



New South Wales

Home Building and Duties Amendment (Loose-fill Asbestos Insulation Affected Premises) Bill 2015

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Home Building Act 1989* to provide a register of residential premises containing loose-fill asbestos insulation (**LFAI**) and require warning signs to be displayed at premises that are included on the register,
- (b) to amend the *Duties Act 1997* to provide a duty concession on a purchase of replacement residential property by owners of residential premises that are acquired by an authority of the State because they contain LFAI.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Schedule 1 Amendment of Home Building Act 1989 No 147

Schedule 1 makes the amendment referred to in paragraph (a) of the Overview, inserting proposed Division 1A into Part 8 of the *Home Building Act 1989*. The proposed Division contains the following provisions:

- (a) Proposed section 119A defines terms used in the proposed Division.

- (b) Proposed section 119B requires the Commissioner for Fair Trading to maintain a publicly available register of residential premises containing LFAI (the *Register*). Residential premises are to be listed on the Register if the Commissioner is satisfied that the presence of LFAI has been verified in accordance with the regulations made under the *Home Building Act 1989*. Particulars of listed premises are to be removed from the Register after the premises are demolished and the land on which the premises were erected has been remediated.
- (c) Proposed section 119C makes it an offence for the owner of listed residential premises to fail to ensure that a warning sign about the LFAI is displayed at the premises, and for any person (other than a person authorised under the *Home Building Act 1989* or an investigator appointed under the *Fair Trading Act 1987*) to remove the warning sign. The Commissioner can, by order published in the Gazette, extend the proposed section to other premises if satisfied that there are reasonable grounds to suspect that the premises contain LFAI.

Schedule 2 Amendment of Duties Act 1997 No 123

Schedule 2 [1] makes the amendment referred to in paragraph (b) of the Overview, inserting proposed Division 5 into Part 8 of Chapter 2 of the *Duties Act 1997*. The proposed Division contains the following provisions:

- (a) Proposed section 104D defines terms used in the proposed Division.
- (b) Proposed section 104E provides for a duty concession to a purchaser or transferee of residential property if the Chief Commissioner is satisfied that the purchaser or transferee is the owner of LFAI-affected residential property acquired by an authority of the State. Section 308 of the *Duties Act 1997* exempts the Crown in right of the State from liability to pay duty under that Act. Proposed section 104E provides that any ad valorem duty chargeable to the purchaser or transferee in connection with the replacement residential property is to be reduced by the amount of ad valorem duty that (but for section 308 of that Act) would have been chargeable to the authority of the State in connection with the acquisition of the LFAI-affected property by the authority.
- (c) Proposed section 104F deals with requirements relating to an application for a duty concession under the proposed Division.

Schedule 2 [2] inserts a savings and transitional provision consequent on the amendment made by **Schedule 2 [1]**.



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Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Home Building Act 1989 No 147	3
Schedule 2 Amendment of Duties Act 1997 No 123	5



New South Wales

Home Building and Duties Amendment (Loose-fill Asbestos Insulation Affected Premises) Bill 2015

No. , 2015

A Bill for

An Act to amend the *Home Building Act 1989* and *Duties Act 1997* in connection with residential premises affected by loose-fill asbestos insulation; and for other purposes.

The Legislature of New South Wales enacts:

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1 Name of Act

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This Act is the *Home Building and Duties Amendment (Loose-fill Asbestos Insulation Affected Premises) Act 2015*.

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2 Commencement

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This Act commences on the date of assent to this Act.

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Schedule 1	Amendment of Home Building Act 1989 No 147	1
Part 8, Division 1A		2
Insert after Division 1:		3
Division 1A	Premises affected by loose-fill asbestos insulation	4
119A	Definitions	5
	In this Division:	6
	<i>affected residential premises</i> means any residential premises that are listed on the Register, but does not include any premises of a class that is excluded from this definition by the regulations.	7 8 9
	<i>loose-fill asbestos insulation</i> means loose-fill amosite or crocidolite asbestos used as ceiling insulation.	10 11
	<i>Register</i> means the register required to be maintained under section 119B.	12
	<i>residential premises</i> means any building that is wholly or partly used (or is wholly or partly designed, constructed or adapted for use) as a place of residence.	13 14 15
119B	Register	16
(1)	The Secretary is to maintain a register of residential premises that contain or have contained loose-fill asbestos insulation.	17 18
(2)	Residential premises are to be listed on the Register if the Secretary is satisfied that the presence of loose-fill asbestos insulation at the premises has been verified in accordance with the regulations.	19 20 21
(3)	Other residential premises may be listed on the Register in the circumstances prescribed by the regulations.	22 23
(4)	The Register is to include the following particulars in relation to residential premises that are listed on the Register:	24 25
	(a) the address and title particulars (such as the Lot and DP numbers) of the land where the premises are located,	26 27
	(b) any other particulars that are prescribed by the regulations.	28
(5)	The names of owners or occupiers of residential premises who are individuals are not to be included on the Register.	29 30
(6)	The Register is to be in the form determined by the Secretary and is to be available for inspection by the public.	31 32
(7)	The Secretary is to remove the following particulars relating to affected residential premises from the Register:	33 34
	(a) all particulars if the Secretary is satisfied that the premises have been demolished and the land on which the premises were erected has been remediated,	35 36 37
	(b) any particulars that the Secretary is satisfied:	38
	(i) are false, erroneous or misleading, or	39
	(ii) have been erroneously included in the Register,	40
	(c) any other particulars in the circumstances prescribed by the regulations.	41

119C	Warning signs	1
(1)	The owner of affected residential premises must ensure that a compliant warning sign is displayed at any place at the premises that is prescribed by the regulations.	2 3 4
(2)	This section does not require the owner of a lot in a strata scheme to display a compliant warning sign at any part of the premises that is not comprised in the lot.	5 6 7
(3)	If affected residential premises are the subject of a strata scheme, the owners corporation for the scheme must ensure that a compliant warning sign is displayed at any place at the premises that is prescribed by the regulations and consists of common property.	8 9 10 11
(4)	A person must not remove, or cause or permit to be removed, a compliant warning sign from affected residential premises.	12 13
(5)	Despite subsection (4), a compliant warning sign may be removed from affected residential premises by a person authorised under section 126 (1) to enter the premises.	14 15 16
(6)	The Secretary may, by order published in the Gazette, extend the application of this section to any premises specified in the order if the Secretary is satisfied that there are reasonable grounds to suspect that the premises contain loose-fill asbestos insulation.	17 18 19 20
(7)	In this section:	21
	<i>affected residential premises</i> includes any premises in relation to which an order under this section is in force.	22 23
	<i>compliant warning sign</i> means a sign about loose-fill asbestos insulation that complies with any requirements (including any requirements about its display) prescribed by the regulations.	24 25 26
	<i>lot</i> , <i>owners corporation</i> and <i>strata scheme</i> have the same meanings as in the <i>Strata Schemes Management Act 1996</i> .	27 28
	Maximum penalty: 200 penalty units in the case of a corporation and 50 penalty units in any other case.	29 30

Schedule 2 Amendment of Duties Act 1997 No 123

[1] Chapter 2, Part 8, Division 5

Insert after section 104C:

Division 5 Concession for persons who have transferred property affected by loose-fill asbestos insulation to State

104D Definitions

(1) In this Division:

authority of the State has the same meaning as in the *Land Acquisition (Just Terms Compensation) Act 1991*.

owner, in relation to residential property, means:

- (a) a registered proprietor of the property, or
- (b) in the case of a land use entitlement—a person having ownership of shares or units through which the entitlement is conferred.

residential property means:

- (a) a parcel of land (including a strata lot) on which a dwelling is erected, or on which there is a building under construction that, when completed, will constitute a dwelling, or
- (b) a land use entitlement—if it entitles the holder of the land use entitlement to occupy a building, or part of a building, as a separate dwelling.

vacant residential land means a parcel of vacant land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for residential or principally for residential purposes.

(2) For the purposes of this Division, residential property is *LFAl-affected* if the dwelling erected on the land comprised in the residential property (or to which the residential property relates) contains, or is part of a building containing, loose-fill asbestos insulation (within the meaning of Division 1A of Part 8 of the *Home Building Act 1989*).

104E Concession

(1) The purchaser or transferee under an agreement for the sale or transfer, or the transfer, of residential property or vacant residential land is entitled to be granted a duty concession under this Division in respect of the agreement or transfer if the Chief Commissioner is satisfied that:

- (a) the purchaser or transferee (or at least one of the purchasers or transferees if there is more than one purchaser or transferee) is the owner of residential property that will be acquired by an authority of the State (or was the owner from whom the authority of the State acquired the property), and
- (b) the authority of the State has entered into a binding agreement to acquire (or has acquired) that residential property because it is or was LFAl-affected.

(2) Despite subsection (1) (a), the Chief Commissioner may grant a duty concession under this Division to a purchaser or transferee who is not or was not (at any time or at the applicable time) the owner (or the only owner) of the LFAl-affected property concerned if the Chief Commissioner is satisfied that

it would be fair and reasonable for the duty concession to be granted to the purchaser or transferee.	1 2
(3) Without limiting subsection (2), the Chief Commissioner may be satisfied that it would be fair and reasonable for a duty concession to be granted to a purchaser or transferee who is or was an owner, but not the only owner, of the LFAI-affected property concerned if the Chief Commissioner is satisfied that each other owner has consented to the making of the application for the duty concession.	3 4 5 6 7 8
(4) If a duty concession is granted under this Division in respect of an agreement or transfer, any ad valorem duty chargeable under this Chapter on the agreement or transfer is to be reduced by the amount of ad valorem duty that (but for section 308) would be (or would have been) chargeable to the authority of the State on:	9 10 11 12 13
(a) the transfer to the authority of the State of the LFAI-affected property concerned, or	14 15
(b) any other dutiable transaction effected to acquire the LFAI-affected property.	16 17
(5) Duty cannot be reduced under this Division to less than \$0.	18
(6) Only one duty concession may be granted under this Division for each acquisition of LFAI-affected property by an authority of the State.	19 20
104F Application	21
(1) An application for a duty concession under this Division is to be made to the Chief Commissioner in the approved form and contain, or be accompanied by, such particulars and other information as the Chief Commissioner may require.	22 23 24 25
(2) The Chief Commissioner may at any time (whether before or after the approval of an application) require the applicant or applicants to provide such further information as the Chief Commissioner may consider necessary for the proper administration of the concession scheme established by this Division.	26 27 28 29
[2] Schedule 1 Savings, transitional and other provisions	30
Insert at the end of the Schedule, with appropriate Part and clause numbering:	31
Part Provision consequent on enactment of Home Building and Duties Amendment (Loose-fill Asbestos Insulation Affected Premises) Act 2015	32 33 34
Availability of duty concession	35
A purchaser or transferee under an agreement or transfer is entitled to a duty concession under Division 5 of Part 8 of Chapter 2, in respect of the agreement or transfer, only if the agreement is entered into, or the transfer occurs, on or after the commencement of that Division.	36 37 38 39