

**2015**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**EXPLANATORY STATEMENT**

**DANGEROUS SUBSTANCES (LOOSE-FILL ASBESTOS  
ERADICATION) LEGISLATION AMENDMENT BILL 2015**

**Presented by  
Andrew Barr MLA  
Chief Minister**



# **Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015**

This explanatory statement relates to the Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015 as introduced to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

## **Outline**

The Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015 ('the Bill') proposes a number of amendments to facilitate the implementation of the Loose-fill Asbestos Insulation Eradication Scheme Buyback Program ('the buyback program') that was announced by Government on 28 October 2014.

The Bill amends the *Dangerous Substances Act 2004* so that the Minister is required to maintain a register of residential premises that contain or have contained loose-fill asbestos insulation (the affected residential premises register). The register will also identify those residential premises that have been acquired by the Territory under the buyback program.

The inclusion of the requirement to keep the register provides a clear legislative basis for the publication of a list of affected premises that need to be referenced for a number of public purposes:

- The inclusion of the property on the affected residential premises register will be noted as an administrative interest on the land titles register. Administrative interests are records of a decision or notification made under territory legislation that affect a parcel of leased land. These interests are legally independent of the land title and the indefeasibility attached to that title. That is, administrative interests are non-proprietary interests. As such, the administrative interests register operates in parallel with proprietary interests recorded on the Torrens title register, creating a central repository for information relating to the land.
- A further intended use of the register is that the presence of a property on the register is a trigger for a tenant or a lessor to terminate a residential tenancy agreement in relation to the property without penalty. Either a lessor or a tenant may terminate a tenancy agreement where the premises are included on the register.

The Bill also enables the transfer of the ACT government feed-in solar tariff ('premium rate') under the *Electricity Feed-in (Renewable Energy Premium) Act 2008* for the owners of affected premises with solar panels who subsequently install new solar panels at their new premises in the ACT.

Further amendments made by the Bill facilitate the buyback program through exempting the sale of affected residential units to the Territory under the buyback program from the *Civil Law (Sale of Residential Property) Act 2003*. The Civil Law (Sale of Residential Property) Act is designed to reduce the incidence of the practice of gazumping and provide increased levels of consumer protection for both buyers and sellers of residential property. In particular, the Act requires the seller to provide a number of required documents with the contract for sale. These reports are a cost to the seller in both monetary and time terms and while the Territory would reimburse these costs, the reports would be of limited value to the Territory in the context of the buyback program.

The Bill has been assessed against the *Human Rights Act 2004* and no issues identified.

## **Clause notes**

### **Part 1 Preliminary**

#### **Clause 1 Name of Act**

This clause provides that the Bill, once enacted, is the *Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Act 2015*.

#### **Clause 2 Commencement**

This clause allows for the various amendments to commence on a day fixed by the Minister by written notice.

#### **Clause 3 Legislation amended- sch 1**

This clause provides that the Bill amends the Acts as set out in the schedule. The Bill amends:

- *Civil Law (Sale of Residential Property) Act 2003*
- *Dangerous Substances Act 2004*
- *Dangerous Substances (General) Regulation 2004*
- *Electricity Feed-in (Renewable Energy Premium) Act 2008*
- *Information Privacy Regulation 2014*
- *Land Titles Act 1925*
- *Planning and Development Regulation 2008*
- *Residential Tenancies Act 1997*
- *Work Health and Safety Regulation 2011*

## **Clause 4      Land Titles Regulation 2015—sch 2**

This clause makes the *Land Titles Regulation 2015*. This is a new regulation under the *Land Titles Act 1925*. The clause contains a number of provisions that are intended to remove any doubt about the status of the regulation due to the fact that the regulation is made directly by the amending Act rather than by the Executive under the Land Titles Act.

## **Schedule 1**

### **Part 1.1      Civil Law (Sale of Residential Property) Act 2003**

#### **Amendment 1.1**

This amendment inserts new sections in the Civil Law (Sale of Residential Property) Act so that pt 2 does not apply to a contract for the sale of a unit to the Territory under the buyback scheme. Part 2 requires a person who is selling a residential property to obtain a number of statements and reports in relation to the property and to have these available for inspection by prospective buyers.

#### **Amendment 1.2**

This amendment inserts a new section 23 (4A) so that a person who is selling a unit to the Territory under the buyback program is not required to provide an energy efficiency rating statement to the Territory.

### **Dangerous Substances Act 2004**

#### **Amendment 1.3**

This amendment inserts new sections in the Dangerous Substances Act.

New section 47M defines *loose-fill asbestos insulation*. The term is used in several Acts and the new definition is subsequently referenced in those Acts for consistency.

New section 47N requires the Minister to keep a register ('the *affected residential premises register*'). The register will comprise two parts:

- (i) the register of residential premises that contain, or have contained, loose-fill asbestos insulation; and
- (ii) the register of residential premises that have been acquired by the Territory under the buyback program.

The Minister may make the affected residential premises register publicly available.

Once the affected residential premises have been demolished and the land remediated, the details of the property will be removed from the register.

New section 47O requires the Minister to tell the registrar-general about any inclusion or removal of details about affected residential premises from the register. This clause complements the amendments to the *Land Titles Act 1926* that will mean that the inclusion of affected premises on the register is noted as an administrative interest on the title of the document.

#### **Amendment 1.4**

This amendment inserts new signpost definitions in the dictionary for the terms that are included in the Act by the Bill.

### **Part 1.2 Dangerous Substances (General) Regulation 2004**

#### **Amendments 1.5 to 1.10**

These amendments are made as a consequence of the inclusion of relevant definitions in the Act by part 1.2 of the Bill.

### **Part 1.3 Electricity Feed-in (Renewable Energy Premium) Act 2008**

#### **Amendment 1.11**

This amendment inserts new section 11(3) and 11(4) to enable the transfer of the ACT government feed-in solar tariff ('premium rate') to a new premise. This provision only applies if the owner currently has the benefit of the premium rate under the Electricity Feed-in (Renewable Energy Premium) Act. The old generator is taken to remain connected to the network if it is installed on the premises of an affected residential property and the house is demolished (or is about to be demolished) and the affected homeowner moves into a new residence with a new generator. The 'new generator' will essentially have the same benefit as the old one for the life of the remainder of the contract (the premium rate is paid for 20 years from the contract of installation of the generator).

Section 11(4) provides that the 'new generator' must be the same capacity as the 'old generator' in order for the premium rate to apply. If the generator has a higher capacity, affected homeowners are not eligible to transfer the premium rate to the new system.

### **Part 1.3 Information Privacy Regulation 2014**

#### **Amendment 1.12**

This amendment is made as a consequence of the amendments made by part 1.2 to include the definition of loose-fill asbestos insulation in the Dangerous Substances Act.

## **Part 1.5 Land Titles Act 1925**

### **Amendment 1.13**

This amendment inserts a new example in the examples of what is an administrative interest in land under the Land Titles Act, section 69A. The Land Titles Act, section 69C, provides for the registrar-general to keep a record of administrative interests on the land titles register. Section 69A defines an administrative interest for this purpose. The inclusion of the new example 3 ensures that the fact that a property is included on the affected residential premises register is such an administrative interest. This is because the inclusion of a property on the affected residential premise register will affect the way in which the property may be dealt with and as such it is a decision that may affect a decision of a person proposing to deal with land.

This amendment is complemented by the new *Land Titles Regulation 2015* which provides that the Minister administering the Dangerous Substances Act is an authorised entity under section 69B.

## **Part 1.6 Planning and Development Regulation 2008**

### **Amendment 1.14**

This amendment is made as a consequence of the amendments made by part 1.1 to include the definition of loose-fill asbestos insulation in the Dangerous Substances Act.

## **Part 1.7 Residential Tenancies Act 1997**

### **Amendment 1.15**

This amendment includes a new circumstance in which a residential tenancy agreement may be terminated. New section 36 (1) provides that a tenancy agreement may be terminated if the premises are included on the affected residential premises register.

### **Amendment 1.16**

This amendment inserts a new section 55A as a complement to new section 64AA. New section 55A provides the ACAT with jurisdiction to make a termination and possession where a lease is terminated by the lessor under new section 64AA. The ACAT is also given discretion to suspend the operation of a termination and possession order for up to 3 weeks in hardship cases.

### **Amendment 1.17**

This amendment sets out the right of the parties to a tenancy agreement to by notice terminate the tenancy where the premises are included on the affected residential premises register. The period of notice that is required is a minimum 2 days for the tenant and minimum 1 week for the lessor.

### **Amendment 1.18**

This amendment inserts new definitions as a consequence of Amendments 1.15-1.17.

### **Part 1.8      Work Health and Safety Regulation 2011**

#### **Amendments 1.19 and 1.20**

These amendments are made as a consequence of the amendments made by part 1.2 to include the definition of loose-fill asbestos insulation in the Dangerous Substances Act.