

2020

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

LOOSE-FILL ASBESTOS LEGISLATION AMENDMENT BILL 2020

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

Presented by

Ms Suzanne Orr MLA

Minister for Employment and Workplace Safety

This explanatory statement relates to the *Loose-fill Asbestos Legislation Amendment Bill 2020* (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Legislative Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

BACKGROUND

The Bill contains amendments to implement a range of initiatives to assist in managing any properties affected by loose-fill asbestos insulation that remain privately owned after 30 June 2020.

The Loose-Fill Asbestos Insulation Eradication Scheme (the Scheme) buyback program ends on 30 June 2020. Under the Scheme, the ACT Government offered to purchase, at market value, all affected Canberra houses to enable government facilitated demolition and sale of the remediated blocks.

The amendments in this Bill aim to provide greater safety to tradespeople, care workers and other people who live at or attend affected premises. This is achieved by restricting the nature of works that can be undertaken and providing easy access to information about the asbestos contamination, so each person may ascertain the risk involved and make an informed decision about any activity they undertake at affected premises.

The amendments also prevent a new generation of residents being exposed to the risks associated with living in affected premises by preventing occupation by new owners or tenants. The occupancy prohibition amendment does not prevent current owner occupiers or tenants from remaining in the property, which supports current very elderly residents to see out their final years in their home.

Most premises identified as affected by loose-fill asbestos have been surrendered to the Territory or privately demolished. However, the goal of eradicating loose-fill asbestos from the ACT residential community can only be achieved when every affected premises has been demolished. The ACT Government acknowledges that it may need to take Compulsory

Acquisition action if homeowners do not arrange for the demolition of their affected property prior to mid-2025. Any Compulsory Acquisition action taken by the Territory will take into consideration the specific circumstances of each remaining homeowner as well as the serious safety risk any remaining property will impose on the community. The Bill makes no provision for acquisition, as this will be undertaken, if necessary, under the provisions of the Lands Acquisition Act 1994 (LAA). It does, however, facilitate the placing of an Administrative Interest on the title of remaining affected premises advising that the property may be subject to acquisition under the LAA.

OVERVIEW OF THE BILL

In summary, the amendments propose to:

- Introduce a requirement for specific information to be included on the affected residential premises register (the Register), to show whether a property requires an asbestos contamination report (commonly known as an asbestos management plan (AMP)) and whether a current report is in place with the required contamination management works completed.
- Introduce a requirement on owners/occupiers of affected residential premises to display the AMP in an approved display case in a visible location at the affected property. The ACT Government will provide these display cases. The amendments also allow for the Minister to approve the way and place where an approved display case must be displayed, by way of notifiable instrument.
- Allow for an AMP to have a validity period between 6 to 24 months, as determined appropriate by a licensed asbestos assessor.
- Prevent development approval being granted for affected residential premises unless the development includes the demolition of the affected structures and remediation of the premises.
- Restrict building works on affected residential premises to works associated with the demolition of the affected property, including asbestos removal and structural demolition, or works essential for health, safety or reasonable living conditions.

- Provide that upon transfer or transmission of an affected residential premises, only certain approved occupants can live in the premises.
- Make void any residential tenancy agreement, occupancy agreement, assignment or sub-let for a premises on the Register that is entered into on or after 1 July 2020.

CONSULTATION ON THE PROPOSED APPROACH

Government directorates and agencies have been consulted in the development of the Bill. Stakeholders have also been consulted on the implementation of elements of the Bill.

CONSISTENCY WITH HUMAN RIGHTS

This Bill may be considered to engage the following rights under the *Human Rights Act 2004* (HRA):

- Section 8- recognition and equality before the law;
- Section 12- privacy and reputation; and
- Section 16- freedom of expression.

Section 28(1) of the HRA provides that human rights are subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic society.

Section 28(2) provides that, in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including:

- a) The nature of the right affected;
- b) The importance of the purpose of the limitation;
- c) The nature and extent of the limitation;
- d) The relationship between the limitation and its purposes; and
- e) Any less restrictive means reasonable available to achieve the purpose the limitation seeks to achieve.

The limits that are placed on human rights by the Bill are reasonable and justifiable in a free and democratic society. An assessment of the Bill's impact on relevant provisions of the HRA, against all factors in section 28(2) is provided below.

Rights engaged

Section 8- Recognition and equality before the law

Section 8 of the HRA provides that:

- (1) *Everyone has the right to recognition as a person before the law.*
- (2) *Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.*
- (3) *Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.*

1. Nature of the right and the limitation (s28(a) and (c))

Several provisions of the Bill may be considered to engage section 8 by introducing special requirements applying only to owners and occupiers of affected residential premises. For example, the requirement for owners of affected premises to display their asbestos contamination report (commonly known as an AMP) at a prominent location at their residence; or limiting building and development works permitted at affected premises.

The Bill could be considered to make a distinction between owners of affected residential premises and owners of non-affected premises. However, the Bill does not distinguish on the basis of the personal characteristics of owners. The only distinction introduced is that between premises that are contaminated with loose-fill asbestos insulation and those that are not. The Bill simply effects this distinction by placing obligations on owners and occupiers as natural persons.

The Bill provides for a licensed asbestos assessor to determine the appropriate validity period (between 6 – 24 months) for an AMP, specific to the nature and condition of the affected premises. Such amendments may be considered to engage the right to equality, as certain

owners may be required to pay for reports more frequently than the current requirement of every two years, while other owners may receive a longer AMP validity period.

The Bill removes access to many of the development and building approvals that are available to the owners of non-affected properties. Again, this distinction is not based on personal characteristics of the owner, but on the status of the premises as affected or not. Demolition activity and works essential for health, safety or reasonable living conditions are still permitted for affected premises. Additionally, some minor works that clearly are not connected to the affected buildings will remain exempt, such as installing a letterbox or erecting a fence.

2. Legitimate purpose (s28(b))

The risks and consequences of exposure to loose-fill asbestos are widely understood; occupiers of affected properties and tradespeople, care workers and other visitors may be subject to significant health risks.

The objectives sought to be achieved by the Bill are to promote community safety in the ACT, and to support the phase out of affected properties, which continue to present a risk to the community. The only way to ensure the health, financial and social risks associated with loose-fill asbestos affected houses is effectively managed is to ensure that every affected residential premise is demolished. The measures engaging section 8, by introducing requirements relating to affected residential premises and their owners, are required to achieve the objectives of the Bill.

3. Rational connection between the limitation and the purpose (s28(d))

The limitations introduced on owners of affected residential premises all work toward the community safety purpose by assisting to limit the risk of exposure to loose-fill asbestos.

4. Proportionality (s28 (e))

The provisions in the Bill that limit section 8 are the least restrictive means reasonably available to achieve the purposes of the Bill.

Other less restrictive approaches are not appropriate, as they will not achieve the purposes of the Bill. For instance, a less restrictive amendment could be requiring the affected residential

premises register to note whether a property has a compliant AMP, but not require the AMP to be displayed at the property. This measure would not be effective in reaching all visitors to the property as they may not be aware of the property status or know how to access the Register. Further, having the AMP displayed ensures full details of the contamination can be readily accessed by anyone undertaking work at the premises so they can fully assess and prepare for any activities that may create a risk of exposure.

Safeguards have been incorporated to ensure that the restriction on section 8 of the HRA is only as extensive as necessary to achieve the purposes of the Bill. Such a safeguard is allowing for the redaction of personal information from an AMP (such as names and contact details) and exclusion of photographs that show any personal effects of the owner or occupier of the premises. Personal information will also not be able to be accessed on the public-facing register of affected residential premises.

Section 12- Privacy and reputation

Section 12 of the HRA states that:

Everyone has the right:

- (a) Not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily; and*
- (b) Not to have his or her reputation unlawfully attacked.*

1. Nature of the right and the limitation (s28(a) and (c))

A number of provisions of the Bill may be considered to engage the right to privacy and reputation, and particularly may be considered to affect the right to a home.

The requirement for an owner to display a current AMP, in a Government-issued display case at a prominent location at the affected property, may be considered to engage with the right to freedom from unlawful interference with one's privacy or home. However, the impact on the right is limited; the Bill provides that personal details may be redacted from AMPs displayed at affected premises. The approved display case containing an AMP, while it is

displayed at a prominent location at property, is relatively discreet. The report inside the case is only able to be read by a visitor approaching the case and removing the report.

The publishing of information, on the affected residential premises register, about whether an affected property requires an AMP and whether a compliant AMP is in place may also be considered to interfere with privacy by sharing information about a person's home (including address) on a public facing register. However, the engagement with the right is limited to the extent that the Minister cannot share personal information (such as names of owners or occupants) on the public-facing register .

The amendments restricting the range and nature of building and development works which can be undertaken in relation to a structure at affected residential premises may be considered to engage the right to a home by affecting the ability of people to undertake works to their home as they see fit. Works may still be undertaken, but only if they are essential to support health, safety or reasonable living conditions; demolition; or are certain minor works exempt from building approval that are unlikely to disturb loose-fill asbestos.

The requirement for an owner of an affected residential premises that is subject to an occupancy prohibition to inform the regulator when an approved occupant is living, and stops living, in the affected premises, also engages the right to privacy by requiring persons to share personal information with the Government. However, the engagement with the right to privacy is limited; the Minister cannot share information about approved occupants on the public-facing register. This information will only be used in relation to administration and enforcement in relation to affected residential premises.

2. Legitimate purpose (s28(b))

The risks and consequences of exposure to loose-fill asbestos are widely understood; occupiers of affected properties and tradespeople, care workers and other visitors may be subject to significant health risks.

The objectives sought to be achieved by the Bill are to promote community safety in the ACT, and to support the phase out of affected residential properties, which continue to present a risk to the community. The only way to ensure the health, financial and social risks associated

with contaminated houses is effectively managed is to ensure that every affected residential property is demolished.

Providing that current information regarding the contamination of an affected premises is easily accessible at the property, and restricting the works that can be undertaken on affected properties, is critical to allow tradespeople, and others required to attend affected properties, to be fully informed of the risks before undertaking any activity at a property. Furthermore, preventing a new generation of occupants being exposed to the risks associated with living in an affected property, through the occupancy prohibition, is important in supporting community safety outcomes. While it is acknowledged that some impact could arise on family connection (in the event of, for example, a family member living separately wishing to return to living in an affected property), the risks of exposure to loose-fill asbestos and the need to secure community safety warrant a proportionate limitation of section 12.

3. Rational connection between the limitation and the purpose (s28(d))

The amendments which may be considered to limit section 12 are directly related to the objective of the Bill - to minimise and where possible remove the risk of exposure to loose-fill asbestos and the associated health risks for occupants, tradespeople, care workers and visitors. The amendments are capable of achieving the Bill's objectives; by limiting, to a justifiable extent, the ability for a person to undertake works on their property (other than essential works or those related to demolition), making information about contamination easily available, and restricting a new generation of occupants being exposed to loose-fill asbestos.

4. Proportionality (s28 (e))

The provisions in the Bill that limit section 12 are the least restrictive means reasonably available to achieve the purposes of the Bill.

As detailed in the analysis of Section 8 of the HRA, other less restrictive AMP requirements will not achieve the purposes of the Bill.

Less restrictive options allowing a greater range of building works to be conducted at an affected premises would not achieve the purposes of the Bill as such options increase the

potential for asbestos exposure and do not support the goal of removing all loose-fill asbestos affected residential properties from Canberra's suburbs.

The occupancy prohibition, which prevents a new generation of occupants in the affected premises, is the least restrictive option to achieve the purpose of the Bill. The restriction only applies to occupancy of the affected premises and does not remove current occupants from the property. The occupancy comes into effect upon transfer or transmission of title, or after any existing rental agreement ends. The limitation on section 12 is warranted, and restricted to the extent that transfer or transmission can still occur to approved occupants.

Safeguards have been incorporated to ensure that the restriction on section 12 is only as extensive as necessary to achieve the purposes of the Bill. Safeguards include allowing the redaction of personal information from a displayed AMP and providing for a review mechanism of the designated validity period. Guidance material on what may constitute work 'essential for health, safety or reasonable living conditions' may be published, which will provide greater certainty to building surveyors and the community on what sorts of works are permissible. Additionally, a decision by the Minister to refuse a person as an approved occupant of an affected residential premises subject to an occupancy prohibition is a reviewable decision under the Act.

Section 16- Freedom of expression

Section 16 of the HRA states that:

- (1) Everyone has the right to hold opinions without interference.*
- (2) Everyone has the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of borders, whether orally, in writing or in print, by way of art, or in another way chosen by him or her.*

1. Nature of the right and the limitation (s28(a) and (c))

The Bill may be considered to engage section 16 by introducing requirements to publish the AMP status of an affected premises on the Register and requiring the AMP to be displayed at

a prominent location of a premises. The restrictions on the nature and extent of works that can be done on affected premises may also be considered to limit the right to freedom of expression, as an individual may wish to express him or herself by way of improvements to the home. Section 16 is limited to a small extent only. Other than the requirement to record AMP information on the register, and to display the AMP at affected premises, there are no impositions on what material an individual displays at an affected property. Furthermore, an individual may continue to express him or herself through works done on a property with certain minor works that remain exempt (which are unlikely to disturb loose-fill asbestos) and with work essential to support health, safety, or reasonable living conditions.

2. *Legitimate purpose (s28(b))*

The purpose of the limitation on the right to freedom of expression is to support community safety, by mitigating the risks of exposure to loose-fill asbestos, and supporting the phase-out of affected residential properties in the ACT.

3. *Rational connection between the limitation and the purpose (s28(d))*

The amendments limiting the right to freedom of expression are capable of achieving the purposes of the Bill. By restricting works that can be undertaken on affected properties, and making AMP information visible and accessible, the purposes of phase-out of affected properties in the ACT and minimising risks of exposure to loose-fill asbestos are supported.

4. *Proportionality (s28 (e))*

The provisions in the Bill that limit the right to freedom of expression are the least restrictive means reasonably available to achieve the purposes of the Bill.

The current, less restrictive, requirements are to place a warning sticker in the meter box of an affected property, and for homeowners to advise people entering the house of the asbestos contamination; and make a copy of the AMP available. It is understood that these requirements are not always followed. The purpose of supporting community safety is better

met by requiring the AMP to be clearly displayed at a property, to ensure those required to enter or conduct work in the property are fully informed.

The limitation on works that can be undertaken is considered a proportionate means to achieve the objectives of the Bill. The less restrictive measure allowing a broader range of building works to continue to be undertaken at affected premises does not effectively meet the purpose of the Bill. Allowing development and improvements does not support the goal of phasing our affected residential premises from Canberra's suburbs. Further, allowing non-essential works to be undertaken increases the potential risk of asbestos exposure for tradespeople, thereby less effectively meeting the community safety purpose of the Bill.

Loose-fill Asbestos Legislation Amendment Bill 2020

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Loose-fill Asbestos Legislation Amendment Bill 2020**. In my opinion, having regard to the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Gordon Ramsay MLA
Attorney-General

Clause notes

Part 1

Clause 1 **Name of Act**

This clause names the Act as the *Loose-fill Asbestos Legislation Amendment Act 2020*.

Clause 2 **Commencement**

This clause provides for the commencement of the Act. The Act commences on 1 July 2020.

Clause 3 **Legislation amended**

This clause provides that the Act amends a number of pieces of legislation.

Part 2 **Building (General) Regulation 2008**

Clause 4 **Exempt buildings and building work generally- Act, s152(2)** **New section 6 (1A)**

This clause introduces a new section to provide that items 2 - 15 in part 1.2 of schedule 1, which are exempted from the provisions of the *Building Act 2004*, are not exempt if the building is erected at affected residential premises.

Items 2 – 15 in part 1.2 of schedule 1 include structures such as dams or water treatment works. It is not expected that these buildings will be located at affected premises, but the clause ensures that should any of these structures exist, they will not be exempt from building approval and therefore will only be approved if related to the demolition of loose-fill affected structures or required for essential health, safety or reasonable living conditions. Temporary buildings remain exempt as they may be needed to facilitate the demolition of an affected building.

Clause 5 **New section 6 (5A)**

This clause introduces a new section to provide that several of the building works in part 1.3 of schedule 1, which are exempted from the provisions of the *Building Act 2004*, are not exempt if the building is erected at affected residential premises.

The building works that remain exempted are minor building works, such as installing a fence, or a demountable pool, which are unlikely to disturb loose-fill asbestos and will allow owners to undertake minor works on their properties without needing to apply for a building approval.

The exemptions that have been removed relate to works that are more likely to disturb loose-fill asbestos, such as installing photovoltaic panels, or internal alterations. An owner of an affected property wishing to undertake works that have been removed from the exemptions will be required to submit an application for building approval following the process provided for in the *Building Act 2004*. These works will then be assessed and only approved if they are required for essential health, safety or reasonable living conditions or relate to the demolition of the loose-fill affected structures.

Clause 6 Section 15A

This clause amends section 15A to make clear that an application for building approval in relation to affected residential premises must include a copy of the current asbestos contamination report.

**Clause 7 Building approval applications- asbestos warning notices- Act, s152(3)(b)
Section 18A (9), definition of *affected residential premises register***

This clause defines *affected residential premises register* by reference to the new section 47P of the *Dangerous Substances Act 2004*.

Clause 8 New section 29A

This clause introduces a new section 29A (Building approvals not to be issued- Act, s30(2)) to provide that a building approval is not to be issued for work involving an affected building at affected residential premises unless the work is related to demolition of the affected building (including asbestos removal); or essential to support health, safety or reasonable living conditions. Guidance on what constitutes these essential works may be provided with guidelines made by the Minister (by way of notifiable instrument). This will provide information to building surveyors and owners of affected residential properties on what kinds of works are permitted.

Clause 9 Dictionary, new definitions

This clause defines *affected building* and *affected residential premises* by reference to section 47I of the *Dangerous Substances Act 2004*.

Part 3 Dangerous Substances Act 2004

Clause 10 Failure to comply with safety duty- exposing people to substantial risk of death or serious harm Section 43(1), examples 1 and 2

Section 22A of the *Dangerous Substances Act 2004* provides that chapter 3 of the Act does not apply to asbestos. Examples 1 and 2 in section 43(1), which falls under chapter 3, relate to asbestos. This clause corrects this pre-existing error in the Act by removing these examples.

Clause 11 Chapter 3A

This clause substitutes chapter 3A of the Act.

The provisions of chapter 3A which are not amended by this Bill are sections 47K and 47L.

A minor amendment is made to section 47M to provide that an advice of the Minister is now termed “advice” rather than “asbestos advice;” this is a stylistic drafting amendment.

New provisions which have been introduced or which are substantially amended by this Bill are discussed in detail below.

47I Definitions- ch 3A

This section introduces definitions for chapter 3A. Some of these definitions were previously defined in the Dictionary section or particular provisions of chapter 3A, however including an overarching definitions section for the chapter is intended to enhance clarity.

47J Meaning of asbestos contamination report and current asbestos contamination report

This section provides that an asbestos contamination report is prepared by a licensed asbestos assessor and expires after a defined period stated by the assessor in the report, between 6 months and 2 years, or after building work or structural damage disturbs asbestos

contamination. Previously the validity period of an asbestos contamination report was 24 months.

A current contamination report is defined by section 47J (2) as a report that has not expired. This section is intended to allow licensed asbestos assessors to determine the appropriate period for the validity of an asbestos contamination report, on a case-by-case basis.

47N Requirement to give asbestos assessment report

This section substitutes section 47L of the Act. The section makes a minor amendment to provide that an engager (any person who engages work on a property) must tell the worker who has been engaged to do the work about the asbestos at the premises, and give the worker a copy of the asbestos assessment report for the premises. Previously section 47L placed this obligation only on the “owner” of the affected premises. The intention in expanding to the term “engager” is to capture others that may request works be undertaken on affected properties, such as real estate agents.

This section also provides that an engager need not give a worker a copy of the asbestos assessment report for the premises if the engager cannot obtain a copy of the report after taking reasonable steps and if the work is in response to an emergency situation. These exemptions applied to the owner of a property and have been broadened to include an engager.

This section also defines *involves* by directly inserting the definition in section 419 of the *Work Health and Safety Regulation 2011*, rather than defining by reference to that provision.

47O Requirements- affected residential premises

This is a new section which draws together existing requirements, making minor amendments to require the owner of an affected residential premises to have a current asbestos contamination report and to replace the term *owner* with the broader term *engager*.

This section provides that a person who undertakes, or engages a person to undertake, work that may disturb asbestos contamination must tell the regulator (Worksafe ACT) about the work at least 5 business days before the work begins. This requirement has been moved from the *Dangerous Substances (General) Regulation 2004* to make the section more coherent.

Section 47O also provides that a regulation may prescribe requirements for certain people in relation to management of asbestos contamination; such as the regulator, an owner or occupier, a real estate agent, a licensed asbestos assessor or asbestos removalist, or a worker. This amendment draws together a list of persons on which there are obligations in relation to the management of affected residential premises.

47P Affected residential premises register

This section replaces the previous section 47N in the Act and introduces several new requirements in relation to the affected residential premises register. The register must now include whether affected premises require an asbestos contamination report, and whether there is a current one in place with all required contamination management works completed.

If the register shows that a premise is required to have a report, and it does not have one, a tradesperson can make a decision about whether to conduct work on the property. If the register shows that the property has a current report, the tradesperson can attend the property and view the report, which is now required to be displayed with this Bill, and so understand the nature of the risk.

The Register must also contain information about whether the affected premises is subject to an occupancy prohibition, and if so, whether any approved occupants resides in the property, and their names. This amendment allows the regulator to monitor compliance with the occupancy prohibition by having oversight of who is living in affected properties that are subject to an occupancy prohibition. Under s47P (5), information relating to the occupancy prohibition (including names of occupants) will not be publicly available.

47Q Notice of affected residential premises to registrar-general

A note has been included in section 47Q to make clear that an administrative interest may be placed on the title of affected residential premises noting that an occupancy prohibition may apply.

Part 3A.3 Occupancy prohibition

This part introduces the Bill's occupancy prohibition, which provides that in the event of a transfer or a transmission of premises on the affected residential premises register on or after

1 July 2020, only an approved occupant may occupy the premises. The premises must have been on the register prior to the transfer or transmission.

Section 47R provides the definition of occupy; and sets the definitions of transfer or transmission as those found in the *Land Titles Act 1925*.

Section 47S provides the meaning of occupancy prohibition. Occupation of a premises that is on the affected residential premises register is prohibited upon the transfer or transmission of the premises on or after 1 July 2020.

Section 47T provides that an approved occupant is an individual who has continuously occupied the premises on or after the day the premises were added to the affected residential premises register or is approved by the Minister to occupy the premises to provide support to such an individual. The intention of this definition of approved occupant is to allow individuals who have lived in the property since it was added to the register to remain even after a transfer or transmission; and also provide for individuals who may be required to provide care to an occupant (such as a carer or a family member). A decision of the Minister under s47T(b) is a reviewable decision.

Section 47U provides that it is an offence for an owner of an affected premises to allow a person, other than an approved occupant, to occupy premises that are subject to an occupancy prohibition. To satisfy the offence, there must be an administrative interest on the title for the premises when they were transferred or transmitted to the owner. Administrative interests are placed on the title of premises under section 69A of the *Land Titles Act 1925*. A maximum penalty of 50 penalty units attaches to the offence.

Section 47V requires that the owner of affected residential premises that are subject to an occupancy prohibition must inform the regulator (Worksafe ACT) that an approved occupant occupies the premises within 10 days of the transfer or transmission (in the case of an approved occupant occupying the premises on the day of transfer or transmission) or the day the occupation began.

Clause 12 Definitions- ch 9

Section 186, definition of *decision-maker*

This clause expands the definition in section 186 of the Act of *decision-maker* to include a licensed asbestos assessor. This amendment operates in conjunction with clauses 30 and 31

of the Bill to provide that a decision by a licensed asbestos assessor regarding the validity period of a contamination report, under section 47J, is an internally reviewable decision.

The intention of clauses 12, 30 and 31 is to allow an avenue for review for owners who disagree with a licensed asbestos assessor's determination.

Clause 13 New chapter 15

This clause introduces a new chapter 15, which provides transitional arrangements for the Bill.

Sections 233 and 235 provide that a valid and current asbestos advice or assessment report at the time of the commencement of the Act will remain valid and current upon the Act's commencement.

Section 234 provides that an asbestos contamination report or a contamination management plan in a contamination report existing at the time of the Act's commencement expires 2 years after the day the report was prepared.

Section 236 makes clear that the existing register is the affected residential premises register for the purposes of the Bill.

Section 237 provides that chapter 15 expires 2 years after the commencement day of the Act, to allow for the expiry of existing contamination reports. After this time, owners will be required to obtain updated contamination reports.

Clauses 14 to 18 Dictionary, new definitions

Dictionary, definition of *affected residential premises register*

Dictionary, new definitions

Dictionary, definition of *loose-fill asbestos insulation*

Dictionary, new definitions

These clauses make a number of amendments to the Dictionary section of the Act to ensure that terms are appropriately defined, in order to reflect the new provisions introduced by the Bill.

Part 4 Dangerous Substances (General) Regulation 2004

Clauses 19 and 20 Removal of asbestos or ACM from premises

Section 312(1), penalty

Asbestos removal control plan

Section 313(1), penalty

These clauses correct an error in these sections, pre-existing in the Regulation and unrelated to the purposes of this Bill, to ensure that each provision carries the maximum permissible penalty units under a regulation, which is 30 units. Currently these provisions each carry a maximum penalty of 40 units.

Clause 21 Section 337

This clause provides that part 3.5 applies to affected residential premises (a term no longer defined in section 337).

Clauses 22 to 24 Section 338, new definition of *approved display case*

Section 338, definition of *approved warning sign*

Section 338, definitions

These clauses make amendments to the definitions section in part 3.5 of the Regulation, introducing a definition of approved display case, clarifying the definition of approved warning sign, and removing definitions no longer required.

Clause 25 Section 339

This clause introduces a requirement that the Minister may approve the way, and the place where, an approved display case (as defined by clause 22) is displayed, and provides that the approval of the Minister is a notifiable instrument.

Allowing the Minister to approve requirements relating to both a warning sign and a display case by way of notifiable instrument allows for flexibility to respond to operational needs. For example, if a particular location is considered inappropriate or impractical, the Minister may approve the way, and the place where, the display case is to be located.

Clause 26 Offence- asbestos warning signs

Section 340(1)(b)

This clause provides that it is an offence to fail to ensure that an approved warning sign is displayed in the way and at the places stated by an approval made by the Minister under section 339. This clause expands on the previous offence provision, to clarify that the approved warning sign must be displayed according to the approval stated in section 339. There is no amendment to the maximum penalty (30 penalty units) applying to the section.

Clause 27 Sections 341 and 342

This clause introduces a requirement into section 341 that an asbestos contamination report identify the location, type and condition of asbestos contamination in the living area of each affected building at the premises. Previously there was no requirement for the contamination to be identified at each affected building.

This clause also introduces a requirement into section 342 that the owner of an affected residential premises must ensure that an approved display case, containing a readable copy of the current asbestos contamination report, is displayed in accordance with an approval given under s339(2). The clause also allows for the removal of personal information (such as names and photos of personal property) from a copy of an asbestos contamination report before it is provided to the occupier of affected residential premises or before it is displayed.

Section 342A expands existing requirements to provide that persons at affected residential premises must not tamper, or attempt to tamper, with an approved warning sign or an approved display case, or a current contamination report in that case. Enforcement of this provision will be by way of the improvement notice scheme, provided for in part 6.3 of the *Dangerous Substances Act 2004*.

This amendment is one of several amendments together intended to ensure that asbestos contamination reports are visible and accessible in a prominent location at an affected residential premises, to allow visitors to make an informed decision about their activity at the premises, while also protecting privacy.

Clauses 28 and 29 Schedule 5, part 5.1 heading

Schedule 5, part 5.1, new item 1A

These clauses provide that decisions made under section 47T(b) to refuse to allow a person to occupy affected residential premises subject to an occupancy prohibition, is a reviewable decision. As this is a decision made by the Minister (or his or her delegate), this decision is reviewable by the ACT Civil and Administrative Tribunal.

Clause 30 and 31 **Schedule 5, part 5.2 heading**

Schedule 5, part 5.2, new item 1A

These clauses provide that decisions made under section 47J (1)(a)(i) by an asbestos assessor to provide a validity period for a contamination report as less than 2 years is an internally reviewable decision.

Clauses 32 to 34 **Dictionary, note 3**

Dictionary, new definition of *approved display case*

Dictionary

These clauses clarify the definitions of several terms in the Dictionary section, which are now defined by provisions introduced by this Bill.

Part 5 Planning and Development Act 2007

Clause 35 **Deciding development applications**

Section 162(3)

This clause introduces a requirement that the planning and land authority or the Minister must refuse a development application for a development involving affected residential premises, unless the application includes the demolition of each affected building and remediation of the premises (remediation development).

An exemption is introduced into the *Planning and Development Regulation 2008* with this Bill to make works essential for health, safety or reasonable living conditions exempt from requiring development approval, and to make clear that currently existing exemptions regarding developments involving demolition apply.

A decision under section 162(3) is a reviewable decision.

Clauses 36 and 37 Section 162(7), new definitions

Dictionary, definition of *affected residential premises register*

These clauses clarify the definitions of *affected building*, *affected residential premises* and *affected residential premises register* in the Act; and establish a definition of *remediation development* to support Clause 35.

Part 6 Planning and Development Regulation 2008

Clauses 38 and 39 Certain direct sales not requiring approval- Act, s240(1)(d)

Section 130(2), definition of *affected residential premises register*

These clauses clarify the definitions of *affected residential premises register* and *eligible impacted property*.

Clause 40 Section 212

This clause replaces section 212 with two new sections to clarify that the definition of *affected lease* applies to the whole regulation, yet the definition of *affected residential premises* applies only division 5.8.2. This amendment is intended to make clear that for the purposes of division 5.8.2, which relates to payment on surrender of affected leases, a definition of *affected residential premises* which includes premises listed on the affected residential premises register (including premises which may have been acquired by the Territory) is appropriate. For the remainder of the regulation, the definition of *affected residential premises* as provided for in section 471 of the *Dangerous Substances Act 2004*, which does not include premises which have been acquired by the Territory, is appropriate. This is because the regulation introduces broad requirements relating to developments on all affected properties, regardless of whether they are under Territory or private ownership.

Clause 41 Definitions- sch 1

Schedule 1, section 1.1, new definition of *affected residential premises*

This clause defines *affected residential premises* by reference to section 471 of the *Dangerous Substances Act 2004*.

Clause 42 Exempt developments- general criteria

Schedule 1, new section 1.10 (ea)

This clause introduces new subsection 1.10(ea) into section 1.10 in Schedule 1, to provide that a development is only exempt from requiring development approval if it complies with the general exemption criteria in section 1.17A (Criterion 7A- affected residential premises).

Clause 43 Schedule 1, new section 1.17A

This clause introduces new criterion 7A for affected residential premises for developments that are exempt from requiring development approval.

This criterion makes clear that a development cannot be exempt if it involves affected residential premises, except where that development involves demolition or asbestos removal, or works essential to support health, safety or reasonable living conditions.

Guidance on what constitutes these essential works may be provided in guidelines made by the Minister (by way of notifiable instrument). Guidelines made under this regulation will provide greater information on what may be considered exempt for the purpose of development approval.

Clauses 44 to 47 Schedule 1, sections 1.100B(1)(a) and 1.101(1)(a)(ii)

Schedule 1, section 1.109

Schedule 1, new section 1.110(1) (aa)

Schedule 1, section 1.112

These clauses provide that the exemptions from development approvals provided for in certain sections of Schedule 1 (relating to demolition of single dwellings and buildings and structures, developments in designated areas, rebuilding damaged buildings and structures, and subdivision of land under a unit title application), only apply if new criterion 7A is also satisfied (a development on affected residential premises is exempt only if it involves demolition or asbestos removal or works essential to support health, safety or reasonable living conditions).

Clause 48 Schedule 1, new section 1.114

This clause introduces a new specific exemption into Schedule 1. A development involving affected residential premises must be for work essential to support health, safety or reasonable living conditions to be exempt from development approval requirements. The specific criterion in section 1.114 must be met after a development satisfies the general

exemption criteria in section 1.17A (as well as any other applicable general exemption criteria).

Clauses 49 to 52 **Definitions- sch 2A**
Schedule 2A, section 2A.1, new definition of *affected residential premises*
Dictionary, note 3
Dictionary, definition of *affected residential premises*
Dictionary, definition of *loose-fill asbestos insulation*

These clauses make several amendments to the definitions section in schedule 2A and the dictionary, to clarify several definitions.

Part 7 Residential Tenancies Act 1997

Clause 53 **New section 64AC**

This clause introduces a new requirement into the *Residential Tenancies Act 1997* making void any tenancy agreement, occupancy agreement, sublet or assignment entered into for a property on the affected residential premises register on or after 1 July 2020.

This clause works toward preventing a new generation of tenants potentially being exposed to loose-fill asbestos.

If any agreement that is void under section 64AC is entered into, a person may apply to ACAT for an order that the lessor or tenant of the premises (in the case of a residential tenancy agreement or sublet), or grantor (in the case of an occupancy agreement) pay a person compensation for any money paid under the agreement.

Clause 54 **Dictionary, definition of *affected residential premises***
Dictionary, definition of *affected residential premises register*

These clauses update these definitions in the *Residential Tenancies Act 1997* to reflect amendments introduced by the Bill.

Schedule 1 Consequential amendments

Schedule 1 makes necessary consequential amendments to a number of pieces of legislation, necessary as a result of the provisions of the Bill.

Consequential amendments necessitating explanation are new sections 69A(ba), 69C(2A) and 69C (4) of the *Land Titles Act 1925*. These amendments are intended to clarify that an administrative interest may be placed on the title of premises on the affected residential premises register. Administrative interests currently exist on affected properties to note that that they are on the register. This amendment is intended to make clear that an administrative interest may also be placed on the title of an affected residential premises noting that an occupancy prohibition will be triggered for the premises upon transfer or transmission of title; and that the premises may be acquired by the Territory under the *Lands Acquisition Act 1994*.

New sections 69C(2A) and (4) of the *Land Titles Act 1925* also clarify that the registrar-general may include in the record any relevant information about an administrative interest (this may include names of new owners who are approved occupants), and that the registrar-general must notify the Minister responsible for the *Dangerous Substances Act 2004* when any information about an administrative interest is included in the record. This will ensure that the Minister is aware of any relevant details in relation to an affected property, such as whether the property is subject to an occupancy prohibition, and whether an approved occupant is occupying the property.