

From: Peter Berney <peter.berney@solutionsie.com.au>

Subject: New Asbestos Legislation – Affects All Your Pre-1992 Buildings

Reply: peter.berney@solutionsie.com.au



e-zine September 2008

All Pre 1992 Buildings Containing ACM to have an Asbestos Register -

Why is it required and what should it contain?

Recent research has shown that a large majority of Victorian buildings built before 1992 are currently without an onsite Asbestos Containing Materials (ACM) register - leaving individual managers and Owners Corporations at risk of \$10,000+ and \$56,000+ fines respectively.

As Australia 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.

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 onsite that shows the date(s) on which the inspection/identification was made, details of the location of the ACM, and risk assessment and control measures identified to handle the ACM.

Supporting this Code of Practice is the Victorian Occupational Health and Safety Regulation which came into effect on the 1st July 2007. It states in Subdivision 2, Part 4.3.20 (1) that "A person who manages or controls a workplace must, so far as is reasonably practical, identify all asbestos present that is under the person's management

or control" and in Part 4.3.21 (1) "A person who manages or controls a workplace must record in an asbestos register".

Which buildings does this requirement apply to?

The Code of Practice states in Part 3, Scope and Application, Regulation 259 (1) (a) that the "code applies to all workplaces where ACM remain, or are likely to remain, in situ". The code also states that buildings built prior to 1990 are more likely to contain ACM. It is widely recommended that buildings built prior to 1992 have an inspection and register on site to incorporate builders that may have used recycled or stockpiled Asbestos Containing Materials after 1990.

Owners of buildings must comply.

According to the NOHSC Code of Practice and the Victorian Occupational Health and Safety Regulations, a person with control of a 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 as volunteers, contractors and people working from home are frequently on site.

Owners Corporation 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 Act 2007 the maximum penalty for an individual is \$11,342 and for a corporation, \$56,710.

The second risk is the exposure to civil litigation and large claims from people who have contracted asbestosis, mesothelioma or some other 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. This is a serious problem given that the large majority of insurance companies now exclude claims related to asbestos.

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 liability or defend themselves (if joined as a defendant to any civil claim), he or she 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.

Damages included \$175,000 for pain and suffering and was the largest award of its type for a victim of mesothelioma.

Tanya Segelov, Mrs Edwards' solicitor stated that this case opened the way for legal action by other home renovators suffering from asbestos-related diseases caused by exposure to the deadly fibres in their homes.

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

Both State and National requirements specify that workplaces need to have an onsite 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

Getting up to date with your ACM requirements is easy and will save you time and money in the future.

Solutions ie employ experienced inspectors who can come to your property, inspect it for ACM and provide you with a thorough risk analysis and Asbestos Register.

Contact us today on 1300 136 036 to talk to one of our friendly staff about placing an order.

Street Address:

Level 1, 1 Queens Road
Melbourne VIC 3004

Postal Address:

GPO Box 3025
Melbourne VIC 3000

T: 1300 136 036

F: 1300 136 037

W: www.solutionsie.com.au

E: enquiry@solutionsie.com.au

