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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DANGEROUS SUBSTANCES (ASBESTOS) AMENDMENT BILL 2005 (NO 2)

EXPLANATORY STATEMENT

**Circulated by authority of the
Minister for Industrial Relations
Ms Katy Gallagher MLA**

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Outline

The ACT Legislative Assembly passed the *Dangerous Substances (Asbestos) Amendment Act 2004* (the 2004 Amendment Act) on 25 August 2004. The Act inserted into the *Dangerous Substances Act 2004* (the Dangerous Substances Act) provisions that:

- make a legislative statement recognising the significance and scope of risks to the community posed by asbestos;
- establish an Asbestos Assessment Task Force (the Task Force);
- require an analysis by the Task Force of the extent and impact of asbestos in the ACT and a requirement to report to the Minister on the analysis by 1 August 2005;
- require the publication of educational material to increase public awareness about risks associated with asbestos; and
- establish a duty of care by owners and occupiers of premises, to provide persons at risk with information about asbestos at premises including its location and condition, if that is known.

The 2004 Amendment Act also amended the *Building Act 2004* and regulations, preserving the arrangements for asbestos removal licensing that were in place at the time of repeal of the *Building Act 1972*.

The 2004 Amendment Act also contains amendments to the Dangerous Substances Act that have not yet commenced. These are:

- section 47K establishing a duty of owners and occupiers of premises to ensure information about asbestos at the premises is obtained and provided to persons engaged to undertake a high risk activity (e.g. construction and renovation work); and
- section 47L requiring a person selling a property to obtain an inspection report and make it available to prospective buyers.

The Dangerous Substances (Asbestos) Amendment Bill 2005 (No 2) (the Bill) proposes to omit these uncommenced provisions from the 2004 Amendment Act. Omission of these provisions will prevent the sections 47K and 47L from commencing and therefore from becoming effective law.

The *Dangerous Substances (Asbestos) Amendment Act 2005* (No 1), passed on 17 February 2005, amended section 47J (Liability of owners and occupiers to inform) before it commenced. The amendments removed any doubt that section 47J established a discovery requirement for an owner or occupier of premises in relation to the presence, location or condition of asbestos.

A new definition of “tenant” was inserted to provide clarity about who is a tenant (and, hence, is a relevant person) to whom a duty is owed by an owner or occupier under section 47J.

The *Dangerous Substances (Asbestos) Amendment Act 2005* also contains an amendment to section 47K. As this Bill will omit section 47K, the amendment to section 47K in the *Dangerous Substances (Asbestos) Amendment Act 2005* is also being omitted by this Bill.

This Bill is part of the ACT Government's response to recommendations made by the Task Force. As required under the Dangerous Substances Act, the Task Force reported to the Minister by 1 August 2005. The Minister tabled the Report in the Assembly on 23 August 2005.

Notes on Clauses

Parts

This Bill is divided into 3 parts. Part 1 contains preliminary matters, which includes the name of the Act and the commencement of the Act. Part 2 contains amendments to the *Dangerous Substances (Asbestos) Amendment Act 2004*, whereas Part 3 amends the *Dangerous Substances (Asbestos) Amendment Act 2005 (No 1)*.

Part 1

Clause 1 – Name of Act – states that the title of this Act is the *Dangerous Substances (Asbestos) Amendment Act 2005 (No 2)*.

Clause 2 – Commencement – provides that the Act commences on the day after the Act is notified on the Legislation Register.

Part 2

Clause 3 – Legislation amended – states that the provisions in Part 2 of the *Dangerous Substances (Asbestos) Amendment Act 2005 (No 2)* amend the *Dangerous Substances (Asbestos) Amendment Act 2004*.

Clause 4 – Section 6 – omits section 6 of the *Dangerous Substances (Asbestos) Amendment Act 2004*.

On commencement, section 6 would have inserted section 47K into the *Dangerous Substances Act 2004*. The purpose of section 47K was to provide for a liability of owners and occupiers to inspect, if the owner or occupier was engaging in a high-risk activity in relation to asbestos at the premises. The section would have applied if the owner or occupier did not know whether there was asbestos at the premises; or the owner or occupier knew that there was asbestos at the premises but did not know the required information about the asbestos. The section would have also imposed a duty of care on owners or occupiers to find out whether there was asbestos at the premises. If there was asbestos at the premises, a further duty to find out the *required information* would have applied.

The meaning of required information was amended by section 10 of the *Dangerous Substances (Asbestos) Amendment Act 2005*, and that provision is also omitted by clause 7 of this Bill.

Clause 5 – Section 7, new part 3A.5 – omits section 7 of the *Dangerous Substances (Asbestos) Amendment Act 2004*, so far as section 7 inserts Part 3A.5.

On commencement, section 7 would have inserted a Part 3A.5, and within it section 47L, into the *Dangerous Substances Act 2004*. Section 47L would have created an offence if a seller of property did not, before the day the property was first advertised or offered for sale or listed by an agent, obtain an inspection report (an asbestos report) for the property and make it available for inspection to a prospective buyer.

In addition to Part 3A.5 and section 47L, section 7 of the *Dangerous Substances (Asbestos) Amendment Act 2004* also contained Schedule 1 - *Other Amendments*. Schedule 1 contained amendments to the *Building Act 2004* and the *Building Regulation 2004*.

Although Part 3A.5 and section 47L have not yet commenced, the amendments made by Schedule 1 to the Building Act and Regulation commenced on 1 September 2004. Accordingly, pursuant to section 86(2) of the *Legislation Act 2001* the omission of section 7 of the *Dangerous Substances (Asbestos) Amendment Act 2004* does not affect the continuing operation of the amendments to the Building Act and Regulation. Clause 5 of the Bill can only remove Part 3A.5 and section 47L as these are the only provisions in section 7 of the *Dangerous Substances (Asbestos) Amendment Act 2004* that have not yet commenced.

Part 3

Clause 6 – Legislation amended – states that provisions in Part 3 of the *Dangerous Substances (Asbestos) Amendment Act 2005 (No 2)* amend the *Dangerous Substances (Asbestos) Amendment Act 2005*.

Clause 7 – Section 10 – omits section 10 of the *Dangerous Substances (Asbestos) Amendment Act 2005*. Section 10 was to have amended the definition of *required information* about asbestos in section 47K. As clause 4 of this Bill omits section 47K, preventing the section from commencing, it is necessary to also omit the amendment to section 47K contained in section 10 of the *Dangerous Substances (Asbestos) Amendment Act 2005*.