

2005

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DANGEROUS SUBSTANCES (ASBESTOS) AMENDMENT BILL 2005

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EXPLANATORY STATEMENT

**Circulated by authority of the
Minister for Industrial Relations
Ms Katy Gallagher MLA**

DANGEROUS SUBSTANCES (ASBESTOS) AMENDMENT BILL 2005

Outline

The *Dangerous Substances Act 2004* establishes a modern duty-based framework for the regulation of dangerous goods and hazardous substances in the ACT. The objective 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.

The *Dangerous Substances (Asbestos) Amendment Act 2004* was passed on 25 August 2004. That Act provides for:

- a legislative statement recognising the significance and scope of risks to the community posed by asbestos;
- the establishment of an Asbestos (Assessment) Task Force;
- an analysis by the Task Force of the extent and impact of asbestos in the ACT and a requirement to report to the Minister on the analysis by 1 August 2005. Regulations supporting its recommendations must be tabled within five sitting days after the Minister receives the report;
- publication of educational material to increase public awareness about risks associated with asbestos;
- a duty of care by owners and occupiers of premises, to provide persons at risk with information about asbestos at premises including its location and condition, if that is known;
- the duty of owners and occupiers of premises to ensure information about asbestos at the premises is obtained and provided to persons engaged to undertake a high risk activity (e.g. construction and renovation work);
- a requirement for a person selling a property to obtain an inspection report and make it available to prospective buyers; and
- amendments to the *Building Act 2004* and regulations to preserve the arrangements for asbestos removal licensing at the time of repeal of the *Building Act 1972*, pending further review of the administrative and statutory arrangements and consolidation in the dangerous substances regime.

The provisions relating to the establishment and functions of the Task Force, and for the publication of education materials, commenced on 1 September 2004. The duty of owners and occupiers to provide information about the presence of asbestos at premises (section 47J) commences on 1 March 2005. The requirement to obtain information about asbestos at premises and give it to persons undertaking high risk activities (section 47K) commences on 16 January 2006. The requirement to obtain an inspection report for property which being offered for sale (section 47L) also commences on 16 January 2006.

The Dangerous Substances (Asbestos) Amendment Bill 2005 amends section 47J (Liability of owners and occupiers to inform) of the *Dangerous Substances (Asbestos) Amendment Act 2004*. The amendments remove any doubt that section 47J does not establish a discovery requirement for an owner or occupier of premises in relation to the presence, location or condition of asbestos. A new definition of “tenant” has also been inserted, to provide clarity about who is a tenant (and, hence, is a relevant person) to whom a duty is owed by an owner or occupier under section 47J. The amendments also postpone the commencement of section 47J until 4 April 2005.

Notes on Clauses

Clause 1 – Name of Act – states that the title of this Act is the *Dangerous Substances (Asbestos) Amendment Act 2005*.

Clause 2 – Commencement – provides that this Act commences on the day after the Act is notified on the Legislation Register.

Clause 3 – Legislation amended – states that the provisions of the *Dangerous Substances (Asbestos) Act Amendment Act 2005* amend the *Dangerous Substances (Asbestos) Amendment Act 2004 A2004-66*.

Clause 4 – Commencement - section 2(3) – amends the commencement date for section 5 (section 47J (Liability of owners and occupiers to inform)) by specifying the date of commencement as 4 April 2005. Without this amendment, section 5 would commence on 1 March 2005, in accordance with section 79 of the *Legislation Act 2001* which states that, if a postponed law has not commenced within six months beginning on its notification day, it automatically commences on the first day after that period. The *Dangerous Substances (Asbestos) Amendment Act 2004* was notified on 31 August 2004.

Clause 5 – Section 5, new section 47J(1) – substitutes a new section 47J (Liability of owners and occupiers to inform), which provides that the owner or occupier of premises has a duty of care to give certain persons written information about asbestos. This clause removes the words “or ought reasonably to know” in relation to the knowledge of an owner or occupier about asbestos at a premises. The words “ought reasonably to know”, in section 47J(1), have raised the concern that the obligation of an owner or occupier of premises may go beyond giving information based on actual knowledge, requiring the owner or occupier to conduct an investigation of the premises under section 47K to discover the “required information” about asbestos at the premises.

The amendment puts beyond doubt that it is not the intention of section 47J to require the owner or occupier to obtain an inspection report or to provide information beyond what is he or she currently knows. The amendment does not displace the common law rules about the liability of owners or occupiers in relation to their premises.

Clause 6 – Section 5, new section 47J(2) – substitutes a new subsection 47J(2), which makes two changes. The first amends the description of the class of persons to whom an owner or occupier has a duty of care to give information about asbestos at premises. The term “relevant person” is later substituted for the definition of “person at risk”, in section 47J(4) of the Act.

The second amendment replaces the reference to “required information” with a reference to “what the owner or occupier knows”. Related clauses 8 and 10 omit the definition of “required information” from subsection 47J(2) and relocate it in section 47K. The purpose is ensure that the reference to “up-to-date” information about the location and condition of asbestos is not taken to imply a requirement to obtain current information in subsection 47J(2).

A new subsection 47J(2A) is included to remove any doubt that section 47J does not establish a requirement for an owner or occupier of premises to discover information about the presence, location or condition of asbestos at premises.

Clause 7 – Section 5, new section 47J(4), definition of *person at risk* – substitutes a new definition of “relevant person” in place of the definition of “person at risk”. Relevant persons are persons doing relevant work, a person who is, or is likely to be, a purchaser of premises, or a person who is a tenant. A new definition of “tenant” is later inserted into subsection 47J(4). Under the definitions of tenant in the *Leases (Commercial and Retail) Act 2001* and the *Residential Tenancies Act 1997*, a tenant includes a prospective tenant.

Clause 8 – Section 5, new section 47J(4), definition of *required information* – omits the definition of “required information” from subsection 47J(4). The term is later inserted into subsection 47K(4).

Clause 9 – Section 5, new section 47J(4), new definition of *tenant* – inserts a new definition of “tenant”, to mean a person who is a tenant under the *Leases (Commercial and Retail) Act 2001* or under the *Residential Tenancies Act 1997*, or as prescribed by regulation for the paragraph. The definition also states that a tenant does not include a person declared by regulation not be a tenant. As the *Dangerous Substances (Asbestos) Amendment Act 2004* does not include a definition of tenant, the new definition has been inserted to provide clarity on who is a tenant (and, hence, a relevant person) to whom a duty is owed by an owner or occupier under section 47J.

Clause 10 – Section 5, new section 47K(4), definition of *required information* – is consequential to the omission of the definition of “required information” from subsection 47J(4). The definition is relocated to subsection 47K(4), preserving its application to an owner or occupier’s duty of care to find out the information when the person is engaging in high-risk activities at the premises.