

Discussion Paper – Asbestos

*Workplace Health and Safety Act 1995*

# Workplace Health and Safety Regulation 1997

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There are several parts to the Asbestos regulations in Queensland.

First we need to examine who has obligations, then what those obligations are and finally how they are to be managed.

<u><i>Application of Legislation</i></u>	<u><i>Excerpts of the Legislation</i></u>
<p><b><u>1. Who has obligations</u></b></p> <p>The current legislation refer states that if you had an obligation under previous legislation prior to 1<sup>st</sup> January 2006 you still have that obligation and more</p> <p>So the regulation applies <i>to a <b>building or a part of a building that is a workplace and is built before 1 January 1990.</b></i></p> <p><b><i>Do you have a Workplace?</i></b></p> <p>The Workplace Health and Safety Act 1995 imposes certain obligations upon particular classes of people one of these classes of people is “Persons in Control of a Workplace”. These persons are those that have effective control as to the management of the Common Property (The Committee or the Body Corporate)</p>	<p><b><i>70 Application of sdiv 1</i></b></p> <p><i>This subdivision applies to a building to which part 11, division 1,26 as in force from time to time before 1 January 2006 (the <b>repealed division</b>), applied if—</i></p> <p><i>(a) the owner of the building had at any time an obligation to comply with the repealed division; and</i></p> <p><i>(b) the owner had not complied with the repealed division. The repealed division was part 11 (Asbestos), division 1 (On-site management of asbestos materials).</i></p> <p><b><i>72 Application of sdiv 2</i></b></p> <p>(1) This subdivision applies to a structure or a part of a structure that is a workplace only if all or part of the structure was built under an approval given by a local government before 1 January 1990.</p>

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For a person to have obligations with respect to asbestos materials management they must have a workplace. A workplace is defined as, “any place where work is, is to be, or is likely to be, performed by a worker, self employed person or employer” (Section 9).

A Body Corporate does engage self-employed persons on a regular basis to perform work on the common property. Therefore the Common Property is a workplace, the Division of Workplace Health and Safety advises that the Common Property of a Body Corporate does ***“satisfy the definition of a workplace under the Act when a worker or self-employed person or employer performs work upon it.”***

***So yes I have a workplace which is the common property of a Body Corporate when a person is working upon it.***

***And if your building was***

- a structure built in 1989 or prior
- a structure started in 1989 but completed in 1990
- a structure built in 1990 under an approval given in 1989

***Then you have obligations with respect to the Onsite Management of Asbestos Materials.***

*Examples for subsection (1)—*

- a structure built in 1989
- a structure started in 1989 but completed in 1990
- a structure built in 1990 under an approval given in 1989

(2) However, this division does not apply to a structure used for domestic residential purposes.

*Examples of structures used for domestic residential purposes—*

- house
- townhouse
- block of units

### **73 Compliance with asbestos management code**

(1) The owner of the structure or part must comply with the asbestos management code on or before 1 January 2008.

(2) However, if a relevant event is proposed for the structure or part before 1 January 2008, the owner must comply with the asbestos management code before the relevant event happens.

(3) If the relevant event is altering the structure or part or offering the structure or part for sale or lease, subsection (2) applies only to the first time the structure or part is offered for sale or lease.

(4) Subsections (1) and (2) are workplace health and safety obligations for the Act.

(5) In this section—

***dismantle*** means systematically dismantle or remove a part of a structure for alteration, maintenance, remodelling, renovation or repair.

***relevant event***, for a structure or part of a structure, means the structure or part is to be—

- (a) offered for sale or lease; or
- (b) altered; or
- (c) dismantled; or
- (d) demolished.

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### 2. What obligations do I have?

*These obligations will vary dependent upon whether asbestos materials are found or not*

1. You have an obligation to inspect the common property areas of a building and determine whether you have asbestos containing materials or not.

It is often very difficult to identify the presence of asbestos by sight. The only way to be certain is to have a sample of the material analysed by a laboratory.

Sampling of anything you suspect may contain asbestos is itself hazardous and should only be done by a competent person, and analysed only in accredited laboratories.

Where materials are not tested you can presume that something contains asbestos and treat it as such. For example, if there is reliable manufacturer information on a product, a label stating something contains asbestos, or if it is a product of a type and age that typically contains asbestos you can presume it contains asbestos. If this presumption is made the material must be treated as if contains asbestos for working with the material or removing it.

**If no asbestos containing materials are found then, a copy of the inspection report stating this should be kept on file and nothing further needs to be done.**

### **PART 7. RESPONSIBILITIES**

Persons with control of premises have a duty of care to:

- investigate the premises for the presence or possible presence of ACM (see Part 9);

### **PART 9.3 Register of ACM**

Persons with control of premises must keep an accurate register of ACM on the premises.

The register should contain the following information:

Identification:

2. the date(s) on which the inspection/identification was made and details on the competent person(s) who carried out the inspection/identification;
3. details on the locations, types (i.e. friable or non-friable) and condition (i.e. damaged or intact) of any ACM identified on the premises, including ACM in items of plant and equipment, and the type of asbestos involved (i.e. blue, brown or white);
4. details on any material presumed to contain asbestos (see section 9.2);
5. any inaccessible areas that are likely to contain ACM (see section 9.2); and
6. the results of any analysis that has confirmed a material in the workplace is or is not an ACM.

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### 3. What Obligations do I have if asbestos containing materials are found or suspected in the Common Property areas?

- Owners will need to assess the condition of any asbestos containing materials (ACM) that are found.

*The initial inspection of the common property areas will have determined the condition of the ACM found.*

- Owners will then need to develop measures to either remove or minimise harm due to the ACM found.

*This is achieved by removal being recommended at the time of inspection as this was the only course of action available. Alternatively the person with control should erect warning signs and ensure workers at the workplace are informed about the register of ACM and the possibility that ACM may be present.*

- Before any work that may expose persons to airborne asbestos fibres is performed, the register should be made readily accessible to:
  - workers and their representatives;
  - any other employers within the premises;
  - any person removing ACM;
  - any person engaged to perform work that may disturb ACM, including presumed ACM (see section 9.2); and
  - any other person who might be exposed.

*This is achieved through signage, making the register available to all required parties and ensuring contractors sign in prior to the commencement of any works that may impact ACM.*

**Under Part 7** of the asbestos management code owners of workplaces have obligations that may be summarised as follows:

- assess the condition of any ACM that are found and the associated asbestos risks
- develop measures to remove the ACM or otherwise to minimise the risks and prevent exposure to asbestos
- ensure the control measures are implemented as soon as possible and are maintained as long as the ACM remain in the workplace.
- consult with any person who may be affected by the presence of ACM; such as employers, workers, contractors and occupants
- provide information and training for workers, contractors and other people who may come into contact with ACM. The training may include procedures to be followed to prevent exposure, the types and locations of asbestos and the health risks of asbestos.
- a procedure for reviewing and updating the management plan and the register of ACM, including a timetable

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### 4. Asbestos management plans

Part 8 of the asbestos management code sets out the requirements for the development of an asbestos management plan for workplaces. All workplaces built before 1 January 1990 should already have an asbestos register, and safety policies and procedures for friable asbestos.

By 1 January 2008 all workplaces must comply with the asbestos management code, which specifies obligations in relation to both friable and bonded asbestos material.

An asbestos management plan helps owners of workplaces comply with asbestos prohibitions and to prevent exposure to airborne asbestos fibres. The plan should set out clear aims, stating what is going to be done, when it is going to be done, and how it is going to be done.

*In most instances the Body Corporate Common Property is a workplace only when persons are working upon it. The ACM management plan in the case of the Common Property is the*

- *the workplace's register of ACM*
- *a record of any works done, by who, what date, the scope of works, that the contractor will inform the Body Corporate of any risks associated with the work they intend to perform and any control measures they will be putting in place and the safe work methods they intend to employ.*
- *The Committee will need to discuss with Owners what they plan to do about any ACM they have onsite.*
- *Monitoring arrangements will generally be covered in the review process.*

### Part 8

An asbestos Management Plan should include:

- the workplace's register of ACM
- details of maintenance or service work on the ACM including:
  1. who performed the work
  2. the dates it was done
  3. the scope of the work
  4. any clearance certificates (see clearance inspections, part 11.10 of the asbestos management code)
- how people at risk are informed about ACM in the workplace, the risks they pose and the control measures in place
- decisions about management options and the reasons for these decisions
- a timetable for action, including priorities and dates for reviewing risk assessments and specific circumstances that may affect the timetable
- monitoring arrangements
- the responsibilities of people involved in the plan
- training arrangements for workers and contractors
- a procedure for reviewing and updating the management plan and the register of ACM, including a timetable
- safe work methods.

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### 5. Reviewing

*The Asbestos Management Code stipulates that the register and any risk assessments pertaining to the register of ACM should be reviewed every 12 months at least. The Division of Workplace Health and Safety has verbally advised that there needs to be a good reason as to why a review is not carried out every 12 months as the Asbestos Management Code is a minimum standard.*

*The expectation is that a 12 monthly review or update will need to be performed*

### 9.3.1 Reviewing the register of ACM

The register of ACM, including any risk assessments, should be reviewed every 12 months or earlier where:

- a risk assessment indicates the need for reassessment (see section 10.1); or
- any ACM has been disturbed or removed.

A visual inspection of identified ACM should be undertaken as part of any review.

### 10.1 Reviewing risk assessments

Risk assessments should be **reviewed** regularly in accordance with Australian Government, State and Territory legislative requirements.

More specifically, the person with control, in consultation with workers and/or their representatives, should review the risk assessment, and any measures adopted to control the risks, whenever:

- there is evidence that the risk assessment is no longer valid;
- there is evidence that any control measures are not effective;
- a significant change is proposed for the workplace or for work practices or procedures relevant to the risk assessment;
- there is a change in the condition of the ACM; or
- the ACM have been removed, enclosed or sealed.

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### 6. Asbestos in a domestic premises

*Generally speaking a structure used for domestic residential purposes will not need to comply with the Asbestos Management Code. Owners still have responsibilities when it comes to deal with ACM when renovating, altering, maintaining their property.*

*However all businesses that perform work which may involve exposure to asbestos, including at domestic premises, should establish an asbestos management plan for the work to be carried out*

### Part 9.4

Part 9.4 of the asbestos management code states how to manage asbestos in domestic premises when they are also workplaces, for example when someone is contracted to do work in a home that may expose them to asbestos, such as renovation work.

All businesses that perform work which may involve exposure to asbestos, including at domestic premises, should establish an asbestos management plan for the work to be carried out.

While many domestic premises contain ACM, they are unlikely to have a register of ACM. Precautions must be taken before work begins to identify the likelihood that ACM is present. While particular attention should be paid to buildings built prior to 1990, recycled materials used in buildings built after 1990 may contain asbestos.

Work at domestic premises that may involve exposure to ACM include:

- demolition and renovation
- electrical maintenance or installation, including work on electrical meter boards
- maintenance or installation of walls, roofing, ceilings or flooring
- plumbing maintenance or installation.

If there is any known or suspected asbestos on the premises, the owner, occupier and/or resident should be informed.

Where asbestos is present or assumed to be present, work should only continue in accordance with the risk assessment and control measures provided in Parts 10 and 11 of the asbestos management code.