



Australian Capital Territory

# Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Act 2014

A2014-53

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Australian Capital Territory

# **Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Act 2014**

**A2014-53**

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An Act to amend legislation about asbestos

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

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J2014-425

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Act 2014*.

### 2 Commencement

This Act commences on 1 January 2015.

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

### 3 Legislation amended

This Act amends the following legislation:

- [Building Act 2004](#)
- [Building \(General\) Regulation 2008](#)
- [Construction Occupations \(Licensing\) Act 2004](#)
- [Construction Occupations \(Licensing\) Regulation 2004](#)
- [Dangerous Substances Act 2004](#)
- [Dangerous Substances \(General\) Regulation 2004](#)
- [Work Health and Safety Act 2011](#).



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## Part 2 Building Act 2004

### 4 Contravention of requirements for building work involving asbestos Section 42A (2) (a)

*substitute*

- (a) the person is—
- (i) a licensed builder; or
  - (ii) a licensed asbestos assessor; or
  - (iii) a licensed asbestos removalist; and
- (aa) carries out the building work; and

### 5 New section 42A (5)

*insert*

- (5) In this section:

*licensed asbestos assessor*—see the [Work Health and Safety Regulation 2011](#), dictionary.

*licensed asbestos removalist*—see the [Work Health and Safety Regulation 2011](#), dictionary.

### 6 Meaning of *prescribed requirements*—div 5.1 Section 66, definition of *prescribed requirements*, paragraph (a)

*substitute*

- (a) if the building work involves handling asbestos or disturbing friable asbestos—the requirements of—
- (i) this Act; and
  - (ii) the [Work Health and Safety Act 2011](#); or

**7 Dictionary, new definition of *asbestos***

*insert*

*asbestos*—see the [Work Health and Safety Regulation 2011](#), dictionary.

**8 Dictionary, definition of *friable asbestos* and examples and note**

*substitute*

*friable asbestos*—see the [Work Health and Safety Regulation 2011](#), dictionary.

---

## Part 3 Building (General) Regulation 2008

### 9 Dictionary Section 3, note 1

*substitute*

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere in this regulation.

For example, the signpost definition '*ActewAGL Distribution*, for schedule 2 (Referral of building approval applications)—see schedule 2, section 2.1.' means that the term '*ActewAGL Distribution*' is defined in that section for schedule 2.

### 10 Bonded asbestos removal—Act, s 26 (3) Section 14 (2) and (3)

*substitute*

- (2) The application must include an asbestos removal control plan for the removal.

### 11 Section 15

*substitute*

### 15 Friable asbestos removal—Act, s 26 (3)

- (1) This section applies to an application for building approval involving the removal of friable asbestos from a residential building.
- (2) The application must include an asbestos removal control plan for the removal.

**12 Dictionary, note 3**

*insert*

- asbestos
- friable asbestos

**13 Dictionary, definition of *asbestos***

*omit*

---

## Part 4                      Construction Occupations (Licensing) Act 2004

**14            What is a *construction occupation*?  
Section 7 (a) and (b)**

*omit*

**15            Who is an *asbestos assessor*?  
Section 7A**

*omit*

**16            What is an *asbestos removalist*?  
Section 7B**

*omit*

**17            Suspension of licence—public safety  
Section 52A (1), example 1**

*omit*

**18            Construction occupations registrar  
Section 103 (2) (a)**

*omit*

**19            Dictionary**

*omit the definitions of*  
*asbestos assessment service*  
*asbestos assessor*  
*asbestos removalist*  
*asbestos removal service*

## **Part 5 Construction Occupations (Licensing) Regulation 2004**

**20 Licence applications—Act, s 17 (3)  
Section 5 (h) (i)**

*omit*

**21 Term of licences generally—Act, s 24  
Section 7 (1) (f)**

*omit*

**22 Section 8 heading**

*substitute*

**8 Term of licence for building assessors, building  
surveyors, plumbing plan certifiers and works  
assessors—Act, s 24**

**23 Section 8 (1) (a)**

*omit*

**24 Particulars in register  
Section 9 (1) (c) (i)**

*omit*

**25 Corporations and partnerships eligible for some  
occupations  
Section 15 (1) (a)**

*omit*

**26 Eligibility to be asbestos removalist  
Section 15A**

*omit*

**27 Eligibility to be asbestos assessor  
Section 16A**

*omit*

**28 Services that may be provided without licence  
Section 35 (2)**

*substitute*

*Note* *Construction service* does not include asbestos removal work (see [Act](#), s 6).

**29 Section 35 (4), definition of *relevant asbestos qualification***

*omit*

**30 Classes of asbestos assessor  
Section 36A**

*omit*

**31 Classes of asbestos removalist  
Section 36B**

*omit*

**32 Asbestos assessor  
Schedule 1, part 1.1**

*omit*

**33 Asbestos removalist  
Schedule 1, part 1.2**

*omit*

**34 Dictionary, definition of *bonded asbestos***

*omit*



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## Part 6 Dangerous Substances Act 2004

### 35 Exclusions from Act New section 7 (1A)

*insert*

- (1A) This Act, other than the following sections, applies to the handling of asbestos only if the handling is non-commercial handling:
- (a) section 13 (*Correctly* classified for a dangerous substance);
  - (b) section 14 (*Correctly* for packed, stored, labelled and placarded);
  - (c) section 75 (Unauthorised import of certain dangerous substances);
  - (d) section 76 (Unauthorised supply of certain dangerous substances);
  - (e) section 77 (Unauthorised possession of certain dangerous substances).

*Note* Asbestos is also dealt with in the [Work Health and Safety Regulation 2011](#). See s 8 and s 8A for the relationship of this Act to the [WHS Act](#).

**36 Failure to comply with safety duty—exposing people to substantial risk of death or serious harm  
Section 43 (1), new example**

*before the note, insert*

- 2 Caroline receives a letter from the ACT Government, advising her that her house contains loose-fill asbestos insulation and alerting her to the dangers associated with this form of insulation. The letter also informs Caroline that she must engage a licensed asbestos assessor and a licensed asbestos removalist before undertaking any work on the house, and to inform anyone carrying out work on the house that the house contains loose-fill asbestos insulation. After receiving the letter, Caroline engages a gasfitter to repair the heating system located in the ceiling cavity of the house, without telling the gasfitter, or taking any other steps to make the gasfitter aware, that the house contains loose-fill asbestos insulation. Caroline is reckless about whether her failure to tell the gasfitter about the loose-fill asbestos insulation exposes the gasfitter to a substantial risk of serious harm. Caroline commits an offence against this section because asbestos is a dangerous substance and, under the general safety duty of everyone involved in handling a dangerous substance, she must take all reasonable steps to minimise the risks resulting from handling the substance (see s 23 and s 41). Handling a dangerous substance includes possessing, or otherwise having custody or control of, the substance (see s 11).

**37 Important concepts  
Part 3A.1**

*omit*

**38 Public education  
Part 3A.3 heading**

*omit*

**39 Asbestos advice and assessment reports  
Part 3A.4 heading**

*omit*

**40 Asbestos assessment reports  
Section 47K (1)**

*omit*

an asbestos assessor

*substitute*

a licensed asbestos assessor

**41 Section 47K (2)**

*substitute*

(2) In this section:

*licensed asbestos assessor*—see the [Work Health and Safety Regulation 2011](#), dictionary.

**42 Requirement to give asbestos assessment report  
Section 47L (1) (b)**

*substitute*

(b) an owner, or occupier, (the *owner*) of the premises engages someone (the *worker*) to undertake work involving asbestos.

*Note* *Involves*—see s (4).

**43 Section 47L (4)**

*substitute*

(4) In this section:

*involves*—see the [Work Health and Safety Regulation 2011](#), section 419 (2).

**44 Dictionary, definition of *asbestos***

*substitute*

*asbestos*—see the [Work Health and Safety Regulation 2011](#), dictionary.

---

## Part 7                      Dangerous Substances (General) Regulation 2004

### 45                      Dictionary Section 3, notes

*substitute*

*Note 1*    The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*emergency service*, for chapter 2 (Certain dangerous substances)—see the *Emergencies Act 2004*, dictionary.' means that the term 'emergency service' is defined in that dictionary and the definition applies to this regulation.

*Note 2*    A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see *Legislation Act*, s 155 and s 156 (1)).

### 46                      Chapter 3 heading

*substitute*

## Chapter 3                      Asbestos and asbestos containing material

### 47                      Sections 301 and 302

*substitute*

### 301                      Meaning of *asbestos containing material (ACM)*—ch 3

In this chapter:

*asbestos containing material (ACM)*—see the *Work Health and Safety Regulation 2011*, dictionary.

**48 Section 303 heading**

*substitute*

**303 When asbestos and asbestos containing material correctly packed—Act, s 14 (1) (a)**

**49 Section 303**

*omit*

asbestos product

*substitute*

asbestos containing material

**50 Section 303, new note**

*insert*

*Note* This provision applies to both commercial and non-commercial packing of asbestos and asbestos containing material (see [Act](#), s 7 (1A)).

**51 Section 304 heading**

*substitute*

**304 When asbestos and asbestos containing material correctly labelled—Act, s 14 (2) (a)**

**52 Section 304**

*omit*

asbestos product

*substitute*

asbestos containing material

**53 Section 304, new note**

*insert*

*Note* This provision applies to both commercial and non-commercial labelling of asbestos and asbestos containing material (see [Act, s 7 \(1A\)](#)).

**54 Section 305 heading**

*substitute*

**305 Asbestos and asbestos containing material are prohibited dangerous substances—Act, s 73, def *prohibited dangerous substance*****55 Section 305**

*omit*

asbestos products

*substitute*

asbestos containing material

**56 Part 3.2 heading and notes**

*substitute*

**Part 3.2 Authorised handling of asbestos and asbestos containing material**

*Note 1* The non-commercial manufacture of asbestos containing material is prohibited except in certain circumstances (see [Act, s 74 \(1\)](#)).

*Note 2* The transport of asbestos and asbestos containing material is regulated by the [Dangerous Goods \(Road Transport\) Act 2009](#).

**57 Sections 306 to 310**

*substitute*

**306 Authorised importation of asbestos and asbestos containing material—Act, s 75 (1) (b)**

A person is authorised to import asbestos or asbestos containing material if the asbestos or asbestos containing material is imported for non-commercial use in asbestos-related work.

*Note* This provision applies to both commercial and non-commercial importation of asbestos and asbestos containing material (see [Act, s 7 \(1A\)](#)).

**307 Authorised supply of asbestos and asbestos containing material—Act, s 76 (1) (b) and (3) (b)**

A person is authorised to supply asbestos or asbestos containing material to someone else if the asbestos or asbestos containing material is supplied for non-commercial use in asbestos-related work.

*Note* This provision applies to both commercial and non-commercial supply of asbestos and asbestos containing material (see [Act, s 7 \(1A\)](#)).

**308 Authorised possession of asbestos and asbestos containing material—Act, s 77 (1) (b)**

- (1) A person conducting a business or undertaking is authorised to possess asbestos or asbestos containing material, for commercial use, if the possession of the asbestos or asbestos containing material is in accordance with the [Work Health and Safety Regulation 2011](#).



(2) A person is authorised to possess asbestos or asbestos containing material, for non-commercial use, if the asbestos or asbestos containing material—

(a) is in plant or a vehicle in the person's possession; and

*Note* **Plant** includes machinery and equipment and a building or other structure (see [Act](#), dict).

(b) is fixed in place; and

(c) was fixed in place before 31 December 2003; and

(d) is fixed in a way that does not cause a risk unless it is disturbed.

(3) A person is authorised to possess asbestos if—

(a) the asbestos is in its natural form in minimal quantities in another mineral; and

(b) the presence of the asbestos is incidental to the purpose of disturbing or extracting the other mineral.

(4) However, this section does not authorise a person to possess chrysotile or chrysotile containing material.

(5) In this section:

***person conducting a business or undertaking***—see the [Work Health and Safety Act 2011](#), section 5.

*Note* This provision applies to both commercial and non-commercial possession of asbestos and asbestos containing material (see [Act](#), s 7 (1A)).

**309 Storage of asbestos and asbestos containing material—  
Act, s 78 (1) (a)**

A person who stores asbestos or an asbestos containing material that has been removed from plant or a vehicle (the *waste*) must ensure that—

- (a) the waste is correctly packed and labelled; and
- (b) the person disposes of the waste as soon as practicable after the person comes into possession of the waste.

*Note 1* **Plant** includes machinery and equipment and a building or other structure (see [Act](#), dict).

*Note 2* This provision applies only to non-commercial storage of asbestos and asbestos containing material (see [Act](#), s 7 (1A)).

**310 Authorised use of asbestos and asbestos containing  
material—Act, s 79 (1) (b)**

- (1) A person is authorised to use asbestos or asbestos containing material if the asbestos or asbestos containing material—

- (a) is in plant or a vehicle used by the person; and

*Note* **Plant** includes machinery and equipment and a building or other structure (see [Act](#), dict).

- (b) is fixed in place; and
- (c) was fixed in place before 31 December 2003; and
- (d) is fixed in a way that does not cause a risk unless it is disturbed.

- (2) A person is authorised to use asbestos if—

- (a) the asbestos is in its natural form in minimal quantities in another mineral; and
- (b) the presence of the asbestos is incidental to the purpose of disturbing or extracting the other mineral.

- (3) However, this section does not authorise a person to possess chrysotile or chrysotile containing material.

*Note* This provision applies only to non-commercial use of asbestos and asbestos containing material (see [Act](#), s 7 (1A)).

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

*omit*

**59 Dictionary, new definitions**

*insert*

*ACM*—see *asbestos containing material*.

*asbestos containing material (ACM)*, for chapter 3 (Asbestos and asbestos containing material)—see the [Work Health and Safety Regulation 2011](#), dictionary.

**60 Dictionary, definitions of *asbestos management plan*,  
*asbestos product* and *asbestos register***

*omit*

**61 Dictionary, new definition of *asbestos-related work***

*insert*

*asbestos-related work*—see the [Work Health and Safety Regulation 2011](#), dictionary.

**62 Dictionary**

*omit the definitions of*

*authorised activity*

*authorised activity condition*

*disturb*

*licensed asbestos assessor*

*national standards*

*non-residential premises*

**63 Dictionary, definition of *risk assessment***

*substitute*

*risk assessment*, for a hazard at premises—see section 222.

## Part 8 Work Health and Safety Act 2011

### 64 Approved codes of practice Section 274 (2)

*after 1st mention of*

code of practice

*insert*

(other than a code of practice in relation to the management, control or removal of asbestos or asbestos containing material)

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 30 October 2014.

**2 Notification**

Notified under the [Legislation Act](#) on 3 December 2014.

**3 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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I certify that the above is a true copy of the Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Bill 2014, which was passed by the Legislative Assembly on 25 November 2014.

Clerk of the Legislative Assembly

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