

2007

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

**DANGEROUS SUBSTANCES (GENERAL) AMENDMENT
REGULATION 2007 (NO 1)**

EXPLANATORY STATEMENT

Circulated by the authority of
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Dangerous Substances (General) Amendment Regulation 2007 (No 1)

OUTLINE

The Dangerous Substances (General) Amendment Regulation 2007 (No 1) amends the *Dangerous Substances (General) Regulation 2004* to provide an asbestos-specific management and control regime for non-residential premises consistent with the recommendations of the ACT Asbestos Task Force Report of August 2005.

The approach proposed by the Task Force is supported by the outcomes of extensive community consultation and an extent and impact survey, and is based on best practice in asbestos management and the most current scientific knowledge. This Regulation reflects those outcomes and creates a more effective system in directing resources towards best practice asbestos management procedures.

The new regulatory regime only applies to non-residential premises built before 31 December 2003. This date is consistent with the national ban on the importation, manufacture and use of asbestos products.

The new regulatory regime provides that there be staged compliance dates for the new regime depending on various categories of premises-

Commercial multi-storey	1 September 2008
Commercial single-storey	1 September 2009
Industrial	1 March 2010
Community/Recreational	1 September 2010

General concepts

Asbestos Register and Asbestos Management Plan

The primary intention behind the proposed regime is to embed the standards and practices outlined by the NOHSC *Code of Practice for the Management of and Control of Asbestos in Workplaces*, recognising the need to increase awareness of the presence of asbestos products within non-residential premises and to protect those people whose activities are likely to disturb asbestos products.

The primary impact of the new regime is the requirement for an asbestos register and associated asbestos management plan to be developed for each non-residential premises.

While the asbestos register serves to provide a consistent approach to the recording of relevant information on asbestos products, it must be used in conjunction with an asbestos management plan to ensure that the asbestos products are appropriately managed.

Strict liability offences

The Regulation contains a number of strict liability offences. These are consistent with the strict liability offences that are currently included in the *Dangerous Substances (General) Regulation 2004*. Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context where for reasons such as public safety, protection of the public revenue, or it is in the public interest to ensure that regulatory schemes are observed, requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded.

The rationale is that persons in control of non-residential premises are to be expected to be aware of their duties and obligations under the Regulation and should be responsible for increasing awareness of the presence of asbestos products within non-residential premises in their control. It also recognizes that they have a duty of care to protect those people whose activities may be likely to disturb or bring them into contact or proximity with asbestos products.

Unless some knowledge or intention is required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time is irrelevant. The penalties for offences cast in these terms are lower than for those requiring proof of fault.

Persons in control

The Regulation generally places obligations on a 'person in control' of non-residential premises. This term takes its meaning from the definition in the *Dangerous Substances Act 2004*, section 17. That section relevantly provides that anyone who has control of the premises (including anyone with authority to make decisions about the management of the premises) can be the person in control. The Act expressly notes that there may be more than one person in control in relation to a duty.

The Regulation has the capacity to place obligations on persons such as owners, occupiers, property managers, contractors and body corporates in control of premises covered by the Regulation. This is consistent with the *Dangerous Substances Act 2004*, which is very clear in providing for the application of safety duties to a range of people who may influence safety outcomes.

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

Detail

Clause 1 — Name of Regulation

This is a technical clause that names the Regulation. The name of the Regulation is the *Dangerous Substances (General) Amendment Regulation 2007 (No 1)*.

Clause 2 — Commencement

The Regulation commences on the day following the day the Regulation is notified on the ACT's Legislation Register.

Clause 3 — Legislation amended

This clause identifies the regulation to be amended, namely the *Dangerous Substances (General) Regulation 2004*.

Clause 4 — New part 3.4 Asbestos management – non-residential premises

This clause inserts new part 3.4 which would specify the duties associated with the preparation and maintenance of asbestos management plans and asbestos registers.

Section 322 Application-pt 3.4

This section provides that this part should only apply to non-residential premises built before 31 December 2003. This date is consistent with the national ban on the importation, manufacture and use of asbestos products.

In addition this part provides that there be staged commencement of the new regime in its application to various categories of premises-

Commercial multi-storey	1 September 2008
Commercial single-storey	1 September 2009
Industrial	1 March 2010
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Section 322 defines the terms '*built*' and '*multi-storey commercial premises*' for the purposes of this section.

Section 323 Definitions-pt 3.4

This section provides for a range of new definitions for the purposes of this part. For example-

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

Examples of *community or recreational premises*

- 1) a large scale 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

Section 324 Meaning of non-residential premises-pt 3.4

This section defines the term '*non-residential premises*' for the purposes of this part as either a commercial premises; an industrial premises or a community or recreational premises. Generally it is intended that this part apply to all premises that are not used for residential purposes, whether a business or other commercial activity is conducted at the premises, or used for sporting, cultural, educational or other activities.

Section 325 Asbestos management plan

Section 325 (1) requires that a person in control of a non-residential premises, such as owners, occupiers, property managers, contractors and body corporates must have an asbestos management plan (AMP) for that premises.

Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 325 (3) lists what the AMP must include. For example, the AMP must-

- provide for the keeping of an asbestos register for the premises;
- provide for all people likely to be affected by an asbestos product at the premises with access to information about the location, type and condition of asbestos products, the risks they pose and the control measures adopted to eliminate or minimise these risks;
- training arrangements for workers and contractors or other people likely to be affected by asbestos product at the premises; and
- procedures, including a timetable, for reviewing and updating the management plan and the register of asbestos and asbestos products;

Section 325 (4) is intended to provide that if something happens at the non-residential premises that may actually disturb an asbestos product at the premises, the AMP must provide, where practicable, for the removal of the asbestos products in preference to other control measures such as enclosure, encapsulation or sealing.

Section 325 (5) allows a previously obtained AMP to be relevant for this part. However, the AMP must meet the following conditions-

- is developed on or after 1 July 2006, but before the application of this part to the premises;
- provides for the review of the plan under section 326;
- complies with section 330 (Identifying asbestos products etc);
- complies with section 331 (Presumed presence of asbestos products);
- complies with section 332 (Asbestos warning signs etc); and
- complies with section 333 (Asbestos risk assessment).

Section 325 (6) provides that subsection (5) is a law to which the *Legislation Act 2001* (the Legislation Act), section 88 applies. That is, repeal of this amending Regulation does not end the effect of these particular sections.

Section 325 (7) provides that subsections (5) and (6) and this subsection expire on 31 December 2011, as by this stage all AMPs should have been reviewed, and therefore will be an AMP under the new regime.

Section 326 Asbestos management plan-review

Section 326 (1) lists when a person in control of a non-residential premises must review the AMP for the premises. For example, if an asbestos product has been disturbed or removed; or there has been a significant change in the premises to which the plan relates. This is intended to ensure that the AMP is always relevant and up to date in relation to the circumstances of the premises.

Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 326 (2) requires that in any case, a person in control of a non-residential premises must review the AMP for the premises within 5 years of being made, or if it has been necessary to review the plan since it was first made, within 5 years of the last review.

Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 327 Asbestos register

Section 327 (1) requires that a person in control of a non-residential premises must have an asbestos register for that premises. Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 327 (3) lists what information a person in control of non-residential premises must include in an asbestos register, such as the identification of asbestos products at the premises and any review of the asbestos register that may have occurred.

Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 327 (5) allows a previously obtained asbestos register to be relevant for this part. However, the asbestos register must have been developed on or after 1 July 2006, but before the application of this part to the premises; and include the information required in subsection (3).

Section 327 (6) provides that subsection (5) is a law to which the Legislation Act, section 88 applies. That is, repeal of this amending Regulation does not end the effect of these particular sections.

Section 327 (7) provides that subsections (5) and (6) and this subsection expire on 31 December 2011, as by this stage all asbestos registers should have been reviewed, and therefore will be an asbestos register under the new regime.

Section 328 Asbestos register-access

This section provides that the person in control of non-residential premises must ensure that workers and other at the premises are informed about the register of asbestos products before any work is performed that may expose them to airborne asbestos fibres.

Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 329 Asbestos register-review

This section provides that 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 section 334 (Asbestos risk assessment—review); or section 335 (Asbestos—atmospheric monitoring).

Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 330 Identifying asbestos products etc

Section 330 (1) provides that a person in control of non-residential premises must identify asbestos products at the premises by having the premises inspected by a licensed asbestos assessor, and that any details of the inspection are included in the inspection report for the premises.

Failure to comply with this obligation is an offence with a maximum penalty of 20 penalty units. Strict liability applies to subsection (1) (a) and (c).

Section 330 (3) states what detail is required for the inspection report required under subsection (1) (c).

Section 331 Presumed presence of asbestos products

Section 331 (1) presumes the presence of asbestos products 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).

Section 331 (2) provides that a person in control of the premises must, subject to any identification of a presumed asbestos product under section 330 (Identifying asbestos products etc), include information about the presumed asbestos product in the asbestos register as if it were an asbestos product.

Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 331 (3) provides that while information about a presumed asbestos product is included in the asbestos register under this section, the whole of part 3.4 applies in relation to the presumed asbestos product as if it were an asbestos product identified under section 330.

Section 332 Asbestos warning signs etc

Section 332 (1) provides that this section applies if an asbestos product is identified under section 330 (Identifying asbestos products etc). It should be noted that a product identified includes a thing included in the asbestos register under section 331 (3) (Presumed presence of asbestos products).

Section 332 (2) provides that 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* (Australian Standard 1319 Safety Signs for the Occupational Environment).

Failure to comply with this obligation is a strict liability offence with a maximum penalty of 30 penalty units.

Section 333 Asbestos risk assessment

Section 333 (1) provides that a risk assessment is required if an asbestos product is identified under section 330 (Identifying asbestos products etc).

Should 333 (1) apply, subsection (2) provides that a person in control of the premises must ensure that a written assessment is made of the risks associated with the asbestos product by a licensed asbestos assessor, and details of the risk assessment are included in the AMP and the asbestos register.

Failure to comply with this obligation is an offence with a maximum penalty of 30 penalty units. Strict liability applies to subsection (2) (a) and (c).

Section 333 (4) requires that the risk assessment must take account of things such as the condition of the product and the result of any atmospheric monitoring at the premises and also set out the measures for control of the risks associated with the product.

Section 334 Asbestos risk assessment-review

Section 334 (1) lists when a person in control of non-residential premises must engage a licensed asbestos assessor to review the risk assessment for the premises, for instance, if a significant change is proposed for the premises, or for work practices or procedures, relevant to the risk assessment any of the following apply:

Failure to comply with this obligation is an offence with a maximum penalty of 30 penalty units. Strict liability applies subsection (1) (a) and (c)

Section 334 (3) provides for a review of a risk assessment by visual inspection, if in the opinion of the licensed asbestos assessor, it is sufficient to adequately assess the risk.

Section 335 Asbestos-atmospheric monitoring

Section 335 (1) provides that this section applies if atmospheric monitoring is a control measure identified in a risk assessment for an asbestos product at non-residential premises.

If so, then section 335 (2) requires that a person in control of the premises must ensure that atmospheric monitoring is carried out at the premises in accordance with the national standards.

An offence against subsection (2) is a strict liability offence with a maximum penalty of 30 penalty units.

Section 335 (3) provides that if atmospheric monitoring 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 then review the control measures for the risks associated with the asbestos product, and if necessary, the AMP and the asbestos register for the premises.

An offence against section 335 (3) is a strict liability offence with a maximum penalty of 30 penalty units.

Section 336 Atmospheric asbestos-exposure standard exceeded

This section provides that 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.

This obligation is a strict liability offence with a maximum penalty of 30 penalty units

Clause 5 — Dictionary, note 2, new dot point

This clause updates note 2 to the Dictionary by inserting the term- ‘doctor’

Clause 6 — Dictionary, new definitions

This clause inserts the following new definitions-

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.

Clause 7 — Dictionary, definition of *risk assessment*

This clause substitutes the definition of *risk assessment* to now include a reference to an asbestos product.