

2015

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

EXPLANATORY STATEMENT

**BUILDING (LOOSE-FILL ASBESTOS ERADICATION)
LEGISLATION AMENDMENT BILL 2015**

**Presented by
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Chief Minister**

Building (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015

This explanatory statement relates to the Building (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015 as introduced to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

Outline

The Building (Loose-fill Asbestos Eradication) Legislation Amendment Bill 2015 ('the Bill') proposes a number of amendments to facilitate the implementation of the demolition and resale components of the Loose-fill Asbestos Insulation Eradication Scheme ('the Scheme') that was announced by Government on 28 October 2014.

Building Act – demolition orders

The Bill amends the *Building Act 2004* to provide a streamlined process for the demolition of residential premises that contain, or have contained, loose-fill asbestos insulation. These amendments will apply to the demolition by the Territory of residential premises that contain, or have contained, loose-fill asbestos insulation ('affected residential premises'). Under these amendments, affected residential premises that are to be demolished by the Territory may be subject to a demolition order issued by the Construction Occupations Registrar. A demolition order authorises the Territory to demolish the building and provides that Part 3 of the Building Act 2004 does not apply to the building work.

The main effect of the demolition order is to remove the need for the Territory to engage a private certifier and go through the full building approval process when demolishing affected residential premises. Demolition involving a structure containing loose-fill asbestos insulation is construction work that is required to have a principal contractor under the *Work Health and Safety Regulation 2011*. There is a certain degree of overlap between the role of the principal contractor and the functions that would be performed by a private certifier under the *Building Act 2004*. Private certifiers perform a range of functions under the Building Act. In addition to checking the quality of work, certifiers also perform a number of functions relating to approvals, compliance with laws and building codes and structural integrity of alterations and buildings, a private certifier is also required to approve the building work necessary to demolish a house. Approval of that work involves the certifier assessing and approving the adequacy of demolition plans, including waste management and the asbestos removal control plan. For a private demolition, the certifier would generally be doing this work in the context of a complete 'knock-down rebuild' process.

The Asbestos Response Taskforce ('the Taskforce') is undertaking demolitions only and the costs and benefits of engaging private certifiers for each demolition are unnecessary in the context of the (structurally) straightforward nature of many of the loose-fill asbestos affected premises. Demolitions by the Taskforce will be undertaken on a bulk scale with safety and

compliance controls achieved through other mechanisms such as procurement and contract requirements and work health and safety regulation.

The quality and safety of the demolition work will also be maintained through the process of seeking a demolition order. The demolition notice may only be issued if the Construction Occupations Registrar is satisfied that a building approval is not required, which will generally be only where the demolition is relatively straightforward and does not require the additional oversight of a private certifier. In making this decision the registrar would be provided with a level of documentation that is broadly consistent with the building approval process. In addition, the registrar would need to be provided with evidence that relevant utilities have been consulted in relation to the planning and execution of the demolition.

Building and Construction Industry Training Levy

The Bill also makes an amendment to the *Building and Construction Industry Training Levy Act 1999* (BCITL Act) as a consequence of the demolition orders provisions that are included in the Building Act. Under the BCITL Act, the project owner is liable to pay a training levy on work (which includes building work). The training levy is 0.2 per cent of the value of the work. The amendment to the BCITL Act inserts a new provision to ensure that for work carried out under a demolition order, the training levy is still payable.

Dangerous Substances (General) Regulation

The Bill amends the *Dangerous Substances (General) Regulation 2004* to ensure that oversight of asbestos removal process in relation to affected residential premises is the responsibility of an asbestos removal business rather than the worker who actually carries out the work.

As such, the owner of affected residential premises must arrange for asbestos removal by a licensed asbestos removalist (ie. a company) rather than by an individual licensed asbestos removal worker. The licensed asbestos removalist will also be responsible for providing certification in relation to the work that has been completed.

Land Rent Act 2008

The amendments to the *Land Rent Act 2008* are intended to make land rent available to former homeowners who are seeking to rebuild on their former block once the affected residential premises have been demolished and the land remediated. Under the Territory's Buyback Program, homeowners who surrender the lease on which affected premises are located are able to indicate in the Deed of Surrender whether they would like to preserve a first right of refusal. Under the first right of refusal, the former owner is given the first option to purchase a new lease over the parcel of land once the affected premises have been demolished and the land deemed suitable for redevelopment.

Land rent leases are currently only available in greenfield estates. The Bill makes a number of technical amendments to the *Land Rent Act 2008* to allow the application of the land rent scheme in the very specific circumstances of former homeowners seeking to return to their

former block. The Bill also makes some more substantive amendments to the *Land Rent Act 2008* to reflect the special nature of the newly available leases in established suburbs where land rent would not otherwise be available.

The current land rent scheme allows a land rent lease to be sold to another person as a land rent lease provided the purchaser is eligible to participate in the land rent scheme. The amendments to the *Land Rent Act 2008* include a provision to prevent the transfer of a land rent lease that is granted under the first right of refusal. The amendments are intended to be a benefit that is only available to the specific former owner to enable them to rebuild on their land and return to their former neighbourhood.

A further aspect of the land rent scheme that will have a modified application to land rent leases granted to former owners of affected residential premises is the amount paid to convert the lease from a land rent lease to a nominal rent lease (ie. a standard lease) under the *Planning and Development Act 2007*. The amount payable for such a lease variation is determined by the Planning and Land Authority by reference to a ministerial policy direction (a disallowable instrument). The current policy direction allows the lessee the option of calculating the amount that is payable for the lease variation on the basis of either average unimproved value or market value. Consistent with the policy objective of reselling land at market value after remediation works are complete, a land rent lease to the former owners of affected residential premises may only be converted to a nominal rent lease at market value.

Planning and Development Act 2007 – demolition of asbestos affected heritage buildings

The Bill amends the *Planning and Development Act 2007* in relation to development approval for the demolition of affected residential premises that are also heritage premises. The Bill amends the *Planning and Development Act 2007* so that the automatic impact track assessment will not apply where the proposal is for demolition of affected residential premises. This is balanced with a requirement that there must be a statement of heritage effects approved by the ACT Heritage Council under the *Heritage Act 2004*, section 61G, in relation to the proposal. Any proposal to rebuild in a heritage area would still require an impact track assessment.

The Bill has been assessed against the *Human Rights Act 2004* and no issues identified.

Clause notes

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the Bill, once enacted, is the *Building (Loose-fill Asbestos Eradication) Legislation Amendment Act 2015*.

Clause 2 Commencement

This clause allows for the various amendments to commence on a day fixed by the Minister by written notice. The amendments in part 4 of the Bill are linked to the commencement of the *Dangerous Substances (General) Amendment Regulation 2015 (No 2)* as the provisions amended by part 4 have not yet commenced.

Clause 3 Legislation amended

This clause lists the legislation that is amended by the Bill.

Part 2 Building Act 2004

Clause 4 Notification by certifier of contravention of building and development approvals—building work Section 50 (1)

This amendment is made as a consequence of the amendment to the part 4 heading of the Act by clause 5.

Clause 5 Part 4 heading

This clause amends the heading of part 4 to reflect the changed content of the part.

Clause 6 Section 52

This clause inserts a new definition of *custodian* for part 4 of the Act as a consequence of the use of that term in the new sections inserted by clause 8.

Clause 7 Preconditions for s 62 notice New section 61 (ca)

This clause inserts a new ground on which the Construction Occupations Registrar may issue a section 62 notice to carry out building work. New paragraph 61 (ca) is intended to give the constructions occupations registrar the necessary power to have work under a demolition order made good in the event that the work is not carried out properly.

Clause 8 New sections 63A to 63E

New section 63A sets out the process and documentation that is required for an application to the Construction Occupations Registrar for a demolition order. An application for demolition

order may only be made in relation to affected residential premises that are either owned by the Territory (eg a Housing and Community Services ACT property) or that have been acquired by the Territory under the Buyback Program. The application may be made by the custodian of the land. The custodian is the administrative unit or other entity with administrative responsibility for land in the ACT that is unleased land, public land or both. An application must be accompanied by a number of documents which detail how the demolition will be carried out and the methods that will be employed to do so.

The Construction Occupations Registrar may decline to issue a demolition order if the registrar considers that a full building approval is necessary for the safe demolition of the building. For example, the registrar may consider that a complex demolition such as the demolition of one half of a duplex is a demolition that should go through the full building approval process and could decline to issue the demolition order on this basis.

Once a demolition order has been issued by the Construction Occupations Registrar, the custodian has a period of two years in which to demolish the building without needing to go through the private certifier and building approval processes in Part 3 of the Bill.

The new section 63B ensures that a demolition order may not be issued where an entity that is required to be consulted has given advice that is inconsistent with the registrar issuing a demolition order. The amendments to the *Building (General) Regulation 2008* in Part 3 of the Bill ensure that any demolition plans are referred to relevant utilities (electricity, gas, water). These processes are equivalent to the referral processes required for building approvals.

The new section 63C is similar in effect to section 36A of the Act and ensures that an entity to whom an application for a demolition order is referred under the regulation cannot act inconsistently with that advice.

The new section 63D provides that the effect of a demolition order is that most of Part 3 of the Act does not apply to the demolition of the building provided that the demolition is carried out in accordance with the demolition order. The requirement to undertake the demolition in a proper and skilful way in section 42 (1) (c) will still apply to the demolition, as will the requirement in section 42 (1) (e) (ii) that the person undertaking the building work is appropriately licensed.

New section 63E establishes a process for the Construction Occupations Registrar to issue a certificate for a demolition under a demolition order on being satisfied that the demolition has been completed.

Clauses 9 to 11

These amendments are made as a consequence of the amendment to the Part 4 heading in clause 5.

Clauses 12 Dictionary, new definitions

This clause inserts new definitions for terms used in Part 4 and in new sections 63A – 63E.

Clause 13 Dictionary, definition of *easement*

This amendment is made as a consequence of the amendment to the heading for part 4 of the Act in clause 5.

Part 3 Building and Construction Industry Training Levy Act 1999

**Clause 14 Assessment of value of work
Section 19 (1) (a)**

This clause ensures that the building and construction industry training levy is able to be calculated on demolition work that is carried out under a demolition order. This cannot be calculated under current section 19 (1) (a) because even though demolition work is building work, there is no building approval required if the Construction Occupations Registrar issues a demolition order for the work. This amendment provides a method for calculating the value of demolition work under a demolition order that is the same method currently used in the Act in relation to work other than building work.

Clause 15 New section 19 (3)

This clause inserts a new definition as a consequence of the amendment in clause 15.

Part 4 Building (General) Regulation 2008

Clause 16 New division 3.6

New division 3.6 sets out the technical and consultation requirements for the new demolition orders provisions in the *Building Act 2004*.

New section 36A sets out the requirements for the plans that are required to accompany an application for a demolition order. These requirements are very similar to the general requirements for building plans prepared for a building approval.

New section 36B requires that the custodian of land refer an application for a demolition order to relevant utilities before making the application to the Construction Occupations Registrar. This referral replicates the process that would be undertaken by a private certifier in referring a building application to relevant utilities.

New section 36C is complementary to new section 36B and sets out how an entity that is consulted may give advice. This provision mirrors the process in relation to referrals of building approval applications under the Regulation, section 20.

Clause 17 New schedule 2A

New schedule 2A sets out when the custodian must refer an application to an entity. The referral provisions reflect the referral requirements in Schedule 2 in relation to building approvals.

Part 5 Dangerous Substances (General) Regulation 2004

Clause 18 Definitions—pt 3.5

Section 338, new definition of *licensed asbestos removalist*

This clause inserts a new definition for licensed asbestos removalists. A licensed asbestos removalist means a person conducting a business or undertaking who is licensed under the *Work Health and Safety Regulation 2011* to carry out Class A or Class B asbestos removal work.

Clause 19 Asbestos contamination report—owner and occupier responsibilities

Section 342 (1) (b)

This amendment has the effect of requiring the owner of affected residential premises to engage a licensed asbestos removalist to undertake work and put up relevant signs as set out in the asbestos contamination report. The requirement to use a licensed asbestos removalist rather than an individual licensed asbestos removal worker is consistent with the requirements in the *Work Health and Safety Regulation 2011*.

Clause 20 Section 344 heading

This clause creates a new heading consistent with the amendments in clauses 19 and 21.

Clause 21 Section 344

This clause has the effect of requiring the licensed asbestos removalist to prepare work reports and provide those reports to other people.

Clause 22 Dictionary, new definition of *licensed asbestos removalist*

This clause inserts a new signpost definition in the Dictionary.

Part 6 Land Rent Act 2008

Clauses 23, 24 and 25

These clauses make amendments to notes to the Act as a consequence of the inclusion of defined terms in the Dictionary.

Clauses 26 and 27

These clauses omit definitions that are included in the Act as terms for the whole of the Act.

Clause 28 New section 7A

This clause inserts new section 7A to provide a mechanism so that a land rent lease may be granted to the former homeowner. New section 7A reflects the fact the lease over former affected residential premises will be an offer of direct sale that is made to a specific person (the former owner) rather than to the public at large. A person must still meet the income threshold requirements for eligibility under section 11 of the Act. Eligibility is assessed by the Commissioner for Revenue.

Clause 29 Discount—eligibility

New section 11 (1A)

This clause inserts a new subsection 11 (1A). The purpose of this new provision is to take appropriate account of the situation of a former owner who is mentioned in paragraph (a) (i)

of the definition of former owner in new section 7A (4). This provision takes account of the situation where a homeowner has sought a delayed settlement with a view to having a concurrent surrender of the lease and entry of contract to buy the remediated block happening immediately prior to demolition. The fact that a person may still own the affected property will affect their eligibility for an early decision on whether or not they are an eligible person for land rent. This amendment is intended to address this situation.

Clause 30 Section 11 (2), new definition of *former owner*

This clause inserts a new signpost definition.

**Clause 31 Transfer of post-1 October 2013 lease
Section 16C (2) (a)**

The intention of this amendment is to restrict the transfer of a land rent lease that is granted to an eligible former owner under new section 7A. Such a land rent lease may be transferred to a new owner but must be paid out and converted to a new nominal rent lease at the point of sale.

**Clause 32 Regulation-making power
Section 35 (2)**

This clause amends the regulation-making power as a consequence of the inclusion of new section 7A so that the regulation can prescribe matters in relation to an application made under that new section.

Clauses 33 and 34

These clauses amend the Dictionary as a consequence of the inclusion of new provisions in the Act.

Part 7 Land Rent Regulation 2008

Clause 35 New section 4

This clause inserts a new provision so that there is a requirement that an eligible former homeowner attend a land rent information session as part of the application process.

Part 8 Planning and Development Act 2007

**Clause 36 Development proposals in impact track because of need for EIS
Schedule 4, part 4.3, item 6**

Under current item 6, a development proposal that is likely to have a significant adverse impact on the heritage significance of a place or object will be assessed in the impact track except if the heritage council produces an environmental significance opinion that the proposal is unlikely to have a significant adverse impact. The new item 6 that is substituted by this clause includes an additional exception where the proposal is for the demolition of a

building that is affected residential premises and the heritage council has approved a statement of heritage effect for the proposal. This additional provision recognises that heritage buildings that are affected residential premises must be demolished in order to eradicate all loose-fill asbestos insulation, while ensuring that the heritage significance of that building is appropriately recorded.

Clause 37 Dictionary, new definitions

This section inserts a new definition for affected residential premises and affected residential premises register into the Act.