

# Model Work Health and Safety Legislation Amendment (Asbestos) 2019

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**1 Name of Act**

These model provisions are the *Model Work Health and Safety Legislation Amendment (Asbestos) 2019*.

**2 Amendment of Model Law**

- (1) The *Model Work Health and Safety Act* is amended as set out in Schedule 1.
- (2) The *Model Work Health and Safety Regulations* is amended as set out in Schedule 2.

## Schedule 1 Amendment of Model Work Health and Safety Act

### [1] Section 4 Definitions

Insert in alphabetical order:

*asbestos*—see section 197A.

*asbestos containing material (ACM)*—see section 197A.

### [2] Part 10, Division 2A

Insert after Division 2 of Part 10:

#### Division 2A Prohibited asbestos notices

##### 197A Definitions

In this Division:

*asbestos* means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock forming minerals, including the following:

- (a) actinolite asbestos;
- (b) grunerite (or amosite) asbestos (brown);
- (c) anthophyllite asbestos;
- (d) chrysotile asbestos (white);
- (e) crocidolite asbestos (blue);
- (f) tremolite asbestos;
- (g) a mixture that contains 1 or more of the minerals referred to in paragraphs (a) to (f).

*asbestos containing material (ACM)* means any material or thing that, as part of its design, contains asbestos.

*prohibited asbestos* means asbestos or ACM, fixed or installed in a workplace on or after 31 December 2003.

*relevant person* in relation to a workplace means:

- (a) a person conducting a business or undertaking at the workplace; or
- (b) a person with management or control of the workplace; or
- (c) a person with management or control of fixtures, fittings or plant at the workplace; or
- (d) a person who the regulator reasonably believes is or was involved in, or caused, whether directly or indirectly, the fixing or installing of prohibited asbestos at the workplace.

##### 197B Issue of prohibited asbestos notices

The regulator must issue a prohibited asbestos notice to a relevant person in relation to a workplace if the regulator reasonably believes prohibited asbestos is present in the workplace.

##### 197C Contents of prohibited asbestos notices

- (1) A prohibited asbestos notice must state:
  - (a) that the regulator believes prohibited asbestos is present in the workplace and the basis of that belief; and

- (b) details of the prohibited asbestos, including the location, type and condition of the prohibited asbestos; and
  - (c) directions in relation to specific measures the relevant person to whom the prohibited asbestos notice is issued is required to take in relation to the prohibited asbestos, including in relation to the management or removal of the prohibited asbestos; and
  - (d) the day by which the relevant person to whom the prohibited asbestos notice is issued is required to comply with the prohibited asbestos notice.
- (2) The day stated for compliance with the prohibited asbestos notice must be reasonable in all the circumstances.
  - (3) The regulations may prescribe factors that must be considered by the regulator when determining specific measures the relevant person to whom a prohibited asbestos notice is issued is required to take in relation to prohibited asbestos.

**197D Compliance with prohibited asbestos notice**

A relevant person to whom a prohibited asbestos notice is issued must comply with the notice.

Maximum penalty:

In the case of an individual—\$100 000.

In the case of a body corporate—\$500 000.

**197E Extension of time for compliance with prohibited asbestos notices**

- (1) This section applies if a relevant person has been issued with a prohibited asbestos notice.
- (2) The regulator may, by written notice given to the relevant person, extend the compliance period for the prohibited asbestos notice.
- (3) However, the regulator may extend the compliance period only if the period has not ended.
- (4) In this section:  
*compliance period* means the period stated in the prohibited asbestos notice under section 197C, and includes that period as extended under this section.

**[3] Section 202 Application of Division**

Omit “or non-disturbance notice”.

Insert instead “, non-disturbance notice or prohibited asbestos notice”.

**[4] Sections 204 and 205(1)**

Omit “or prohibition notice” wherever occurring.

Insert instead “, prohibition notice or prohibited asbestos notice”.

**[5] Section 204(b)**

Insert “measures to take or” after “choice of”.

**[6] Section 206**

Omit the section. Insert instead:

**206 Changes to notice**

- (1) An inspector may:
  - (a) make minor changes to a notice issued by an inspector; or
  - (b) extend the compliance period for an improvement notice in accordance with section 194.
- (2) The regulator may:
  - (a) make minor changes to a prohibited asbestos notice issued by the regulator; or
  - (b) extend the compliance period of a prohibited asbestos notice in accordance with section 197E.
- (3) In this section, *minor changes* means a minor change to a notice:
  - (a) for clarification; or
  - (b) to correct errors or references; or
  - (c) to reflect changes of address or other circumstances.

**[7] Section 207**

Omit the section. Insert instead:

**207 Regulator may vary or cancel notice**

- (1) Except as provided in section 206, a notice issued by an inspector may only be varied or cancelled by the regulator.
- (2) A notice issued by the regulator may only be varied or cancelled by the regulator.

**[8] Sections 211, 212(1)(a) and 213(b)**

Insert “or prohibited asbestos notice” after “prohibition notice” wherever occurring.

**[9] Section 212 Power of the regulator to take other remedial action**

Omit section 212(1)(b): Insert instead:

- (b) a prohibition notice or prohibited asbestos notice cannot be issued because, after taking reasonable steps:
  - (i) in relation to a prohibition notice—the person with management or control of the workplace cannot be found; or
  - (ii) in relation to a prohibited asbestos notice—a relevant person in relation to the workplace cannot be found.

**[10] Section 214 Application of Division**

Omit “or non-disturbance notice”.

Insert instead “, non-disturbance notice or prohibited asbestos notice”.

**[11] Section 223 Which decisions are reviewable**

Insert after item 9 of the table to section 223(1):

- |    |   |  |
|----|---|--|
| 9A | Section 197B (issue of prohibited asbestos notice)                              | (1) The person to whom the notice was issued.  |
|    |   | (2) The person with management or control of the workplace.  |
|    |   | (3) A person conducting a business or undertaking whose interests are affected by the decision.              |
|    |   | (4) A worker whose interests are affected by the decision.   |
|    |   | (5) A health and safety representative who represents a worker whose interests are affected by the decision. |
| 9B | Section 197E (extension of time for compliance with prohibited asbestos notice) | (1) The person to whom the notice was issued.  |
|    |   | (2) The person with management or control of the workplace.  |
|    |   | (3) A person conducting a business or undertaking whose interests are affected by the decision.              |
|    |   | (4) A worker whose interests are affected by the decision.   |
|    |   | (5) A health and safety representative who represents a worker whose interests are affected by the decision. |

## **Schedule 2      Amendment of Model Work Health and Safety Regulations**

### **[1] Regulation 5 Definitions**

Omit the definitions of *asbestos* and *asbestos containing material* from regulation 5(1).

Insert in alphabetical order:

*asbestos*—see section 197A of the Act.

*asbestos containing material (ACM)*—see section 197A of the Act.

### **[2] Regulation 419 Work involving asbestos or ACM—prohibitions and exceptions**

Insert after regulation 419(3)(j):

- (k) work that is being carried out in accordance with a prohibited asbestos notice issued under section 197B of the Act.