



Asbestos Safety and Eradication Agency Act 2013

No. 58, 2013

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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

[Assented to 21 June 2013]

The Parliament of Australia enacts:

Asbestos Safety and Eradication Agency Act 2013 No. 58, 2013 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Asbestos 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Note: This table relates only to the provisions of this Act as originally enacted.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.

- (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 Safety and Eradication Agency to administer the National Strategic Plan, which aims to prevent exposure to asbestos fibres in order to eliminate asbestos-related disease in Australia.

3 Definitions

In this Act:

Agency means the Asbestos Safety and Eradication Agency established by section 6.

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.

Asbestos Safety and Eradication Council means the Council established by section 28.

CEO means the Chief Executive Officer of the Agency.

Chair means the Chair of the Asbestos Safety and Eradication Council.

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

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

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.

4 Crown to be bound

This Act binds the Crown in each of its capacities.

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5 Extension to external Territories

This Act extends to every external Territory.

Part 1A—National Strategic Plan

5A National Strategic Plan

The *National Strategic Plan* means the plan that:

- (a) is known as the National Strategic Plan for Asbestos Management and Awareness; and
- (b) aims to prevent exposure to asbestos fibres in order to eliminate asbestos-related disease in Australia; and
- (c) addresses the following priority areas:
 - (i) the systematic identification of material containing asbestos in the built environment and of asbestos dump sites;
 - (ii) systems, timelines and processes for the prioritised safe removal of material containing asbestos from public and commercial buildings and the safe disposal of such material;
 - (iii) measures to assist the residential sector to minimise the risks of asbestos, including raising awareness, education and mechanisms for identifying and classifying risks associated with asbestos;
 - (iv) improving education and information about asbestos;
 - (v) improving asbestos safety;
 - (vi) improving the sharing of information about asbestos and asbestos safety; and
- (d) deals with any other relevant matters.

Part 2—Asbestos Safety and Eradication Agency

6 Establishment

The Asbestos Safety and Eradication Agency is established by this section.

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 Plan;
 - (b) to review and amend the National Strategic Plan as required by the National Strategic Plan or at the request of the Minister;
 - (c) to publish and promote the National Strategic Plan;
 - (d) to provide advice to the Minister about asbestos safety, if requested to do so by the Minister;
 - (e) to liaise with Commonwealth, State, Territory, local and other governments, agencies or bodies about:
 - (i) the implementation, review or amendment of the National Strategic Plan; or
 - (ii) asbestos safety;
 - (f) to commission, monitor and promote research about asbestos safety;
 - (g) such other functions as are conferred on the Agency by or under this Act, the rules or any other law of the Commonwealth;

- (h) 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 Plan 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; orfor 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

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- (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.

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 Asbestos Safety and Eradication Council

- (1) If the Asbestos Safety and Eradication 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 Asbestos Safety and Eradication 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 *Financial Management and Accountability Act 1997* 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 Asbestos Safety and Eradication Council meetings.

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13 Keeping the Minister informed etc.

- (1) The CEO must keep the Minister informed of the operations of the Agency that relate to the performance of the Agency's functions.
- (2) The CEO must give the Minister such reports, documents and information in relation to those operations as the Minister requires.

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 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the directions (see sections 44 and 54 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.

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.

20 Disclosure of interests

The CEO must give written notice to the Minister of all interests, pecuniary or otherwise, that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's functions.

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 20 (which deals with the disclosure of interests); 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 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 Asbestos Safety and Eradication 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 Safety and Eradication Council

Division 1—Functions of the Asbestos Safety and Eradication Council etc.

28 Establishment

The Asbestos Safety and Eradication Council is established by this section.

29 Functions of the Asbestos Safety and Eradication Council

- (1) The Asbestos Safety and Eradication 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; and
 - (c) to monitor the implementation of the National Strategic Plan by Commonwealth, State, Territory and local governments; and
 - (d) to provide advice, and make recommendations, about the National Strategic Plan and annual operational plans.
- (2) The Asbestos Safety and Eradication Council may issue written guidelines to the CEO about the performance of the Agency's functions.
- (2A) The Asbestos Safety and Eradication Council must not issue guidelines that are inconsistent with any directions given under section 14 (Minister's directions to CEO).
- (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 Asbestos Safety and Eradication Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Part 5 Asbestos Safety and Eradication Council

Division 1 Functions of the Asbestos Safety and Eradication Council etc.

Section 30

- (5) Guidelines issued under subsection (2) are not a legislative instrument.

30 Minister may give directions to the Asbestos Safety and Eradication Council

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

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the directions (see sections 44 and 54 of that Act).

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

30A Committees

- (1) The Asbestos Safety and Eradication 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 Asbestos Safety and Eradication Council determines.
- (3) If the Asbestos Safety and Eradication 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 Asbestos Safety and Eradication Council

31 Membership

The Asbestos Safety and Eradication 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) 1 member representing the interests of workers in Australia; and
- (e) 1 member representing the interests of employers in Australia; 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.
- (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 the person has knowledge or experience in one or more of the following:

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- (a) asbestos safety;
 - (b) public health issues relating to asbestos;
 - (c) asbestos-related diseases;
 - (d) the representation of, or the provision of support to, persons with asbestos-related diseases and their families;
 - (e) financial management;
 - (f) corporate governance.
- (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:
 - (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

Part 5 Asbestos Safety and Eradication Council

Division 2 Membership of the Asbestos Safety and Eradication Council

Section 34

- (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.
- (2) The Chair may grant leave of absence to another Council member on the terms and conditions that the Chair determines.

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- (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 Disclosure of interests to the Asbestos Safety and Eradication Council

- (1) A Council member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Asbestos Safety and Eradication Council must disclose the nature of the interest to a meeting of the Council.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Council member's knowledge.
- (3) The disclosure must be recorded:
 - (a) in the minutes of the meeting of the Asbestos Safety and Eradication Council; and
 - (b) in any advice provided, or recommendations made, to the CEO by the Council; and
 - (c) in any guidelines issued to the CEO by the Council.
- (4) The Council member:
 - (a) must not be present during any deliberation by the Council on the matter; and
 - (b) must not take part in any decision of the Council with respect to the matter.

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 Asbestos Safety and Eradication Council; or
- (e) if the member fails, without reasonable excuse, to comply with section 37 (which deals with the disclosure of interests).

Division 4—Procedures of the Asbestos Safety and Eradication Council

41 Meetings of the Asbestos Safety and Eradication Council

- (1) The Chair must hold such meetings as are necessary for the efficient performance of the Asbestos Safety and Eradication 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 Asbestos Safety and Eradication Council, a quorum is constituted by:
 - (a) 2 members appointed under paragraph 31(c) (members representing State, Territory and local governments); and
 - (b) any 4 other Council members.
- (2) However, if:
 - (a) a member is required by section 37 not to be present during the deliberations or to take part in any decision of the Asbestos Safety and Eradication 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 Asbestos Safety and Eradication 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 Asbestos Safety and Eradication Council must keep minutes of its meetings.

41D Conduct of meetings

The Asbestos Safety and Eradication 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 Asbestos Safety and Eradication 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 Asbestos Safety and Eradication 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

Part 5 Asbestos Safety and Eradication Council

Division 4 Procedures of the Asbestos Safety and Eradication Council

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have been entitled to vote on that proposal if the matter had been considered at a meeting of the Council.

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

Part 6—Planning and reporting

Division 1—Annual operational plan

42 Annual operational plan

- (1) The Agency 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 the National Strategic Plan.

First annual operational plan

- (4) If this section commences on or after 1 July in a year:
 - (a) the Agency must give the first annual operational plan under subsection (1) as soon as practicable after the commencement of this section; and
 - (b) that plan must relate to the period that starts on that commencement and ends at the end of the next 30 June.

43 Approval of annual operational plan

- (1) The Minister may, by written notice given to the Agency:
 - (a) approve an annual operational plan given to the Minister under section 42; or

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- (b) request the Agency 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 Agency may, on its 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 Agency, 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.

Division 2—Annual report

45 Annual report

- (1) The Agency must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the Agency's operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) If this section does not commence at the start of a financial year, the first report under subsection (1) must relate to the period that starts on the commencement of this section and ends at the end of the next 30 June.

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 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:

- (a) required or permitted by this Act to be prescribed by the rules; or

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- (b) necessary or convenient to be prescribed in order to carry out or give effect to this Act.
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*[Minister's second reading speech made in—
House of Representatives on 20 March 2013
Senate on 17 June 2013]*

(78/13)
