



Asbestos and Silica Safety and Eradication Agency Act 2013

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About this compilation

This compilation

This is a compilation of the *Asbestos and Silica Safety and Eradication Agency Act 2013* that shows the text of the law as amended and in force on 31 May 2024 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title.....	1
2 Commencement	1
2A Object of this Act.....	2
3 Definitions	2
4 Crown to be bound.....	3
5 Extension to external Territories.....	4
Part 1A—National Strategic Plans	5
5A Asbestos National Strategic Plan.....	5
5B Silica National Strategic Plan	5
Part 2—Asbestos and Silica Safety and Eradication Agency	7
6 Asbestos and Silica Safety and Eradication Agency	7
7 Constitution of the Agency	7
8 Functions of the Agency	7
8A Annual reports in relation to National Strategic Plans	9
9 Agency to have the privileges and immunities of the Crown.....	11
Part 3—Chief Executive Officer	12
Division 1—Functions of the CEO etc.	12
10 Chief Executive Officer	12
11 Functions of the CEO	12
12 Working with the Council.....	12
14 Minister may give directions to the CEO	13
14A CEO may obtain information.....	13
Division 2—Appointment of the CEO	15
15 Appointment	15
16 Acting appointment.....	15
Division 3—Terms and conditions of appointment	16
17 Remuneration and allowances	16
18 Leave of absence.....	16
19 Outside work.....	16
21 Other terms and conditions	16
22 Resignation	17
23 Termination of appointment	17
23A Delegation.....	18

Division 4—Committees	19
24 Committees	19
Part 4—Staff etc.	20
25 Staff.....	20
26 Consultants	20
27 Persons assisting the Agency.....	20
Part 5—Asbestos and Silica Safety and Eradication Council	21
Division 1—Functions of the Council etc.	21
28 Asbestos and Silica Safety and Eradication Council	21
29 Functions of the Council.....	21
30 Minister may give directions to the Council.....	22
30A Committees	22
Division 2—Membership of the Council	23
31 Membership	23
32 Appointment of Council members.....	23
33 Term of appointment	25
34 Acting appointment.....	25
Division 3—Terms and conditions of appointment	27
35 Remuneration and allowances	27
36 Leave of absence.....	27
37 Recording disclosures of interests	28
38 Other terms and conditions	28
39 Resignation	28
40 Termination of appointment	29
Division 4—Procedures of the Council	30
41 Meetings of the Council.....	30
41A Quorum	30
41B Voting at meetings	30
41C Minutes	31
41D Conduct of meetings	31
41E Decisions without meetings	31
Part 5A—Application of the finance law	33
41F Application of the finance law	33
Part 6—Planning	34
42 Annual operational plan.....	34

43	Approval of annual operational plan	34
44	Variation of annual operational plan	35
Part 7—Miscellaneous		36
46	Delegation.....	36
47	Review of the Agency’s role and functions.....	36
48	Rules	36
Endnotes		38
Endnote 1—About the endnotes		38
Endnote 2—Abbreviation key		40
Endnote 3—Legislation history		41
Endnote 4—Amendment history		43

An Act to establish the Asbestos and Silica Safety and Eradication Agency, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Asbestos and Silica Safety and Eradication Agency Act 2013*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 June 2013
2. Sections 3 to 48	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 July 2013 (see F2013L01226)
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

Section 2A

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

2A Object of this Act

The object of this Act is to establish the Asbestos and Silica Safety and Eradication Agency to lead coordinated and national action to eliminate asbestos-related diseases and silica-related diseases in Australia by:

- (a) fostering collaboration between:
 - (i) persons and bodies involved in the regulation, management and control of asbestos safety and silica safety; and
 - (ii) persons and bodies involved in dealing with issues related to asbestos-related diseases and silica-related diseases; and
- (b) supporting and monitoring the implementation of the National Strategic Plans by the Commonwealth and State, Territory and local governments; and
- (c) promoting national consistency in relation to asbestos safety, asbestos-related diseases, silica safety and silica-related diseases; and
- (d) improving the state of knowledge and awareness of issues relating to asbestos safety, asbestos-related diseases, silica safety and silica-related diseases.

3 Definitions

In this Act:

Agency means the Asbestos and Silica Safety and Eradication Agency referred to in section 6.

Asbestos and Silica Safety and Eradication Agency means the Agency referred to in section 6.

Asbestos and Silica Safety and Eradication Council means the Council referred to in section 28.

Asbestos National Strategic Plan has the meaning given by section 5A.

asbestos safety includes, but is not limited to, matters relating to asbestos awareness, education and information sharing, and the identification, management, removal, transportation, storage or disposal of asbestos in Australia or internationally.

CEO means the Chief Executive Officer of the Agency.

Chair means the Chair of the Council.

Council means the Asbestos and Silica Safety and Eradication Council.

Council member means a member of the Council (and includes the Chair).

National Strategic Plans means the Asbestos National Strategic Plan and the Silica National Strategic Plan.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

rules means the rules made by the Minister under section 48.

Silica National Strategic Plan has the meaning given by section 5B.

silica safety includes, but is not limited to, matters relating to awareness, education and information sharing in relation to respirable crystalline silica and products that contain silica.

4 Crown to be bound

This Act binds the Crown in each of its capacities.

Part 1 Preliminary

Section 5

5 Extension to external Territories

This Act extends to every external Territory.

Part 1A—National Strategic Plans

5A Asbestos National Strategic Plan

- (1) The *Asbestos National Strategic Plan* is the plan with that name that:
- (a) aims:
 - (i) to eliminate asbestos-related diseases in Australia by preventing exposure to asbestos fibres; and
 - (ii) to support workers and others who are affected by asbestos-related diseases; and
 - (b) represents a commitment to implement an agreed set of strategic actions and national targets focussing on:
 - (i) identifying asbestos and preventing exposure risks, including through prioritised safe removal and effective waste management; and
 - (ii) improving awareness of asbestos safety and asbestos-related diseases; and
 - (iii) improving research and national data in relation to asbestos safety and asbestos-related diseases; and
 - (iv) facilitating international collaboration in relation to asbestos safety and asbestos-related diseases; and
 - (v) any other relevant priorities.

Note: The *Asbestos National Strategic Plan* is available on the Agency's website.

- (2) The plan referred to in subsection (1) represents a commitment to implement an agreed set of strategic actions and national targets focussing on the priorities referred to in subparagraphs (1)(b)(i) to (v) only if the plan has been agreed to by at least 6 of the governments of the Commonwealth and each State and Territory.

5B Silica National Strategic Plan

- (1) The *Silica National Strategic Plan* is the plan with that name that:
-

Section 5B

- (a) aims:
 - (i) to eliminate silica-related diseases in Australia by preventing exposure to respirable crystalline silica; and
 - (ii) to support workers and others who are affected by silica-related diseases; and
 - (b) represents a commitment to implement an agreed set of strategic actions and national targets focussing on:
 - (i) eliminating or minimising exposure to respirable crystalline silica in workplaces; and
 - (ii) improving awareness of silica safety and silica-related diseases; and
 - (iii) improving research and national data in relation to silica safety and silica-related diseases; and
 - (iv) facilitating international collaboration in relation to silica safety and silica-related diseases; and
 - (v) any other relevant priorities.
- (2) The plan referred to in subsection (1) represents a commitment to implement an agreed set of strategic actions and national targets focussing on the priorities referred to in subparagraphs (1)(b)(i) to (v) only if the plan has been agreed to by at least 6 of the governments of the Commonwealth and each State and Territory.

Part 2—Asbestos and Silica Safety and Eradication Agency

6 Asbestos and Silica Safety and Eradication Agency

The body known immediately before the commencement of this section as the Asbestos Safety and Eradication Agency is continued in existence with the new name, Asbestos and Silica Safety and Eradication Agency.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

7 Constitution of the Agency

The Agency consists of:

- (a) the CEO; and
- (b) the staff of the Agency.

Note: The Agency does not have a legal identity separate from the Commonwealth.

8 Functions of the Agency

- (1) The Agency has the following functions:
 - (a) to encourage, coordinate, monitor and report on the implementation of the National Strategic Plans;
 - (b) to review, amend or replace, publish and promote the National Strategic Plans;
 - (c) to provide advice to the Minister about asbestos safety, asbestos-related diseases, silica safety and silica-related diseases;
 - (d) to collaborate with Commonwealth, State, Territory, local and other governments, agencies or bodies (including international governments, agencies and bodies) about:
 - (i) the development, implementation, review and amendment of the National Strategic Plans; and

Section 8

- (ii) asbestos safety, asbestos-related diseases, silica safety and silica-related diseases;
 - (e) to conduct, commission, monitor and promote research about asbestos safety, asbestos-related diseases, silica safety and silica-related diseases;
 - (f) to raise awareness of asbestos safety, asbestos-related diseases, silica safety and silica-related diseases, including by developing and promoting materials on asbestos safety, asbestos-related diseases, silica safety and silica-related diseases;
 - (g) to collect and analyse data required for measuring progress on preventing exposure to asbestos fibres, or respirable crystalline silica, and for informing evidence-based policies and strategies;
 - (h) to promote consistent messages, policies and practices in relation to asbestos safety, asbestos-related diseases, silica safety and silica-related diseases;
 - (i) such other functions as are conferred on the Agency by or under this Act, the rules or any other law of the Commonwealth;
 - (j) to do anything incidental or conducive to the performance of any of the above functions.
- (2) The Agency has the power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.
- (3) In performing its functions, the Agency must act in accordance with the National Strategic Plans and any annual operational plan.

Constitutional limits

- (4) The Agency may perform its functions only:
- (a) for purposes relating to the collection of statistics; or
 - (b) for purposes relating to a corporation to which paragraph 51(xx) of the Constitution applies; or
 - (c) for purposes relating to trade and commerce:

- (i) between Australia and places outside Australia; or
- (ii) among the States; or
- (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (d) for purposes relating to a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (e) for purposes relating to a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; for a purpose of the Commonwealth; or
- (f) in, or for purposes relating to, a Territory; or
- (g) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (h) for purposes relating to external affairs, including:
 - (i) giving effect to an international agreement to which Australia is a party; or
 - (ii) addressing matters of international concern; or
- (i) for purposes relating to the defence of Australia; or
- (j) for purposes relating to the implied power of the Parliament to make laws with respect to nationhood; or
- (k) for purposes relating to the executive power of the Commonwealth; or
- (l) for purposes relating to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

8A Annual reports in relation to National Strategic Plans

Annual report in relation to Asbestos National Strategic Plan

- (1) The Agency must, before the end of 31 December in each financial year, prepare a written report relating to the progress made by the Commonwealth and State and Territory governments in implementing the Asbestos National Strategic Plan during the

Section 8A

previous financial year. The report may also include information relating to any other matter the Agency considers relevant.

- (2) As soon as practicable after the Agency has prepared a report under subsection (1), the Agency must give a copy of the report to the following:
- (a) the Minister who administers this Act;
 - (b) the Minister who administers the *National Health Act 1953*;
 - (c) the Minister who administers the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (d) each State or Territory Minister who is responsible, or principally responsible, for matters relating to work health and safety in the State or Territory;
 - (e) each State or Territory Minister who is responsible, or principally responsible, for matters relating to health in the State or Territory;
 - (f) each State or Territory Minister who is responsible, or principally responsible, for matters relating to the protection of the environment in the State or Territory.

Annual report in relation to Silica National Strategic Plan

- (3) The Agency must, before the end of 31 December in each financial year, prepare a written report relating to the progress made by the Commonwealth and State and Territory governments in implementing the Silica National Strategic Plan during the previous financial year. The report may also include information relating to any other matter the Agency considers relevant.
- (4) As soon as practicable after the Agency has prepared a report under subsection (3), the Agency must give a copy of the report to the following:
- (a) the Minister who administers this Act;
 - (b) the Minister who administers the *National Health Act 1953*;
 - (c) each State or Territory Minister who is responsible, or principally responsible, for matters relating to work health and safety in the State or Territory;

- (d) each State or Territory Minister who is responsible, or principally responsible, for matters relating to health in the State or Territory.

Annual reports must be publicly available

- (5) The Agency must make each report prepared under subsection (1) or (3) publicly available.

Example: A report may be published on the Agency's website.

9 Agency to have the privileges and immunities of the Crown

The Agency has the privileges and immunities of the Crown in right of the Commonwealth.

Part 3—Chief Executive Officer

Division 1—Functions of the CEO etc.

10 Chief Executive Officer

There is to be a Chief Executive Officer of the Agency.

11 Functions of the CEO

- (1) The functions of the CEO are:
 - (a) to manage the affairs of the Agency; and
 - (b) to ensure the Agency performs its functions.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

12 Working with the Council

- (1) If the Council provides advice or makes recommendations to the CEO under section 29, the CEO must have regard to that advice or those recommendations in performing the CEO's functions.
- (1A) The CEO must comply with any guidelines issued by the Council under section 29.
- (1B) Subsection (1A) does not apply to the extent that:
 - (a) compliance with the guidelines would be inconsistent with the CEO's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to the Agency; or
 - (b) the guidelines relate to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the Agency.
- (2) The CEO may attend Council meetings.

14 Minister may give directions to the CEO

- (1) The Minister may, by legislative instrument, give written directions to the CEO about the performance of the Agency's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The CEO must comply with a direction given under subsection (1).
- (3) Subsection (2) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to the Agency.

14A CEO may obtain information

- (1) This section applies to a person if:
- (a) the CEO believes on reasonable grounds that the person has information that is relevant to the performance of any of the functions of the Agency referred to in paragraphs 8(1)(a), (b) and (g); and
 - (b) the CEO is satisfied that the information:
 - (i) is necessary for the performance of that function; and
 - (ii) is not otherwise available to the CEO.
- (2) The CEO may, by written notice given to the person, request the person to give to the CEO, within the period and in the manner and form specified in the notice, any such information.
- (3) A period specified under subsection (2) must not be shorter than 14 days after the notice is given.
- (4) A manner specified in a notice under subsection (2) must involve the use of a service to which paragraph 51(v) of the Constitution applies.
- (5) A person may comply with a request under subsection (2).
- (6) Subsection (5) has effect despite anything in:

Part 3 Chief Executive Officer
Division 1 Functions of the CEO etc.

Section 14A

- (a) a law of the Commonwealth (other than this Act); or
- (b) a law of a State or Territory.

Division 2—Appointment of the CEO

15 Appointment

- (1) The CEO is to be appointed by the Minister by written instrument, on a full-time basis.
- (2) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

16 Acting appointment

The Minister may, by written instrument, appoint a person to act as CEO:

- (a) during a vacancy in the office of CEO, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any other reason, unable to perform the duties of the office.

Note: See sections 33AB and 33A of the *Acts Interpretation Act 1901* for rules that apply to acting appointments.

Division 3—Terms and conditions of appointment

17 Remuneration and allowances

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the rules.
- (2) The CEO is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

18 Leave of absence

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant to the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

19 Outside work

The CEO must not engage in paid work outside the duties of his or her office without the Minister's approval.

21 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

22 Resignation

- (1) The CEO may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

23 Termination of appointment

The Minister may terminate the appointment of the CEO:

- (a) for misbehaviour; or
- (b) if the CEO is unable to perform the duties of his or her office because of physical or mental incapacity; or
- (c) if the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (d) if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (e) if the CEO engages, except with the Minister's approval, in paid work outside the duties of his or her office (see section 19); or
- (f) if the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or
- (g) if the Minister is satisfied that the CEO's performance has been unsatisfactory.

Part 3 Chief Executive Officer

Division 3 Terms and conditions of appointment

Section 23A

23A Delegation

- (1) The CEO may, in writing, delegate all or any of the CEO's functions or powers under this Act (other than section 14A which confers power on the CEO to obtain information in certain circumstances) to a person who is a member of the staff of the Agency.
- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the CEO.

Division 4—Committees

24 Committees

- (1) The CEO may, by writing, establish committees to assist:
 - (a) the CEO in the performance of his or her functions; or
 - (b) the Council in the performance of its functions.
- (2) A committee is to consist of such persons as the CEO determines.
- (3) If the CEO establishes a committee under subsection (1), the CEO must, in writing, determine:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.
- (4) An instrument made under subsection (1) or (3) is not a legislative instrument.

Part 4—Staff etc.

25 Staff

- (1) The staff of the Agency must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of that Act:
 - (a) the CEO and the staff of the Agency together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

26 Consultants

- (1) The CEO may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Agency's functions.
- (2) The consultants are to be engaged on the terms and conditions that the CEO determines in writing.

27 Persons assisting the Agency

The Agency may be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
 - (b) by officers or employees of a State or Territory; or
 - (c) by officers or employees of authorities of the Commonwealth, a State or a Territory;
- whose services are made available to the Agency in connection with the performance of the Agency's functions.

Part 5—Asbestos and Silica Safety and Eradication Council

Division 1—Functions of the Council etc.

28 Asbestos and Silica Safety and Eradication Council

The body known immediately before the commencement of this section as the Asbestos Safety and Eradication Council is continued in existence with the new name, Asbestos and Silica Safety and Eradication Council.

Note: See also section 25B of the *Acts Interpretation Act 1901*.

29 Functions of the Council

- (1) The Council's functions are:
 - (a) to provide advice, and make recommendations, to the CEO about the performance of the Agency's functions, on its own initiative or at the request of the CEO; and
 - (b) to provide advice to the Minister about asbestos safety, asbestos-related diseases, silica safety and silica-related diseases; and
 - (c) to monitor the implementation of the National Strategic Plans by Commonwealth, State, Territory and local governments; and
 - (d) to provide advice, and make recommendations, about the National Strategic Plans and annual operational plans.
- (2) The Council may issue written guidelines to the CEO about the performance of the Agency's functions.
- (2A) The Council must not issue guidelines that are inconsistent with any directions given under section 14 (Minister's directions to CEO).

Section 30

- (2B) Any guidelines that are inconsistent with a direction of the kind referred to in subsection (2A) have no effect to the extent of the inconsistency.
- (3) The Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (5) Guidelines issued under subsection (2) are not a legislative instrument.

30 Minister may give directions to the Council

- (1) The Minister may, by legislative instrument, give written directions to the Council about the performance of the Council's functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The Council must comply with a direction given under subsection (1).

30A Committees

- (1) The Council may, by writing, establish committees to assist the Council in the performance of its functions.
- (2) A committee is to consist of such persons as the Council determines.
- (3) If the Council establishes a committee under subsection (1), the Council must, in writing, determine:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.
- (4) An instrument made under subsection (1) or (3) is not a legislative instrument.

Division 2—Membership of the Council

31 Membership

The Council is to consist of:

- (a) the Chair; and
- (b) one member representing the Commonwealth; and
- (c) 4 members representing State, Territory and local governments; and
- (d) 2 members representing the interests of workers in Australia; and
- (e) 2 members representing the interests of employers in Australia; and
- (ea) 1 member who has expertise relevant to asbestos safety, asbestos-related diseases, silica safety or silica-related diseases; and
- (f) 2 other members.

32 Appointment of Council members

- (1) The Council members are to be appointed by the Minister by written instrument, on a part-time basis.
- (2) The instrument of appointment of a Council member must specify whether the member is appointed as:
 - (a) the Chair; or
 - (b) the member representing the Commonwealth; or
 - (c) a member representing State, Territory and local governments; or
 - (ca) the member representing the interests of workers in Australia; or
 - (cb) the member representing the interests of employers in Australia; or
 - (d) one of the other members.

Section 32

- (3) A person is eligible for appointment as a Council member under paragraph 31(a), (d), (e) or (f) only if the Minister is satisfied that:
- (a) the person has knowledge or experience in one or more of the following:
 - (i) asbestos safety;
 - (ii) public health issues relating to asbestos;
 - (iii) asbestos-related diseases;
 - (iv) the representation of, or the provision of support to, persons with asbestos-related diseases and their families;
 - (v) silica safety;
 - (vi) silica-related diseases;
 - (vii) the representation of, or the provision of support to, persons with silica-related diseases and their families;
 - (viii) financial management;
 - (ix) corporate governance; or
 - (b) the person:
 - (i) has, or has had, an asbestos-related disease; or
 - (ii) has lived experience as a family member, carer or advocate in providing support to a person who has, or has had, an asbestos-related disease; or
 - (iii) has, or has had, a silica-related disease; or
 - (iv) has lived experience as a family member, carer or advocate in providing support to a person who has, or has had, a silica-related disease.
- (4) A person is eligible for appointment as a Council member under paragraph 31(d) only if:
- (a) the person has been nominated for the appointment by an authorised worker body; and
 - (b) the Minister agrees to the person being appointed.
- (5) If an authorised worker body nominates a person but the Minister does not agree to the person being appointed, an authorised worker body (which may be the same or a different body) may nominate another person for the appointment.

- (6) The Minister may authorise a body for the purposes of subsections (4) and (5) if the Minister considers that the body represents the interests of workers in Australia. If the Minister does so, the body is an *authorised worker body*.
- (7) A person is eligible for appointment as a Council member under paragraph 31(e) only if:
 - (a) the person has been nominated for the appointment by an authorised employer body; and
 - (b) the Minister agrees to the person being appointed.
- (8) If an authorised employer body nominates a person but the Minister does not agree to the person being appointed, an authorised employer body (which may be the same or a different body) may nominate another person for the appointment.
- (9) The Minister may authorise a body for the purposes of subsections (7) and (8) if the Minister considers that the body represents the interests of employers in Australia. If the Minister does so, the body is an *authorised employer body*.

33 Term of appointment

A Council member holds office for the period specified in the instrument of appointment. The period must not be more than 3 years.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.

34 Acting appointment

Appointment to act as Chair

- (1) The Minister may, by written instrument, appoint a Council member to act as the Chair:
 - (a) during a vacancy in the office of Chair, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the Chair:

Section 34

- (i) is absent from duty or from Australia; or
- (ii) is, for any other reason, unable to perform the duties of the office.

Appointment to act as member other than Chair

- (2) The Minister may, by written instrument, appoint a person to act as a Council member (other than the Chair):
 - (a) during a vacancy in the office of a Council member (other than the Chair), whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when a Council member (other than the Chair):
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any other reason, unable to perform the duties of the office.

Note: See sections 33AB and 33A of the *Acts Interpretation Act 1901* for rules that apply to acting appointments.

- (3) If:
 - (a) paragraph (2)(a) applies; and
 - (b) the vacancy is in the office of a Council member referred to in paragraph 31(d), (e) or (f);a person is not eligible for appointment to act as that member unless the person is eligible for appointment as that member (see subsection 32(3)).
- (4) If:
 - (a) paragraph (2)(b) applies; and
 - (b) the Council member referred to in that paragraph was appointed under paragraph 31(d), (e) or (f);a person is not eligible for appointment to act as that member unless the person is eligible for appointment as that member (see subsection 32(3)).

Division 3—Terms and conditions of appointment

35 Remuneration and allowances

- (1) A Council member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.
- (2) However, a Council member is not entitled to be paid remuneration if he or she holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
 - (a) a State; or
 - (b) a corporation (a *public statutory corporation*) that:
 - (i) is established for a public purpose by a law of a State; and
 - (ii) is not a tertiary education institution; or
 - (c) a company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
 - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.

Note: A similar rule applies to a member who has a similar relationship with the Commonwealth or a Territory. See subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (3) A Council member is to be paid the allowances that are prescribed by the rules.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

36 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.

Section 37

- (2) The Chair may grant leave of absence to another Council member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants another Council member leave of absence for a period that exceeds 3 months.

37 Recording disclosures of interests

- (1) A disclosure by a Council member under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) to each other member of the Council must be recorded:
 - (a) in any advice provided, or recommendations made, to the CEO by the Council; and
 - (b) in any guidelines issued to the CEO by the Council.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the member is taken not to have complied with section 29 of that Act if the disclosure is not recorded as required by subsection (1) of this section.

38 Other terms and conditions

A Council member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

39 Resignation

- (1) A Council member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

40 Termination of appointment

The Minister may terminate the appointment of a Council member:

- (a) for misbehaviour; or
- (b) if the member is incapable of performing the duties of his or her office; or
- (c) if the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (d) if the member is absent, except on leave of absence, from 3 consecutive meetings of the Council; or
- (e) if the member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

Division 4—Procedures of the Council

41 Meetings of the Council

- (1) The Chair must hold such meetings as are necessary for the efficient performance of the Council's functions.
- (2) The Chair must preside at all meetings at which he or she is present.
- (3) If the Chair is not present at a meeting, the other Council members must appoint one of themselves to preside.

41A Quorum

- (1) At a meeting of the Council, a quorum is constituted by:
 - (a) 2 members appointed under paragraph 31(c) (members representing State, Territory and local governments); and
 - (b) any 6 other Council members.
- (2) However, if:
 - (a) a member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations or to take part in any decision of the Council with respect to a particular matter; and
 - (b) when the member leaves the meeting concerned, there is no longer a quorum present;the remaining Council members at the meeting constitute a quorum for the purposes of any deliberation or decision at that meeting with respect to that matter.

41B Voting at meetings

- (1) A question arising at a meeting of the Council is to be determined by a majority of the votes of the Council members present and voting.

- (2) The person presiding at a meeting has:
 - (a) a deliberative vote; and
 - (b) if necessary, also a casting vote.

41C Minutes

The Council must keep minutes of its meetings.

41D Conduct of meetings

The Council may regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Council members may participate in meetings.

41E Decisions without meetings

- (1) The Council is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the Council members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Council under subsection (2); and
 - (c) all the Council members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Council:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which Council members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Council member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Council.

Part 5 Asbestos and Silica Safety and Eradication Council

Division 4 Procedures of the Council

Section 41E

- (4) The Council must keep a record of decisions made in accordance with this section.

Part 5A—Application of the finance law

41F Application of the finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following combination of bodies is a listed entity:
 - (i) the Agency;
 - (ii) the Council; and
- (b) the listed entity is to be known as the Asbestos and Silica Safety and Eradication Agency; and
- (c) the CEO is the accountable authority of the listed entity; and
- (d) the following persons are officials of the listed entity:
 - (i) the CEO;
 - (ii) the members of a committee established under section 24;
 - (iii) the staff of the Agency;
 - (iv) consultants engaged under section 26;
 - (v) persons whose services are made available to the Agency under section 27;
 - (vi) the Council members;
 - (vii) the members of a committee established under section 30A; and
- (e) the purposes of the listed entity include:
 - (i) the functions of the Agency referred to in section 8; and
 - (ii) the functions of the CEO referred to in section 11; and
 - (iii) the functions of the Council referred to in section 29.

Part 6—Planning

42 Annual operational plan

- (1) The CEO must, before the start of the 12-month period that starts on 1 July in a year, give the Minister for approval an annual operational plan relating to that period.

Content etc.

- (2) The annual operational plan must set out:
 - (a) the activities to be undertaken by the Agency during the 12-month period in the performance of the Agency's functions; and
 - (b) performance indicators for the assessment of the Agency's performance of its functions during that period.
- (3) The annual operational plan must not be inconsistent with either of the National Strategic Plans.
- (4) The annual operational plan is taken to be a corporate plan for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

43 Approval of annual operational plan

- (1) The Minister may, by written notice given to the CEO:
 - (a) approve an annual operational plan given to the Minister under section 42; or
 - (b) request the CEO to amend an annual operational plan given to the Minister under section 42 and to resubmit it for approval.
- (2) An annual operational plan comes into force on the later of the following days:
 - (a) the day it is approved by the Minister;

(b) the first day of the period to which it relates.

44 Variation of annual operational plan

- (1) The CEO may, on his or her own initiative or at the request of the Minister, vary an annual operational plan and give the variation to the Minister for approval.
- (2) The Minister may, by written notice given to the CEO, approve the variation of the annual operational plan.
- (5) The variation of the annual operational plan takes effect on the day it is approved by the Minister.

Part 7—Miscellaneous

46 Delegation

- (1) The Agency may, in writing, delegate all or any of its functions or powers under this Act to:
 - (a) the CEO; or
 - (b) an SES employee, or acting SES employee, who is a member of the staff of the Agency.

Note: *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the Agency.

47 Review of the Agency's role and functions

- (1) The Minister must cause a review of the Asbestos and Silica Safety and Eradication Agency's ongoing role and functions to be conducted.
- (2) The review must:
 - (a) start 5 years after the commencement of this section; and
 - (b) be completed within 6 months.
- (3) The Minister must cause a written report about the review to be prepared.
- (4) The Minister must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the completion of the report.

48 Rules

The Minister may, by legislative instrument, make rules prescribing matters:

Section 48

- (a) required or permitted by this Act to be prescribed by the rules; or
- (b) necessary or convenient to be prescribed in order to carry out or give effect to this Act.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Asbestos Safety and Eradication Agency Act 2013	58, 2013	21 June 2013	s 3–48: 1 July 2013 (s 2(1) item 2) Remainder: 21 June 2013 (s 2(1) item 1)	
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 4), Sch 7 (items 128–144) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 32): 5 Mar 2016 (s 2(1) item 2)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fair Work Legislation Amendment (Closing Loopholes) Act 2023	120, 2023	14 Dec 2023	Sch 2: 15 Dec 2023 (s 2(1) item 25)	Sch 2 (items 55–62)
Financial Framework (Supplementary Powers) Amendment Act 2024	27, 2024	30 May 2024	Sch 1 (item 5): 31 May 2024 (s 2(1) item 2)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title.....	am No 120, 2023
Part 1	
s 1.....	am No 120, 2023
s 2A.....	rs No 120, 2023
s 3.....	am No 120, 2023
Part 1A	
Part 1A.....	rs No 120, 2023
s 5A.....	am No 62, 2014 rs No 120, 2023
s 5B.....	ad No 120, 2023
Part 2	
Part 2 heading.....	rs No 120, 2023
s 6.....	rs No 120, 2023
s 8.....	am No 120, 2023; No 27, 2024
s 8A.....	ad No 120, 2023
Part 3	
Division 1	
s 12.....	am No 62, 2014; No 120, 2023
s 13.....	rep No 62, 2014
s 14.....	am No 126, 2015
s 14A.....	ad No 120, 2023
Division 3	
s 20.....	rep No 62, 2014
s 23.....	am No 62, 2014
s 23A.....	am No 120, 2023
Division 4	
s 24.....	am No 120, 2023

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Part 5	
Part 5 heading	rs No 120, 2023
Division 1	
Division 1 heading.....	am No 120, 2023
s 28.....	rs No 120, 2023
s 29.....	am No 120, 2023
s 30.....	am No 126, 2015; No 120, 2023
s 30A.....	am No 120, 2023
Division 2	
Division 2 heading.....	am No 120, 2023
s 31.....	am No 120, 2023
s 32.....	am No 120, 2023
Division 3	
s 37.....	rs No 62, 2014
s 40.....	am No 62, 2014; No 120, 2023
Division 4	
Division 4 heading.....	am No 120, 2023
s 41.....	am No 120, 2023
s 41A.....	am No 62, 2014; No 120, 2023
s 41B.....	am No 120, 2023
s 41C.....	am No 120, 2023
s 41D.....	am No 120, 2023
s 41E.....	am No 120, 2023
Part 5A	
Part 5A.....	ad No 62, 2014
s 41F.....	ad No 62, 2014 am No 120, 2023
Part 6	
Part 6 heading.....	rs No 62, 2014
Division 1 heading.....	rep No 62, 2014
s 42.....	am No 62, 2014; No 120, 2023

Endnote 4—Amendment history

Provision affected	How affected
s 43.....	am No 62, 2014
s 44.....	am No 62, 2014
Division 2	rep No 62, 2014
s 45.....	rep No 62, 2014
Part 7	
s 47.....	rs No 120, 2023