

These asbestos containing construction products included AC sheeting or asbestos cement sheeting used in walls and soffits, floor and wall tiles, roof shingles, super 66 corrugated roofing sheets, electrical switchboard backing boards, fire doors, vermiculite (the rough textured grey coloured surface often used on stairway and hallway ceilings and in many other products). It was used extensively due to its thermal qualities, fire resistance and plentiful availability.

Asbestos fibres in asbestos products were deemed until 1st January 2006 to be in a stable state and not a huge health risk. This of course is not true as simple act of drilling a hole through AC sheet releases airborne asbestos fibres.

The changes now mean that both asbestos materials and asbestos products must now be on your asbestos register.

#### What is asbestos?

It is natural material made up of tiny heat resistant fibres which, when inhaled, can lodge in the lungs and lead to cancer or scarring of the lungs. The cancer may be lung cancer or mesothelioma, which is a cancer of the lining of the lungs or other internal organs. The scarring of the lungs is termed asbestosis. Exposure to asbestos was traditionally linked to breathing contaminated air in workplaces that make or use asbestos or in the air of buildings containing asbestos that are being torn down or renovated. Now however, there is increasing evidence of people outside these types of workplaces contracting diseases such as mesothelioma from incidental contact from ACM.

#### What you get from a Solutions ie Asbestos Report:-

- Dates of risk assessments and details of the competent person that performed them
- Findings and conclusions of risk assessments
- The control measures resulting from a risk assessment

You will also receive an asbestos register as required by law with details including: -

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- Dates of inspections
- Locations of asbestos
- Details of materials presumed to contain asbestos
- Inaccessible areas that contain asbestos
- Analysis results.

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# Asbestos Information & Legislation Update Pack

**Are you aware of the  
1st January 2008 changes?**

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**New Asbestos Laws apply NOW Do you comply?**

As from 1st January 2008 new asbestos laws came into affect. All Asbestos Containing Materials or ACM is now to be included in an Asbestos Containing Materials Register that is kept on site. The changes reflect a move to national asbestos management standards.

Under the new legislation, all existing asbestos registers that complied with the previous legislation will need to be updated. For those buildings approved for construction before 31st December 1990 (which includes most building built during 1991 and some in 1992) that do not yet have an asbestos register there is now a clear new and/or upgraded requirement.

**Which buildings do the asbestos laws apply to?**

The new legislation applies to all buildings that were built under an approval given by a local government before 1990. (This of course includes many buildings built in 1991 and some in 1992.)

**By what date must you comply?**

The deadline was the 1st January 2008 so the majority of Body Corporate Managers have now complied with the new requirements. If you have not yet done so, now's the time to put a standard motion on all AGM meeting agendas in order to ensure that you are not at risk of civil litigation as a result of asbestos material causing asbestosis or mesothelioma from using the common area of your property.

**Owners of buildings must comply.**

Under Part 11, Division 3, of the Workplace Health and Safety Regulation 1997 owners of buildings and structures that are workplaces must comply with the requirements of the asbestos management code.

**Body Corporate Managers are caught under the definition of an 'owner' and therefore needs to ensure obligations are met.**

Under the Workplace Health and Safety Act 1995 an owner is defined to include 'a person who has control of or manages a workplace.' If Asbestos obligations are not met then there is an avenue for the Body Corporate Manager as well as the Body Corporate to be pursued.

**Do the internals of residential units have to inspected for Asbestos?**

No. There is a residential exemption that excludes the internals of residential units.

**Are workplaces like the common property of strata buildings exempt?**

No. The common property fits under the definition of a workplace under the Workplace Health & Safety Act and Regulations and therefore must have an Asbestos Register. There is also a responsibility of the Body Corporate to comply with section 114 of the Body Corporate and Community Management Act 1997 ('the Act'). This section of the Act casts the duty on the Body Corporate to 'administer, manage and control the common property and body corporate assets reasonably and for the benefit of the Lot owners' \*

It is also a common law duty of the body corporate not to endanger its occupants, workers and visitors by exposing them to unsafe materials on common property. \*

\*Source – Asbestos Legal Advice Herd Law

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**What about the risk from civil litigation?**

The more important concern from a Body Corporate point of view is not the prospect of a being exposed to a fine but being exposed to a civil litigation claim from a person who has 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 of dollars or possibly millions. Given that most if not all- insurance companies now exclude claims related to asbestos this is a serious problem.

For a body corporate 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 body corporate manager to avoid liability or defend itself (if joined as a defendant to any civil claim) it would need to show that it had highlighted the asbestos risk to the body corporate and recommended that the body corporate takes the appropriate steps to identify, manage and where necessary eliminate the risk.

**Example of a Recent 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.

\$803 403 was awarded to Helene Edwards, 57, 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 who is a mother of three has been diagnosed with mesothelioma, a malignant tumour in the lungs, and has been told she has only a year or two to live.

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 research shows Australia had used more asbestos per person than any other nation in the world. One in three dwellings & buildings built before 1982 contained asbestos in wall/ceiling insulation, vinyl tiles and fibro-cement sheeting. Ms Segelov said Mrs. Edwards' 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.

**How does including Asbestos Containing Materials (ACM) change things?**

Up until 1st January 2006 only asbestos materials were required to be on your asbestos register.

**Asbestos Material**

Asbestos material is most often found in acoustic and thermal insulation in walls and lagging (insulation) around pipes. In these situations asbestos was used in an almost raw state, which meant that asbestos fibres which are deadly if inhaled, would with very little disturbance get airborne. Asbestos fibres in this state are termed loose and friable.

**Asbestos Products**

Asbestos products, which were used extensively in building construction until the 1990 and in some cases beyond, were not required to be on your asbestos register until the 1st January 2006.

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