



Australian Capital Territory

# **Dangerous Substances (General) Amendment Regulation 2007 (No 1)**

**Subordinate Law SL2007-23**

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The Australian Capital Territory Executive makes the following regulation under the *Dangerous Substances Act 2004*.

Dated 6 September 2007.

ANDREW BARR  
Minister

SIMON CORBELL  
Minister

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made under the

**Dangerous Substances Act 2004**

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**1 Name of regulation**

This regulation is the *Dangerous Substances (General) Amendment Regulation 2007 (No 1)*.

**2 Commencement**

This regulation commences on the day after its notification day.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

**3 Legislation amended**

This regulation amends the *Dangerous Substances (General) Regulation 2004*.

**4 New part 3.4**

*insert*

## **Part 3.4 Asbestos management— non-residential premises**

**322 Application—pt 3.4**

- (1) This part applies to non-residential premises built before 31 December 2003.
- (2) However, this part only applies to non-residential premises on and after—
  - (a) for multi-storey commercial premises—1 September 2008; and
  - (b) for single storey commercial premises—1 September 2009; and

- (c) for industrial premises—1 March 2010; and
- (d) for community or recreational premises—1 September 2010.

(3) In this section:

***built***—non-residential premises are taken to be ***built*** on the day a certificate of occupancy for the premises, or the earliest certificate of occupancy for part of the premises, is issued under the *Building Act 2004*.

***multi-storey commercial premises*** means commercial premises that have 2 or more stories.

### 323 Definitions—pt 3.4

In this part:

***asbestos management plan***, for non-residential premises—see section 325.

***asbestos register***, for non-residential premises—see section 327.

***building***—see the *Building Act 2004*, section 7.

***class***—see the *Building Act 2004*, dictionary.

***commercial premises*** means premises, or a part of premises, that are a class 5 or class 6 building.

#### **Examples—commercial premises**

- 1 office building used for professional or commercial purposes
- 2 shop used for retail sale of goods or supply of services

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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***community or recreational premises*** means premises, or a part of premises, that are a class 3 or class 9 building.

**Examples—*community or recreational premises***

- 1 a boarding-house or guest house
- 2 the residential part of a hotel, motel, school or detention centre
- 3 a health-care or an aged care building

***disturb***—an asbestos product is disturbed if anything happens that increases, or may increase, the risk of asbestos fibres from the product being dispersed into the air.

***industrial premises*** means premises, or a part of premises, that are a class 7 or class 8 building.

**Examples—*industrial premises***

- 1 a building used for the production or repair of goods or produce for trade, sale or gain
- 2 a carpark
- 3 a building used for storage or wholesale sale of goods

***licensed asbestos assessor*** means an asbestos assessor licensed under the *Construction Occupations (Licensing) Act 2004*.

***national standards*** means—

- (a) the Asbestos Membrane Filter Method Guidance Note (NOHSC 3003 (2005)); and
- (b) the Code of Practice for the Management and Control of Asbestos in Workplaces (NOHSC 2018 (2005)) published by the National Occupational Health and Safety Commission.

***non-residential premises***—see section 324.

***risk assessment***, in relation to an asbestos product—see section 333.

**324 Meaning of *non-residential premises*—pt 3.4**

In this part:

*non-residential premises* means—

- (a) commercial premises; or
- (b) industrial premises; or
- (c) community or recreational premises.

**325 Asbestos management plan**

- (1) A person in control of non-residential premises must have a plan (an *asbestos management plan*) for the premises.

Maximum penalty: 30 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) The asbestos management plan must include the following:
  - (a) provision for the keeping of an asbestos register for the premises;
  - (b) provision for people likely to be affected by an asbestos product at the premises to have access to information about the following:
    - (i) the location, type and condition of the product;
    - (ii) the risks posed by the product;
    - (iii) the control measures adopted to eliminate or minimise those risks;
  - (c) details of locations for the placement of warning signs and labels under section 332;
  - (d) details of safe work methods in relation to asbestos products at the premises;



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- (e) details of decisions, and reasons for decisions, about the management of an asbestos product at the premises;
  - (f) details of arrangements for dealing with accidents, incidents or emergencies involving an asbestos product at the premises;
  - (g) a timetable for managing risks associated with asbestos products at the premises, including priorities and dates for reviewing risk assessments, and special circumstances and activities that may affect the timing of action;
  - (h) details of atmospheric monitoring arrangements at the premises;
  - (i) details identifying each person having responsibilities under the plan, and the person's particular responsibilities;
  - (j) details of any training arrangements for workers or contractors engaged at the premises or other people likely to be affected by an asbestos product at the premises;
  - (k) procedures, including a timetable, for reviewing and updating the plan and asbestos register.

**Examples of decisions—par (e)**

- 1 to seal or enclose the asbestos product
- 2 to replace the asbestos product with an alternative product

**Examples of arrangements—par (f)**

- 1 warning and communication systems
- 2 safety drills
- 3 availability of information for emergency services

**Examples of special circumstances and activities—par (g)**

- 1 plant shutdown periods
- 2 renovation or refurbishment of premises

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) If something that may happen at the non-residential premises may disturb an asbestos product at the premises, the asbestos management plan must provide, as far as practicable and having regard to the risks to health, for the asbestos product to be removed from the premises rather than secured at the premises.
- (5) A plan for the management of asbestos products in non-residential premises is taken to be an asbestos management plan for this part if the plan—
  - (a) is developed on or after 1 July 2006, but before the application of this part to the premises;
  - (b) provides for the review of the plan under section 326;
  - (c) complies with section 330 (Identifying asbestos products etc);
  - (d) complies with section 331 (Presumed presence of asbestos products);
  - (e) complies with section 332 (Asbestos warning signs etc); and
  - (f) complies with section 333 (Asbestos risk assessment).
- (6) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on 31 December 2011.

### **326 Asbestos management plan—review**

- (1) A person in control of non-residential premises must review the asbestos management plan for the premises if—
  - (a) an asbestos product at the premises has been disturbed or removed; or
  - (b) a review of the asbestos register under section 329 indicates the need for the review; or

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- (c) a review of a risk assessment under section 334 indicates the need for the review; or
  - (d) a review is required under section 335 (Asbestos—atmospheric monitoring); or
  - (e) there has been a significant change in the premises: or
  - (f) there is any other evidence of which the person is, or should be, aware that the plan is no longer adequate for managing asbestos products at the premises.

Maximum penalty: 30 penalty units.

**Examples of significant change in premises—par (e)**

- 1 significant renovation or refurbishment to part or all of the premises
- 2 a change in the building code classification of the premises

**Example of other evidence—par (f)**

unexpected damage to the premises

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A person in control of non-residential premises must also ensure that the asbestos management plan for the premises is reviewed not later than—
  - (a) 5 years after the day it was made; or
  - (b) if the plan has been reviewed after it was made (whether under this section or otherwise)—5 years after the day the last review finished.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

**327 Asbestos register**

- (1) A person in control of non-residential premises must have a register (the *asbestos register*) for the premises.

Maximum penalty: 30 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) A person in control of non-residential premises commits an offence if the person fails to take reasonable steps to ensure that the asbestos register contains the following information:
- (a) information about the identification of asbestos products at the premises, including the following:
    - (i) the date of each inspection and identification under section 330 (Identifying asbestos products etc);
    - (ii) the name of each person who conducted an inspection or identification under section 330;
    - (iii) the location, type and condition of each asbestos product identified at the premises under section 330;
    - (iv) the location, type and condition of anything at the premises that is presumed under section 331 to contain an asbestos product;
    - (v) any analysis confirming that material at the premises contains, or does not contain, an asbestos product;
  - (b) information about a review of the asbestos register under section 329 including the following:
    - (i) the date of each review;
    - (ii) the name of each person who conducted the review;
    - (iii) the findings and conclusions of the review;

- (c) information about risk assessments under section 333 for the premises, including the following:
  - (i) the date of each assessment;
  - (ii) the name of each person who conducted an assessment;
  - (iii) the findings and conclusions of each assessment;
  - (iv) the result of any atmospheric monitoring at the premises, and any assessment of the results, under section 335;
- (d) information about a review of a risk assessment under section 334 for the premises, including the following:
  - (i) the date of each review;
  - (ii) the name of each person who conducted the review;
  - (iii) the findings and conclusions of the review;
  - (iv) the result of any atmospheric monitoring at the premises, and any assessment of the results, under section 335;
- (e) information about control measures at the premises including measures recommended or adopted because of a risk assessment under section 333;
- (f) information about maintenance and service work in relation to asbestos products at the premises, including the following:
  - (i) the name of each person who carried out the work;
  - (ii) each date on which the work was carried out;
  - (iii) the scope of the work carried out;

- (iv) any clearance certificate relating to the work.

**Example of clearance certificate—subpar (iv)**

a certificate by an asbestos removalist certifying premises are clear of asbestos

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Maximum penalty: 30 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) An asbestos register is taken to be a register for this part if the register—
  - (a) is developed on or after 1 July 2006, but before the application of this part to the premises; and
  - (b) includes the information required under subsection (3).
- (6) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on 31 December 2011.

**328 Asbestos register—access**

- (1) A person in control of non-residential premises must ensure that—
  - (a) each worker at the premises is told about the register; and
  - (b) before any work that may expose anyone to airborne asbestos fibres is done at the premises, the register is readily accessible to each of the following:
    - (i) the worker or a representative of the worker;
    - (ii) the employer of a worker at the premises;

- (iii) anyone removing an asbestos product at the premises;
- (iv) anyone engaged to carry out work that may disturb an asbestos product at the premises;
- (v) anyone else who may be exposed to airborne asbestos fibres because of the work.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) In this section:

*construction service*—see the *Construction Occupations (Licensing) Act 2004*, section 6 (2).

*worker* means someone engaged to—

- (a) provide a construction service at the premises; or
- (b) do other work prescribed by regulation at the premises.

### **329 Asbestos register—review**

- (1) A person in control of non-residential premises must ensure that the asbestos register for the premises is reviewed by a licensed asbestos assessor if a review is required under either—
  - (a) section 334 (Asbestos risk assessment—review); or
  - (b) section 335 (Asbestos—atmospheric monitoring).

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

### **330 Identifying asbestos products etc**

- (1) A person in control of non-residential premises must ensure that—
  - (a) the premises are inspected to find out whether there is any asbestos product at the premises; and

- (b) the person carrying out the inspection is a licensed asbestos assessor; and
- (c) details of the inspection are included in an inspection report for the premises.

Maximum penalty: 20 penalty units.

- (2) Strict liability applies to subsection (1) (a) and (c).
- (3) For subsection (1) (c), the report must—
  - (a) identify the location, type and condition of any asbestos product found at the premises; and
  - (b) identify any inaccessible areas at the premises where the presence of something that is an asbestos product should be presumed; and
  - (c) make recommendations about the placement of signs and labels to show the location, type and condition of an asbestos product found, or presumed to be, at the premises.

### **331 Presumed presence of asbestos products**

- (1) This section applies if a licensed asbestos assessor —
  - (a) identifies an inaccessible area of non-residential premises as an area where the presence of something that is an asbestos product should be presumed; and
  - (b) includes details about the presumed presence of an asbestos product in a report mentioned in section 330 (1) (c).
- (2) A person in control of the premises must, subject to any identification of the thing under section 330 (Identifying asbestos products etc), include information about the thing in the asbestos register as if it were an asbestos product.

Maximum penalty: 30 penalty units.



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- (3) While information about a thing is included in the asbestos register under this section, this part applies in relation to the thing as if it were an asbestos product identified under section 330.
  - (4) An offence against this section is a strict liability offence.

### **332 Asbestos warning signs etc**

- (1) This section applies if an asbestos product is identified under section 330.

*Note* A product identified includes a thing included in the asbestos register under s 331 (see s 331 (3)).

- (2) A person in control of non-residential premises must ensure that—
  - (a) warning signs and labels to show the location, type and condition of each asbestos product identified at the premises are displayed in accordance with the recommendations in the report required under section 330 for the premises; and
  - (b) each warning sign or label complies with the safety sign standard.

Maximum penalty: 30 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) In this section:

*safety sign standard* means Australian Standard 1319 Safety Signs for the Occupational Environment.

### **333 Asbestos risk assessment**

- (1) This section applies if an asbestos product is identified under section 330.

*Note* A product identified includes a thing included in the asbestos register under s 331 (see s 331 (3)).

- (2) A person in control of the premises must ensure that—
- (a) a written assessment (a *risk assessment*) is made of the risks associated with the asbestos product; and
  - (b) the person making the risk assessment is a licensed asbestos assessor; and
  - (c) details of the risk assessment are included in—
    - (i) the asbestos management plan for the premises; and
    - (ii) the asbestos register for the premises.

Maximum penalty: 30 penalty units.

- (3) Strict liability applies to subsection (2) (a) and (c).
- (4) The risk assessment for an asbestos product must—
- (a) take account of the following:
    - (i) the condition of the product;
    - (ii) the likelihood of anyone being exposed to the product;
    - (iii) whether the nature or location of any work to be carried out is likely to disturb the product;
    - (iv) the result of any atmospheric monitoring at the premises; and
  - (b) set out the control measures considered, or used, for control of the risks associated with the product.

### **334 Asbestos risk assessment—review**

- (1) A person in control of non-residential premises must ensure that the risk assessment for the premises is reviewed by a licensed asbestos assessor if any of the following apply:
- (a) there is evidence of which the person is, or should be, aware that the risk assessment is no longer valid or adequate;

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- (b) there is evidence of which the person is, or should be, aware that the control measures set out in the risk assessment are no longer valid or adequate;
  - (c) a significant change is proposed for the premises, or for work practices or procedures, relevant to the risk assessment;
  - (d) there is a change in the condition of the product.

Maximum penalty: 30 penalty units.

**Examples of significant change—par (c)**

- 1 significant renovation or refurbishment to part or all of the premises
  - 2 a change in the building code classification of the premises
- (2) Strict liability applies to subsection (1) (c) and (d).
  - (3) A review of a risk assessment need not include more than a visual inspection of the asbestos product if the inspection is, in the opinion of the licensed asbestos assessor, sufficient to adequately assess the risk.

**335 Asbestos—atmospheric monitoring**

- (1) This section applies if atmospheric monitoring is a control measure identified in a risk assessment for an asbestos product at non-residential premises.
- (2) A person in control of the premises must ensure that atmospheric monitoring is carried out at the premises in accordance with the national standards.

Maximum penalty: 30 penalty units.

- (3) If atmospheric monitoring under subsection (2) indicates that airborne asbestos fibres at the premises might exceed the exposure standard under the national standards, a person in control of the premises must review—
- (a) the control measures for the risks associated with the asbestos product; and
  - (b) if necessary—
    - (i) the asbestos management plan for the premises; and
    - (ii) the asbestos register for the premises.

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.

### **336 Atmospheric asbestos—exposure standard exceeded**

- (1) A person in control of non-residential premises must ensure that airborne asbestos fibres at the premises do not exceed the exposure standard under the national standards.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

## **5 Dictionary, note 2, new dot point**

*insert*

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## **6 Dictionary, new definitions**

*insert*

***asbestos management plan***, for part 3.4 (Asbestos management—non-residential premises)—see section 323.

*asbestos register*, for part 3.4 (Asbestos management—non-residential premises)—see section 323.

*disturb*, for part 3.4 (Asbestos management—non-residential premises)—see section 323.

*licensed asbestos assessor*, for part 3.4 (Asbestos management—non-residential premises)—see section 323.

*national standards*, for part 3.4 (Asbestos management—non-residential premises)—see section 323.

*non-residential premises*, for part 3.4 (Asbestos management—non residential premises)—see section 323.

## **7 Dictionary, definition of *risk assessment***

*substitute*

*risk assessment*—

- (a) for a hazard, for chapter 2 (Certain dangerous substances)—see section 222; and
- (b) for an asbestos product, for part 3.4—see section 333.

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## Endnotes

**1 Notification**

Notified under the Legislation Act on 6 September 2007.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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