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Subject: Asbestos Legislation: Affects all your pre-1992 buildings...

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***All Pre 1992 Buildings to Have an Asbestos Register**

- Why is it required and what should it contain?

National Asbestos legislation came into force more than 18 months ago and moved the goal posts on Asbestos compliance forever. Many believe the next round of legislative changes will require the removal of all Asbestos material and products from all buildings. For now both Asbestos materials and products need to be on an Asbestos register available on site for all trades people to inspect.

Recent research has shown that 50% of New South Wales buildings which contain asbestos and were approved for construction before 1990 are currently without an on site Asbestos Containing Materials (ACM) register - leaving individual managers and Owners Corporations at risk of a \$27,000 fine and open to future litigation.

Australia had used more asbestos per person than any other nation in the world - with one in three dwellings and buildings built before 1982 containing asbestos. Buildings that haven't identified ACM on their common property could be at a serious risk of exposure of the deadly fibre to individuals on their common property.

The New South Wales Occupational Health and Safety Regulation 2001 states in Part 8.7, 259 (1) "An employer must ensure that asbestos work is carried out, in a manner appropriate to that work, in accordance with the following documents published by the NOHS Commission, as in force from time to time: (a) Code of Practice for the Management and Control of Asbestos in the Workplace [NOHSC: 2018 (2005)] , (b) Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)] ."

The National Occupational Health and Safety Commission (NOHSC) Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)] advises all managers of residential, commercial and industrial buildings that operate as a workplace to hold an asbestos register on site that shows the date(s) on which the inspection/identification was made, details of the location of the ACM, a risk assessment and control measures identified to handle the ACM.

Which buildings does the requirement apply to?

*The requirement under the Code of Practice applies to all buildings that contain ACM. It is widely recommended that any buildings built under an approval given by a local government before 1990 (which includes many buildings built in 1991 and 1992) are inspected to assess if there is any ACM on site.

Owners of buildings must comply

According to the NOHSC Code of Practice and the New South Wales Occupational Health and Safety Regulation, a person with control of premises used as a workplace must ensure that all Asbestos and Asbestos Containing Material in their workplaces are identified. As a workplace means "any place where a person works", whether or not for reward or recognition, the common property of strata title buildings is generally classified as a workplace.

Strata Managers are caught under the definition of a 'person with control' and therefore need to ensure their obligations are met

Under the NOHSC Code of Practice, a person with control is defined as 'a person who has control of the premises used as a workplace' or 'a person who is able to make decisions about work undertaken at the premises'. If Managers do not meet their Asbestos management obligations it may expose both the Manager and the Owners Corporation to potential liability.

Do the internal areas of residential units have to be inspected for Asbestos?

No. This is the owner's responsibility and the internal areas of residential dwellings are not required to be on the common property's Asbestos Register.

What are the legal risks?

There are two major concerns from an Owners Corporation's point of view. The first is that there are heavy fines for not complying with the requirements for asbestos management. Under the Occupational Health and Safety Regulation 2001, not complying with the Regulation could cost you \$27,000.

The second risk is the exposure to civil litigation and large claims from people who have contracted asbestosis, mesothelioma or another life threatening illness as a result of residing in or visiting a building with an asbestos problem which has not been properly managed. A claim of this nature could result in an award of damages in the hundreds of thousands if not millions of dollars. Given that the large majority of insurance companies now exclude claims related to asbestos this is a serious problem.

For an Owners Corporation to have any chance of defending itself from such a claim it would need to show that it had properly identified, managed and - where necessary - eliminated the risks associated with asbestos.

For a manager to avoid being held liable or defend themselves (if joined as a defendant to any civil claim), they would need to show that they had highlighted the asbestos risk to the Owners Corporation and recommended that they take the appropriate steps to identify, manage and - where necessary - eliminate the risk.

Example of an asbestos court case

Thousands of home and unit dwellers and owners could have an avenue to litigate after a landmark legal ruling in favour of a South Australian woman dying from an asbestos-related disease.

Helene Edwards, 57, was awarded \$803,403 by the Dust Disease Tribunal of New South Wales. She was exposed to asbestos while installing fibro sheeting in her home more than twenty years ago. Mrs Edwards, a mother of three has been diagnosed with mesothelioma, a malignant tumour in the lungs,

and was told she had only a year or two to live in 2000.

What can I do to ensure my common property is sound for contractors and employees?

Both state and national requirements state that workplaces need to have an on site asbestos register that includes identification of the asbestos, analysis results, locations of asbestos, dates of inspections, details of materials presumed to contain asbestos and inaccessible areas that may contain asbestos.

This register is then available for viewing by;

- Workers and their representatives
- Any other employers within the premises
- Any person removing ACM
- Any person engaged to perform work that may disturb ACM
- Any other person who might be exposed

Your Easy Asbestos Solution

Many clients like you have asked Solutions ie to inspect and create Asbestos Registers for their whole portfolio of pre 1992 buildings. We have a complete service including installing the registers on site with triplicate forms for contractors to send in with their invoices. It's your complete solution. Just call us on 1300 136 036 and talk to one of our experts.

Kind regards,

James Freestun
CEO, Solutions ie



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