

**2015**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**DANGEROUS SUBSTANCES (GENERAL)  
AMENDMENT REGULATION 2015 (NO 1)**

**SL2015-10**

**EXPLANATORY STATEMENT**

**Presented by  
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## **Dangerous Substances (General) Amendment Regulation 2015 (No 1)**

### **Overview**

This explanatory statement relates to the *Dangerous Substances (General) Amendment Regulation 2015 (No 1)* (the Amending Regulation). The Statement must be read in conjunction with the Amending Regulation. It is not, and is not meant to be, a comprehensive description of the Amending Regulation. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

The Amending Regulation is made under the *Dangerous Substances Act 2004* (the Act). The purpose of the Act is to protect the health and safety of people, and to protect property and the environment from damage, from the hazards associated with dangerous substances. That purpose includes, at section 6(2), the elimination of hazards associated with dangerous substances, and if it is not reasonably practicable to eliminate the hazards—to minimise as far as reasonably practicable the risks resulting from the hazards by, for example—

- (i) ensuring that the hazards are identified and the risks are assessed and controlled; and
- (ii) requiring information and training about the hazards and the safe handling of the substances to be made available to people handling the substances.

The *Dangerous Substances (General) Regulation 2004*, part 3.5, is designed to provide information to improve the safety of tradespeople and other visitors or workers on residential premises affected by loose-fill asbestos insulation. The purpose of the Amending Regulation is to require those homeowners of affected residential premises to have an inspection of the living areas of the premises for loose-fill asbestos contamination and to have this inspection by 15 May 2015. The new requirements are intended to give effect to the purposes referred to above in relation to the identification of hazards.

### Context

Asbestos is one of the dangerous substances regulated under the Act. There are a number of houses in the Territory that have been identified as having had amosite (brown asbestos), and in some cases crocidolite (blue asbestos) in a loose-fibre (friable) form installed between 1968 and 1980 as insulation. In friable form, the microscopic, needle-like asbestos fibres are readily able to migrate from the roof and wall cavities throughout the structure of an affected home and enter the living areas through any penetration in the ceiling, wall or floor. Amosite and crocidolite asbestos have been banned from import, use and resale in Australia for many years. The continued occupation, maintenance, renovation and sale of affected homes are inconsistent with this national ban.

Following consultation with asbestos experts, and having regard to the findings of assessments of affected homes conducted since February 2014, the ACT Government has reached the conclusion that the ongoing risks posed by the continuing presence of loose-fill asbestos insulation in Canberra homes cannot be effectively managed.

It has accepted the advice of the Asbestos Response Taskforce (the Taskforce) that there is no effective, practical and affordable method to render homes containing loose-fill asbestos insulation safe to occupy in the long term.

Eradication of ongoing exposure risks through the demolition of all affected homes and subsequent site remediation is the only enduring solution to the health risks posed to residents, visitors and workers by the continuing presence of loose-fill asbestos insulation in Canberra homes, and their attendant social, financial and practical consequences.

Under the Buyback Program, the ACT Government has offered to buy all houses in the ACT affected by loose-fill asbestos insulation. Participation in the Buyback Program is voluntary.

The Buyback Program seeks to accommodate the individual circumstances of affected individuals and families, including in relation to assistance for those who wish to stay in their homes in the medium term, against the backdrop of the need for all affected homes to be demolished in that same time frame.

This *Dangerous Substances (General) Amendment Regulation 2015 (No 1)* (the Amendment Regulation) is made against this background.

The Amendment Regulation amends part 3.5 to insert new requirements for the owner of affected residential premises to arrange for a licensed asbestos assessor to inspect the living area of the premises for asbestos contamination.

This obligation is intended to apply to people who have not voluntarily already had an asbestos assessment of their property so that any worker who enters the property (for example, a furniture removalist or a property valuer) has access to appropriate information. The Buyback Program will close on 30 June 2015 and a secondary purpose of requiring the inspection is to ensure that if a homeowner chooses not to participate in the program, they do so with knowledge of the extent (if any) to which the asbestos fibres are present in the living areas of the house.

The Government has also announced that there will be medium term management obligations on homeowners and these will take effect post June 2015. Part of these obligations will be the requirement to have an asbestos assessment with associated risk assessment and management plans in place—the pre-15 May inspection requirement will ensure that there is a degree of ‘early notice’ about the potential impact of the medium term management obligations for the homeowner.

### Regulatory impact statement

The *Legislation Act 2001*, section 34, requires that if a proposed subordinate law is *likely to impose appreciable costs* on the community, or a part of the community, then the Minister must arrange for a regulatory impact statement to be prepared for the law.

Most homeowners (over 90%) have voluntarily had an asbestos assessment prepared (as described in section 47K of the Act) and have been reimbursed the cost of this by the Government. The asbestos assessment goes above and beyond what is required by the simpler ‘identification inspection’ proposed in this regulation. Those homeowners who have already had an earlier asbestos assessment in 2014-2015 are not required to have a repeat inspection.

The Government will similarly pay for the outstanding identification inspections required by the Amending Regulation.

In addition, the Taskforce is able to assist homeowners by making the arrangements for the inspections required by the Amending Regulation.

For these reasons, the Amending Regulation is not a regulation that will impose any appreciable cost on the community. As such, the Amending Regulation does not require a regulatory impact statement.

### 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 and may be justified on the basis of a valid public purpose in managing the health risks associated with a dangerous substance. 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.

### **Outline of provisions**

#### **Clause 1—Name of regulation**

This is a technical clause that explains that the regulation is the *Dangerous Substances (General) Amendment Regulation 2015 (No 1)*.

#### **Clause 2—Commencement**

This clause provides that the regulation commences on 15 May 2015. The effect of this delayed commencement is to provide a reasonable period of time for homeowners to make arrangements for an inspection as required under new section 341.

#### **Clause 3—Legislation amended**

This clause provides that this regulation will amend the *Dangerous Substances (General) Regulation 2004*.

#### **Clause 4—Section 338, new definition of *licensed asbestos assessor***

This clause inserts a new signpost definition as a consequence of the use of the term *licensed asbestos assessor* in new sections 341 and 342.

#### **Clause 5—New sections 341 and 342**

**Section 341** imposes a requirement on the owner of residential premises that are affected by loose-fill asbestos to have a licensed asbestos inspector to inspect the living area of the premises residential to identify the extent, if any, to which those living areas are contaminated by loose-fill asbestos dust or debris.

As is noted above, most affected residential premises have already had an asbestos assessment by a licensed asbestos assessor who has completed a report that complies with the Act, section 47K. The asbestos assessment report referred to in section 47K includes the identification of the location, type and condition of asbestos in relation to the premises. As

such, these existing assessments would already encompass the more limited inspection of living areas and would not need to have any additional inspection to comply with new section 341.

The inspection is only required for the living areas as these are the areas that would be readily accessible and regularly used by a person living in the house. Full asbestos assessments conducted to date indicate that it may be presumed (consistently with work health and safety laws) that there are asbestos fibres present in the wall cavities and in the subfloor. However, these areas are not readily accessible by a person living in the house in the same way as the internal spaces.

While there is no offence for failing to comply with the requirement in section 341, failure to do so will enliven the compliance mechanisms in chapter 6 of the Act (for example, an improvement notice).

**Section 342** imposes a requirement on the licensed asbestos assessor to give a copy, or arrange for a copy, of the report prepared under section 341 to the regulator. The provision is expressed in this way because the existing asbestos assessment reports have already been given to the Taskforce and the Taskforce will ensure that the reports are given to the regulator. Where any new inspection report referred to in section 341 is given to the Taskforce, this will be similarly be given by the Taskforce to the regulator.