

# prensa update

January 2011

## Harmonised Asbestos Regulations

The long awaited draft model harmonised Workplace Health & Safety Regulations and codes of practice were published by Safe Work Australia in December last year. This Prensa Update focuses on how the proposed regulations address the management of asbestos risks at the workplace.



Prensa notes the regulations are currently in draft and Safe Work Australia is seeking feedback by 4<sup>th</sup> April 2011.

Asbestos is addressed in Part 7.3 of the draft regulations as well as in two supporting codes of practice. The new codes are largely modelled on the existing NOHSC codes for the Management and Removal of asbestos.

### Identification of Asbestos in the Workplace

The proposed Code for the management of asbestos requires a person with control of a workplace to identify and record the presence of asbestos. Importantly, the proposed Code focuses on the need to determine the age of the building. The Code states that any refurbishment or extension to the original building prior to 2003 **may** have involved the use of asbestos. The Code also states that, it is **likely** that asbestos will still be found in structures and buildings built prior to 2003 and possibly found in plant manufactured before 2004.

With the exception of Queensland and ACT, authorities in each state had previously moved away from specifying dates of construction after which an asbestos audit is not required. This is because of the increasingly common occurrence of buildings found with asbestos materials which were constructed post 1990. In Queensland and ACT the current regulations do not require audits in post 1990 and 2003 buildings respectively.

Historically, building owners and managers have used 1990 as a nominal cut-off date for undertaking audits but more recently it has become industry practice to undertake some form of assessment for buildings constructed prior to 2003.

The implications of the proposed changes are that building owners and managers will need to undertake a formal identification process for all buildings constructed or refurbished prior to 2003.

### Labelling

The proposed Code requires that all identified asbestos or presumed asbestos, including where the asbestos is inaccessible, be clearly indicated. The Code also states that if it is reasonably practicable, labels must be used to identify the material as containing asbestos.

This consideration of **practicability** does not exist in the current Code but is consistent with labelling obligations in the Victorian regulations. It would enable building owners and managers to consider the risks of disturbance as well as the practical issues associated with alarming building occupants when posting asbestos warning labels.

The Code requires that the Competent Person determines the number and positions of the labels required.

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### Registers & Management Plans

The proposed regulations have greater focus on developing and implementing Asbestos Management Plans (AMPs) than do the existing regulations. The Code requires an asbestos management plan to include, as a minimum:

- a reference or link to the asbestos register for the workplace
- the most recent risk assessment for the workplace
- details of how many people will be trained and any training procedures and related information
- locations for the display of warning signs and labels
- details of who was consulted
- decisions, and reasons for decisions, about the management of asbestos at the workplace
- procedures for dealing with accidents, incidents or emergencies involving asbestos at the workplace
- timetable for managing risks associated with asbestos, for example, priorities and dates for reviewing risk assessments, circumstances and activities that could affect the timing of action
- identification of each person with responsibilities under the plan, and the person's responsibilities
- procedures, including a timetable for reviewing and if necessary, revising the plan and asbestos register
- air monitoring procedures at the workplace, if required, and
- safe work procedures in relation to handling or using asbestos in the workplace.

The proposed Code states that reviewing the **asbestos register** can occur at the same time the asbestos management plan is reviewed, however, the Code states that it is likely that it will be necessary to review the register more frequently.

The proposed Code requires the Asbestos Management Plan to be reviewed at least every 5 years. Previously, the code required



the AMPs to be reviewed annually. The 5 year minimum review date is consistent with the current Victorian regulations which do not adopt the national code.

The loosening of the required review frequency would remove the existing obligation for controllers of workplaces to undertake annual inspections of low risk asbestos containing materials (ACM) which are unlikely to deteriorate significantly over a 12 month period. This may include, for example, vinyl tiles or mastics which contain asbestos and are unlikely to be disturbed.

The challenge with a less frequent mandated review period is that the onus has been placed on the controller of the workplace to specify a suitable review frequency based on the risks posed by each ACM.

For larger portfolio managers, this will enable a staggered review program whereby higher risk asbestos items are reviewed more frequently (or are removed) and lower risk items are reviewed at least 5 yearly.

As with the current code, the AMP must be developed by a competent person and specify the timetable for reviewing the register.

### Asbestos Dusts

Unsurprisingly, the definition of ACM includes any material or thing that contains asbestos. The management of in-situ asbestos is dealt with in Division 3, 5 & 6 of the proposed regulations. Asbestos Containing Dusts and debris (ACD) is defined as an ACM and should therefore be included on a register for workplaces where there is also in-situ ACM present.

Dusts are also addressed in Division 8 where the removal of ACD must be undertaken by a Class A contractor unless the amount is minor or associated with the removal of non-friable asbestos.

### Asbestos Contaminated Soils

For asbestos contaminated soils, the proposed regulations state that a risk assessment by a licensed assessor or competent person should determine the most appropriate control measure. In the case of disturbed soils which are contaminated with asbestos, the new regulations adopt the current Victorian exemption from the prohibition to re-use soil which has been contaminated provided the soil has been visually inspected to confirm that visible traces of ACM have, so far as is reasonably practicable, been removed.

In addition, the proposed regulations require air monitoring and clearance inspections to be undertaken by a licensed assessor for any removal which must be undertaken by a Class A licensed removalist.

Under the proposed regulations, a Class A contractor is required for the removal of friable asbestos. However in Victoria, under the Dangerous Goods Order, a Class A contractor is required for the remediation of soils contaminated with asbestos irrespective of its friability. This means that air monitoring and clearance inspections must be undertaken in Victoria by a licensed assessor for all soil remediation works that contain asbestos.



The proposed regulations acknowledge the requirement for asbestos contaminated soils to be managed in accordance with the National Environment Protection Measure (NEPM) which is due for release by mid 2011.

### Licensed Assessors and Competent Persons

The new regulations are proposing to license assessors to perform air monitoring and clearance inspections during Class A removal work. A higher level of competency will be required for persons performing air monitoring and clearance inspections compared with those persons identifying and risk assessing ACM in the workplace. Audits and risk assessments will be able to be undertaken by a person defined as competent by virtue of their experience and training but will not require to be licensed with the authorities.

This is a new requirement except for ACT where a similar system is currently in place. While this change will be significant for asbestos consultants and hygienists, it will not significantly impact building owners and managers.

This newsletter has been drafted to summarise and provide comment on a number of key issues that relate to the proposed laws when managing asbestos risks in the workplace. If you would like to discuss any of these issues in more detail please call David Hood on (03) 9508 0100 or Derrick Scott on (02) 9033 8634.