



Australian Capital Territory

Planning and Development (Loose-fill Asbestos Insulation Eradication) Amendment Regulation 2014 (No 1)

Subordinate Law SL2014-35

The Australian Capital Territory Executive makes the following regulation under the *Planning and Development Act 2007*.

Dated 18 December 2014.

ANDREW BARR
Minister

MICK GENTLEMAN
Minister



Australian Capital Territory

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J2014-591

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1 Name of regulation

This regulation is the *Planning and Development (Loose⁸fill Asbestos Insulation Eradication) Amendment Regulation 2014 (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 *Planning and Development Regulation 2008*.

4 New division 5.8.1

insert

Division 5.8.1 Payment of amount on surrender or termination of leases—certain leases

209 Application—div 5.8.1

(1) This division applies to the following leases:

- (a) a residential lease granted for not more than 3 residential dwellings;
- (b) a lease granted to a community organisation;

Note **Community organisation**—see the [Act](#), dictionary.

- (c) a lease terminated for breach of a building and development provision.

Note **Building and development provision**, in relation to a lease—see the [Act](#), s 234.

- (2) However, this division does not apply to a lease surrendered under the buyback program.

Note Leases surrendered under the buyback program are dealt with in div 5.8.2.

- (3) In this section:

buyback program—see section 213.

5 Section 210 (1)

omit

6 Section 211 (1)

omit

7 New division 5.8.2

insert

Division 5.8.2 Payment of amount on surrender of leases—loose-fill asbestos insulation eradication buyback program

212 Meaning of *affected lease* and *affected residential premises*

- (1) In this Act:

affected lease means a lease of land on which there are improvements including affected residential premises.

affected residential premises means residential premises that contain, or have contained, loose-fill asbestos insulation.

(2) In this section:

residential premises means premises, or a part of premises, that are a class 1 or class 2 building.

213 Meaning of *buyback program*

In this Act:

buyback program means the program—

- (a) involving the surrender of affected leases; and
- (b) for which funding was appropriated under the [Appropriation \(Loose-fill Asbestos Insulation Eradication\) Act 2014-2015](#).

214 Meaning of *buyback program valuation procedure*

In this Act:

buyback program valuation procedure means the procedure set out in schedule 2A.

215 Payment amount—contract entered on or before 18 February 2014—Act, s 300 (2)

(1) This section applies if—

- (a) a lessee entered into a contract for sale to purchase land comprised in an affected lease on or before 18 February 2014; and
- (b) the contract was completed on or before 28 October 2014; and
- (c) the lessee surrenders the affected lease under the buyback program.

- (2) The prescribed amount is the greater of the following amounts:
- (a) the amount payable to the lessee for the surrender under the buyback program valuation procedure;
 - (b) the amount payable to the lessee under the [Act](#), section 291 (Authority to pay for certain improvements).

Note The [Act](#), s 291 applies to a surrendered lease as if the lease had expired on the day the lease was surrendered (see [Act](#), s 293).

**216 Payment amount—contract entered after
18 February 2014 and completed on or before
28 October 2014—Act, s 300 (2)**

- (1) This section applies if—
- (a) a lessee entered into a contract for sale of land comprised in an affected lease after 18 February 2014; and
 - (b) the contract for sale was completed on or before 28 October 2014; and
 - (c) the lessee surrenders the affected lease under the buyback program.
- (2) The prescribed amount is the greater of the following amounts:
- (a) the amount of the purchase price set out in the contract for sale;
 - (b) the amount payable to the lessee under the [Act](#), section 291 (Authority to pay for certain improvements).

Note The [Act](#), s 291 applies to a surrendered lease as if the lease had expired on the day the lease was surrendered (see [Act](#), s 293).

-
- (3) However, subsection (4) applies if—
- (a) a lessee makes a submission to the planning and land authority before surrendering the affected lease, stating that the lessee undertook improvements to the land after the day the contract for sale was completed and on or before 28 October 2014 (the *after-purchase improvements*); and
 - (b) the planning and land authority is satisfied that the after-purchase improvements have had a significant effect on the value of the affected lease including improvements.
- (4) The prescribed amount is the greater of the following amounts:
- (a) the amount of the purchase price set out in the contract for sale, plus the value of the after-purchase improvements;
 - (b) the amount payable to the lessee under the [Act](#), section 291.

217 Payment amount—contract entered after 18 February 2014 and completed after 28 October 2014—Act, s 300 (2)

- (1) This section applies if—
- (a) a lessee entered into a contract for sale of land comprised in an affected lease after 18 February 2014 but before 28 October 2014; and
 - (b) the contract for sale was completed after 28 October 2014; and
 - (c) the lessee surrenders the affected lease under the buyback program.
- (2) The prescribed amount is the greater of the following amounts:
- (a) the amount of the purchase price set out in the contract for sale;

- (b) the amount payable to the lessee under the [Act](#), section 291 (Authority to pay for certain improvements).

Note The [Act](#), s 291 applies to a surrendered lease as if the lease had expired on the day the lease was surrendered (see [Act](#), s 293).

218 Payment amount—lease acquired before 18 February 2014 other than by contract—Act, s 300 (2)

- (1) This section applies if a lessee—
 - (a) on or before 18 February 2014, acquired an interest in land comprised in an affected lease other than by entering into a contract for sale; and
 - (b) surrenders the affected lease under the buyback program.
- (2) The prescribed amount is the greater of the following amounts:
 - (a) the amount payable to the lessee for the surrender under the buyback program valuation procedure;
 - (b) the amount payable to the lessee under the [Act](#), section 291 (Authority to pay for certain improvements).

Note The [Act](#), s 291 applies to a surrendered lease as if the lease had expired on the day the lease was surrendered (see [Act](#), s 293).

219 Payment amount—lease acquired after 18 February 2014 other than by contract, and transferor acquired lease before 18 February 2014—Act, s 300 (2)

- (1) This section applies if—
 - (a) a person (the *transferor*) acquired an interest in land comprised in an affected lease on or before 18 February 2014; and
 - (b) after 18 February 2014, a lessee acquired from the transferor an interest in the land other than by entering into a contract for sale; and

- (c) the lessee surrenders the affected lease under the buyback program.
- (2) The prescribed amount is the greater of the following amounts:
 - (a) the amount payable to the lessee for the surrender under the buyback program valuation procedure;
 - (b) the amount payable to the lessee under the [Act](#), section 291 (Authority to pay for certain improvements).

Note The [Act](#), s 291 applies to a surrendered lease as if the lease had expired on the day the lease was surrendered (see [Act](#), s 293).

219A Payment amount—lease acquired after 18 February 2014 other than by contract, and transferor acquired lease after 18 February 2014—Act, s 300 (2)

- (1) This section applies if—
 - (a) a person (the *transferor*) entered into a contract for sale of land comprised in the affected lease after 18 February 2014 but before 28 October 2014; and
 - (b) after 18 February 2014, a lessee acquired from the transferor an interest in the land other than by entering into a contract for sale; and
 - (c) the lessee surrenders the affected lease under the buyback program.
- (2) The prescribed amount is the greater of the following amounts:
 - (a) the amount of the purchase price set out in the contract for sale;
 - (b) the amount payable to the lessee under the [Act](#), section 291 (Authority to pay for certain improvements).

Note The [Act](#), s 291 applies to a surrendered lease as if the lease had expired on the day the lease was surrendered (see [Act](#), s 293).

- (3) However, subsection (4) applies if—
- (a) a lessee makes a submission to the planning and land authority before surrendering the affected lease, stating that the transferor or lessee undertook improvements to the land after the day the transferor completed the contract for sale and on or before 28 October 2014 (the *after-purchase improvements*); and
 - (b) the planning and land authority is satisfied that the after-purchase improvements have had a significant effect on the value of the affected lease including improvements.
- (4) The prescribed amount is the greater of the following amounts:
- (a) the amount of the purchase price set out in the contract for sale, plus the value of the after-purchase improvements;
 - (b) the amount payable to the lessee under the [Act](#), section 291.

219B Limitation on payment amount—buyback program—Act, s 300 (3)

The planning and land authority may pay an amount mentioned in section 215 to section 219A only if all outstanding amounts payable to the Territory in relation to the lease (including rates, land tax, stamp duty and land rent) have been paid.

219C Payment amount under this division includes payment for improvements

An amount paid to a lessee under any of the following provisions is taken to include any payment the planning and land authority may be liable to pay to the lessee under the [Act](#), section 291 (Authority to pay for certain improvements) in relation to the surrender:

- (a) section 215 (2) (a);
- (b) section 216 (2) (a), (3) (a);

- (c) section 217 (2) (a);
- (d) section 218 (2) (a);
- (e) section 219 (2) (a);
- (f) section 219A (2) (a), (3) (a).

8 New schedule 2A

insert

Schedule 2A Buyback program valuation procedure

(see s 214)

2A.1 Definitions—sch 2A

In this schedule:

Asbestos Response Taskforce means the Asbestos Response Taskforce established by the ACT government in June 2014.

assessment day means 28 October 2014.

reasonable value, of an affected lease, means the value of the lease, including the improvements, assuming that the lease, including the improvements, were offered for sale on the open market on the assessment day on the reasonable terms and conditions that a genuine seller might require.

Note *Affected lease*—see s 212.

2A.2 Valuation as at assessment day, not including asbestos etc

- (1) Two valuations of the reasonable value of an affected lease must be carried out.
- (2) The affected lease, including the improvements, must be valued as at the assessment day.
- (3) A valuation must not have regard to—
 - (a) the presence of loose-fill asbestos insulation at the affected residential premises on the affected lease; or
 - (b) minor maintenance work needing to be carried out on the affected residential premises on the affected lease as at the assessment day; or
 - (c) minor maintenance work or cosmetic improvements carried out on the affected residential premises on the affected lease after the assessment day.

2A.3 Accredited valuers to carry out valuation

- (1) Each valuation of the reasonable value of an affected lease must be carried out by a valuer who is—
 - (a) an accredited valuer; and
 - (b) independent of the other valuer carrying out a valuation of the affected lease; and
 - (c) independent of the territory and the lessee.
- (2) Each valuer must be selected by the Australian Property Institute Incorporated (ABN 49 007 505 866).

2A.4 Valuation to be given to lessee and Asbestos Response Taskforce

A valuer who carries out a valuation of the reasonable value of an affected lease must give a copy of the valuation to—

- (a) the lessee of the affected lease; and
- (b) the Asbestos Response Taskforce.

2A.5 Presidential determination—request by Asbestos Response Taskforce

- (1) This section applies if the Asbestos Response Taskforce is given 2 valuations of the reasonable value of an affected lease.
- (2) If the difference between the valuations is 10% or more, but less than 10.5%, of the lower valuation, the Asbestos Response Taskforce may ask for a presidential determination of the reasonable value of the affected lease.

Note **Presidential determination**—see s 2A.8.

- (3) In deciding whether to ask for a presidential determination, the Asbestos Response Taskforce must consider—
 - (a) the views of the lessee of the affected lease; and
 - (b) the difference between the valuations; and
 - (c) the cost involved in obtaining a presidential determination.
- (4) If the difference between the valuations is 10.5% or more of the lower valuation, the Asbestos Response Taskforce must ask for a presidential determination of the reasonable value of the affected lease.
- (5) If the Asbestos Response Taskforce asks for a presidential determination, the Asbestos Response Taskforce—
 - (a) must tell the lessee; and

(b) is liable for the cost of the determination.

2A.6 Buyback program valuation

The *buyback program valuation* for an affected lease is worked out as follows:

$$\frac{V1+V2}{2}$$

V1 means the first valuation of the reasonable value of the affected lease.

V2 means the second valuation of the reasonable value of the affected lease.

2A.7 Presidential determination—request by lessee

- (1) If a lessee of an affected lease rejects a buyback program valuation for the affected lease, the lessee may ask for a presidential determination of the reasonable value of the affected lease.

Note **Presidential determination**—see s 2A.8.

- (2) If the lessee asks for a presidential determination, the lessee is liable for the cost of the determination.

2A.8 Presidential determination

- (1) This section applies if the Asbestos Response Taskforce or the lessee asks for a presidential determination of the reasonable value of an affected lease.
- (2) The president of the ACT Division of the Australian Property Institute Incorporated must appoint a valuer (a *presidential valuer*) to carry out a valuation (a *presidential determination*) of the reasonable value of the affected lease.
- (3) The presidential valuer must be—
 - (a) an accredited valuer; and

- (b) independent of the valuers who carried out the valuations of the affected lease under section 2A.3; and
 - (c) independent of the Territory and the lessee.
- (4) The lessee may give any information or material to the presidential valuer that the lessee considers relevant to the valuation—
 - (a) if the Asbestos Response Taskforce asks for the presidential determination—before the presidential valuer starts the presidential determination; or
 - (b) if the lessee asks for the presidential determination—at the time the lessee asks for the presidential determination.
- (5) The presidential valuer must make a presidential determination in the same way as the valuations of the reasonable value of the affected lease were carried out.
- (6) A presidential determination is binding on the lessee and the Asbestos Response Taskforce.

2A.9 Amount payable for surrender of affected lease

- (1) This section applies if a lessee of an affected lease surrenders the lease under the buyback program.
- (2) The amount payable to the lessee for the surrender of the affected lease is—
 - (a) if a presidential determination is made of the reasonable value of the affected lease—the reasonable value determined by the presidential determination; or
 - (b) in any other case—the buyback program valuation for the affected lease.

9 Dictionary, note 3

insert

- accredited valuer

10 Dictionary, new definitions

insert

affected lease—see section 212.

affected residential premises—see section 212.

Asbestos Response Taskforce, for schedule 2A (Buyback program valuation procedure)—see schedule 2A, section 2A.1.

assessment day, for schedule 2A (Buyback program valuation procedure)—see schedule 2A, section 2A.1.

buyback program—see section 213.

buyback program valuation, for schedule 2A (Buyback program valuation procedure)—see schedule 2A, section 2A.6.

buyback program valuation procedure—see section 214.

loose-fill asbestos insulation—see the [Dangerous Substances \(General\) Regulation 2004](#), section 338.

presidential determination, for schedule 2A (Buyback program valuation procedure)—see schedule 2A, section 2A.8.

presidential valuer, for schedule 2A (Buyback program valuation procedure)—see schedule 2A, section 2A.8.

reasonable value, of an affected lease, for schedule 2A (Buyback program valuation procedure)—see schedule 2A, section 2A.1.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 18 December 2014.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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