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THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

EXPLANATORY STATEMENT

PLANNING AND DEVELOPMENT (LOOSE-FILL ASBESTOS INSULATION  
ERADICATION) AMENDMENT REGULATION 2014 (No 1)

SL2014-35

**Presented by**  
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# Planning and Development (Loose-fill Asbestos Insulation Eradication) Amendment Regulation 2014 (No 1)

## Outline

The purpose of this amendment is to set out the amount that is payable to a lessee who surrenders a lease to the Territory under the Loose-fill Asbestos Insulation Eradication Scheme Buyback Program ('the buyback program'). Under the buyback program the Territory has offered to buy all homes in the ACT affected by loose-fill asbestos insulation.

Asbestos is the name collectively given to six mineral fibres which fall into two broad groups:

- the serpentine group – comprising only chrysotile (white asbestos)
- the amphibole group – comprising amosite (brown asbestos), crocidolite (blue asbestos), anthophyllite, tremolite, and actinolite

Asbestos is a Class 1 carcinogen and poses a risk to health when fibres of a respirable size become airborne and are inhaled. Asbestos is regulated in the ACT under a number of laws including the *Dangerous Substances Act 2004*, the *Work Health and Safety Act 2011*, the *Building Act 2004* and the *Environment Protection Act 1997*.

Between 1968 and 1978-79, more than 1000 homes in the ACT were insulated with loose-fill asbestos insulation (commonly referred to as 'Mr Fluffy'). Between 1989 and 1993 the Commonwealth Government and newly-formed ACT Government undertook a jointly funded remediation program to remove visible and accessible asbestos fibres from affected homes in the ACT. The majority of homes affected by loose-fill asbestos insulation identified in that program contain amosite. Based on records from the original remediation program, a small number contain crocidolite.

The ACT Government wrote to the owners of affected homes in 1993 and 2005 reminding them of the presence of loose-fill asbestos fibres in the inaccessible areas of their homes including wall cavities. In 2005–06 it also made changes to the presentation of information about affected houses on building files held by the ACT Planning and Land Authority, and in the title searches conducted as part of conveyancing processes.

The ACT Government again wrote to residents of affected homes in February 2014, drawing on the report of the forensic deconstruction of a property in Downer, reminding them of the continuing presence of asbestos fibres in their homes, and recommending they have an asbestos assessment undertaken.

By October 2014, in excess of 600 asbestos assessments of affected homes had been undertaken. Assessments indicated affected homes are uniformly contaminated by asbestos fibres in the roof space, wall cavities and in the subfloor areas. More than 50 per cent of houses assessed had asbestos fibres detected in living areas.

On 28 October 2014, the ACT Government announced the buyback program under which it has offered to buy all homes in the ACT affected by loose-fill asbestos insulation. The buyback program, the ACT Government will acquire, demolish and safely dispose of all affected homes, remediate affected blocks and then resell them to defray overall costs. The mechanism that will be utilised for this is the surrender of the lease on which the homes stand.

The *Planning and Development Act 2007* ('the Act'), section 299, provides that a person may, at any time, with the consent of the planning and land authority, surrender a lease. The Act also provides that the planning and land authority may make payments to a person in relation to a surrendered lease.

The *Planning and Development (Loose-fill Asbestos Insulation Eradication) Amendment Regulation 2014 (No 1)* amends the *Planning and Development Regulation 2008* to support payments by the ACT Government to lessees who surrender their lease under the buyback program. The amendment sets out the amount of any payment that may be made by the planning and land authority for a surrendered lease under the buyback program as well as the circumstances in which the payment may be made.

The amendment divides existing part 5.8 into two new divisions. Division 5.8.1 contains the existing provisions for refund on surrender of a lease. New division 5.8.2 applies specifically to the payment of a prescribed amount in relation to a lease where the lease is surrendered as part of the buyback program.

In the majority of cases, the prescribed amount that will be paid for surrender of a lease under the buyback program will be assessed as at 28 October 2014. The date of 28 October 2014 is the date the buyback program was announced. This date is used to provide consistency in valuations for all owners, prevent market speculation and encourage a timely sale of contaminated houses so the houses can be demolished.

The buyback program valuation procedure is set out in new schedule 2A and takes into account both the value of the land comprised in the lease and the improvements on the land including the house.

Under the buyback program valuation procedure, the valuation must not have regard to the fact that the house contains, or has contained, loose-fill asbestos insulation. The presence of loose-fill asbestos insulation in a home poses a health risk with consequent significant negative impact on the value of the home. The requirement

to disregard the loose-fill asbestos insulation will result in a higher payment to the lessee in relation to the improvements than the lessee would receive if the payment for the improvements was calculated solely under the provisions for payment for improvements on surrendered leases in part 9.8 of the Act. Part 9.8 provides for a determination of the market value of the improvements—something that would be negatively influenced by the asbestos contamination of the premises. The amount payable under the buyback scheme is intended to incorporate and improve on the amount that would otherwise be payable for improvements under part 9.8.

In the situation where a lessee entered the contract to purchase an affected property after 18 February 2014, the amount that will be paid for surrender of the lease under the buyback program will generally be the contract price for the purchase.

A regulatory impact statement is not required as the amendments do not operate to the disadvantage of anyone but rather advantage owners of residential premises affected by loose-fill asbestos insulation by prescribing an amount that is payable under the buyback program.

A copy of the Asbestos Response Taskforce report *Long Term Management of Loose Fill Asbestos Insulation in Canberra Homes*, which recommends the demolition of these homes is available here: [Long Term Management of Loose Fill Asbestos Insulation in Canberra Homes](#)

Documents outlining the ACT Governments Loose Fill Asbestos Insulation Eradication Scheme can be found here:

[The ACT Government's Preferred Way Forward on Loose Fill Asbestos: Overview](#)

[The ACT Government's Preferred Way Forward on Loose Fill Asbestos: Supporting Detail](#)

A Guide on the Voluntary Buyback Program can be found here: [The Loose Fill Asbestos Insulation Eradication Scheme: A Guide to the Voluntary Buyback Program](#)

## Clause notes

### Clause 1 Name of Regulation

This clause provides for the name of the regulation.

### Clause 2 Commencement

This clause provides that the regulation commences on the day after its notification.

### Clause 3 Legislation amended

This clause states the regulation amends the *Planning and Development Regulation 2008*.

### Clause 4 New division 5.8.1

This clause inserts a new division heading and a new section 209. The new division is comprised of the existing sections 210 and 211. New section 209 sets out the application of division 5.8.1 and specifically excludes any leases surrendered under the buyback program.

### Clause 5 Section 210 (1)

This clause omits section 210 (1). Section 210 (1) is essentially captured in the new application provision in section 209.

### Clause 6 Section 211 (1)

This clause omits section 211 (1). Section 211 (1) is essentially captured in the new application provision in section 209.

### Clause 7 New division 5.8.2

This clause inserts new division 5.8.2. Division 5.8.2 provides a legislative structure to support the payments by the planning and land authority in relation to surrendered leases.

**New section 212** sets out definitions relevant to the division.

**New section 213** identifies the buyback program as the program involving the acquisition of residential premises that contain, or have contained, loose-fill asbestos used as ceiling insulation and for which funding is provided under the *Appropriation (Loose-fill Asbestos Insulation Eradication) Act 2014-2015*.

**New section 214** defines the buyback program valuation procedure as the procedure set out in new schedule 2A. The buyback program valuation procedure is

designed to assess the value of the lease (ie the land including the house and other improvements on the land).

**New section 215** sets out the prescribed amount that will apply in the majority of situations where a lessee surrenders a lease under the buyback program. This section applies to a lessee that who owns the property on 28 October 2014, and who also either owned or had contracted to buy the property on or before 18 February 2014.

Example 1: Christina purchased her 'Mr Fluffy' house in 1999 and still owns the house on 28 October 2014.

Example 2: Brian signed a contract for sale to purchase his 'Mr Fluffy' house on 10 January 2014 and the contract settled on 10 March 2014. Brian still owns the house on 28 October 2014.

The amount payable to both Christina and Brian for the surrender of their respective leases under the buyback program is calculated using the buyback program valuation procedure set out in schedule 2A.

Under schedule 2A, the amount payable expressly includes a component valuing the improvements on the lease. The inclusion of this amount is intended to ensure that any payment that would be payable in respect of the improvements under section 291 of the Act is factored in to the single payment.

The prescribed amount is the greater of the amount payable for the surrender under the buyback program valuation procedure or the amount payable to the lessee in relation to the improvements under section 291.

**New section 216** sets out the prescribed amount that will apply in the situation where the surrendered lease was purchased by the lessee after 18 February 2014.

In most cases in this category, the prescribed amount is the greater of the contract price or the amount payable to the lessee in relation to the improvements under section 291.

However, if the lessee has made significant improvements to the lease in the time between purchasing the lease and 28 October 2014, then the lessee may request the planning and land authority to take those improvements into account in addition to the contract price. A significant improvement is one which will add value to the lease. For example, the installation of a new kitchen may add value to a lease, but the painting of a house—while likely to make the lease sell more quickly—is unlikely to actually add value to the lease.

**New section 217** sets out the prescribed amount that will apply in the situation where the lessee entered a contract to purchase the affected lease after 18 February 2014 and the contract settled after 28 October 2014. In this case, the prescribed amount is the greater of the contract price or the amount payable to the lessee in relation to the improvements under section 291.

**New section 218** sets out the prescribed amount that will apply on surrender of an affected lease where the lessee owns the affected lease on 18 February 2014 and had acquired the affected lease other than by entering a contract for sale (which would be covered by new section 215).

This would include:

- a person who became the lessee of an affected block as a result of inheritance from a deceased estate
- trustees (including executors of deceased estates)
- a person who became the lessee of an affected block as a result of a settlement or orders made under the *Family Law Act 1975*
- a mortgagee in possession of an affected block due to default by the registered lessee, and
- a liquidator, trustee in bankruptcy, administrator or other external administrator of the lessee of an affected block.

The prescribed amount payable to the lessee in this situation is the greater of the amount payable for the surrender under the buyback program valuation procedure or the amount payable to the lessee in relation to the improvements under section 291.

**New section 219** sets out the amount that is payable to a lessee who surrenders an affected lease and who acquired the lease other than by contract after 18 February 2014 but from a person who originally acquired the lease before that date. The prescribed amount payable to the lessee in this situation is the greater of the amount payable for the surrender under the buyback program valuation procedure or the amount payable to the lessee in relation to the improvements under section 291.

**New section 219A** sets out the amount payable in the situation where the lessee has acquired the affected lease after 18 February 2014 other than by contract but from a person ('the transferor') who purchased the lease after that date. The lessee in this situation is treated in the same way as if they themselves had purchased the lease after 18 February 2014. Similarly to new section 216, the prescribed amount is the greater of the contract price or the amount payable to the lessee in relation to the improvements under section 291. However, if the transferor or lessee has made significant improvements to the lease in the time between purchasing the lease and 28 October 2014, then the lessee may request the planning and land authority to take those improvements into account in addition to the contract price.

**New section 219B** provides, consistently with existing section 210 and section 211, that the amount payable under the buyback program may only be paid if rates, taxes etc in relation to the lease have been paid.



**New section 219C** provides that an amount payable that is calculated using the buyback program valuation procedure is taken to include an amount payable for premises under section 291. Section 291 provides for payments for improvements on a lease that is surrendered and the intention of new section 219C is to ensure that these are not ‘double counted’ in relation to a lease that is surrendered under the buyback program.

#### **Clause 8     New schedule 2A**

New schedule 2A sets out the buyback program valuation procedure. The key elements of the buyback program valuation procedure set out in schedule 2A are as follows:

- the value of the house and land is calculated as at 28 October 2014 as this is the day that the Government announced the buyback program
- two valuers appointed by the Australian Property Institute will independently assess the value of the house and land
- the valuers will ignore the presence of loose-fill asbestos and minor maintenance or presentation issues but will take into account all other defects and other forms of contamination
- the two valuers will prepare their reports independently of one another
- the amount offered for surrender of the lease will be the average of the two valuations
- either the Territory or the lessee may request a third valuation (a Presidential valuation)
- the Territory may request a Presidential valuation if the difference between the two original valuations is 10% or more of the lower valuation and must request a Presidential valuation where the difference is 10.5% or more
- a Presidential valuation, if requested, will be final and decisive of the amount offered for surrender of the lease.

#### **Clause 9     Dictionary, note 3**

This clause inserts a reference to the fact that the term ‘accredited valuer’ is defined in the Act.

#### **Clause 10    Dictionary, new definitions**

This clause inserts new dictionary definitions for defined terms used in the amended regulation.