

Australian Capital Territory

Dangerous Substances (General) Amendment Regulation 2014 (No 1)

Subordinate law SL2014–19

made under the

Dangerous Substances Act 2004

EXPLANATORY STATEMENT

Overview of the Amendment Regulation

The *Dangerous Substances (General) Amendment Regulation 2014 (No 1)* (‘the Amendment Regulation’) amends the *Dangerous Substances (General) Regulation 2004* by inserting new part 3.5.

New part 3.5 is designed to improve the safety of tradespeople and other visitors or workers on residential property affected by loose fill asbestos (‘Mr Fluffy’) insulation.

The owner of residential property affected by loose fill insulation must ensure that an asbestos warning sign is displayed at the premises in the place, and in the way, approved by the Minister.

The ACT Government will be assisting owners of affected residential property to meet this new obligation by delivering a program to affix the warning sign by 30 December 2014, as well as by making the warning sign available free of charge to affected homeowners.

Human Rights Implications

The Amendment Regulation may engage section 12(a) of the *Human Rights Act 2004*. That section requires that everyone has the right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

The Amendment Regulation is not an arbitrary or unlawful interference with the right. In any case, the limitation on the right is reasonable. The Amendment Regulation’s potential interference with the human right is minimal and the importance of its purpose is such that the limitation is reasonable.

The offences do not attract strict liability.

CLAUSE NOTES

Clause 1 Name of Regulation

This clause provides for the name of the regulation as the *Dangerous Substances (General) Amendment Regulation 2014 (No 1)*.

Clause 2 Commencement

This clause provides for the commencement date of the regulation (other than section 5), which is 1 September 2014. Section 5 commences on 1 January 2015.

In effect, the regulation commences on 1 September 2014, with delayed commencement of the offence provision in section 340(1) that mandates the fixing of warning signs, until 1 January 2015.

While homeowners are responsible for ensuring the warning signs are attached from 1 January 2015, WorkSafe ACT Inspectors will deliver a program between 1 September and 31 December 2014 to attach the warning labels to all affected home in the way prescribed by the Minister.

Homeowners are encouraged to attach the warning label immediately and can obtain a warning label from the Asbestos Response Taskforce (or other way outlined at www.act.gov.au/asebstos). Attching a warning sign before 1 January 2015 is strongly encouraged.

However, as soon as a warning label is attached (regardless of who attaches it) the offence provision in section 340 that applies if the owner or occupier fails to replace a tag that has been removed applies. For example, if a WorkSafe Inspector attaches the warning label to an affected residential premises on 14 September 2014, it is an offence not to replace it if it is removed from that date.

Clause 3 Legislation amended

This clause provides that the regulation amends the *Dangerous Substances (General) Regulation 2004*.

Clause 4 New part 3.5

This clause inserts new part 3.5 of the *Dangerous Substances (General) Regulation 2004*.

Part 3.5 Asbestos management—residential premises

337 Application—pt 3.5

New section 337 provides for the application of new part 3.5, which is to residential premises that contain or have contained loose fill asbestos insulation (defined in section 338).

338 Definitions—pt 3.5

New section 338 provides for the definitions of ‘approved warning sign’, ‘class’ for a class of building, ‘loose fill asbestos insulation’ and ‘residential premises’ as the terms are used in new part 3.5.

339 Asbestos warning signs – approval

New section 339 provides for approved warning signs.

The Minister can approve the warning sign, and the way or place where it must be displayed. An approval of this nature can be found on the ACT Legislation Register www.legislation.act.gov.au .

New section 340 provides that a person commits an offence if the person is the owner or occupier of an affected residential premises and a warning sign is removed from the place where it is displayed and the person fails to ensure that the warning sign is replaced (in the way, and in the place, approved by the Minister).

The fault elements in division 2.2.3 of the Criminal Code 2002 apply to the elements of the offence. A person must know they are an owner of an affected home and be reckless as to whether the warning label has been removed and reckless as to whether it has been replaced it in accordance with the prescribed requirements.

The offence provision commences on 1 September 2014, however as noted above, it is only an offence to fail to replace a warning sign that has been removed *after* it has been attached. While homeowners are encouraged to attach the warning sign as soon as possible, and WorkSafe Inspectors are delivering a program to attach all warning signs by 31 December 2014, it is not an offence to fail to replace a removed sign until the warning sign has been attached.

Clause 5 New section 340(1)

New section 340(1) provides for the requirement for the owner of affected residential premises to ensure that a warning sign is displayed at the premises. The warning sign must be displayed in the place, and in the way, approved by the Minister and must comply with the standard approved by the Minister.

Again, the fault elements in division 2.2.3 of the *Criminal Code 2002* apply to the elements of the offence. A person must know they are an owner of an affected home and be reckless as to whether the relevant warning sign is attached in the prescribed manner.

This provision commences on 1 January 2015. If a warning sign has not been attached by this date the homeowner or occupier must ensure that they do so.

WorkSafe ACT inspectors can use other enforcement and compliance mechanisms in the Dangerous Substances Act to achieve compliance with the new obligations, these include improvement notices.

Clause 6 Dictionary, new definitions

Clause 5 inserts into the Dictionary to the *Dangerous Substances (General) Regulation 2004* terms introduced into the *Dangerous Substances (General) Regulation 2004* by new part 3.5.