



Minister for Disability
Minister for Community Services and Facilities
Minister for Employment and Workplace Safety
Minister for Government Services and Procurement
Member for Yerrabi

20/03924

Mrs Giulia Jones MLA
Chair
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety's (the Committee's) Scrutiny Report 40 of 24 March 2020. This letter specifically addresses comments made by the Committee on the Loose-fill Asbestos Legislation Amendment Bill 2020 (the Bill).

Impact of development and building works restrictions on occupants with special needs

I note the Committee's concerns regarding the Bill's provisions restricting building and development works to those that either involve demolition or are "essential for health, safety or reasonable living conditions" and how "essential" works will be assessed and enforced so as not to unduly impact on occupants with special needs. The Bill aims to facilitate the phase-out of affected residential properties from Canberra's suburbs, while ensuring that remaining residents, including the elderly and those with special needs, continue to have reasonable living standards in their own homes.

The Asbestos Response Taskforce (the Taskforce) is currently developing guidelines on the kinds of building and developments works that will be permitted under the amendments. These guidelines are being developed in close collaboration with the Building Policy and Planning Delivery areas in the Environment, Planning and Sustainable Development Directorate (EPSDD), and consultation will be undertaken with the Council on the Ageing and the ACT Disability, Aged and Carer Advocacy Service. The kinds of works anticipated to be permitted include those typically required by the elderly and those with special needs, such as installing grab rails and access ramps, and making alterations to entrances. The guidelines will be published as notifiable instruments under both the *Building (General) Regulation 2008* and the *Planning and Development Regulation 2008*, in accordance with clauses 8 and 43 of the Bill respectively. As these guidelines are made as notifiable instruments, they may be updated during implementation of the Bill, to respond to stakeholder feedback as appropriate.

ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia GPO Box 1020, Canberra ACT 2601, Australia
Phone +61 2 6205 1439 Email orr@act.gov.au



@SuzanneOrrMLA



SuzanneOrrMLA



SuzanneOrrMLA



Assessment and enforcement of building and development works will occur in accordance with the existing provisions of the *Building Act 2004*, *Building (General) Regulation 2008*, *Planning and Development Act 2007* and *Planning and Development Regulation 2008*.

Inclusion of family members as approved occupants

I note the Committee's request for further information on the rationale for not including family members as approved occupants in relation to the Bill's occupancy prohibition provisions.

The objective of the occupancy prohibition is to prevent more people being at risk of exposure to loose-fill asbestos. Acknowledging the age and long-term occupancy of many residents, the Bill provides for existing occupants to remain, and where needed, a support person to be also approved for occupancy. As provided for in the Bill, a decision to allow a support person to take up occupancy in the affected home must be made with consideration given, in accordance with clause 11, section 47T(2), not only to whether the support is reasonably necessary, but also to whether it is reasonably necessary for the support person to actually occupy the premises to provide the required support. Through this, the Bill seeks to limit the number of people potentially exposed.

Providing for family members, including new domestic partners, to be approved occupants unnecessarily broadens the number of people potentially at risk of exposure to loose-fill asbestos, and so frustrates the objectives of the Bill.

Engagement of the right to privacy (section 12 of the *Human Rights Act 2004*)

I note the Committee's comments regarding the engagement of the right to privacy in section 12 of the *Human Rights Act 2004* (HRA), through the potential disclosure of sensitive health information in an approved occupant application. A justification of the limitation of section 12, in accordance with section 28 of the HRA, is provided below.

The nature of the right affected (s28(2)(a))

No application is necessary for individuals who have occupied premises continuously since the premises were added to the affected residential premises register and these individuals are automatically considered approved occupants. Applications will be required to have a person become an approved occupant in order to provide support to an existing occupant. In this application, sensitive health information may need to be provided to address the criteria in clause 11, section 47T(2) of the Bill. The Taskforce is currently developing forms and guidance material in relation to and the information required to support an application.

The importance of the purpose of the limitation (s28(2)(b))

The limitation of section 12 is important to restrict the range of individuals that are permitted to occupy affected premises, and so prevent unnecessary risk of exposure, while ensuring that vulnerable people remaining in their home are supported.

The nature and extent of the limitation (s28(2)(c))

Any personal or confidential information received as part of an approved occupant application will be handled in accordance with Territory and Commonwealth legislation, including the *Health Records (Privacy and Access) Act 1997* and the *Information Privacy Act 2014*, and used only for the purposes of assessing the application.

The relationship between the limitation and its purpose (s28(2)(d))

Requiring sensitive health information to be provided to confirm the need for a support person to occupy affected premises directly supports the purpose of preventing any person from being unnecessarily at risk of exposure to loose-fill asbestos.

Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve (s28(2)(d))

A less restrictive means available to achieve the purpose of the limitation could be broadening the range of people who may be considered approved occupants, and not limit this range only to residents and approved support persons. However, this would not achieve the purpose of the Bill.

Effect of amendments to the *Residential Tenancies Act 1997* on ongoing and new occupants

I note the Committee's request for further information on the effect of the Bill's amendments to the *Residential Tenancies Act 1997* (the RTA) on ongoing occupants and new approved occupants. I note that the Bill's provisions regarding the RTA relate only to new agreements executed on or after 1 July 2020. Any RTA agreement in relation to an affected property existing at the time of sale or transfer of the property will be subject to the provisions of the RTA and other legislation regarding the rights and obligations of tenants and homeowners.

The Bill preserves the right of an existing occupant to remain in his or her home under current arrangements. Should an owner occupier choose to sell their property, they will have the opportunity to move to new living arrangements that do not pose a risk of exposure to loose-fill asbestos. Encouraging the on-going occupation of the affected premises through a new rental arrangement frustrates the purpose of the Bill that seeks to reduce the number of people at risk of exposure to loose-fill asbestos.

The limitation of rights in the HRA, particularly the right to a home in section 12, introduced by the restriction on rental arrangements, is considered justified. The restriction on rights is limited, as the cohort of remaining affected homes and their residents is small and continues to decrease. Accordingly, it would be a rare circumstance for an approved occupant to sell his or her home and seek to execute an RTA agreement in relation to it. The limitation on rights has a direct connection to the Bill's purposes of preventing unnecessary exposure and working towards the eradication of all affected properties. A less restrictive option of allowing approved occupants to enter into new agreements under the RTA would frustrate the Bill's objectives.

I thank the Committee for its comments on the Bill and I trust this information is of assistance.

Yours sincerely

Suzanne Orr MLA
Minister for Employment and Workplace Safety