

2018 Review of the model WHS laws

Response provided by the Asbestos Safety and Eradication Agency

Scope

The Asbestos Safety and Eradication Agency's (ASEA) response to the 2018 Review of the model WHS laws is limited only to those specific areas of the WHS Act, Regulations and model Codes of Practice its research projects and stakeholder consultation have identified as relevant to the Review.

The response addresses the following points as set out in the Review Terms of Reference:

- whether the model WHS laws are operating as intended,
- whether any areas of the model WHS laws have resulted in unintended consequences, and
- whether the model Codes of Practice adequately support the object of the model WHS Act.

Summary

The following themes have been identified through ASEA's research and stakeholder consultation forums and will form the basis of this response.

- The current definition of a competent person is not clear with regard to who should or must perform certain asbestos-related tasks.
- There is lack of available quality, suitable training to support the competent person role and the development of model national training should be considered to improve the standard and consistency of practice.
- Current practice with regard to how asbestos registers are prepared and used is varied. Inconsistencies in how the condition of asbestos containing materials (ACMs) are described and rated has resulted in different registers rating the same/similar ACMs differently and recommending different actions/outcomes.
- There is currently a gap in existing standards or guidelines on the management and cleaning of HEPA filters.

Background

ASEA was established on 1 July 2013 to provide a national focus on asbestos issues which goes beyond workplace safety to encompass environmental and public health concerns. It aims to ensure asbestos issues receive the attention and focus needed to drive change across all levels of government. ASEA is responsible for encouraging, coordinating, monitoring and reporting on the implementation of the *National Strategic Plan for Asbestos Management and Awareness 2014-18* (National Strategic Plan). The National Strategic Plan represents a commitment by the Commonwealth, state and territory governments to work cooperatively and independently to achieve its objectives and towards the ultimate aim of preventing exposure to airborne asbestos fibres in order to eliminate asbestos-related disease in Australia.

In line with its role to commission, monitor and promote research about asbestos safety under s8(1)(f) of the *Asbestos Safety and Eradication Agency Act 2013* (ASEA Act), ASEA has undertaken a range of research projects and engagement with industry. A key area of research and consultation has been concerned with examining issues of asbestos identification and grading, including aiming to understand the current practices of industry and emerging gaps. Research in this area has focused on deliverables and outcomes under the National Strategic Plan.

In addition to research and consultation on specific projects, ASEA has received insight and feedback from its Building, Construction and Demolition Sectors (BCDS) Committee on issues that may require future review and consideration. These key issues are summarised below.

Building, Construction and Demolition Sectors (BCDS) Committee

The BCDS Committee was established under s24 of the ASEA Act and is ASEA's primary industry consultation forum. It includes employer and employee representatives from industries impacted by Australia's asbestos legacy and provides advice to the agency on issues relating to the management of asbestos in the building, construction and demolition sectors and the implementation of the National Strategic Plan.

Current membership includes representatives from the following organisations:

- Australian Industry Group (Ai Group)
- Construction Forestry Mining & Energy Union (CFMEU)
- Masters Builders Australia (MBA)
- Housing Industry Association (HIA)
- Australian Constructors Association (ACA)
- Australian Council of Trade Unions (ACTU)
- Asbestos Removal Contractors Association (ARCA) NSW
- Demolition and Contractors Association NSW
- Master Plumbers
- National Electrical and Communications Association (NECA)
- Australian Manufacturing Workers Union (AMWU)
- Electrical Trades Union (ETU)
- Plumbing Trades Employees Union (PTEU)
- National Fire Industry Association (NFIA)
- Australian Workers Union (AWU)
- Australian Chamber of Commerce & Industry (ACCI)

The issues raised in ASEA's response have been discussed by the BCDS Committee who have provided in-principle support, noting they are reflective of the experience and views of industry.

Summary of key issues identified

1) Definition of a competent person

- Research findings and consultation with industry suggest the current definition of a competent person (for the purposes of carrying out a range of asbestos-related tasks under the WHS Regulations and *How to Manage and Control Asbestos in the Workplace Code of Practice*) may require additional detail to provide clarity around who meets this definition.
- The current definition is: *a person who has acquired through training, qualification or experience, the knowledge and skills to carry out the task*. Evidence suggests that there is a need for nationally consistent definition, guidelines or specification around who should or must undertake asbestos assessments in order to prevent inexperienced/insufficiently training people potentially putting themselves and others at risk of asbestos exposure (ORIMA Research 2017).
- Some stakeholders have suggested that a system of accreditation or licencing (similar to requirements for other asbestos-related tasks) could be introduced to provide greater clarity on

what is required to meet the definition of a competent person and to ensure quality and consistent outcomes.

Examples of stakeholder feedback:

The term competent person has been abused by the industry for years. – Licenced Assessor, Sydney

The definition of competent person is too vague. It should be a qualified person... - Removalist, Melbourne

2) Available training to support the competent person role

- Research findings and feedback from some stakeholders indicate there is a lack of available quality, suitable training to support the competent person role and the development of model national training should be considered (Campbell Research & Consulting 2015, ORIMA Research 2017).
- Some of the range of tasks/responsibilities identified as being the role of a competent person in *the How to Manage and Control Asbestos in the Workplace Code of Practice* are outlined below. It has been suggested that this list could be used as a starting point for considering the content of model national training.
 - Responsibility for determining whether soil contains more than trace levels of asbestos determined in accordance with AS4964:2004
 - Identifying all asbestos or ACM at the workplace, including inaccessible areas
 - Taking samples of suspected ACM for analysis
 - Providing advice on the number and position of labels required
 - Reviewing and revising asbestos registers and management plans
 - Surveillance of rocks to ensure minimal disturbance of any suspected fibrous minerals
 - Undertaking demolition or refurbishment surveys
 - Determining whether ACM is fixed to or installed in a structure or plant
 - Determining if work involving soil is defined as asbestos-related work
 - Inspect material and make determinations whether removal is necessary due to damage or deterioration
 - Determining the most efficient respirator for the task

Examples of stakeholder feedback:

There needs to be a training pathway for this in Australia. – Licensed assessor, Sydney

The big elephant in the room is training. There is an absence of reference to any training course in the Code. – Licenced Assessor, South Australia

3) Consistency in asbestos register use

- ASEA's research into the use and effectiveness of asbestos registers highlighted significant variation in how asbestos registers are prepared and their level of use. This currently ranges from existing to fulfil regulatory requirements, through to being a useful tool allowing organisations to accurately review and prioritise risk management and removal activities across multiple sites (Inca Consulting 2016).
- The research also highlighted inconsistencies between register format, content and outputs and in the thoroughness and quality of asbestos assessment processes leading to their development.
- A key issue highlighted in this research is that the regulations do not identify a standard or qualification for those who carry develop registers. The lack of an effective accreditation scheme for asbestos assessors and the variable quality that exists in the industry were key issues raised.
- Inconsistencies in how the condition of ACMs are described and rated has resulted in different registers rating the same/similar ACMs differently and recommending different actions/outcomes. A key example of this occurring on a large scale project has been in the work undertaken by the Victorian Asbestos Eradication Agency (VAEA) in their work to consolidate asbestos registers from Victorian public sector bodies into a central database to inform a future schedule for prioritised removal.
- Only 59% of tradespeople surveyed knew what an asbestos register was, and only 47% had actually seen one (Inca Consulting 2016). Industry experience suggests that there is currently a lack of shared accountability for accessing and using asbestos register information and recommends exploring new mechanisms for expanding and enforcing register consultation.
- Worker representatives reported through stakeholder consultation activity there exists a perceived lack of enforcement of regulatory requirements relating to asbestos registers. Anecdotal evidence suggests that some workplaces do not have a register and some of those that do may be out of date.
- The current *How to Manage and Control Asbestos Code of Practice* provides a basic template of an asbestos register at Appendix C. Industry feedback suggests that the inclusion of a more comprehensive template and example in the code could be a useful to encourage the development and use of better quality registers.

Example of stakeholder feedback:

At the moment, it's all over the place – everyone has their own system, their own format. It would be nice to have the same template. We've got a lot of contractors that might not understand different requirements. If you've got the same template, everyone will learn it quickly – Removalist, Melbourne

4) Clear standards on cleaning of HEPA filters

- BCDS Committee members have previously raised concerns around the issue of HEPA filter management and the lack of consistent mandatory regulation across Australian jurisdictions.