

2015

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**DANGEROUS SUBSTANCES (GENERAL)
AMENDMENT REGULATION 2015 (NO 2)
SL2015-13**

EXPLANATORY STATEMENT

**Presented by
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Dangerous Substances (General) Amendment Regulation 2015 (No 2)

Overview

This explanatory statement relates to the *Dangerous Substances (General) Amendment Regulation 2015 (No 2)* (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 occupiers, 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 who have not surrendered their lease to the Territory as part of the Loose Fill Asbestos Buyback Scheme to have an asbestos contamination report prepared for their property, and to comply with any cleaning, sealing, locking or labelling requirements of that report. These regulations repeal earlier regulations made to require the owners of these properties to have an asbestos assessment report prepared.

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.

The Government has advised homeowners who do not intend to surrender their property to the Territory that they will be required to comply with new legislation intended to control the risks of loose-fill asbestos in the cavities of their homes. The new regulations will put in place an asbestos contamination report, including a management plan, for each property, developed after inspection by a licensed asbestos assessor. This will be lodged with WorkSafe ACT (the regulator) and require homeowners to have work done by an asbestos removalist to clean up, seal up, lock up or label any areas identified as being contaminated with loose fill asbestos dust or debris. The regulations will also require an owner to notify WorkSafe ACT of any intended building or maintenance work that may disturb loose-fill asbestos in the building cavities, carried out by themselves or a worker, so that the regulator can impose, if necessary any controls on this work, or inspect the work.

This *Dangerous Substances (General) Amendment Regulation 2015 (No 2)* (the Amendment Regulation) is made against this background.

The Amendment Regulation amends part 3.5 to substitute requirements for the owner of affected residential premises to arrange for a licensed asbestos assessor to prepare an asbestos contamination report for the property. These will replace the more limited requirements that were inserted in the Regulation by the *Dangerous Substances (General) Amendment Regulation 2015 (No 1)*.

This obligation is intended to apply to people who are not participating in the Buyback program, or who have agreed to an extended settlement beyond 1 year, and will not apply to properties purchased by The Territory for demolition.

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. The Amending Regulation will impose a appreciable cost on the community and a regulatory impact statement has been prepared.

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 2)*.

Clause 2—Commencement

This clause provides that the regulation commences on 1 February 2016. The effect of this delayed commencement is to provide a reasonable period of time for homeowners to make arrangements for an asbestos assessor inspection as required under new section 342.

Clause 3—Legislation amended

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

Clause 4—Section 338, new definitions

This clause inserts a number of new signpost definitions as a consequence of the use of new sections 341 and 342.

Clause 5—Sections 341 and 342

Section 341 sets out what is required for an asbestos contamination report. The asbestos contamination report is a more comprehensive version of the report required by current section 341. In addition to requiring the identification of the location type, location and condition of asbestos contamination in the living areas of the premises, the new asbestos contamination report will also identify any means of ingress of asbestos fibres from building cavities and have a management action component. The objective of the asbestos contamination report is to provide an assessment of current asbestos contamination of living areas and to reduce the risk of further contamination.

The inspection is only required for the living areas as it can be presumed all building cavities are contaminated. Asbestos assessments conducted to date indicate that it may be presumed (consistent with Work Health and Safety regulations) that there are asbestos fibres present in the wall or roof cavities and in the subfloor.

An approved form (s222) has been prepared to guide licensed asbestos assessors in the preparation of the asbestos contamination reports.

Section 342 imposes a requirement on the owner of affected residential premises to obtain new contamination report every 2 years, or earlier if any building damage or alteration occurs. The provision also requires the owner to give effect to any management actions in the report by engaging a licensed asbestos removal worker to clean up asbestos contamination in the living areas or to seal any likely pathways for asbestos fibres to move from the ceiling, wall or subfloor cavities into the living areas of the premises. It will also require the owner to ensure that a removal worker locks any building cavity manholes and to label any doors or access points to these areas. This is for the purpose of dissuading casual entry to these areas and to warn tradespersons of the asbestos hazard.

The owner must give a copy of the report to an occupier of the premises.

Section 342 (2) places an obligation on the occupier of premises to tell anyone who enters the living areas about the asbestos contamination and to make the asbestos contamination report available. This is in addition to any requirements under the Act, section 47L, to give a worker who is engaged to undertake work involving asbestos a copy of any asbestos assessment report. This is intended to enable visitors and other family members to be made aware of the asbestos hazard and what remedial measures have been put in place to reduce the risk of exposure to asbestos fibres.

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

New section 343 is intended to ensure that a licensed asbestos assessor who prepares an asbestos contamination report is both authorised and required to give a copy of that report to the regulator as well as the owner of the premises.

New section 344 requires a licensed asbestos removal worker who does the work required under an asbestos contamination report to certify the work has been completed using the approved form and to give that form to relevant parties.

Clause 6—Dictionary, new definitions

This clause inserts new definitions in the dictionary.