
2019

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

WORK HEALTH AND SAFETY AMENDMENT REGULATION 2019 (No 1)

SL2019-3

EXPLANATORY STATEMENT

**Presented by
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WORK HEALTH AND SAFETY AMENDMENT REGULATION 2019 (No 1)

Outline of the Regulation

The purpose of this Regulation is to amend the *Work Health and Safety Regulation 2011* to mandate the Working Safely with Asbestos Containing Materials (ACMs) course for declared occupations.

Asbestos is an ongoing risk to the community, and in particular, the health and safety of workers. ACMs are present in a substantial proportion of buildings in the ACT due to widespread use prior to the imposition of a ban in 2003.

If undisturbed, ACMs do not pose a significant risk to health. However, asbestos fibres may become airborne if ACMs are improperly handled, and exposure to these fibres can cause a number of serious diseases such as asbestosis and mesothelioma.

As set out in detail below, the Regulation will:

1. enhance protection for workers who may be required to carry out minor or routine maintenance work or other minor work on ACMs by mandating relevant training;
2. ensure workers that are likely to be required to perform this work are trained in how to do so safely;
3. ensure best practice management of asbestos in the workplace;
4. reduce workers' exposure to asbestos fibres; and
5. in the longer term, reduce incidences of asbestos-related diseases.

This Regulation will not broaden the range of people who can work with ACMs, but instead will ensure those who are already able to carry out minor or routine maintenance work will have the skills and knowledge to be able to do so safely. As this list will be declared by notifiable instrument, it will be possible to expand the list of occupations in the future, should it be considered beneficial to do so.

This Regulation will commence on 1 July 2019 to enable workers time to complete the course.

Human Rights Considerations

Section 22(1) of the *Human Rights Act 2004* (HR Act), provides that everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law.

The Regulation will create a strict liability offence for a Person Conducting a Business or Undertaking (PCBU) that fails to ensure that a worker they engage in one of the stated occupations is trained in the Working Safely with ACMs course. Strict liability offences engage the right to be presumed innocent under section 21(1) of the HR Act by removing the fault elements of an offence which, in turn, requires the defendant to prove mistake of fact, (a defence to all ACT offences under the Criminal Code 2002 (the Code)), or other defences available under the Code for strict liability offences.

Strict liability can be reasonably justified in certain circumstances:

- strict liability offences should only be used where a person knows, or ought to know, their legal obligations;
- strict liability offences must be relevant, rational and proportionate to their objective; and
- examples of where strict liability offences are considered to be appropriate include regulatory regimes such as work health and safety, to support the integrity of the legislation and regulations, and where offences are minor with no custodial penalty.

This strict liability offence arises in the regulatory context where, for reasons such as worker and public safety, and in the interest of ensuring that regulatory schemes are observed, the sanction of a criminal penalty is justified. The offence also arises in a context where a PCBU can be reasonably expected, because of their professional involvement, to know the requirements of the law. As such, the mental or fault element can justifiably be excluded.

Strict liability will apply under the Regulation where a PCBU fails to ensure that a relevant worker they engage is trained in the Working Safely with ACMs course. The new offence does not impose a custodial penalty.

Detail of the Regulation

Clause 1 — Name of Regulation

This clause provides that the name of the Regulation is the *Work Health and Safety Amendment Regulation 2019 (No 1)*.

Clause 2— Commencement

This clause provides that the Regulation commences on 1 July 2019.

Clause 3— Legislation Amended

This clause provides that the Regulation amends the *Work Health and Safety Regulation 2011*.

Clause 4— Section 434

This clause provides that section 434 (Training in relation to naturally occurring asbestos) requires a PCBU to include the training referred to in sections 445 and 445A.

Clause 5— Section 445 heading

This clause substitutes the heading for section 445 as a consequence of inserting a new section 445A under clause 6.

Clause 6— New Section 445A

This clause amends the *Work Health and Safety Regulation 2011* by inserting a new section 445A to mandate that a person in a declared occupation under subsection 445(2)(a) is trained in a course declared under section 445A (2)(b).