

2014

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Bill 2014

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

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(As presented)

(Chief Minister)

Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Bill 2014

A Bill for

An Act to amend legislation about asbestos

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

J2014-425

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Dangerous Substances (Asbestos Safety Reform)*
4 *Legislation Amendment Act 2014.*

5 **2 Commencement**

6 This Act commences on 1 January 2015.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 **3 Legislation amended**

10 This Act amends the following legislation:

- 11 • [Building Act 2004](#)
- 12 • [Building \(General\) Regulation 2008](#)
- 13 • [Construction Occupations \(Licensing\) Act 2004](#)
- 14 • [Construction Occupations \(Licensing\) Regulation 2004](#)
- 15 • [Dangerous Substances Act 2004](#)
- 16 • [Dangerous Substances \(General\) Regulation 2004](#)
- 17 • [Work Health and Safety Act 2011](#).

1 **Part 2** **Building Act 2004**

2 **4** **Contravention of requirements for building work**
3 **involving asbestos**
4 **Section 42A (2) (a)**

5 *substitute*

6 (a) the person is—

7 (i) a licensed builder; or

8 (ii) a licensed asbestos assessor; or

9 (iii) a licensed asbestos removalist; and

10 (aa) carries out the building work; and

11 **5** **New section 42A (5)**

12 *insert*

13 (5) In this section:

14 *licensed asbestos assessor*—see the *Work Health and Safety*
15 *Regulation 2011*, dictionary.

16 *licensed asbestos removalist*—see the *Work Health and Safety*
17 *Regulation 2011*, dictionary.

18 **6** **Meaning of *prescribed requirements*—div 5.1**
19 **Section 66, definition of *prescribed requirements*,**
20 **paragraph (a)**

21 *substitute*

22 (a) if the building work involves handling asbestos or disturbing
23 friable asbestos—the requirements of—

24 (i) this Act; and

25 (ii) the *Work Health and Safety Act 2011*; or

1 **7 Dictionary, new definition of asbestos**

2 *insert*

3 *asbestos*—see the *Work Health and Safety Regulation 2011*,
4 dictionary.

5 **8 Dictionary, definition of friable asbestos and examples**
6 **and note**

7 *substitute*

8 *friable asbestos*—see the *Work Health and Safety Regulation 2011*,
9 dictionary.

1 **Part 3** **Building (General) Regulation**
2 **2008**

3 **9 Dictionary**
4 **Section 3, note 1**

5 *substitute*

6 *Note 1* The dictionary at the end of this regulation defines certain terms used in
7 this regulation, and includes references (*signpost definitions*) to other
8 terms defined elsewhere in this regulation.

9 For example, the signpost definition '*ActewAGL Distribution*, for
10 schedule 2 (Referral of building approval applications)—see schedule 2,
11 section 2.1.' means that the term '*ActewAGL Distribution*' is defined in
12 that section for schedule 2.

13 **10 Bonded asbestos removal—Act, s 26 (3)**
14 **Section 14 (2) and (3)**

15 *substitute*

- 16 (2) The application must include an asbestos removal control plan for
17 the removal.

18 **11 Section 15**

19 *substitute*

20 **15 Friable asbestos removal—Act, s 26 (3)**

- 21 (1) This section applies to an application for building approval
22 involving the removal of friable asbestos from a residential building.
- 23 (2) The application must include an asbestos removal control plan for
24 the removal.

1 **12 Dictionary, note 3**

2 *insert*

- 3 • asbestos
4 • friable asbestos

5 **13 Dictionary, definition of *asbestos***

6 *omit*

1 **Part 4** **Construction Occupations**
2 **(Licensing) Act 2004**

3 **14** **What is a *construction occupation*?**
4 **Section 7 (a) and (b)**

5 *omit*

6 **15** **Who is an *asbestos assessor*?**
7 **Section 7A**

8 *omit*

9 **16** **What is an *asbestos removalist*?**
10 **Section 7B**

11 *omit*

12 **17** **Suspension of licence—public safety**
13 **Section 52A (1), example 1**

14 *omit*

15 **18** **Construction occupations registrar**
16 **Section 103 (2) (a)**

17 *omit*

18 **19** **Dictionary**

19 *omit the definitions of*

20 *asbestos assessment service*

21 *asbestos assessor*

22 *asbestos removalist*

23 *asbestos removal service*

1 **Part 5** **Construction Occupations**
2 **(Licensing) Regulation 2004**

3 **20** **Licence applications—Act, s 17 (3)**
4 **Section 5 (h) (i)**

5 *omit*

6 **21** **Term of licences generally—Act, s 24**
7 **Section 7 (1) (f)**

8 *omit*

9 **22** **Section 8 heading**

10 *substitute*

11 **8** **Term of licence for building assessors, building**
12 **surveyors, plumbing plan certifiers and works**
13 **assessors—Act, s 24**

14 **23** **Section 8 (1) (a)**

15 *omit*

16 **24** **Particulars in register**
17 **Section 9 (1) (c) (i)**

18 *omit*

19 **25** **Corporations and partnerships eligible for some**
20 **occupations**
21 **Section 15 (1) (a)**

22 *omit*

1	26	Eligibility to be asbestos removalist
2		Section 15A
3		<i>omit</i>
4	27	Eligibility to be asbestos assessor
5		Section 16A
6		<i>omit</i>
7	28	Services that may be provided without licence
8		Section 35 (2)
9		<i>substitute</i>
10		<i>Note</i> <i>Construction service</i> does not include asbestos removal work (see
11		Act , s 6).
12	29	Section 35 (4), definition of <i>relevant asbestos</i>
13		<i>qualification</i>
14		<i>omit</i>
15	30	Classes of asbestos assessor
16		Section 36A
17		<i>omit</i>
18	31	Classes of asbestos removalist
19		Section 36B
20		<i>omit</i>
21	32	Asbestos assessor
22		Schedule 1, part 1.1
23		<i>omit</i>

1 **33 Asbestos removalist**
2 **Schedule 1, part 1.2**

3 *omit*

4 **34 Dictionary, definition of *bonded asbestos***

5 *omit*

Part 6 Dangerous Substances Act 2004

35 Exclusions from Act New section 7 (1A)

insert

(1A) This Act, other than the following sections, applies to the handling of asbestos only if the handling is non-commercial handling:

- (a) section 13 (*Correctly* classified for a dangerous substance);
- (b) section 14 (*Correctly* for packed, stored, labelled and placarded);
- (c) section 75 (Unauthorised import of certain dangerous substances);
- (d) section 76 (Unauthorised supply of certain dangerous substances);
- (e) section 77 (Unauthorised possession of certain dangerous substances).

Note Asbestos is also dealt with in the [Work Health and Safety Regulation 2011](#). See s 8 and s 8A for the relationship of this Act to the [WHS Act](#).

1 **36 Failure to comply with safety duty—exposing people to**
2 **substantial risk of death or serious harm**
3 **Section 43 (1), new example**

4 *before the note, insert*

5 2 Caroline receives a letter from the ACT Government, advising her that her
6 house contains loose-fill asbestos insulation and alerting her to the dangers
7 associated with this form of insulation. The letter also informs Caroline that
8 she must engage a licensed asbestos assessor and a licensed asbestos
9 removalist before undertaking any work on the house, and to inform anyone
10 carrying out work on the house that the house contains loose-fill asbestos
11 insulation. After receiving the letter, Caroline engages a gasfitter to repair
12 the heating system located in the ceiling cavity of the house, without telling
13 the gasfitter, or taking any other steps to make the gasfitter aware, that the
14 house contains loose-fill asbestos insulation. Caroline is reckless about
15 whether her failure to tell the gasfitter about the loose-fill asbestos insulation
16 exposes the gasfitter to a substantial risk of serious harm. Caroline commits
17 an offence against this section because asbestos is a dangerous substance
18 and, under the general safety duty of everyone involved in handling a
19 dangerous substance, she must take all reasonable steps to minimise the risks
20 resulting from handling the substance (see s 23 and s 41). Handling a
21 dangerous substance includes possessing, or otherwise having custody or
22 control of, the substance (see s 11).

23 **37 Important concepts**
24 **Part 3A.1**

25 *omit*

26 **38 Public education**
27 **Part 3A.3 heading**

28 *omit*

29 **39 Asbestos advice and assessment reports**
30 **Part 3A.4 heading**

31 *omit*

1 **40 Asbestos assessment reports**
2 **Section 47K (1)**

3 *omit*

4 an asbestos assessor

5 *substitute*

6 a licensed asbestos assessor

7 **41 Section 47K (2)**

8 *substitute*

9 (2) In this section:

10 *licensed asbestos assessor*—see the [Work Health and Safety](#)
11 [Regulation 2011](#), dictionary.

12 **42 Requirement to give asbestos assessment report**
13 **Section 47L (1) (b)**

14 *substitute*

15 (b) an owner, or occupier, (the *owner*) of the premises engages
16 someone (the *worker*) to undertake work involving asbestos.

17 *Note Involves*—see s (4).

18 **43 Section 47L (4)**

19 *substitute*

20 (4) In this section:

21 *involves*—see the [Work Health and Safety Regulation 2011](#),
22 section 419 (2).

- 1 **44 Dictionary, definition of *asbestos***
- 2 *substitute*
- 3 *asbestos*—see the *Work Health and Safety Regulation 2011*,
- 4 dictionary.

1 **Part 7** **Dangerous Substances (General)**
2 **Regulation 2004**

3 **45 Dictionary**
4 **Section 3, notes**

5 *substitute*

6 *Note 1* The dictionary at the end of this regulation defines certain terms used in
7 this regulation, and includes references (*signpost definitions*) to other
8 terms defined elsewhere.

9 For example, the signpost definition '*emergency service*, for chapter 2
10 (Certain dangerous substances)—see the *Emergencies Act 2004*,
11 dictionary.' means that the term 'emergency service' is defined in that
12 dictionary and the definition applies to this regulation.

13 *Note 2* A definition in the dictionary (including a signpost definition) applies to
14 the entire regulation unless the definition, or another provision of the
15 regulation, provides otherwise or the contrary intention otherwise
16 appears (see *Legislation Act*, s 155 and s 156 (1)).

17 **46 Chapter 3 heading**

18 *substitute*

19 **Chapter 3 Asbestos and asbestos**
20 **containing material**

21 **47 Sections 301 and 302**

22 *substitute*

23 **301 Meaning of *asbestos containing material (ACM)*—ch 3**

24 In this chapter:

25 *asbestos containing material (ACM)*—see the *Work Health and*
26 *Safety Regulation 2011*, dictionary.

1	48	Section 303 heading
2		<i>substitute</i>
3	303	When asbestos and asbestos containing material
4		correctly packed—Act, s 14 (1) (a)
5	49	Section 303
6		<i>omit</i>
7		asbestos product
8		<i>substitute</i>
9		asbestos containing material
10	50	Section 303, new note
11		<i>insert</i>
12		<i>Note</i> This provision applies to both commercial and non-commercial packing
13		of asbestos and asbestos containing material (see Act , s 7 (1A)).
14	51	Section 304 heading
15		<i>substitute</i>
16	304	When asbestos and asbestos containing material
17		correctly labelled—Act, s 14 (2) (a)
18	52	Section 304
19		<i>omit</i>
20		asbestos product
21		<i>substitute</i>
22		asbestos containing material

1 **53 Section 304, new note**

2 *insert*

3 *Note* This provision applies to both commercial and non-commercial
4 labelling of asbestos and asbestos containing material (see
5 [Act, s 7 \(1A\)](#)).

6 **54 Section 305 heading**

7 *substitute*

8 **305 Asbestos and asbestos containing material are**
9 **prohibited dangerous substances—Act, s 73, def**
10 ***prohibited dangerous substance***

11 **55 Section 305**

12 *omit*

13 asbestos products

14 *substitute*

15 asbestos containing material

16 **56 Part 3.2 heading and notes**

17 *substitute*

18 **Part 3.2 Authorised handling of asbestos**
19 **and asbestos containing material**

20 *Note 1* The non-commercial manufacture of asbestos containing material is
21 prohibited except in certain circumstances (see [Act, s 74 \(1\)](#)).

22 *Note 2* The transport of asbestos and asbestos containing material is regulated
23 by the [Dangerous Goods \(Road Transport\) Act 2009](#).

57 Sections 306 to 310

2 *substitute*

306 Authorised importation of asbestos and asbestos containing material—Act, s 75 (1) (b)

5 A person is authorised to import asbestos or asbestos containing
6 material if the asbestos or asbestos containing material is imported
7 for non-commercial use in asbestos-related work.

8 *Note* This provision applies to both commercial and non-commercial
9 importation of asbestos and asbestos containing material (see
10 [Act, s 7 \(1A\)](#)).

307 Authorised supply of asbestos and asbestos containing material—Act, s 76 (1) (b) and (3) (b)

13 A person is authorised to supply asbestos or asbestos containing
14 material to someone else if the asbestos or asbestos containing
15 material is supplied for non-commercial use in asbestos-related
16 work.

17 *Note* This provision applies to both commercial and non-commercial supply
18 of asbestos and asbestos containing material (see [Act, s 7 \(1A\)](#)).

308 Authorised possession of asbestos and asbestos containing material—Act, s 77 (1) (b)

21 (1) A person conducting a business or undertaking is authorised to
22 possess asbestos or asbestos containing material, for commercial
23 use, if the possession of the asbestos or asbestos containing material
24 is in accordance with the [Work Health and Safety Regulation 2011](#).

1 (2) A person is authorised to possess asbestos or asbestos containing
2 material, for non-commercial use, if the asbestos or asbestos
3 containing material—

4 (a) is in plant or a vehicle in the person's possession; and

5 *Note* **Plant** includes machinery and equipment and a building or other
6 structure (see [Act](#), dict).

7 (b) is fixed in place; and

8 (c) was fixed in place before 31 December 2003; and

9 (d) is fixed in a way that does not cause a risk unless it is
10 disturbed.

11 (3) A person is authorised to possess asbestos if—

12 (a) the asbestos is in its natural form in minimal quantities in
13 another mineral; and

14 (b) the presence of the asbestos is incidental to the purpose of
15 disturbing or extracting the other mineral.

16 (4) However, this section does not authorise a person to possess
17 chrysotile or chrysotile containing material.

18 (5) In this section:

19 ***person conducting a business or undertaking***—see the [Work](#)
20 [Health and Safety Act 2011](#), section 5.

21 *Note* This provision applies to both commercial and non-commercial
22 possession of asbestos and asbestos containing material (see
23 [Act](#), s 7 (1A)).

1 **309 Storage of asbestos and asbestos containing material—**
2 **Act, s 78 (1) (a)**

3 A person who stores asbestos or an asbestos containing material that
4 has been removed from plant or a vehicle (the *waste*) must ensure
5 that—

- 6 (a) the waste is correctly packed and labelled; and
7 (b) the person disposes of the waste as soon as practicable after the
8 person comes into possession of the waste.

9 *Note 1* **Plant** includes machinery and equipment and a building or other
10 structure (see [Act](#), dict).

11 *Note 2* This provision applies only to non-commercial storage of asbestos and
12 asbestos containing material (see [Act](#), s 7 (1A)).

13 **310 Authorised use of asbestos and asbestos containing**
14 **material—Act, s 79 (1) (b)**

15 (1) A person is authorised to use asbestos or asbestos containing
16 material if the asbestos or asbestos containing material—

- 17 (a) is in plant or a vehicle used by the person; and

18 *Note* **Plant** includes machinery and equipment and a building or other
19 structure (see [Act](#), dict).

- 20 (b) is fixed in place; and
21 (c) was fixed in place before 31 December 2003; and
22 (d) is fixed in a way that does not cause a risk unless it is
23 disturbed.

24 (2) A person is authorised to use asbestos if—

- 25 (a) the asbestos is in its natural form in minimal quantities in
26 another mineral; and

- 27 (b) the presence of the asbestos is incidental to the purpose of
28 disturbing or extracting the other mineral.

1 (3) However, this section does not authorise a person to possess
2 chrysotile or chrysotile containing material.

3 *Note* This provision applies only to non-commercial use of asbestos and
4 asbestos containing material (see [Act](#), s 7 (1A)).

5 **58 Asbestos management—non-residential premises**
6 **Part 3.4**

7 *omit*

8 **59 Dictionary, new definitions**

9 *insert*

10 *ACM*—see *asbestos containing material*.

11 *asbestos containing material (ACM)*, for chapter 3 (Asbestos and
12 asbestos containing material)—see the [Work Health and Safety](#)
13 [Regulation 2011](#), dictionary.

14 **60 Dictionary, definitions of *asbestos management plan*,**
15 ***asbestos product* and *asbestos register***

16 *omit*

17 **61 Dictionary, new definition of *asbestos-related work***

18 *insert*

19 *asbestos-related work*—see the [Work Health and Safety](#)
20 [Regulation 2011](#), dictionary.

- 1 **62 Dictionary**
- 2 *omit the definitions of*
- 3 *authorised activity*
- 4 *authorised activity condition*
- 5 *disturb*
- 6 *licensed asbestos assessor*
- 7 *national standards*
- 8 *non-residential premises*
- 9 **63 Dictionary, definition of *risk assessment***
- 10 *substitute*
- 11 *risk assessment*, for a hazard at premises—see section 222.

1 **Part 8** **Work Health and Safety Act 2011**

2 **64** **Approved codes of practice**
3 **Section 274 (2)**

4 *after 1st mention of*

5 code of practice

6 *insert*

7 (other than a code of practice in relation to the management, control
8 or removal of asbestos or asbestos containing material)

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 October 2014.

2 Notification

Notified under the [Legislation Act](#) on 2014.

3 Republications of amended laws

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

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