

Impact of National Harmonisation on the Management of Asbestos Risks

Australia's State, Territory and Commonwealth governments have agreed that by the end of 2011, new harmonised occupational health and safety model legislation will replace existing state and territory OHS laws. Asbestos is one of the five priority pieces of legislation and the adoption of a nationally uniform regulation will have implications for employers as well as building owners and managers.

While most of the states and territories have been gradually adopting the existing National Codes of Practice for the Management and Removal of Asbestos, there remain significant differences between jurisdictions which will impact on employers and controllers of workplaces when the new laws are introduced.

In particular, national employers or organisations controlling national property portfolios will be impacted the greatest. A number of examples of how the new legislation will impact are provided below.

Asbestos Registers

All jurisdictions currently require registers to be prepared for buildings that contain fixed or installed asbestos. Historically, the frequency of review and update of the registers varied between states with those states adopting the National Code requiring review and update to occur at least annually. In Victoria, the review period is currently a maximum of 5 years.

The process of undertaking reviews and subsequent communication of the updated register to tenants, contractors and employees requires a systematic approach to remain compliant over time. With the



awareness of risks posed by asbestos in the workplace increasing in recent years, most workplaces have undergone audits and registers have been developed. Many workplaces, however, have not undertaken reviews or communicated the updated register to employees, tenants or contractors due to the absence of a systematic approach to managing asbestos risks.

Given the specialised skills required to undertake asbestos audits, most organisations have contracted hygiene consultancies to undertake these functions. With the national harmonisation of asbestos regulations and likely increased frequency of review and updating of asbestos registers required for some states, employers and building controllers will need to develop greater internal capabilities and systems to manage risks associated with asbestos in the workplace. In particular, the new regulations will require employers to develop systems to train, communicate, monitor and control Asbestos Containing Materials (ACM) in the workplace.

Contamination of Dusts and Soil

Over the past 4-5 years most states have adopted the National Code of Practice for the management and removal of asbestos as their minimum legislative standards. This is the case in South Australia although the definition of asbestos containing materials in SA remains limited to materials which contain greater than 1% asbestos. In Victoria this definition was changed from >1% asbestos to any material which contains asbestos.

Victoria's definition is now consistent with the national code of practice. In NSW the definition is the same as Victoria's current definition and includes all materials that contain asbestos.

Asbestos is present in the built environment in background concentrations and therefore is present in all dusts and soils in background concentrations. While it is not intended that incidental or background concentrations of asbestos in dusts require them to be treated as an ACM, the presence of very minor concentrations of asbestos in dusts and soil can pose a significant risk to building owners and managers.

In particular, developers, employers and asset owners should be aware of the implication of these changes in definition as it can significantly impact on refurbishment and demolition of buildings which have had asbestos previously removed.

In some states such as NSW, asbestos buried in soil is often classified as friable and as such only an A1 Class contractor can perform remediation work. Similarly in Victoria, under the Dangerous Goods order G26, asbestos which is not fixed or installed such as dusts and contaminated soil can only be remediated by a Class A contractor unless the extent of the works is considered minor.

It is likely the new national model asbestos regulations will introduce more detailed provisions for the management of asbestos contaminated soils and dust in the workplace.

Labelling

Labelling of asbestos items is addressed in the national code of practice and requires all items of ACM to be identified with labels stating the material contains asbestos. This is an area where employers and controllers of workplaces have often not complied due to the sensitive nature of the occupancy and concerns of alarming occupants if asbestos warning labels are posted for general viewing.

In Victoria, the existing state based regulations require the identification of asbestos materials and where practical this must be done by labelling. In Victoria therefore, employers and controllers of sensitive workplaces can use alternate methods of identifying a material which contains asbestos depending on the practicality of posting an asbestos warning label. This may change, however, with the introduction of a nationally uniform asbestos regulation.

Timeframes

Drafting of the model regulations has commenced and it is anticipated that the model regulations will be made available for public comment by November 2010. The public comment period will close in February 2011 with the final model regulations completed by June 2011.

Implications

The model asbestos regulations are currently being developed and it is likely there will be significant debate between the states on areas where some jurisdictions currently have their unique requirements. All stakeholders agree a uniform set of regulations will significantly improve the current regime, however, employers and controllers of buildings will need to prepare for the changes which are likely to be introduced.

If you would like to receive a summary of the existing differences between jurisdictional requirements or to discuss any of the specific state based requirements please contact:
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