

2015

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

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

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Chief Minister**

Overview

This Supplementary Explanatory Statement complements the existing Explanatory Statement that was tabled with the Building (Loose- Fill Asbestos Eradication) Legislation Amendment Bill 2015 (the Bill) on 24 September 2015. It outlines the proposed Government Amendments to the Bill introduced in the ACT Legislative Assembly.

The Government Amendments are required in order to implement the Eligible Impacted Properties Buyback Program (EIPBP), which forms part of the Loose Fill Asbestos Insulation Eradication Scheme. The purpose of the EIPBP is to enable the purchase of properties that may be necessary to give effect to the safe, effective or efficient demolition of residential premises affected by loose fill asbestos insulation. The EIPBP is necessary to facilitate the demolition of affected residential premises, in order to eradicate the risk of loose fill asbestos insulation in the ACT community. Essentially the EIPBP is designed to deal with properties where:

- (a) the affected residential premises is structurally dependent on the property;
- (b) there is a migration pathway for loose fill asbestos insulation fibres from the affected residential premises to the property;
- (c) the affected residential premises cannot be demolished because of a safety, economic or practical impediment related to the nature of the other property.

The Government Amendments will extend the legislative architecture in place for affected residential premises relating to acquisition, demolition and re-sale, to these 'eligible impacted properties'. Various Acts and Regulations are amended in order for this to occur including the: *Building Act 2004*, *Building and Construction Industry Training Levy Act 1999*, *Civil Law (Sale of Residential Property) Act 2003*, *Electricity Feed-in (Renewable Energy Premium) Act 2008*, *Land Rent Act 2008*, *Planning and Development Regulation 2008*, *Residential Tenancies Act 1997* and the *Taxation Administration Regulation 2004*.

Most importantly, the new provisions in the *Civil Law (Sale of Residential Property) Act 2003* define an 'eligible impacted property' and the 'eligible impacted property

buyback program'. Legally, a property becomes an 'eligible impacted property' when the Government makes a determination it is eligible under the EIPBP. The new provisions also set out the factors the Chief Minister may consider in making such a determination.

Amendment 1 – Clause 3, page 2, line 23

This amendment inserts the *Civil Law (Sale of Residential Property) Act 2003* into clause 3, as legislation amended by the Bill.

Amendment 2 – Clause 3, page 2, line 24

This amendment inserts the *Electricity Feed-in (Renewable Energy Premium) Act 2008* into clause 3, as legislation amended by the Bill.

Amendment 3 – Clause 3, page 2, line 27

This amendment inserts the Planning and Development Regulation 2008, *Residential Tenancies Act 1997* and Taxation Administration Regulation 2004 into clause 3, as regulations amended by the Bill.

Amendment 4 – Clause 7, proposed new section 61(ca), page 4, line 5

This amendment amends new section 61(ca) of the *Building Act 2004* to include correct references to the amended heading for new section 63A of the *Building Act 2004*. The heading for new section 63A is being amended by amendment 5.

Amendment 5 – Clause 8, proposed new section 63A heading, page 4, line 10

This amendment inserts a new heading for new section 63A of the *Building Act 2004* to include a reference to eligible impacted properties. New section 63A is the clause which establishes the application and decision-making process for the new demolition orders. Both affected residential premises and eligible impacted properties will be able to apply for the new demolition orders.

Amendment 6 – Clause 8, proposed new section 63A(1), page 4, line 12

This amendment replaces new section 63A(1) of the *Building Act 2004* to extend the application of new section 63A to eligible impacted properties.

Amendment 7 – Clause 8, proposed new section 63A(3)(a), page 4, line 26

This amendment replaces new section 63A(3)(a) of the *Building Act 2004*. This amendment clarifies that the custodian of the land is required to supply an asbestos

removal control plan to directors-general, where such a plan is required, prior to applying for a demolition order. Asbestos removal control plans will be necessary for demolition of affected residential premises. An asbestos removal control plan will be necessary for an eligible impacted property only if it contains asbestos (any form of asbestos, not limited to loose fill).

Amendment 8 – Clause 8, proposed new section 63A(4)(c) and (d), page 5, line 8

This amendment replaces new section 63A(4)(c) and (d) of the *Building Act 2004*. This amendment establishes that only for affected residential premises, is the custodian of the land required to supply an asbestos assessment report and asbestos removal control plan in their demolition order application to the Construction Occupations Registrar. For eligible impacted properties, an asbestos removal control plan will only be necessary of the property if it contains asbestos (any form of asbestos, not limited to loose fill).

Amendment 9 – Clause 8, proposed new section 63A(6)(a), page 6, line 4

This amendment replaces new section 64A(6)(a) of the *Building Act 2004* to clarify that in considering whether the required consultation with directors-general has occurred under new section 63A(3), an asbestos removal control plan is required for an affected premises but is only required for an eligible impacted property where the property contains asbestos (any form of asbestos, not limited to loose fill).

Amendment 10 – Clause 8, proposed new section 63A(9), proposed new definitions of *eligible impacted property* and *eligible impacted property buyback program*, page 6, line 19

This amendment inserts the definitions of ‘eligible impacted property’ and ‘eligible impacted property buyback program’ into the clause which establishes the new demolition orders application and decision-making process (clause 63A).

Amendment 11 – Clause 8, proposed new section 63E heading, page 10, line 10

This amendment inserts a new heading for new section 63E of the *Building Act 2004* to include a reference to eligible impacted properties. New section 63E is the clause which sets out what the custodian of the land may do once a demolition has been completed under a demolition order.

Amendment 12 – Clause 15, proposed new section 19(3), definition of demolition order, page 13, line 18

This amendment amends new section 19(3) of the *Building and Construction Industry Training Levy Act 1999* to include in the definition of ‘demolition order’ with correct references to the amended heading for new section 63A of the *Building Act 2004*, as amended by amendment 5.

Amendment 13 – proposed new part 4A, page 17, line 6

This amendment inserts a new Part 4A into the Bill. This part will insert new sections 6(3) and (4), 9A and amend the dictionary in the *Civil Law (Sale of Residential Property) Act 2003*. Essentially, these amendments are an extension of the provisions already inserted into the *Civil Law (Sale of Residential Property) Act 2003* by the *Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Act 2015*, to eligible impacted properties. The amendments ensure Part 2 of the *Civil Law (Sale of Residential Property) Act 2003* does not apply to a contract for the sale of a residential property to the Territory, under either the buyback program for affected residential premises or the eligible impacted property buyback program. 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.

In particular, the new section 9A is the location in the statute book for the new definition of an ‘eligible impacted property’ and the ‘eligible impacted property buyback program’. For consistency, these definitions are referenced in all other Acts using those terms.

Importantly new section 9A establishes how a property becomes an eligible impacted property, which is by Government decision that the property is eligible under the EIPBP (as defined). In deciding whether the property is eligible under the program (which is that in place for the acquisition of eligible impacted properties from time to time), the Government may consider a number of factors including:

- (a) whether the residential premises are structurally dependent on the affected residential premises (which is listed on the affected residential premises

register in accordance with section 47N of the *Dangerous Substances Act 2004*);

- (b) whether the affected residential premises owner has agreed to surrender or sell the property to the Territory, and if so, whether this process has been completed;
- (c) whether loose fill asbestos insulation has been found in the property or whether pathways have been clearly identified where asbestos fibres could have migrated between the properties;
- (d) whether the premises present an obstacle to the safe, efficient or practical demolition of the affected residential premise;
- (e) anything else that the Government considers to be relevant in making a determination.

Determinations of whether a property is eligible will be on a case by case basis.

Amendment 14 - proposed new part 5A, page 19, line 6

This amendment inserts a new Part 5A into the Bill. This part will amend sections 11(3) and (4) of the *Electricity Feed-in (Renewable Energy Premium) Act 2008*. Again, these amendments are an extension of provisions already inserted into this Act by the *Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Act 2015*, to eligible impacted properties. This will enable the transfer of the ACT Government feed-in solar tariff ('premium rate') to a new premise for eligible impacted properties, in the same way as now applies for affected residential premises.

Amendment 15 – Clause 28, proposed new section 7A(4), new definitions of *eligible impacted property* and *eligible impacted property buyback program*, page 22, line 12

Clause 28 of the Bill inserts into the *Land Rent Act 2008*, a scheme for offering land rent to eligible former owners of land on which affected residential premises were located. This amendment inserts definitions of 'eligible impacted property' and 'eligible impacted property buyback program' into Clause 28, to enable the land rent scheme to be offered to former owners of eligible impacted properties as well.

Amendment 16 – Clause 28, proposed new section 7A(4), definition of former owner, paragraph (a), page 22, line 24

This amendment inserts new paragraphs (iii) and (iv) into the definition of ‘former owner’ in the land rent scheme in the *Land Rent Act 2008*, to enable the inclusion of eligible impacted property owners in the land rent scheme.

Amendments 17 and 18 – Clause 28, proposed new section 7A(4), definition of former owner, paragraphs (b) and (c), page 22, line 27, and page 23, line 5

These amendments are a technical change to paragraphs (b) and (c) in the definition of ‘former owner’ in the land rent scheme in the *Land Rent Act 2008*. The amendments insert the words ‘or sold’ at the end of each of these paragraphs to include properties that are ‘sold’ to the ACT, rather than ‘surrendered’, under the Eligible Impacted Property Buyback Program.

Amendment 19 – proposed new parts 9, 10 and 11, page 26, line 14

This amendment inserts new Parts 9, 10 and 11 into the Bill. These parts amend the Planning and Development Regulation 2008 (new Part 9), *Residential Tenancies Act 1997* (new Part 10) and the Taxation Administration Regulation 2004 (new Part 11) to enable existing schemes for affected residential premises in those regulations, to be extended to eligible impacted properties. In summary, the amendments are as follows:

- (a) Planning and Development Regulation 2008 (new Part 9): The amendments to regulation 130 will explicitly allow for a new Crown Lease to be granted by direct sale to a former owner of an eligible impacted property. This enables leases to be directly offered to former owners who have chosen to receive a first right of refusal to repurchase a new lease of the land. The amendments to various regulations in Divisions 5.8.1 and 5.8.2 will extend the same payment scheme available for the surrender of leases for affected residential premises, to eligible impacted properties.
- (b) *Residential Tenancies Act 1997* (new Part 10): This part will enable residential tenancy agreements to be terminated if the property has been determined by the Chief Minister to be an eligible impacted property (see new section 36(1)(m)). Unlike section 64AA for affected residential premises, new section 64AB sets out different notice of termination periods for agreements related to

eligible impacted properties. For affected residential premises it is a minimum two days for the tenant and minimum one week for the lessor. For eligible impacted properties, new section 64AB has a notice period of 28 days for either party. This recognises that the same urgency is not required for eligible impacted properties, which are not directly affected by the presence of loose fill asbestos insulation. As it is for affected residential premises, the ACT Civil and Administrative Tribunal (ACAT) will be able to make a termination and possession order where a lease is terminated by the lessor under new section 64AB. The ACAT is also given discretion to suspend the operation of a termination and possession order for up to three weeks in hardship cases.

- (c) Taxation Administration Regulation 2004 (new Part 11): Existing regulation 4(3) permits the Commissioner for Revenue to release taxpayer information to the Head of the Asbestos Response Taskforce for affected residential premises. The amendments to regulations 4(3) and (4) extend this to eligible impacted properties. This is necessary so appropriate contact can be made with owners of eligible impacted properties, in order to manage any residual risk, provide appropriate assistance, and advise them about the buyback program.