

2006

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

ASBESTOS LEGISLATION AMENDMENT BILL 2006  
EXPLANATORY STATEMENT

Circulated by the authority of  
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## BACKGROUND

The Asbestos Legislation Amendment Bill 2006 (the Bill) amends the following legislation (the amended laws)–

- *Building Act 2004*
- *Building Regulation 2004*
- *Civil Law (Sale of Residential Property) Act 2003*
- *Construction Occupations (Licensing) Act 2004*
- *Construction Occupations (Licensing) Regulation 2004*
- *Dangerous Substances Act 2004*
- *Residential Tenancies Act 1997*

### Objectives of the amended laws

The main objectives of the amended laws are to give effect to the Government's response to the ACT Asbestos Task Force Report in order to establish asbestos management regimes for the residential sector and those occupations that handle asbestos on a regular basis.

### Objectives of the Bill

The main objective of the Bill is to give effect to the Government's response to the Task Force Report that was tabled on 28 August last year, in order to establish asbestos management regimes for the residential sector and those occupations that handle asbestos on a regular basis.

The Government agreed, or agreed in principle to all of the recommendations of the Task Force, with the one exception that proposed to defer the commencement of sections 47K and 47L of the Dangerous Substances Act from 16 January 2006 until a later date. In light of the support for the new management regimes, the Government agreed instead to repeal section 47K and L in preparation for these new legislative reforms. Sections 47 K and L were subsequently repealed in October 2005.

This Bill does not capture the non-residential asbestos requirements proposed by the Task Force report. These will be incorporated into the ACT's amendments to the *Dangerous Substances (General) Regulation 2004* as part of the implementation of the National Hazardous Substances Regulatory Framework. The introduction of the regulation framework is to coincide with the proposed commencement of this amending legislation.

Generally the Bill proposes to amend certain laws and regulations to provide for a range of measures dealing with minor maintenance work around homes and other types of buildings that may involve bonded asbestos, the licensing and training of construction and other occupations that handle asbestos on a regular basis and to provide for the supply of information at key transaction points on the likely location of asbestos in homes built prior to 1985.

The approaches proposed by the Task Force are supported by the outcomes of extensive community consultation and an extent and impact survey and are based on best practice in asbestos management and the most current scientific knowledge. This Bill reflects those outcomes and represents a more effective system to ensure that a greater cost-benefit balance is achieved in directing resources towards best practice management procedures.

## OUTLINE

The key provisions of the Bill make amendments to the amended laws to provide for certain new asbestos specific licensing and training initiatives in the legislative framework, and to establish requirements to disclose information on the likely location of asbestos in residential premises. Specifically, these amendments achieve the following:

- allow the Minister to recognise codes of practice that set out practices, standards and other matters about building work if the work involves the use, handling or disposal of asbestos;
- exempt from the building approval process minor maintenance work and working with less than 10m<sup>2</sup> of bonded asbestos by prescribed trade, service and maintenance occupations;
- all building certifiers and prescribed occupations will undertake relevant asbestos training;
- establish licensing regimes for the new asbestos specific occupations of 'asbestos assessor' and 'asbestos removalist';
- that the work of a 'builder' will no longer encompass asbestos building work, as that type of work is intended to be the kind of work provided in the occupation of 'asbestos removalist';
- that if an asbestos assessment report is obtained for a residential property, it will be required to be made available by owners either with a building approval application, when entering into a residential tenancy agreement or a contract for sale of a residential property, or when engaging a tradesperson to provide a construction service or do renovation work at a premises; and
- that in the event that an asbestos assessment report has not been obtained, then owners will be required instead to provide a generic asbestos advice either with a building approval application, when entering into a residential tenancy agreement or with a contract for sale of a residential property.

## FINANCIAL IMPLICATIONS

The matters proposed by this Bill are funded for implementation in the year 2005-06.

## NOTES ON SPECIFIC PROVISIONS

### Preliminary

#### Name of Act

Section 1 provides that the name of the Act is the Asbestos Legislation Amendment *Act 2006*.

#### Commencement

Section 2 provides that the Act commences 1 week after its notification date, except where an amendment gives a special commencement provision.

#### Legislation amended

Section 3 provides that in schedule 1, this Act amends the *Building Act 2004*; the *Building Regulation 2004*; the *Civil Law (Sale of Residential Property) Act 2003*; the *Construction Occupations (Licensing) Act 2004*; the *Construction Occupations (Licensing) Regulation 2004*; the *Dangerous Substances Act 2004*; and the *Residential Tenancies Act 1997*.

#### Schedule 1                      Legislation amended

#### Part 1.1            ***Building Act 2004*** (the Building Act)

#### **Clause 1.1**            **New sections 10A and 10B**

This clause provides for new section 10A to give a meaning of *minor maintenance work*. For the purposes of the Building Act, *minor maintenance work* means minor maintenance carried out on a premises (residential and non-residential) that is personally done by an individual who owns or occupies the premises.

The reference to “owns or occupies” is intended to encompass ‘landowners’ as defined elsewhere in the Act, and to include people who rent the premises, regularly work in the premises as part of their normal occupation, or who normally reside in the property.

The reference to “owns or occupies” is intended to exclude a person who merely occupies the premises for reasons only relating to doing minor maintenance work.

This clause provides that *minor maintenance* means all or any of the following done in relation to bonded asbestos:

- (a) low speed or hand drilling;
- (b) sealing;
- (c) painting;
- (d) coating;
- (e) cleaning.

For example, “low speed” drilling is intended to refer to drilling at a low enough speed to not blast drilled material into the air.

The terms listed at (a) to (e) of the clause are intended to refer to the respective activities in so far as they are not expected to contribute significantly to ambient air concentrations of asbestos fibres or add significantly to the cumulative exposure for people undertaking this type of work.

This clause provides for a new section 10B to give a meaning of *disturbs* friable asbestos. For the Building Act, work *disturbs* friable asbestos if the work increases, or may significantly increase the risk of, the dispersal of asbestos fibres into the air. This may occur as a result of activities, such as drilling, cleaning or removal of asbestos cement sheeting that may expose asbestos fibres into the air..

#### **Clause 1.2 Section 13 (2)**

This clause omits the current term ‘the handling of asbestos or disturbance of loose asbestos and substitutes the term ‘handling asbestos or disturbing friable asbestos’ to allow for the usage of the contemporary descriptions of asbestos.

#### **Clause 1.3 Section 13 (2), example**

This clause omits the term ‘loose asbestos’ and substitutes ‘friable asbestos’ to allow for the usage of the contemporary descriptions of asbestos.

#### **Clause 1.4 Section 15—application of pt 3 to building work**

Currently under the Building Act, any asbestos related work, regardless of the size, is required to be undertaken or supervised by a licensed builder, in accordance with the statutory approval process provided by the Act, part 3, (Building work). There are significant impracticalities in this approach, particularly in having to call in a licensed builder to undertake or supervise minor tasks associated with bonded asbestos, for example, preparing for painting a sheet of bonded asbestos, such as those found under the eaves of homes built prior to 1985.

This clause provides that owners are permitted to undertake minor maintenance activities without complying with building approval related processes, by exempting this type of building work from the application of part 3, provided the work is undertaken in accordance with an approved asbestos code.

The clause also restates the other kinds of building work part 3 does not apply to, to continue the current effect of that aspect of the provision.

#### **Clause 1.5 Section 26 (2) (b) (ii)**

This clause provides that where a building approval is required for building work on a residential premises built prior to 1 January 1985, the building approval application must be accompanied by an asbestos removal control plan that addresses asbestos disturbance, handling and disposal, and the safety of workers, occupants and others potentially subject to exposure.

The clause also requires that should an asbestos assessment report exist, and can reasonably be obtained, for which the building work relates, it too is required to accompany the application.

#### Clause 1.6 Section 28 (3) to (5)

This clause substitutes new sections 28 (3) to (7) to provide, under paragraph 28 (3) (b) (iii), that if the accompanying documents to a building approval do not include an asbestos assessment report, a building certifier is required to attach an asbestos advice to the building approval plans.

Also, if, because of the size of 1 or more of the accompanying documents (the *relevant documents*), it is impractical to attach the relevant documents to the plans, the certifier may, instead of attaching the relevant documents under subsection (3) (b) (ii), mark each page of the plans with an indication that the relevant documents are separate.

The clause defines the term *accompanying document*, in relation to a building approval, to mean a document required to accompany the application for the building approval.

The clause also provides a note indicating that section 26 requires certain documents to accompany applications for building approval and allows other material required to accompany applications to be prescribed by regulation.

#### Clause 1.7 Section 29 (1) (d)

This clause provides that if an asbestos control plan is required to accompany the application, the plan must comply with the relevant asbestos code as determined by the Minister under section 139B.

#### Clause 1.8 Sections 42 (1) (d) and 42A (1)

This clause omits the term 'the handling of asbestos or disturbance of loose asbestos and substitutes 'handling asbestos or disturbing friable asbestos' to provide consistency of terms and definitions within the Act.

#### Clause 1.9 New section 42A (3A)

This clause inserts new section 42A (3A) to create a defence to a prosecution under section 42A (2). A person commits that offence if the person carries out specialist building work that involves the handling or disturbance of friable asbestos so as section 42, (Requirements for carrying out building work), of the Act is breached. Section 42 covers matters such as carrying out building work in accordance with the respective approved plans by a person with a relevant licence that authorises that work.

Clause 1.9 creates two defences that only operate where friable asbestos was disturbed in carrying out the building work and either—

- a) the defendant took reasonable steps to minimise the risk of friable asbestos being disturbed; or
- b) the disturbing of the friable asbestos happened in the defendant taking reasonable steps to minimise the risks resulting from the disturbance of the friable asbestos.

The intended outcome is for a defence to exist that relies on proposed section 42A (3A) (b) (i) where the defendant took the reasonable precautions necessary to establish that the defendant

was not reckless about whether friable asbestos was disturbed, but yet that asbestos was disturbed not as a result of the defendant's recklessness.

An example of an intended operation of that defence is where the defendant satisfactorily establishes that the defendant was not reckless about identifying where asbestos was located, for example by satisfactorily establishing that the defendant engaged an expert to identify all such locations in the relevant building prior to the disturbance, but yet the defendant disturbed friable asbestos that was located in an area that the defendant did not reasonably suspect contained asbestos as the expert declared that location to contain no asbestos.

The other intended outcome of clause 1.9 is for a defence to exist that relies on proposed section 42A (3A) (b) (ii), where the defendant inadvertently disturbed asbestos, for example, in a manner that proposed section 42A (3A) (b) (i) applies to, but continued to disturb the asbestos by taking reasonable steps to minimise the risks resulting from the disturbance of the friable asbestos.

#### **Clause 1.10 Section 65-application of pt 5 to building work**

Currently under the Building Act, any asbestos related building work, regardless of the size, is taken as being work on building that effects the entitlement to occupy or use the building. Currently the Act, part 5 (Building occupancy) prohibits the occupancy or use of part of a building that has had asbestos building work carried out upon it unless a certificate under part 5 is issued in respect of the work. There are significant impracticalities in this approach, particularly in having to apply for a certificate for minor tasks associated with bonded asbestos, for example, preparing for painting a sheet of bonded asbestos, such as those found under the eaves of homes built prior to 1985.

This clause provides that owners are permitted to undertake minor maintenance activities without complying with building occupancy related processes, by exempting this type of building work from that application of part 5, provided the work is undertaken in accordance with an approved asbestos code.

The clause also restates the other kinds of building work part 5 does not apply to, to continue the current effect of that aspect of the provision.

#### **Clause 1.11 Section 66**

This clause omits the term 'the handling of asbestos or disturbance of loose asbestos' and substitutes 'handling asbestos or disturbing friable asbestos' to provide consistency of terms and definitions within the Act.

#### **Clause 1.12 Section 79 heading**

This clause substitutes a new heading for section 79 to more accurately reflect the content of the provisions.

#### **Clause 1.13 Section 83-application of pt 6 to building work**

Currently under the Building Act, certain kinds of asbestos related building work, in relation to certain residential buildings are required to be subject to a statutory warranty, and to be covered by a statutory warranty insurance cover or a fidelity certificate, under the Act part 6 (Residential

buildings—statutory warranties, insurance and fidelity certificates). There are significant impracticalities in this approach, particularly in - having to provide that cover in relation to relatively small-scale asbestos building work.

This clause provides that owners are permitted to undertake minor maintenance activities without complying with part 6.

The clause also restates the other kinds of building work part 6 does not apply to, to continue the current effect of that aspect of the provision.

#### Clause 1.14 Section 88 (2) (b) (ii)

This clause omits the term 'the handling of asbestos or disturbance of loose asbestos' and substitutes 'handling asbestos or disturbing friable asbestos' to provide consistency of terms and definitions within the Act.

#### Clause 1.15 Section 134

This clause makes a consequential amendment to the Act by omitting three mentions of the term 'land or' prior to the word 'premises'. Clause 1.18 makes mentions of that term superfluous by inserting into the dictionary to the Act a definition of the term *premises* to include the term 'land or'.

#### Clause 1.16 Part 8 heading

This clause provides for a new heading – '**Codes and standards**' and new division – '**Building code and recognised standards**' to more accurately reflect the content of the provisions and to account for the inclusion of new asbestos codes in Division 8.2

#### Clause 1.17 New Division 8.2–Asbestos code

This clause provides a new division to allow the Minister to approve, in writing, certain codes of practice for the purposes of this Act. The purpose of the codes of practice may be to set out practices, standards and other matters about building work if the work involves the use, handling or disposal of asbestos. An approved code of practice, or an amendment or repeal of a code of practice is a disallowable instrument.

For example, the Minister may determine that the *Code of Practice for the Safe Removal of Asbestos* prepared and published by the Office of the Australian Safety and Compensation Council, to be an approved asbestos code.

This clause also provides that the construction occupations registrar must make a copy of each code, and any instrument (or provision of an instrument) applied (with or without change) by the code, available for public inspection during ordinary office hours at—

- (a) the office of the construction occupations registrar; or
- (b) another place prescribed under the regulations.



## Clause 1.18 Dictionary, new definitions

This clause provides for a range of new definitions for the purposes of the Building Act, these are-

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

*asbestos assessment report*, for premises—see the *Dangerous Substances Act 2004*, section 47K.

*asbestos code*—see section 139B.

*asbestos removal control plan*, in relation to building work, means a plan that provides for the management of any asbestos disturbance to comply with the asbestos code.

*bonded asbestos* means asbestos in a form where the asbestos fibres are held within another material, for example, cement, but does not include friable asbestos.

*disturbs* friable asbestos—see section 10B.

*friable asbestos* means asbestos, whether or not contained in other material, that—

- (a) is crumbly, dusty or powdery; or
- (b) when dry, can be crumbled, pulverised or reduced to powder by hand pressure.

### Examples of friable asbestos

- 1 sprayed asbestos coating or insulation
- 2 asbestos lagging
- 3 loose asbestos, asbestos in its raw form

*handling* asbestos—to remove any doubt, *handling* asbestos (including friable asbestos) includes disturbing the asbestos.

*minor maintenance work*—see section 10A.

*premises* includes land or a structure and any part of an area of land or a structure.

## Part 1.2 *Building Regulation 2004* (the Building Regulation)

### Clause 1.19 Sections 4A and 4B

This clause substitutes section 4A to provide consistency of terms and definitions within the Building Act and the Building Regulation. The examples have not changed.

This clause also removes section 4A (2). This section was originally inserted to allow the Asbestos Taskforce to conduct the asbestos survey of 600 ACT homes. This is no longer required.

This clause substitutes section 4B to provide consistency of terms and definitions within the Building Act and the Building Regulation.

## Clause 1.20 Section 7 heading

This clause provides for a new heading for section by referring now to s 83 (1) (b). This reflects the change in numbering of that section.

## Clause 1.21 New section 7A

This clause provides that for the purposes of the building approval process under Part 3, Part 5 and Part 6 of the Building Act, building work that involves handling asbestos is exempt building work if—

- (a) the asbestos is bonded asbestos; and
- (b) not more than 10m<sup>2</sup> of asbestos is handled during the building work; and
- (c) each person who handles the asbestos—
  - (i) works in a prescribed occupation; and
  - (ii) has a relevant asbestos qualification; and
- (d) the asbestos is handled by each person who handles it in the course of the person's occupation.

The 10m<sup>2</sup> mentioned in the clause is an arbitrary amount intended to be sufficient to permit certain minor work, but not necessarily sufficient to permit removal of all asbestos cement sheets from a bathroom, for example, where the bathroom contains more than 10m<sup>2</sup> of asbestos cement sheet.

This clause also provides that the construction occupations registrar may declare, by notifiable instrument, an occupation to be a prescribed occupation or a qualification to be a relevant asbestos qualification.

This clause also provides the following meanings for the purposes of this section-

**building surveyor**—see the *Construction Occupations (Licensing) Act 2004*, section 9.

**construction occupation**—see the *Construction Occupations (Licensing) Act 2004*, section 7.

**plumbing plan certifier**—see the *Construction Occupations (Licensing) Act 2004*, section 14.

**prescribed occupation** means—

- (a) a construction occupation, other than building surveyor or plumbing plan certifier; or
- (b) an occupation declared to be a prescribed occupation under subsection (2).

**relevant asbestos qualification** means a qualification declared to be a relevant asbestos qualification under new proposed subsection 7A (2).

#### Clause 1.22 Sections 12A and 14A

This clause omits the term 'stable asbestos cement sheeting' and substitutes 'bonded asbestos' to allow for the usage of the contemporary descriptions of asbestos containing materials.

#### Clause 1.23 Section 15 (1) (h) (ii)

This clause provides that in addition to consulting with the relevant chief executive in respect demolition procedures and waste management, the relevant chief executive must also be consulted in regard to any asbestos control plan provided in the application.

### Part 1.3 *Civil Law (Sale of Residential Property) Act 2003* (SOR Act)

#### Clause 1.24 Section 9 (1) (i)

This clause provides that for the purposes of a contract of sale, if there are premises covered by the proposed contract and there is a current asbestos assessment report for the premises (or some or all of them)—a copy of each current asbestos assessment report [paragraph 9 (1) (i)] is a required document. However, if there is no current asbestos assessment report for the premises (or any of them), or, if a current asbestos assessment report for the premises (or any of them) exists but the seller cannot, after taking reasonable steps, find or get the report—an asbestos advice [paragraph 9 (1) (j)] is the required document.

#### Clause 1.25 Section 9 (3) (b)

This clause provides for an update of the drafting style only.

#### Clause 1.26 Section 9 (4), new definitions

This clause inserts new definitions for the purposes of these amendments to the SOR Act—

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

*asbestos assessment report*, for premises—see the *Dangerous Substances Act 2004*, section 47K.

*current asbestos assessment report*, for premises, means an asbestos assessment report for the premises if the premises have not been changed, since the report was made, in a way that would affect the accuracy of the report.

*premises* includes land or a structure and any part of an area of land or a structure.

#### Clause 1.27 Section 11 (1) (i)

This clause provides that the new numbering of paragraphs for section 9 is reflected in this provision.

## Part 1.4      *Construction Occupations (Licensing) Act 2004* (COLA)

### Clause 1.28      Section 7—What is a construction occupation? Section 7A—What is an asbestos assessor? Section 7B—What is an asbestos removalist?

This clause amends section 7 of COLA to include the new construction occupations of ‘asbestos assessor’ and ‘asbestos removalist’.

This clause provides for a new section 7A to provide a description of what an asbestos assessor is. For the purposes of COLA an *asbestos assessor* is an individual who provides, has provided or proposes to provide an asbestos assessment service.

An *asbestos assessment service* is the doing or supervising of all or any of the following work for this Act, the *Building Act 2004*, the *Civil Law (Sale of Residential Property) Act 2003*, the *Dangerous Substances Act 2004* or the *Residential Tenancies Act 1997*:

- a) air monitoring;
- b) identifying the location, type and condition of asbestos in buildings;
- c) assessing the risk the identified asbestos presents;
- d) advising on how the asbestos should be managed;
- e) reporting about the work mentioned in paragraphs (a) to (c).

For the purposes of this section, *assess* asbestos includes taking samples and other steps to identify the location, type and condition of asbestos.

This clause provides for a new section 7B to provide a description of what is an asbestos removalist. An *asbestos removalist* is an entity that provides, has provided or proposes to provide an asbestos removal service.

An *asbestos removal service* is the doing or supervising of work that involves all or any of the following:

- (a) handling (including disturbing) asbestos in or around buildings;
- (b) removing and disposing of asbestos from in or around buildings.

### Clause 1.29      Section 8 (2)

This clause provides a new meaning for building service in order to remove handling asbestos or disturbing friable asbestos from what is the doing or supervising of building work under the occupation of ‘builder’.

An intended outcome is to prohibit the work of a ‘builder’ from encompassing asbestos building work, as that type of work is intended to be the kind of work provided in the proposed occupation of ‘asbestos remover’.

This clause also provides that, for the purposes of this section, the following definitions apply-

*disturbs* friable asbestos—see the *Building Act 2004*, section 10B.

*friable asbestos*—see the *Building Act 2004*, dictionary.

*specialist building work*—see the Building Regulation 2004, section 4B.

This clause commences on a day fixed by the Minister by written notice in order to correspond with the transitional provisions for the commencement of the new asbestos removalists licensing regime.

#### **Clause 1.30 Section 16—What is an operational Act?**

This clause substitutes a new section 16 to include the *Dangerous Substances Act 2004* as an operational Act for the purposes of COLA. This enables the call-up of the new provisions *Dangerous Substances Act 2004* relating to the asbestos advice and the asbestos assessment report.

This clause commences on a day fixed by the Minister by written notice in order to correspond with the transitional provisions for the commencement of the new asbestos assessors licensing regime.

#### **Clause 1.31 – New section 103 (2)**

This clause provides that the relevant chief executive may now also appoint a public servant as the construction occupations registrar if that person has the relevant experience or a relevant qualification as an asbestos assessor.

That is necessary to ensure that the list of occupations under section 102 (2) corresponds with range of occupations covered by the ACT.

#### **Clause 1.32 New part 15: Transitional-Asbestos Legislation Amendment Act 2006**

##### *Section 155 Effect of building licence authorising building work involving asbestos*

In order to ensure that existing builder's licensees are not disadvantaged in the event that the appropriate training to convert their licences is still in development at the time this legislation is commenced, this clause provides that section 135 will continue to authorise respective building work under transitional arrangements.

This clause provides that if immediately before the commencement of this section, the person had a builder's licence, and the builder's licence was endorsed to authorise the person to do building work that involves handling asbestos or disturbing friable asbestos, the builders licence continues to authorise the person to do the building work.

These transitional arrangements have a separate commencement date to be fixed by the Minister, and then a period of 12 months following the commencement date for asbestos removalists or builders to obtain the minimum standard of training and licence conversion.

### *Section 156    Renewal of building surveyor licences*

In order to ensure that existing licensed building surveyors are not disadvantaged in the event that the appropriate asbestos training is still in development at the time this legislation is commenced, this clause provides that section 136 will provide that, despite section 25 (2), the registrar may continue to renew a building surveyors licence under transitional arrangements.

This clause applies to the renewal of a licence as a building surveyor if the applicant for renewal was licensed immediately before the commencement of this section.

These transitional arrangements have a separate commencement date to be fixed by the Minister, and then a period of 12 months following the commencement date for asbestos removalists or builders to obtain the minimum standard of training and licence conversion.

### *Section 157    Expiry-pt 15*

This clause provides that part 15 expires 1 year after the day it commences.

#### **Clause 1.33    Dictionary, new definitions**

This clause provides that, for the purposes of COLA, the following definitions now apply-

*asbestos assessor*—see section 7A (1).

*asbestos assessment service*—see section 7A (2).

*asbestos removalist*—see section 7B (1).

*asbestos removal service*—see section 7B (2).

## **Part 1.5    Construction Occupations (Licensing) Regulation 2004**

#### **Clause 1.34    Section 5 (h)**

This clause substitutes a new section 5 (h) to provide that, if the application is for a licence as an asbestos assessor, the applicant must provide the name of the insurer who will provide the insurance mentioned in section 16A (Eligibility to be asbestos assessor) or the regulations.

#### **Clause 1.35    Section 8-Term of licence for asbestos assessors, building surveyors and plumbing plan certifiers—Act, s 24**

This clause provides that, like a building surveyor or plumbing plan certifier, the maximum period for a licence in the construction occupation of asbestos assessor is 1 year, or less, depending on the maximum period for which the applicant has insurance.

That is to ensure that no licensee in that occupation can have a licence that is valid beyond the period that the mandatory insurance operates.

#### **Clause 1.36 Section 9 (1) (c)**

This clause substitutes a new section 9 (1) (c) to provide that, if the licensee is an asbestos assessor, they also must provide, for the register, the name of the insurer who will provide the insurance mentioned in section 16A (Eligibility to be asbestos assessor) or the regulations.

#### **Clause 1.37 Section 15 (1)**

This clause provides that an asbestos removalist is eligible to be licensed as a corporation or partnership.

#### **Clause 1.38 New section 15A-Eligibility to be asbestos removalist**

This clause provides that an applicant for a licence as an asbestos removalist is only eligible for the licence if the applicant satisfies the registrar that the applicant has qualifications or experience necessary for the applicant to provide, and understand the minimum health and safety requirements in relation to, the asbestos removal services for which the licence is sought.

This clause also provides that for this section, *asbestos removal service* has the meaning given under section 7B (2) of the Act.

#### **Clause 1.39 Section 16A-Eligibility to be asbestos assessor Section 17-Eligibility to be building surveyor**

This clause provides for a new section 16A to provide that an asbestos assessor is only eligible for a licence if the applicant satisfies the registrar that the applicant is adequately insured.

This clause amends section 17 to require that, in addition to the current eligibility requirements to be a building surveyor, an applicant for a licence as a building surveyor is eligible for the licence only if the applicant satisfies the registrar that the applicant has successfully undertaken asbestos management training that has been approved by the registrar.

This clause also provides that the registrar may approve the previously mentioned asbestos management training, if the registrar considers that successful undertaking of the training will give an applicant for a licence as a building surveyor adequate knowledge of the requirements to deal appropriately with asbestos.

This clause commences on a day fixed by the Minister by written notice in order to correspond with the transitional provisions under new section 136 of the Act for the renewal of building surveyors licences.

The clause also restates the current provisions that apply to building surveyors where the intent remains unchanged.

#### **Clause 1.40 New section 35 (1A)**

Currently section 35 provides that a building services may be provided by an unlicensed individual provided it is done under the supervision of a licensed individual or the nominee of a licensed corporation or partnership.

This clause now provides that the building services done by an unlicensed individual under the supervision of a licensed individual or the nominee of a licensed corporation or partnership can still be done, but that the individual providing the services must have a relevant asbestos qualification.

That is necessary to ensure that it is unlawful for such work to be done by a person that does not have a relevant asbestos qualification.

#### Clause 1.41 Section 35 (2), new definition

This clause provides that the *relevant asbestos qualification* referred to in *clause 1.40* is the same qualification defined in new section 7A (4) of the *Building Regulation 2004*.

#### Clause 1.42 New section 36A—Classes of asbestos assessor; and New Section 36B—Classes of asbestos removalist

This clause inserts section 36A to provide for the new construction occupation of asbestos assessor and provides that it is divided into the classes set out in schedule 1, part 1.1A, column 2.

This clause also inserts section 36B to provide for the new construction occupation of asbestos removalist and provides that it is divided into the classes set out in schedule 1, part 1.1B, column 2.

#### Clause 1.43 Schedule 1, new part 1.1A—Asbestos assessor Schedule 1, new part 1.1B—Asbestos removalist

This clause inserts a new part 1.1A to provide 2 classes of asbestos assessor-

1. ***Class A Asbestos Assessor*** provides an asbestos assessment service and does anything allowed to be done under a class B licence.
2. ***Class B Asbestos Assessor*** undertakes field surveys to identify the location, type and condition of asbestos in buildings for this Act, the *Building Act 2004*, the *Civil Law (Sale of Residential Property) Act 2003*, the *Dangerous Substances Act 2004* or the *Residential Tenancies Act 1997*, for example, by bulk sampling.

This clause also inserts a new part 1.1B to provide 2 classes of asbestos removalist-

1. ***Class A Asbestos Removalist*** provides an asbestos removal service.
2. ***Class B Asbestos Removalist*** provides an asbestos removal service in relation to bonded asbestos.

#### 1.44 Schedule 1, 1.1

This clause will prohibit the work of a 'builder' from encompassing asbestos building work, as that type of work is intended to be the kind of work provided in the proposed occupation of 'asbestos remover'.



This clause commences on a day fixed by the Minister by written notice in order to correspond with the transitional provisions for the commencement of the new asbestos removalists licensing regime.

#### Clause 1.45 Schedule 1

This clause provides a note to indicate that the parts of schedule 1 will be renumbered when the regulation is next republished under the *Legislation Act*.

#### Clause 1.46 Dictionary, new definitions of *bonded asbestos* and *friable asbestos*

This clause inserts the following new definitions-

*bonded asbestos*—see the *Building Act 2004*, dictionary.

*friable asbestos*—see the *Building Act 2004*, dictionary.

### Part 1.6 *Dangerous Substances Act 2004* (DS Act)

#### Clause 1.47 Part 3A.4- Asbestos advice and assessment reports

This clause substitutes a new Part 3A.4 to provide the following-

##### *47J Asbestos advice*

Currently section 47J of the DS Act requires owners of a premises to provide written information on what they know about the location of asbestos on their property. This clause changes section 47J to provide that the Minister must prepare an asbestos advice (a notifiable instrument) about the likely location of asbestos in residential premises built, or the building of which started, before 1985.

The asbestos advice was derived from the survey of over 600 houses conducted for the specific purpose of determining the extent and impact of asbestos in the ACT by the Asbestos Task Force. The proposed asbestos advice provides useful and accurate information on likely locations of asbestos materials in and around home built prior to 1985.

Amendments made by this amending Act to the DS Act, the Building Act, the Civil Law (Sale of Residential Property) Act and the Residential Tenancies Act require that, if an asbestos assessment report does not exist or has not been obtained for the premises, the asbestos advice must be made available at the following key transaction points-

- a) building approval;
- b) tenancy agreements; and
- c) sale or transfer of property.

#### 47K *Asbestos assessment report*

This clause includes a new section 47K to provide that an *asbestos assessment report*, for a residential premises, is a report prepared by a COLA licensed Class A asbestos assessor that—

- a) identifies the location, type and condition of asbestos in relation to the premises; and
- b) assesses the risk posed by the identified asbestos; and
- c) advises on how the asbestos should be managed; and
- d) includes everything required by regulation to be included in the report.

Amendments made by this amending Act to the DS Act, the Building Act, the Civil Law (Sale of Residential Property) Act and the Residential Tenancies Act require that where an asbestos assessment report exists or has been obtained for a residential premises, it should be provided by owner/occupiers at the following points:

- a) building approval;
- b) tenancy agreements;
- c) sale of property; and
- d) when engaging a tradesperson to provide a construction service or do renovation work at the premises.

#### 47L *Requirement to give asbestos assessment report*

This clause includes a new section 47L to provide that if there is an asbestos assessment report for a residential premises, and an owner or occupier (referred to as the owner) of the premises engages someone (referred to as the *worker*) to

- a) provide a construction service at the premises; or
- b) do other work prescribed by regulation.

The owner must give the worker a copy of the asbestos assessment report for the premises.

New section 47L also provides that the owner need not give the worker a copy of the asbestos assessment report for the premises if the owner cannot obtain a copy of the report after taking reasonable steps, or the work is a response to an emergency situation.

For the purposes of this section:

- *construction service*—see the *Construction Occupations (Licensing) Act 2004*, section 6 (2).

## Part 1.7      *Residential Tenancies Act 1997*

### Clause 1.48      Section 12 (3) (d)

This clause provides that the existing section 12 (3) (d) passed by a previous amendment to this Act but not yet commenced, will be incorporated and will be commenced on commencement of this amending Act.

This clause provides that under new section 12 (3) (e) the lessor must provide the tenant with, if there is an asbestos assessment report for the premises and the lessor can obtain a copy of the report after taking reasonable steps, a copy of the report.

This clause provides that under new section 12 (3) (f), if there is no asbestos assessment report for the premises or the lessor cannot obtain the asbestos assessment report for the premises after taking reasonable steps, an asbestos advice for the premises.

### Clause 1.49      New part 11: Transitional—*Asbestos Legislation Amendment Act 2006*

#### *140      Existing residential tenancy agreements—lessor must provide asbestos information*

This clause inserts a new part 11 and section 140 that applies if a residential tenancy agreement was entered into before the commencement of this section and is still in force on the commencement of this section.

If so, then within 12 months after the commencement of this section, the lessor must give the tenant—

- a) if there is an asbestos assessment report for the premises and the lessor can obtain a copy of the report after taking reasonable steps—a copy of the report; and
- b) if there is no asbestos assessment report for the premises or the lessor cannot obtain the asbestos assessment report for the premises after taking reasonable steps—an asbestos advice for the premises.

Subsection 140 (3) provides that subsection (2) does not apply if the tenant does not live at the premises covered by the residential tenancy agreement 12 months after the commencement of this section.

#### *141      Expiry-pt 11*

This section provides that part 11 expires 1 year after the date it commences.

### Clause 1.50      Dictionary, new definitions

This clause inserts the following definitions for the purposes of the Residential Tenancy Act-

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

***asbestos assessment report***, for premises—see the *Dangerous Substances Act 2004*, section 47K.