

Western Australia

Health (Asbestos) Regulations 1992

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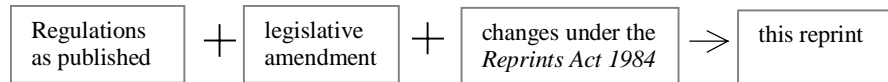
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Guide for using this reprint

What the reprint includes



Endnotes, Compilation table, and Table of provisions that have not come into operation

1. Details about the original regulations and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the regulations being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

Notes amongst text (italicised and within square brackets)

1. If the reprint includes a regulation that was inserted, or has been amended, since the regulations were made, editorial notes at the foot of the regulation give some history of how the regulation came to be as it is. If the regulation replaced an earlier regulation, no history of the earlier regulation is given (the full history of the regulations is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
 - removed (because it was repealed or deleted from the law); or
 - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

THE TEXT OF THE LEGISLATION FOLLOWS

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Health (Asbestos) Regulations 1992

Part 1 — Preliminary

1. Citation

These regulations may be cited as the *Health (Asbestos) Regulations 1992*¹.

2. Interpretation

In these regulations, unless the contrary intention appears —

“**asbestos**” means the asbestiform variety of mineral silicates belonging to the serpentine or amphibole groups of rock-forming minerals and includes actinolite, amosite, anthophyllite, chrysotile, crocidolite, tremolite, and any mixture containing 2 or more of those;

“**asbestos cement product**” means a product or part of a product containing asbestos in a cement binder;

“**authorised person**” means an environmental health officer or a person authorised under regulation 5;

“**dwelling-house**” does not include any associated structure or outbuilding that is not an integral part of a dwelling-house’s structure;

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“material containing asbestos” means material in which —

- (a) fibrous material is able to be detected by stereoscopic light microscopy at a magnification of not less than 10 times and not greater than 40 times; and
- (b) the fibrous material is able to be identified as asbestos by polarised light microscopy at a magnification of not greater than 400 times or by a method approved by the Executive Director, Public Health.

*[Regulation 2 amended in Gazette 28 Jun 1994 p. 3016;
29 Dec 2000 p. 7908.]*

3. Local laws

These regulations apply to all districts as if they were local laws made under the Act.

[Regulation 3 inserted in Gazette 29 Dec 2000 p. 7908.]

4. Asbestos declared hazardous

Asbestos is declared to be a hazardous substance.

5. Authorised persons

The Executive Director, Public Health may authorise a person in writing to be an authorised person for the purposes of these regulations.

Part 2 — Asbestos cement product

[Heading inserted in Gazette 29 Dec 2000 p. 7908.]

6. Sale or supply of an asbestos cement product

A person who sells or supplies an asbestos cement product to another commits an offence, except when —

- (a) that person has the prior written approval of the Executive Director, Public Health and does so in accordance with that approval;
- (b) the supply of the asbestos cement product to another is for the purpose of having that other person dispose of it in accordance with the *Environmental Protection (Controlled Waste) Regulations 2000*;
- (c) the asbestos cement product forms part of a fixture on land when the ownership of that land is transferred to another; or
- (d) the asbestos cement product forms part of a dwelling-house (whether or not a fixture on land) which is sold or supplied and which, at that time, is not substantially dismantled.

[Regulation 6 amended in Gazette 28 Jun 1994 p. 3016-17; 29 Dec 2000 p. 7908 and p. 7911.]

7. Use of asbestos cement product

- (1) Subject to subregulation (2), a person who uses any asbestos cement product commits an offence, except —
 - (a) if the person is —
 - (i) maintaining or repairing the asbestos cement product; or
 - (ii) removing the asbestos cement product for the purpose of disposing of it in accordance with the *Environmental Protection (Controlled Waste) Regulations 2000*;

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- (aa) if, —
 - (i) for the purpose of carrying out work on, under or near a structure (which term includes a fence) containing an asbestos cement product, the person dismantles and reinstates the whole or part of the structure within a reasonable time; and
 - (ii) any asbestos cement product used to reinstate the structure —
 - (I) was part of the structure before the structure was dismantled; and
 - (II) is in a stable, undamaged condition;
 - or
 - (b) when that person has the prior written approval of the Executive Director, Public Health and does so in accordance with that approval.
- (2) Subregulation (1) does not apply to the use of asbestos cement product where —
- (a) the asbestos cement product was in use as part of a structure (which term includes a fence) when these regulations came into operation; and
 - (b) the use of that asbestos cement product as that part of that structure has continued, without the position of the asbestos cement product being changed, since these regulations came into operation.
- (3) A person who stores, breaks, damages, cuts, maintains, repairs, removes, moves, or disposes of, or uses any material containing asbestos without taking reasonable measures to prevent asbestos fibres entering the atmosphere commits an offence.
- (4) For the purposes of subregulation (3), “**reasonable measures**” includes —

- (a) using water or other practical measures to keep airborne material containing asbestos to a minimum;
- (b) not using any tools other than non-powered hand tools or portable power tools that incorporate dust suppression or dust extraction attachments designed to collect asbestos fibres;
- (c) using only vacuum cleaning equipment designed to collect asbestos fibres or wetting the area before sweeping up material containing asbestos;
- (d) not using a high pressure water jet, or compressed air, unless in a manner which adequately prevents asbestos fibres entering the atmosphere and which is approved in writing by the Executive Director, Public Health;
- (e) ensuring, so far as is reasonably practicable, that material containing asbestos is not broken or abraded;
- (f) ensuring that waste material containing asbestos is disposed of in accordance with the *Environmental Protection (Controlled Waste) Regulations 2000* as soon as practicable.

[Regulation 7 amended in Gazette 28 Jun 1994 p. 3017; 29 Dec 2000 p. 7908-9 and p. 7911.]

7A. Asbestos dwelling-houses

- (1) Subject to subregulation (2), a person who moves a dwelling-house built wholly or partly with an asbestos cement product commits an offence unless, in the course of moving it, —
 - (a) the dwelling-house is not divided into more than 3 sections; and
 - (b) that part of it built wholly or partly with an asbestos cement product is not substantially dismantled.
- (2) The Executive Director, Public Health may approve, in writing, with or without conditions, the transportation of a

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dwelling-house built wholly or partly with an asbestos cement product in more than 3 sections if he or she is satisfied that the dwelling-house cannot be moved safely unless it is divided into more than 3 sections.

- (3) A person must comply with a condition imposed under subregulation (2) on an approval.
- (4) A person must not cut or deliberately break an asbestos cement product for the purpose of, or in the course of, moving a dwelling-house built wholly or partly with an asbestos cement product.

[Regulation 7A inserted in Gazette 29 Dec 2000 p. 7909-10.]

Part 3 — Material containing asbestos

8. Directions by authorised persons

- (1) An authorised person may, by a written notice served on —
 - (a) the owner of material containing asbestos; or
 - (b) the owner or occupier of premises on which material containing asbestos is present; or
 - (c) a person handling material containing asbestos,direct that person to maintain, repair, remove, move, dispose of, or handle the material containing asbestos in such manner and within such time as is specified in the direction.
- (2) The power conferred by subregulation (1) to direct a person to maintain, repair, remove, move, dispose of, or handle material containing asbestos includes power to direct that person to do any 2 or more of those things in combination.
- (3) A person who is served with a notice under subregulation (1) may, within 28 days of the service of the notice, appeal in writing against the notice to the Executive Director, Public Health who may uphold, revoke, or amend the notice.
- (4) A person who fails to comply with a direction in a notice under subregulation (1) commits an offence.

8A. Payment for work done in default

- (1) If a person fails to comply with a direction under regulation 8(1) (to maintain, repair, remove, move, dispose of, or handle material containing asbestos) in the manner, or within the time, specified in the direction, a local government may carry out, or make alternative arrangements to carry out, the work required to be done under that direction.
- (2) The expenses incurred by the local government in ensuring that the required work is carried out shall be paid by the person whose failure to comply with a direction gave rise to the need

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for the local government to carry out, or make alternative arrangements to carry out, the work described in subregulation (1).

[Regulation 8A inserted in Gazette 13 Aug 2002 p. 4179.]

9. Executive Director may prohibit or restrict use, sale or supply of material containing asbestos

- (1) The Executive Director, Public Health may, by notice published in a newspaper circulating in the State —
 - (a) prohibit; or
 - (b) impose conditions or restrictions on,the use, sale, or supply of material containing asbestos.
- (2) A person aggrieved by a notice made under subregulation (1) may appeal in writing against the notice to the Minister who may uphold, revoke, or amend the notice.
- (3) A person who uses, sells, or supplies material containing asbestos in contravention of a notice made under subregulation (1) commits an offence.

Part 4 — Disposal of material containing asbestos

[10. Repealed in Gazette 29 Dec 2000 p. 7910.]

11. Asbestos for disposal to be separated etc.

A person shall not —

- (a) supply material containing asbestos to another for the purpose of having that other person dispose of it; or
- (b) transport material containing asbestos,

unless —

- (c) it is separated from other material for disposal where that is reasonably practicable; and
- (d) it is wrapped in plastic so as to prevent asbestos fibres entering the atmosphere, or is contained in such other manner as is approved in writing by the Executive Director, Public Health.

[Regulation 11 inserted in Gazette 28 Jun 1994 p. 3018; amended in Gazette 29 Dec 2000 p. 7910.]

12. Duty to notify others of presence of asbestos

- (1) A person who supplies material containing asbestos to another for the purpose of having that other person dispose of it shall inform (whether by use of an appropriate label or otherwise) the other person that it is or contains asbestos.

[(2) repealed]

[Regulation 12 inserted in Gazette 28 Jun 1994 p. 3018-9; amended in Gazette 29 Dec 2000 p. 7910.]

[12A, 13. Repealed in Gazette 29 Dec 2000 p. 7910.]

Part 5 — Miscellaneous

14. Power to take sample

- (1) An authorised person may take a sample of any thing which he or she believes on reasonable grounds —
 - (a) is an asbestos cement product or material containing asbestos; and
 - (b) is or may be evidence in relation to an offence under these regulations.
- (2) When taking a sample, an authorised person shall —
 - (a) cause no more damage to property than is reasonably necessary;
 - (b) divide the sample into 3 separate parts and package and label them appropriately;
 - (c) give one part to the person in possession of the thing from which the sample is taken;
 - (d) have the second part analysed; and
 - (e) safely keep the third part for future comparison.

*[Regulation 14 inserted in Gazette 28 Jun 1994 p. 3019;
amended in Gazette 29 Dec 2000 p. 7911.]*

15. Penalties

- (1) A person who does not comply with these regulations commits an offence.
- (1a) The owner of material containing asbestos who permits another person to commit an offence under these regulations commits an offence.
- (1b) Where an offence against this Act is committed by an agent, an employee, or a subcontractor, the principal, employer, or contractor is also guilty of an offence and liable to the same penalty as is prescribed for the first-mentioned offence unless it

is proved that the principal, the employer, or contractor could not by the exercise of reasonable diligence have prevented the commission of the offence by the agent, the employee, or the subcontractor.

- (2) A person who commits an offence under these regulations is liable on conviction to —
- (a) a penalty of not more than \$1 000 and not less than —
 - (i) in the case of a first offence, \$100;
 - (ii) in the case of a second offence, \$200; and
 - (iii) in the case of a third or subsequent offence, \$500;
 - and
 - (b) if that offence is a continuing offence, a daily penalty of not more than \$100 and not less than \$50.
- (3) The court convicting a person of an offence arising from a breach of any of the provisions of these regulations may order that person to pay, in addition to a penalty, any expense incurred by the Commissioner, the Executive Director, Public Health, or the local government in consequence of the breach or non-observance of the regulation to the Commissioner, the Executive Director, Public Health, or the local government, as the case requires.

[Regulation 15 amended in Gazette 29 Dec 2000 p. 7910-11.]

16. Repeal

The *Health (Disposal of Asbestos Waste) Regulations 1984* are repealed.

[Schedules 1, 2 and 3 repealed in Gazette 29 Dec 2000 p. 7911.]

Health (Asbestos) Regulations 1992

Notes

- ¹ This is a compilation of the *Health (Asbestos) Regulations 1992* and includes the amendments made by the written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Health (Asbestos) Regulations 1992</i>	22 May 1992 p. 2129-34	22 May 1992
<i>Health (Asbestos) Amendment Regulations 1994</i>	28 Jun 1994 p. 3016-20	28 Jun 1994
<i>Health (Asbestos) Amendment Regulations 1997</i>	11 Apr 1997 p. 1834	11 Apr 1997
<i>Health (Asbestos) Amendment Regulations (No. 2) 1998</i>	14 Aug 1998 p. 4420	14 Aug 1998
<i>Health (Asbestos) Amendment Regulations 2000</i>	29 Dec 2000 p. 7907-11 (as amended in <i>Gazette</i> 30 Mar 2001 p. 1756 r. 4)	1 Apr 2001 (see r. 2 and <i>Gazette</i> 30 Mar 2001 p. 1837)
Reprint of the <i>Health (Asbestos) Regulations 1992</i> as at 1 June 2001 (includes amendments listed above)		
<i>Health (Asbestos) Amendment Regulations 2002</i>	13 Aug 2002 p. 4179	13 Aug 2002