



Western Australia

Health (Asbestos) Regulations 1992

Compare between:

[24 Jan 2017, 01-e0-03] and [20 Sep 2017, 01-f0-01]

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;

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

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 Chief Health Officer.

[Regulation 2 amended-~~in~~: Gazette 28 Jun 1994 p. 3016; 29 Dec 2000 p. 7908; 10 Jan 2017 p. 261 and 262.]

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. Deleted-~~in~~: Gazette 10 Jan 2017 p. 261.]

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 Chief Health Officer and does so in accordance with that approval; or
- (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 2004*; or
- (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.

Penalty: a fine of \$10 000.

[Regulation 6 amended ~~in~~: Gazette 28 Jun 1994 p. 3016-17; 29 Dec 2000 p. 7908 and p. 7911; 10 Jan 2017 p. 262; 10 Jan 2017 p. 199-200.]

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 2004;*

- (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 Chief Health Officer and does so in accordance with that approval.

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

- (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.

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

- (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 Chief Health Officer;
 - (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 2004* as soon as practicable.

[Regulation 7 amended ~~in~~ Gazette 28 Jun 1994 p. 3017; 29 Dec 2000 p. 7908-9 and p. 7911; 10 Jan 2017 p. 200 and 262.]

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.

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

- (2) The Chief Health Officer may approve, in writing, with or without conditions, the transportation of a 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 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.

[Regulation 7A inserted ~~in~~; Gazette 29 Dec 2000 p. 7909-10; amended ~~in~~; Gazette 10 Jan 2017 p. 200-1 and 262.]

Part 3 — Material containing asbestos

8. Directions by authorised officer

- (1) An authorised officer 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 Chief Health Officer who may uphold, revoke, or amend~~ [apply to the State Administrative Tribunal for a review of the direction in](#) the notice.
- (4) A person who fails to comply with a direction in a notice under subregulation (1) commits an offence.

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

[Regulation 8 amended ~~in~~ Gazette 10 Jan 2017 p. 201, 261 and 262; 19 Sep 2017 p. 4882.]

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 must be paid by the person whose failure to comply with a direction gave rise to the need for the local government to carry out, or make alternative arrangements to carry out, the work described in subregulation (1).
- (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.

[Regulation 8A inserted-~~in~~: Gazette 13 Aug 2002 p. 4179; amended-~~in~~: Gazette 10 Jan 2017 p. 201.]

9. Chief Health Officer may prohibit or restrict use, sale or supply of material containing asbestos

- (1) The Chief Health Officer 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.

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

[Regulation 9 amended-~~in~~: Gazette 10 Jan 2017 p. 262; 10 Jan 2017 p. 202.]

Part 4 — Disposal of material containing asbestos

[10. Deleted ~~in~~: Gazette 29 Dec 2000 p. 7910.]

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.

[Regulation 11 inserted ~~in~~: Gazette 10 Jan 2017 p. 202.]

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 must inform (whether by use of an appropriate label or otherwise) the other person that it is or contains asbestos.
- (2) A person who fails to comply with subregulation (1) commits an offence.

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

[Regulation 12 inserted ~~in~~: Gazette 28 Jun 1994 p. 3018-9; amended ~~in~~: Gazette 29 Dec 2000 p. 7910; 10 Jan 2017 p. 202-3.]

Health (Asbestos) Regulations 1992

Part 4 Disposal of material containing asbestos

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| [12A, 13. Deleted~~in~~u: Gazette 29 Dec 2000 p. 7910.]

Part 5 — Miscellaneous

14. Power to take sample

- (1) An authorised officer 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 officer must —
 - (a) cause no more damage to property than is reasonably necessary; and
 - (b) divide the sample into 3 separate parts and package and label them appropriately; and
 - (c) give one part to the person in possession of the thing from which the sample is taken; and
 - (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; 10 Jan 2017 p. 203 and 61.]

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.

[Regulation 15 inserted ~~in~~: Gazette 10 Jan 2017 p. 203.]

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

r. 15B

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.

[Regulation 15A inserted ~~in~~; Gazette 10 Jan 2017 p. 203-4.]

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.

[Regulation 15B inserted ~~in~~; Gazette 10 Jan 2017 p. 204.]

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.

[Regulation 15C inserted ~~in~~; Gazette 10 Jan 2017 p. 204.]

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 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.~~

(7) A local government may delegate a power or duty conferred or imposed on it by this regulation to the chief executive officer of the local government.

- (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.

[Regulation 15D inserted ~~in~~: Gazette 10 Jan 2017 p. 204-5; amended: Gazette 19 Sep 2017 p. 4882.]

[16. Deleted ~~in~~: Gazette 10 Jan 2017 p. 205.]

Schedule 1 — Prescribed offences and modified penalties

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

[Heading inserted ~~in~~: Gazette 10 Jan 2017 p. 206.]

	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
r. 12	Failing to inform a person that material is or contains asbestos	\$1 000

[Schedule 1 inserted ~~in~~: Gazette 10 Jan 2017 p. 206-7.]

Schedule 2 — Infringement notice

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

[Heading inserted ~~in~~ Gazette 10 Jan 2017 p. 207.]

<i>Health (Miscellaneous Provisions) Act 1911</i> <i>Health (Asbestos) Regulations 1992</i> INFRINGEMENT NOTICE		Infringement notice no.
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	\$	
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**

It is alleged that you have committed the above offence.

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.

If you do not pay the modified penalty within the 28 days, you may be prosecuted or enforcement action may be taken under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*. 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.

If you need more time to pay the modified penalty, you should contact the Approved Officer at the address below.

Paying the modified penalty will not be regarded as an admission for the purposes of any civil or criminal court case.

If you want this matter to be dealt with by prosecution in court, sign and date here:

_____ / /20
and post this notice to the Approved Officer at the address below within 28 days after the date of this notice.

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.

By post

Tick the relevant box below and post this notice to:

Approved Officer — *Health (Asbestos) Regulations 1992*

[Address]

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		
	In person² Pay the cashier at: [Address]		
	Electronically² [details ³]		
	[]		
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.

[Schedule 2 inserted ~~in~~ Gazette 10 Jan 2017 p. 207-9.]

Schedule 3 — Notice to withdraw infringement notice

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

[Heading inserted ~~in~~ Gazette 10 Jan 2017 p. 210.]

<p><i>Health (Miscellaneous Provisions) Act 1911</i> <i>Health (Asbestos) Regulations 1992</i></p> <p>WITHDRAWAL OF INFRINGEMENT NOTICE</p>		<p>Infringement notice no.</p>
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	

<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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[Schedule 3 inserted in Gazette 10 Jan 2017 p. 210-11.]

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. The table also contains information about any reprint.

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
<i>Health (Asbestos) Amendment Regulations 2006</i>	15 Dec 2006 p. 5622	15 Dec 2006
<i>Health (Asbestos) Amendment Regulations 2016</i>	10 Jan 2017 p. 199-211	r. 1 and 2: 10 Jan 2017 (see r. 2(a)); Regulations other than r. 1 and 2: 24 Jan 2017 (see r. 2(b) and <i>Gazette</i> 10 Jan 2017 p. 165)
<i>Health Regulations Amendment (Public Health) Regulations 2016</i> Pt. 10	10 Jan 2017 p. 237-308	24 Jan 2017 (see r. 2(b) and <i>Gazette</i> 10 Jan 2017 p. 165)

Citation	Gazettal	Commencement
<u>Health (Asbestos) Amendment Regulations 2017</u>	<u>19 Sep 2017</u> <u>p. 4882</u>	<u>r. 1 and 2: 19 Sep 2017</u> <u>(see r. 2(a));</u> <u>Regulations other than r. 1 and 2:</u> <u>20 Sep 2017 (see r. 2(b))</u>