

Health Act 1911

Health (Asbestos) Amendment Regulations 2016

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Health (Asbestos) Amendment Regulations 2016*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Public Health (Consequential Provisions) Act 2016* section 5 comes into operation.

3. Regulations amended

These regulations amend the *Health (Asbestos) Regulations 1992*.

4. Regulation 6 amended

- (1) In regulation 6:
 - (a) in paragraph (a) delete “approval;” and insert:

approval; or

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(b) in paragraph (b) delete “*Regulations 2000*,” and insert:

Regulations 2004; or

(2) At the end of regulation 6 insert:

Penalty: a fine of \$10 000.

5. Regulation 7 amended

(1) In regulation 7(1)(a)(ii) delete “*Regulations 2000*,” and insert:

Regulations 2004;

(2) At the end of regulation 7(1) insert:

Penalty for this subregulation: a fine of \$10 000.

(3) At the end of regulation 7(3) insert:

Penalty for this subregulation: a fine of \$10 000.

(4) In regulation 7(4)(f) delete “*Regulations 2000*” and insert:

Regulations 2004

6. Regulation 7A amended

(1) At the end of regulation 7A(1) insert:

Penalty for this subregulation: a fine of \$10 000.

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- (2) Delete regulation 7A(3) and (4) and insert:
- (3) A person who fails to comply with a condition imposed on an approval under subregulation (2) commits an offence.
Penalty for this subregulation: a fine of \$10 000.
- (4) A person who cuts or deliberately breaks 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 commits an offence.
Penalty for this subregulation: a fine of \$10 000.

7. Regulation 8 amended

At the end of regulation 8(4) insert:

Penalty for this subregulation: a fine of \$10 000.

8. Regulation 8A amended

- (1) In regulation 8A(2) delete “shall” and insert:

must
- (2) After regulation 8A(2) insert:
- (3) A person who fails to comply with the requirement to pay for expenses incurred by the local government under subregulation (2) commits an offence.
Penalty for this subregulation: a fine of \$10 000.

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9. Regulation 9 amended

At the end of regulation 9(3) insert:

Penalty for this subregulation: a fine of \$10 000.

10. Regulation 11 replaced

Delete regulation 11 and insert:

11. Asbestos for disposal to be separated and contained

- (1) Subject to subregulation (2), a person commits an offence if the person —
- (a) supplies material containing asbestos to another person for the purpose of having that other person dispose of it; or
 - (b) transports material containing asbestos.

Penalty for this subregulation: a fine of \$10 000.

- (2) Subregulation (1) does not apply if the material containing asbestos —
- (a) is separated from other material for disposal where reasonably practicable; and
 - (b) 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 Chief Health Officer.

11. Regulation 12 amended

- (1) In regulation 12(1) delete “shall” and insert:

must

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(2) After regulation 12(1) insert:

(2) A person who fails to comply with subregulation (1) commits an offence.

Penalty for this subregulation: a fine of \$10 000.

12. Regulation 14 amended

(1) In regulation 14(2) delete “shall —” and insert:

must —

(2) In regulation 14(2) after each of paragraphs (a) to (c) insert:

and

13. Regulation 15 replaced

Delete regulation 15 and insert:

15. Offence by owner

The owner of material containing asbestos who permits another person to commit an offence under these regulations commits an offence.

Penalty: a fine of \$10 000.

15A. Offence by principal, employer or contractor

If an offence against these regulations 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

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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.

15B. Expense incurred by CEO, Chief Health Officer or local government

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 CEO, the Chief Health Officer or the local government in consequence of the breach or non-observance of the regulation to the CEO, the Chief Health Officer or the local government, as the case requires.

15C. Penalties for continuing offences

For the purposes of the *Interpretation Act 1984* section 71, in relation to an offence committed under these regulations, the penalty for each separate and further offence committed by a person is a fine of \$1 000.

15D. Infringement notices

- (1) The offences specified in Schedule 1 are offences for which an infringement notice may be issued under the *Criminal Procedure Act 2004* Part 2.
- (2) The modified penalty specified opposite an offence in Schedule 1 is the modified penalty for that offence for the purposes of the *Criminal Procedure Act 2004* section 5(3).
- (3) The Chief Health Officer may, in writing, appoint persons or classes of persons to be authorised officers

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or approved officers for the purposes of the *Criminal Procedure Act 2004* Part 2.

- (4) The Chief Health Officer must issue to each authorised officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.
- (5) A local government may, in writing, appoint persons or classes of persons to be authorised officers or approved officers for the purposes of the *Criminal Procedure Act 2004* Part 2.
- (6) Each local government that appoints a person as an authorised officer under subregulation (5) must issue to the officer a certificate, badge or identity card identifying the officer as a person authorised to issue infringement notices.
- (7) A certificate of authority given to a person under the *Public Health Act 2016* section 30 has effect for the purposes of subregulation (4) or (6), whichever is relevant, if it meets the requirement in the subregulation.
- (8) For the purposes of the *Criminal Procedure Act 2004* Part 2 —
 - (a) the prescribed form of an infringement notice is set out in Schedule 2; and
 - (b) the prescribed form of a notice to withdraw an infringement notice is set out in Schedule 3.

14. Regulation 16 deleted

Delete regulation 16.

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At the end of the regulations insert:

**Schedule 1 — Prescribed offences and
modified penalties**

[r. 15D(1) and (2)]

	Description of offence	Modified penalty
r. 6	Selling or supplying asbestos cement product	\$1 000
r. 7(1)	Using an asbestos cement product	\$1 000
r. 7(3)	Storing, breaking, damaging, cutting, maintaining, repairing, removing, moving or disposing of, or using any material containing asbestos without taking reasonable measures to prevent asbestos fibres entering the atmosphere	\$2 000
r. 7A(1)	Moving a dwelling-house built wholly or partly with an asbestos cement product	\$2 000
r. 7A(3)	Failing to comply with a condition on an approval	\$2 000
r. 7A(4)	Cutting or deliberately breaking 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	\$2 000
r. 8	Failing to comply with a direction in a notice	\$1 000
r. 11(1)(a)	Supplying material containing asbestos to another for the purpose of having another person dispose of it	\$1 000
r. 11(1)(b)	Transporting material containing asbestos	\$1 000

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Description of offence		Modified penalty
r. 12	Failing to inform a person that material is or contains asbestos	\$1 000

Schedule 2 — Infringement notice

[r. 15D(8)(a)]

<i>Health (Miscellaneous Provisions) Act 1911</i> <i>Health (Asbestos) Regulations 1992</i>		Infringement notice no.
INFRINGEMENT NOTICE		
Alleged offender	Name	
	Address	
Details of alleged offence	Date or period	
	Place	
	Written law contravened	<i>Health (Asbestos) Regulations 1992</i> regulation
	Details of offence ¹	
Date of issue	Date of issue	
Issuing officer	Name	
	Office	
	Signature	
Modified penalty	\$	

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Penalty	\$	You do not have to pay this amount. This is the maximum fine that can be imposed if you are prosecuted in a court and convicted of this offence.
TAKE NOTICE	<p>It is alleged that you have committed the above offence.</p> <p>If you do not want to be prosecuted in court for the offence, pay the modified penalty to an Approved Officer within 28 days after the date of this notice.</p> <p>If you do not pay the modified penalty within the 28 days, you may be prosecuted or enforcement action may be taken under the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i>. Under that Act, some or all of the following action may be taken — your driver's licence may be suspended; your vehicle licence may be suspended or cancelled; your details may be published on a website; your vehicle may be immobilised or have its number plates removed; and your property may be seized and sold.</p> <p>If you need more time to pay the modified penalty, you should contact the Approved Officer at the address below.</p> <p>Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case.</p> <p>If you want this matter to be dealt with by prosecution in court, sign and date here:</p> <p>_____ / /20</p> <p>and post this notice to the Approved Officer at the address below within 28 days after the date of this notice.</p> <p>If you consider that you have good reason to have this notice withdrawn, you can write to the Approved Officer at the address below requesting that this notice be withdrawn and setting out why you consider that this notice should be withdrawn. Your letter must be received not later than 28 days after the date of this notice.</p>	

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	<p>By post</p> <p>Tick the relevant box below and post this notice to: Approved Officer — <i>Health (Asbestos) Regulations 1992</i> [Address]</p>		
How to pay	<input type="checkbox"/> I want to pay the modified penalty. A cheque or money order (payable to Approved Officer — <i>Health (Asbestos) Regulations 1992</i>) for the modified penalty is enclosed.		
	<input type="checkbox"/> I want to pay the modified penalty by credit card. Please debit my credit card account. ²		
	[details ³]		
	Complete all details		
	<p>In person²</p> <p>Pay the cashier at: [Address]</p>		
	<p>Electronically²</p> <p>[details³]</p>		
Method of service²		Date of service	

Notes to Form —

1. The details should say what the alleged offender has done that is considered to be a contravention of the law.
2. Delete this option if not applicable.
3. Include here, when applicable, details of how a payment may be made electronically.

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Schedule 3 — Notice to withdraw infringement notice

[r. 15D(8)(b)]

<i>Health (Miscellaneous Provisions) Act 1911</i> <i>Health (Asbestos) Regulations 1992</i>		Infringement notice no.
WITHDRAWAL OF INFRINGEMENT NOTICE		
Alleged offender	Name	
	Address	
Details of infringement notice	Infringement notice no.	
	Date of issue	
Details of alleged offence	Date or period	
	Place	
	Written law contravened	<i>Health (Asbestos) Regulations 1992</i> regulation
	Details of offence	
Approved Officer withdrawing notice	Name	
	Office	
	Signature	
Date	Date of withdrawal	

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<p>Withdrawal of infringement notice</p> <p><i>[*Delete whichever is not applicable]</i></p>	<p>The above infringement notice issued against you for the above alleged offence has been withdrawn.</p> <p>If you have already paid the modified penalty for the alleged offence, you are entitled to a refund.</p> <p style="padding-left: 40px;">* Your refund is enclosed</p> <p>or</p> <p style="padding-left: 40px;">* If you have paid the modified penalty but a refund is not enclosed, you may claim your refund by signing and dating this notice and posting it to:</p> <p style="padding-left: 40px;">Approved Officer — <i>Health (Asbestos) Regulations 1992</i></p> <p style="padding-left: 40px;">[Address]</p> <p>Your signature Date</p>
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R. KENNEDY, Clerk of the Executive Council.