

2014

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**DANGEROUS SUBSTANCES (ASBESTOS SAFETY REFORM)
LEGISLATION AMENDMENT BILL 2014**

**EXPLANATORY STATEMENT
OCTOBER 2014**

Presented by
Katy Gallagher MLA
Chief Minister

Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Bill 2014

Overview

The purpose of this Bill is to amend the *Dangerous Substances Act 2004* (the Act) and *Dangerous Substances (General) Regulation 2004* (the Regulation) to adopt Chapter 8 of the national model Work Health and Safety Regulation (the model regulation), which governs the management, control and removal of asbestos in workplaces.

The importance of harmonisation of work safety legislation has long been recognised as a critical area of regulatory reform, and is a key priority of the Council of Australian Governments' national reform agenda.

In July 2008, the Commonwealth and each of the States and Territories signed the Inter-Governmental Agreement for Regulatory and Operational Reform in OHS (IGA), which commits jurisdictions to implement model laws which comprise a model Work Health and Safety Act, model Section and model Codes of Practice.

On 29th September 2011, the Legislative Assembly passed the *Work Health and Safety Act 2011* (the WHS Act), which gave effect to the Territory's commitment under the IGA. On 1st January 2012, the WHS Act and the supporting *Work Health and Safety Regulation 2011* (the WHS regulation) came into effect in the Territory.

At that time, the *Work Health and Safety Regulation 2011* did not adopt Chapter 7 (Hazardous Chemicals), Chapter 8 (Asbestos) or Chapter 9 (Major Hazard Facilities) of the model regulation, and these matters continued to be regulated under the Territory's dangerous substances legislation.

Together with the *Work Health and Safety (Asbestos) Amendment Regulation 2014*, this Bill will harmonise the Territory's asbestos management framework with that of other model jurisdictions, improving safety outcomes and reducing compliance costs for business.

To achieve harmonisation, this Bill also makes consequential amendments to a range of legislation including the:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Construction Occupations (Licensing) Act 2004*
- *Construction Occupations (Licensing) Regulation 2004*
- *Work Health and Safety Act 2011*.

The Bill removes asbestos-related workplace obligations from the Act, as these are now contained in the WHS regulation, in accordance with the model regulation. However the Bill retains certain obligations (e.g. section 23 - the general safety of everyone involved in handling dangerous substances everywhere) that relate to the non-commercial handling of asbestos.

The Bill also harmonises terminology across Territory legislation with the preferred national model terminology, and removes now unnecessary definitions, as asbestos-related definitions are now consolidated in the WHS regulation.

The Bill removes provisions related to the licensing of asbestos assessors and removalists from the *Construction Occupations (Licensing) Act 2004*, and consequentially from the *Construction Occupations (Licensing) Regulation 2004*, *Building Act 2004* and *Building (General) Regulation 2008*. This is because asbestos assessor and removalist licensing is now regulated by the WHS regulation, in accordance with the model regulation. The *Work Health and Safety (Asbestos) Amendment Regulation 2014* contains transitional provisions which continue existing licenses for a period of time, subject to certain conditions.

Human Rights Considerations

No provisions in this Bill engage rights under the *Human Rights Act 2004*.

Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Bill 2014

Detail

Part 1 Preliminary

Clause 1 – Name of Act

This clause names the Act.

Clause 2 – Commencement

This clause provides for the commencement of the Act.

Clause 3 – Legislation amended

This clause provides that the Regulation amends the following legislation:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Construction Occupations (Licensing) Act 2004*
- *Construction Occupations (Licensing) Regulation 2004*
- *Dangerous Substances Act 2004*
- *Dangerous Substances (General) Regulation 2004*
- *Work Health and Safety Act 2011*.

Part 2 Building Act 2004

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

This clause amends section 42A(2)(a) to reflect that asbestos licensing provisions have been moved from the *Construction Occupations (Licensing) Act 2004* to the *Work Health and Safety Regulation 2011*, in accordance with the model regulation.

Clause 5 – New section 42A(5)

This clause defines ‘licensed asbestos assessor’ and ‘licensed asbestos removalist’ with reference to the Dictionary of the *Work Health and Safety Regulation 2011*. Asbestos-related definitions are now consolidated in that regulation, in accordance with the model regulation.

Clause 6 – Meaning of *prescribed requirements* – div 5.1

Section 66, definition of prescribed requirements, paragraph (a)

This clause amends the definition of ‘prescribed requirements’ to include reference to the requirements under the *Work Health and Safety Act 2011*. This reflects that requirements for handling asbestos are now also found under that Act.

Clause 7 – Dictionary, new definition of *asbestos*

This clause defines ‘asbestos’ with reference to the Dictionary of the *Work Health and Safety Regulation 2011*. Asbestos-related definitions are now consolidated in that regulation, in accordance with the model regulation.

Clause 8 – Dictionary, definition of *friable asbestos* and examples and note

This clause defines ‘friable asbestos’ with reference to the Dictionary of the *Work Health and Safety Regulation 2011*. Asbestos-related definitions are now consolidated in that regulation, in accordance with the model regulation.

Part 3 Building (General) Regulation 2008

Clause 9 – Dictionary

Section 3, note 1

This clause replaces the example signpost definition in Note 1 because there are no longer signpost definitions relating to asbestos in the Dictionary.

Clause 10 – Bonded asbestos removal – Act, s 26(3)

Section 14(2) and (3)

This clause replaces the requirement that an application for building approval must contain a code-compliant description of the method proposed to remove bonded asbestos sheeting with a new requirement that the application must include an asbestos removal control plan, in accordance with the model regulation.

Clause 11 – Section 15

This clause clarifies that the section applies to friable asbestos removal. In section 15(2) the existing requirements in relation to building approval involving the removal of friable asbestos have been replaced with the requirement that the application must include an asbestos removal control plan.

Clause 12 – Dictionary, note 3

This clause inserts a note that ‘asbestos’ and ‘friable asbestos’ in this regulation have the same meaning as in the *Building Act 2004*.

Clause 13 – Dictionary, definition of *asbestos*

This clause removes the definition of *asbestos*, which is already defined in the *Work Health and Safety Regulation 2011*.

Part 4 Construction Occupations (Licensing) Act 2004

Clause 14 – What is a *construction occupation*? Section 7(a) and (b)

This clause removes ‘asbestos assessors’ and ‘asbestos removalists’ from the definition of construction occupations. Asbestos occupations are now governed under the *Work Health and Safety Act 2011*, in accordance with the model regulation.

Clause 15 – Who is an asbestos assessor? Section 7A

This clause removes the definition of asbestos assessor, which is now provided in the *Work Health and Safety Regulation 2011*, in accordance with the model regulation.

Clause 16 – What is an asbestos removalist? Section 7B

This clause removes the definition of asbestos removalist, which is now provided in the *Work Health and Safety Regulation 2011*, in accordance with the model regulation.

Clause 17 – Suspension of licence—public safety Section 52A(1), example 1

This clause removes an example concerning a construction practitioner licensed to undertake demolition work involving the removal of asbestos. Under the *Work Health and Safety Act 2011*, asbestos can now only be removed by a licensed asbestos removalist.

Clause 18 – Construction occupations registrar Section 103(2)(a)

This clause removes asbestos assessment from the list of relevant qualifications in relation to the construction occupations registrar. Asbestos occupations are no longer defined as construction occupations (see clause 13).

Clause 19 – Dictionary

This clause removes several asbestos-related definitions from the Dictionary of the Act. Relevant asbestos-related definitions are now harmonised and consolidated in the *Work Health and Safety Regulation 2011*.

Part 5 Construction Occupations (Licensing) Regulation 2004

Clause 20 – Licence applications—Act, s 17(3) Section 5(h)(i)

This clause removes a reference to an ‘asbestos assessor’. Asbestos assessors will now be licensed under the *Work Health and Safety Act 2011*, in accordance with the model regulation.

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

This clause removes a reference to an ‘asbestos removalist’. Asbestos removalists will now be licensed under the *Work Health and Safety Act 2011*, in accordance with the model regulation.

Clause 22 – Section 8 heading

This clause removes a reference to an ‘asbestos assessor’. Asbestos assessors will now be licensed under the *Work Health and Safety Act 2011*, in accordance with the model regulation.

Clause 23 – Section 8(1)(a)

This clause removes a reference to an ‘asbestos assessor’. Asbestos assessors will now be licensed under the *Work Health and Safety Act 2011*, in accordance with the model regulation.

Clause 24 – Particulars in register Section 9(1)(c)(i)

This clause removes a reference to an ‘asbestos assessor’. Asbestos assessors will now be licensed under the *Work Health and Safety Act 2011*, in accordance with the model regulation.

Clause 25 – Corporations and partnerships eligible for some occupations Section 15(1)(a)

This clause removes a reference to an ‘asbestos removalist’. Asbestos removalists will now be licensed under the *Work Health and Safety Act 2011*, in accordance with the model regulation.

Clause 26 – Eligibility to be asbestos removalist Section 15A

This clause removes the eligibility criteria for asbestos removalists. The eligibility of a person to be an asbestos removalist is now specified in sections 493 and 494 of the *Work Health and Safety Regulation 2011*.

Clause 27 – Eligibility to be asbestos assessor
Section 16A

This clause removes the eligibility criteria for asbestos assessor. The eligibility of a person to be an asbestos removalist is now specified in section 495 of the *Work Health and Safety Regulation 2011*.

Clause 28 – Services that may be provided without licence
Section 35(2)

This clause removes a reference to a building service that involves asbestos removal. As asbestos occupations are no longer construction occupations (see clause 13), this reference is no longer relevant.

Clause 29 – Section 35(4), definition of relevant asbestos qualification

The term ‘relevant asbestos qualification’ is only used in section 48(2). Given the amendment to section 48(2) (see clause 27) the definition of relevant asbestos qualification is no longer required.

Clause 30 – Classes of asbestos assessor
Section 36A

This clause removes references to classes of asbestos assessor. Asbestos assessor classes are now specified in the *Work Health and Safety Regulation 2011*, in accordance with the model regulation.

Clause 31 – Classes of asbestos removalist
Section 36B

This clause removes references to classes of asbestos removalist. Asbestos removalist classes are now specified in the *Work Health and Safety Regulation 2011*, in accordance with the model regulation.

Clause 32 – Asbestos assessor
Schedule 1, part 1.1

This clause removes references to Class A and Class B asbestos assessors carrying out construction work. As asbestos assessors are no longer a construction occupation (see clause 13), they no longer carry out construction work.

Clause 33 – Asbestos removalist
Schedule 1, part 1.2

This clause removes references to Class A and Class B asbestos removalists carrying out construction work. As asbestos removalists are no longer a construction occupation (see clause 13), they no longer carry out construction work.

Clause 34 – Dictionary, definition of *bonded asbestos*

This clause removes the definition of bonded asbestos. The term is not used in this regulation as a result of clause 32.

Part 6 Dangerous Substances Act 2004

Clause 35 – Exclusions from Act New section 7(1A)

This clause provides that obligations under the Act, except obligations under sections 13, 14, 75-77, apply only to the non-commercial handling of asbestos. As a result, although the *Work Health and Safety Act 2011* regulates the management and control of asbestos by officers, workers, persons at workplaces and PCBUs, the duties under this Act (e.g. section 23 – general safety duty of everyone involved in handling dangerous substances anywhere) continue to apply to the non-commercial handling of asbestos.

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

This clause inserts an example of how the general safety duty under section 23 continues to apply to the non-commercial handling of asbestos, in this case the handling (which is defined under section 11 to include possession) of asbestos by the owner or occupier of a residential property.

Clause 37 – Important concepts Part 3A.1

This clause removes the definition of ‘asbestos’. Asbestos is now defined in the *Work Health and Safety Regulation 2011*, in accordance with the model regulation.

Clause 38 – Public education Part 3A.3 heading

This clause removes a heading to improve the readability of the Chapter.

Clause 39 – Asbestos advice and assessment reports Part 3A.4 heading

This clause removes a heading to improve the readability of the Chapter.

Clause 40 – Asbestos assessment reports Section 47K(1)

This clause replaces the term ‘an asbestos assessor’ with ‘a licensed asbestos assessor’ in order to harmonise terminology with the *Work Health and Safety Regulation 2011*.

Clause 41 – Section 47K(2)

This clause defines ‘licensed asbestos assessor’ with reference to the Dictionary of the *Work Health and Safety Regulation 2011*. Asbestos-related definitions are now consolidated in that regulation, in accordance with the model regulation.

Clause 42 – Requirement to give asbestos assessment report Section 47L(1) (b)

This clause replaces a reference to a ‘construction service’ with a reference to ‘work involving asbestos’, which is the terminology used by the model regulation. This phrase is defined in section 419(2) of the *Work Health and Safety Regulation 2011*.

Clause 43 – Section 47L(4)

This clause inserts a note that the word ‘involves’ is defined in section 419(2) of the *Work Health and Safety Regulation 2011*.

Clause 44 – Dictionary, definition of asbestos

This clause defines ‘asbestos’ with reference to the Dictionary of the *Work Health and Safety Regulation 2011*. Relevant asbestos-related definitions are now consolidated in that regulation, in accordance with the model regulation.

Part 7 Dangerous Substances (General) Regulation 2004

Clause 45 – Dictionary Section 3, notes

This clause removes a reference to asbestos which is no longer relevant.

Clause 46 – Chapter 3 heading

This clause replaces a reference to ‘asbestos products’ with a reference to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

Clause 47 – Sections 301 and 302

This clause replaces the definition of ‘asbestos product’ with the definition of ‘asbestos containing material’, the preferred terminology under the model regulation.

The clause defines ‘asbestos containing material’ with reference to the Dictionary of the *Work Health and Safety Regulation 2011*.

The clause removes the definitions of ‘authorised activity’ and ‘authorised activity condition’, which are now captured in section 419(3) of the *Work Health and Safety Regulation 2011*.

Clause 48 – Section 303 heading

This clause replaces a reference to ‘asbestos products’ with a reference to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

Clause 49 – Section 303

This clause replaces a reference to ‘asbestos products’ with a reference to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

Clause 50 – Section 303, new note

This clause notes that the provision applies to both commercial and non-commercial labelling, with reference to section 7(1A) of the *Dangerous Substances Act 2004*.

Clause 51 – Section 304 heading

This clause replaces a reference to ‘asbestos products’ with a reference to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

Clause 52 – Section 304

This clause replaces a reference to ‘asbestos products’ with a reference to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

Clause 53 – Section 304, new note

This clause replaces a reference to ‘asbestos products’ with a reference to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

This clause notes that the provision applies to both commercial and non-commercial labelling, with reference to section 7(1A) of the *Dangerous Substances Act 2004*.

Clause 54 – Section 305 heading

This clause replaces a reference to ‘asbestos products’ with a reference to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

Clause 55 – Section 305

This clause replaces a reference to ‘asbestos products’ with a reference to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

Clause 56 – Part 3.2 heading and notes

This clause replaces a reference to ‘asbestos products’ with references to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

This clause inserts a note regarding the prohibition of non-commercial asbestos manufacture, with reference to section 74(1) of the *Dangerous Substances Act 2004*.

The clause inserts a note regarding the transport of asbestos and asbestos containing material, with reference to the *Dangerous Goods (Road Transport) Act 2009*.

Clause 57 – Sections 306 to 310

This clause replaces references to ‘asbestos products’ with references to ‘asbestos containing material’, which is the preferred terminology under the model regulation.

This clause replaces the existing restrictions on the importation of asbestos and asbestos containing material with restrictions that are consistent with the model regulation.

Section 306 has been amended to clarify that the importation of asbestos or asbestos containing materials is not permitted for non-commercial use. If asbestos or asbestos containing materials are imported it can only be for a use provided for in section 419(3) *Work Health and Safety Regulation 2011*.

Section 307 has been amended to clarify that the supply of asbestos or asbestos containing materials is not permitted for non-commercial use. If asbestos or asbestos containing materials are supplied it can only be for a use provided for in section 419(3) *Work Health and Safety Regulation 2011*.

Section 308(1) has been amended to clarify that PCBU is authorised to possess asbestos or asbestos containing materials only if it is in accordance with the *Work Health and Safety Regulation 2011*. Section 308(2) only applies to non-commercial possession.

Section 309 has been amended so that it only applies to the non-commercial storage of asbestos or asbestos containing material. Commercial use relevant to this regulation is captured in section 472 of the *Work Health and Safety Regulation 2011*.

Section 310 has been amended so that it only applies to the non-commercial authorised use of asbestos or asbestos containing material. Commercial use relevant to this regulation is captured in section 419(3) of the *Work Health and Safety Regulation 2011*.

Clause 58 – Asbestos management—non-residential premises Part 3.4

This clause removes part 3.4 of the Regulation which concerns the management of asbestos in non-residential premises. This Part is unnecessary as the *Work Health and Safety Regulation 2011* now regulates asbestos management in all workplaces.

Clause 59 – Dictionary, new definitions

The clause inserts a definition of asbestos containing material and ACM, and refers to section 301.

Clause 60 – Dictionary, definitions of asbestos management plan, asbestos product and asbestos register

This clause removes the definitions of ‘asbestos management plan’ and ‘asbestos register’, which are now defined in the *Work Health and Safety Regulation 2011*.

The clause removes the definition of ‘asbestos product’, which has been replaced thorough the Regulation with the preferred term ‘asbestos containing material’.

Clause 61 – Dictionary, new definition of *asbestos-related work*

The clause defines ‘asbestos-related work’ with reference to the Dictionary of the *Work Health and Safety Regulation 2011*. Relevant asbestos-related definitions are now consolidated in that regulation, in accordance with the national laws.

Clause 62 – Dictionary

This clause removes definitions that are now provided in the *Work Health and Safety Regulation 2011*, in accordance with the model regulation.

Clause 63 – Dictionary, definition of *risk assessment*

The clause removes the reference to ‘asbestos product’ from the definition of risk assessment.

Part 8 Work Health and Safety Act 2011

Clause 64 – Approved codes of practice Section 274(2)

This clause excludes codes of practice in relation to the ‘management, control or removal of asbestos or ACM’ from the requirements of section 274(2). This is to allow the adoption of Territory developed codes of practice relating to asbestos.