

# Asbestos – Management in the workplace Practice Guideline



## **Purpose:**

This Practice Guideline has been created to clarify the obligations of an owners corporation (OC) to identify and manage asbestos in the workplace. It also clarifies the role of the owners corporation manager (OCM) who is engaged to manage the risk of the owners corporation.

Under the current Victorian Occupational Health and Safety laws, any obligation imposed on an OC, becomes a shared obligation with an owners corporation manager, when appointed. This will remain the case if Victoria subsequently adopts the proposed national Work Health & Safety Act.

It is the intention of SCA (Vic) to help you understand when it is mandatory to act and what is the best practice, in this area.

This Practice Guideline is to help you understand where obligations are imposed, where you can reference further information to better support your knowledge and understand particulars of what is involved. It also offers advice on practical application as outlined in the 15 step procedure set out below.

SCA (Vic) has created this Practice Guideline based, on the Compliance Code issued by WorkSafe Victoria and titled "Managing asbestos in workplaces".

## **Best Practice:**

This best practice recognises that access to these Compliance Codes is readily available, and that to follow the guidance within these Codes, may be recognised as a reasonably practicable way an OC may meet the duties imposed by the legislation.

It is not expected that an OC or OCM would have the expertise or technical knowledge to implement all the requirements of the Code. An OCM should raise awareness of the topic and the OC's obligations to comply and the adverse consequences that may result from a failure to comply with these obligations. It is strongly recommend that an OC engage professional consultants to ensure compliance and minimise liability where asbestos is present.

In summary, 15 Steps are noted below. This summary is explained in greater detail under the heading Procedure.

1. Advise OC and/or Committee of their OHS Obligations
2. Obtain quotes for Asbestos Audit
3. OC/Committee to consider quotes
4. Accept preferred quote
5. Provide Asbestos Audit Report to Committee/OC for action
6. If Asbestos present, Asbestos Report is provided (place copy on site and affix signs etc as recommended by Audit)

7. OC/Committee consider any optional risk management action identified within Audit
8. Ascertain funds to carry out any required action
9. Notify relevant parties of asbestos presence
10. Update Work Orders
11. Diarise future review of Audit
12. Comply with additional obligations when removing asbestos or renovating including updating of the asbestos register
13. Report to AGM on Audit
14. Include OHS – Asbestos Audit as topic for annual review on AGM/Committee agenda
15. Transfer Asbestos Register to Secretary or new OCM in the event of losing management.

**Background:**

S69 An Owners Corporation is a creature of statute and must act in line with powers, functions and duties set out by its governing legislation. Primarily this includes the Owners Corporations Act 2006 and the Owners Corporations Regulations 2007.

OC Act S120 & 121 PG OHS – OC & OCM respon. CoA Under this legislation the functions of the Owners Corporation (Section 4(a)(b)(c)(f) & Section 5 in particular) and the function and duties of the owners corporation manager (Section 120 to 122) are outlined. Referenced in more detail in the SCA (Vic) Practice Guide Occupational Health & Safety - An OC & OCM's responsibility.

OCM respon. CoA These same functions and duties are also detailed within the standard SCA (Vic) Contract of Appointment signed by both parties in acknowledgement and agreement to comply.

With regard to Management of Asbestos in particular, the Act governing an OC's obligations is the Occupational Health and Safety Act 2004 (Vic) (**OHS Act**) and the Occupational Health and Safety Regulations 2007 (Vic) (**OHS Regs**).

The OH&S Regs provide details of asbestos related activities, including prohibited activities, asbestos register, risk control hierarchy, licensed removal, safety requirements for unlicensed and licensed removal work (inc. control plans, notifications, clearance certificates).

OHS Regs In particular note the following Divisions within the OH&S Regs

- |        |            |                               |
|--------|------------|-------------------------------|
| Div 2, | Division 2 | Asbestos general requirements |
| 5      | Division 5 | Asbestos in the workplace     |
| 8      | Division 8 | Activities involving asbestos |

Part 4.3  
4.3 Part 4.3 of the OHS Regs contains clear duties for

- ✓ Persons with management or control of the workplace; and
- ✓ Employers or self-employed person with management or control of plant.

Regulation 4.3 confirms these are the persons responsible to 'control risk of exposure' to asbestos. That is, being responsible to eliminate so far as is reasonably practicable, or reduce exposure of persons at the workplace to asbestos and ensure the exposure standard is not exceeded.

To determine who has the role to manage/control a workplace you should address the following three important points

1. Specific facts of relationship
2. Review contractual arrangements
3. Get legal advice

NB: Whilst nationally some states and territories have adopted the Model Work Health and Safety Act, the new legislation is yet to be adopted here in Victoria.

To understand the framework of the OHS legislation, read 'WorkSafe Victoria – Victorian Occupational Health and Safety Compliance Framework and Handbook'. Available on the WorkSafe Victoria website [www.worksafe.vic.gov.au/](http://www.worksafe.vic.gov.au/)

PG – OHS Leg Frame  
A brief overview of this framework is provided within the SCA (Vic) Guide to Understanding the OHS Legislative Framework.

The OC Act provides that the OC is obligated to manage, administer, repair and maintain the common property and services as well as carry out any other functions conferred on the OC by any other law. The WorkSafe Vic Compliance Code advises in practical terms how to comply with the obligations imposed on the OC under the OHS Act, providing details of '[Removing asbestos in workplaces](#)' and '[Managing asbestos in workplaces](#)'.

This Compliance Code supports the OHS Regs. It clarifies that since 2003, employers have had the obligation to ensure that all buildings built prior to 1990, must have an asbestos audit to determine whether asbestos is/isn't present and what information must be contained within the report provided by the professional consultant.

PG – OHS OC & OCM Resp.  
Refer to the SCA (Vic) Practice Guide Occupational Health & Safety - An OC & OCM's responsibility.

## Procedure:

1. Create the understanding of the importance of taking action to identify if asbestos is present in a building. This can include distribution of the WorkSafe Victoria Compliance Code – Managing asbestos in workplaces.
  - a. Explain to your OC the terms and obligations of the OHS legislation as noted above in ‘background’ and other referenced Practice Guides. In particular advise that an OC’s common area is defined under the OHS Act as a ‘Workplace’, ‘employees’ may be resident managers and/or independent contractors such as plumbers, electricians, caretakers etc.
2. Request quotes from professional consultant(s) to provide the asbestos audit; including cost to provide additional signage if and where necessary and ongoing costs to review.

You can refer to the SCA (Vic) Associate Directory on the website for consultants who perform this category of work.

3. Present quotations to OC Committee or OC to consider and make informed decision when selecting their preferred contractor.
4. Engage preferred consultant.

SCA (Vic) Practice Guideline – Engaging Contractors

5. Provide the audit which includes recommended plan of action to comply with the applicable obligations, to the OC Committee or OC for approval to proceed.
6. Once received, OC to accept the recommendations contained in the audit. If asbestos is present, then as an example a register will need to be created and maintained, signage will need to be affixed within and/or around the building and effected persons will need to be notified; eg contractors, residents, owners.

NB: OHS Reg 4.3.21 provides the person with management or control of a workplace must record results of identification of asbestos in an asbestos register.

OHS Reg 4.3.22 provides this register must be kept current.

7. Recommendations of audit need to be considered.

NB: OHS Reg 4.3.25 provides details of the Hierarchy of Risk Control.

The person with management or control must:

- Eliminate any risk from the presence of asbestos by removing the asbestos so far as is reasonably practicable
- If removal not practicable, must reduce the risk by:
  - Enclosure eg fixing a metal box around an Asbestos Containing Material
  - Sealing – eg epoxy based paint used as a temporary control

PG –  
OHS  
Engage.  
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OHS  
Regs –  
4.3.21

4.3.22

OHS  
Regs –  
4.3.25

- The person with management or control must ensure control measures are properly installed and maintained: eg routine inspection and prompt action if enclosure or sealant has deteriorated or been damaged.
8. Review budget to ensure the OC has adequate resources to enable any action identified within the audit to be carried out ie costs may be needed to make safe areas, further testing, removal.
  9. Provide advice that asbestos is present to all contractors who are to work on site resident manager, caretakers, plumbers, real estate agents etc.

OHS  
Regs –  
4.2.23

OHS Reg 4.2.23 provides the person with management or control of the workplace must provide a copy of the asbestos register, inform and/or provide access to a range of people. In practical terms these people are:

- An employer at the workplace who is a tenant
- A person who proposes to occupy the workplace, if they request
- A person conducting an asbestos related activity
- A license holder engaged to conduct asbestos removal
- A person engaged to do work that involves a risk of exposure
- A person engaged to do any work

10. Add advice on Work Orders that an asbestos audit has been carried out and asbestos is / is not present. If it is they should request a copy and make themselves familiar with location and where/when it may affect their health and/or requires management whilst they are conducting work on site.

When considering asbestos related activities, there is a shared responsibility with the employer to obtain the register.

11. Organise a review of the audit at least every 5 years and/or immediately if any renovation or repairs are to be undertaken.

OHS  
Regs –  
4.3.22

According to OHS Reg 4.3.22 the register must be kept current; it must be reviewed and if necessary, revised to include any changes to the condition of the asbestos at least every 5 years.

12. If an OC is to carry out demolition or refurbishment where asbestos is present additional obligations are imposed.

OHS  
Regs  
Div 6

12.1 Division 6 of the OHS Regulations 2007,

- Before demolition or refurbishment work at a premises commences the person who manages or controls the premises must review the asbestos register and revise the register if it is inadequate having regard to the proposed demolition or refurbishment work.
- No demolition or refurbishment work should commence until it is ascertained whether asbestos is present or not. If asbestos is present an asbestos register must be created.

- No register means no demolition or refurbishment until the information is obtained (otherwise assume asbestos to be present).

12.2 It is the duty of the person who commissioned the asbestos removal work to inform all employers\* in immediate/adjacent areas that removal is proposed.

- \* Whilst the legislative term used here is 'employers' it is definitely best practice within OC's that all residents and home owners be notified.

12.3 Obtain a 'Clearance Certificate'. This document states that an asbestos removal area has been cleaned and is safe to re-occupy. It must be obtained after the asbestos removal work is completed and prior to the area being re-occupied. It must be obtained by the person who commissioned the removal work.

12.4 Depending on the extent of works necessary, asbestos removal can be undertaken by a removalist who is licensed or unlicensed. Refer to the OHS Regs for detailed advice on removal obligations.

### 13. OC to report to AGM

13.1 that an asbestos register is in place

13.2 where a copy of the audit and asbestos register may be obtained from if they don't have one

13.3 recommend landlords insert information within their lease agreement so that tenants are aware and/or can inform contractors working internal of apartments to manage the risk.

14. Place OHS as topic on each committee meeting agenda to discuss any particular items of concern, but once per year include review of plan as topic, even if it is to note the review is not taking place this year, or is to be deferred to a particular date.

15. In the event the OCM is no longer the manager of the OC, he/she must provide the asbestos register to the OC Secretary and/or incoming OCM.

OHS  
Regs –  
4.3.24

OHS Reg 4.3.24 the person relinquishing management or control is responsible to provide the most recent asbestos register to any person who is assuming management or control.

## Issues:

Issues can arise when an OC fails to recognise its obligations under the OHS Act. If an OC is taking this line of thinking it is in the OCM's best interest to seek support to deliver the message. Decisions of the OC should be minuted as failing to act on the advice of the OCM. A professional manager should also consider the risk of managing a non-compliant building and consider their options to minimise their risk exposure. Substantial penalties can be imposed for breaches of OHS Legislation.

Issues can also arise when a contractor fails to recognise that asbestos has been identified on site.

## Resources:

- Owners Corporations Act 2006 Sections (OC)
- Owners Corporations Regulations 2007 (OC Regs)
- Occupational Health & Safety Act 2004 (OHS)
- Occupational Health & Safety Regulations 2007 (OHS Regs)
- SCA (Vic) Contract of Appointment (CoA)
- SCA (Vic) Practice Guideline – Occupational Health & Safety
- SCA (Vic) Practice Guide - OHS - Legislative Framework
- SCA (Vic) Practice Guide - OHS - An OC & OCM's responsibility
- WorkSafe Victoria Compliance Code – Managing asbestos in workplaces
- WorkSafe Victoria Compliance Code – Removing asbestos in workplaces
- WorkSafe Victoria – Victorian Occupational Health and Safety Compliance Framework and Handbook

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