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Asbestos and the law

New legislation means new responsibilities for you regarding how asbestos is dealt with at properties that you manage.



As you are aware, from 1 January 2012 the new *Work Health and Safety Act 2011* (WHS Act) and the *Work Health and Safety Regulation 2011* (WHS Regulation) came into effect. These replace the *Occupational Health and Safety Act 2000* and the *Occupational Health and Safety Regulation 2001*.

A number of changes are now taking place as a result of this new legislation, including the way asbestos is identified and treated, and who is responsible for ensuring the Codes of Practice are followed.

You always have a common law duty of care to anyone who visits a property that you manage. However, the new WHS Act and WHS Regulation have increased your responsibilities to anyone who carries out work or visits a site that you manage.

What are the duties for property managers and strata managers?

As a property manager or strata manager, it is your duty to ensure that the workplace is safe and free from hazards including asbestos dangers. You should obtain a Work Health and Safety Report (previously known as an OH&S Report) and an Asbestos Report to ensure that any hazards at the workplace are identified.

How do I comply with the new legislation?

1. Obtain an Asbestos Report for each property you manage.
2. Obtain a WHS Report for each property that you manage.
3. Ensure contractors are aware of their WHS obligations.
4. Ongoing Risk Management including reviewing and monitoring.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

If the person has "a health and safety duty" and they fail to comply with that duty the penalties range from \$50,000 for an individual for a category three offence, to \$3,000,000 for a Body Corporate (company) for a category one offence. The defined penalties

include a possible five years' imprisonment.

Additionally, the WHS Regulation lists many penalties relating to non-compliance with asbestos requirements, which range from \$1250 for an individual to \$30,000 for a Body Corporate (company).

All buildings constructed prior to 31 December 2003 must obtain an Asbestos Register and an Asbestos Management Plan from a "competent person" — this is someone who has the training, study or experience to identify and advise on the presence of asbestos. It is recommended that the register and management plan be obtained from a reputable, established company.

The Asbestos Register is a record of any asbestos or asbestos-containing material (ACM) present or likely to be present. Among other things, it includes the location, type and condition of asbestos and the date of identification. The Asbestos Register can also

state that no asbestos has been identified or is likely to be present in a building if that is the case. Only one Asbestos Register is required for each site. It must be prepared and kept at the workplace, and be readily available to all workers.

If asbestos is identified you must prepare an Asbestos Management Plan, which includes the identification of asbestos or ACM. You need a plan to deal with the asbestos at the work site (including control measures) and reasons for decisions relating to the asbestos management.

The Asbestos Register and Management Plan must be reviewed every five years.

“It is your duty to ensure that the workplace is safe and free from hazards including asbestos dangers.”

The Asbestos Management Plan should also include, among other things, the procedure for dealing with emergencies relating to asbestos contamination and information for workers who may come into contact with the asbestos.

The presence and location of asbestos must be clearly indicated and, if reasonably practicable, labelled. ♦

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