

# Submission to the Department of Health on the Revision of the Health (Asbestos) Regulations 1992 and Supporting Arrangements



June 2015

## Status of this Submission

This Submission has been prepared through the Municipal Waste Advisory Council (MWAC) for the Western Australian Local Government Association (WALGA). MWAC is a standing committee of WALGA, with delegated authority to represent the Association in all matters relating to solid waste management. MWAC's membership includes the major Regional Councils (waste management) as well as a number of Local Government representatives. This makes MWAC a unique forum through which all the major Local Government waste management organisations cooperate. This Submission therefore represents the consolidated view of Western Australia Local Government. However, individual Local Governments and Regional Councils may have views that differ from the positions taken here.

This Submission was endorsed by MWAC on **Wednesday 24 June**.

## Introduction

The Association supports the intent of the review, particularly the efforts taken to improve consistency with Work Health and Safety requirements. Whilst Local Government does appear to be better placed than State / Federal Government to implement some of the reforms, there are considerable resourcing constraints in some areas that could undermine the effectiveness of the proposed initiatives.

This Submission provides some general comments on the application of the proposed approach and addresses the questions asked by the Department in the Memorandum of Understanding and Code of Practice.

## Comments - Memorandum of Understanding

### Is it useful to have some agreement with WorkSafe?

The Association supports the intent of the Memorandum of Understanding (MoU), in that it will help to establish a closer working relationship between the Department of Health and WorkSafe and clearly identify roles and responsibilities for each agency. It is important to make the distinction that the MoU is not binding, and as such the signatories cannot make Local Government EHO's undertake any activity (be it reporting, granting exemptions to requirements, enforcement etc). To assist with making this distinction, the Association considers that a core DoH responsibility is to provide resources and support Local Government EHO's – rather than represent them.

In terms of managing the agreement, it would be much simpler for the MoU to require that each signatory appoints officers, rather than naming them in the document. This way, the MoU would not need to be updated, at every change in the management group. It would also be beneficial for the management group to initially arrange regular meetings (every two months for example), to ensure that any problems with the MoU can be identified and resolved prior to the 12 month review.

### Is a MoU the best way to have an arrangement with WorkSafe and what may be a preferred other way of doing it?

The Association is supportive of an arrangement between the two parties. Simply undertaking the process of developing the MoU will help to establish relationships. As there is overlap in the operations of EHO's and WorkSafe, it would be beneficial for EHO's to know who to approach for support (especially when dealing with rouge asbestos removalists that are potentially endangering the health of their own employees). There is a need for a clear delineation of responsibilities. That is, clearly stating that WorkSafe is responsible for workplaces.

**Should there be greater LG EHO involvement in developing and approving an arrangement, given that they will be the primary implementer for public health? E.G. WALGA signing it?**

WALGA considers that the Environmental Health Directorate is best placed to sign the MoU, as it has both the resources and the technical knowledge to support Local Governments.

WALGA also considers that there should be wider Local Government involvement in developing and approving any arrangement (for example, CEO input), to ensure that all issues relating to the implementation of this proposal can be captured but that should be separate to the MoU between DoH and WorkSafe.

**Should an arrangement be written in more or less binding terms, noting that delivery may be problematic for both sides?**

This largely depends on what both parties want to achieve through the agreement. Is it to deliver tangible outcomes and improved communication? Or is the purpose of the agreement to limit liabilities and define the scope of involvement for each party?

The Association is of the view that the roles and responsibilities within the document can be clarified, in a way that doesn't cause problems for both parties. For example, under the operational arrangements section of the MoU, there is a phrase that currently reads '*... it is important that WA Health has an opportunity to comment on the training programs for licensed asbestos removalists and on any changes that WorkSafe makes in regards to licensed asbestos removalists.*' This phrase could easily be remodelled, so there is a formal commitment by the two agencies to request, and consider each other's feedback on new initiatives.

It would be sensible to resolve which party 'does what,' prior to responding to a high profile incident involving asbestos. Clarity, on which party has jurisdiction when responding to an incident, is essential.

**What other requirements would be worth building into an interagency operational arrangement?**

Having an agreed statement of cooperation is a good place to start. The Association considers that only those requirements and responsibilities that relate to the signatories should be included.

**What additional initiatives or products could WA Health produce to support any interagency agreement, especially in helping LG EHOs?**

The suggestion that DoH develops a database to house reports of non-compliance is supported. There are other areas of asbestos management (such as Controlled Waste Tracking) that could also be incorporated into the database, to allow for a more holistic regulatory approach to instances of non-compliance. There is a possibility that some operators are committing offences across the entire regulatory system.

It is important that information from this database is made available to both WorkSafe and Local Governments, so that Officers can check previous infringement and prosecution reports, against available information on possible new offences. There is a high possibility that rouge operators will be causing problems in multiple areas. The Association suggests that the online data base and reporting framework undergoing development by the RID Squads in NSW could be used as a template to record breaches of asbestos related requirements in WA. This tool standardises illegal dumping reports from Local Governments and assists with the evidence gathering process. Having the ability to search for information (such as registration plates) will allow for swift action to potential breaches of the Regulations. It is important to consistently record evidence in a standard format.

This database presents an opportunity for other Government agencies that use licensed asbestos removalists, to report suspected instances of non-compliance (such as Housing, Education etc).

As part of the MoU, it would be beneficial for both parties to formally state what resources and support they will provide for Local Governments.

## **Comments – Code of Practice**

The Association supports the initiative taken to establish a closer working relationship with WorkSafe, and to provide specific guidance on what constitutes a permitted activity (Section 5, pg 8).

There is a need for the Code to contain information that meets the needs of its intended audience. Currently, the Code is written for a varied audience. Page 5 lists this audience as the public, EHO's, and licensed asbestos

removalists. It could be argued that the content is targeted more towards EHO's, and other incident responders. If the Code is intended to assist the community, it would be useful to explain where the Code sits with respect to other legislation. Members of the community may not have the same level of understanding as an EHO, on what gives a Code its power (the Association suggests including a diagram, explaining how the various Acts, Regulations, Codes, and Guidance Notes inter relate).

It would also be useful for the community to know who to contact in the event that prohibited activities are observed. The Association considers that it is not appropriate to target licensed removalists through this Code. All licensed removalists should be directed to the National Code, to ensure that consistent approaches are applied.

All elements of the Code should use consistent terms, including the Appendices, and the body of the Code. For example, the reference to a clearance note is only found in the Appendices. The Association does have concerns with some of the permitted activities – mainly Sections 7.3.2, 7.3.3, 7.3.4 and 7.6.

### **Temporary removal then reinstatement**

Section 7.3.2 provides the example that access to utilities is one reason why temporary removal and reinstatement would be required. Given that tradespersons will be accessing utilities in the majority of cases, the Association queries if a householder is expected to temporarily remove the asbestos prior to a tradesperson undertaking their task, and then put it back. When a tradesperson is used, the site becomes a workplace and the OSH requirements that there is no reinstatement after removal would then apply. There are many tradespersons that will not work on jobs where there is known or suspected asbestos. The Association suggests considering the purpose of the Code, when drafting advice to the community. If the community is provided with advice and available options on proper disposal, then having the requirement of no reinstatement should be feasible. For example, free asbestos drop off days (for small quantities) could be promoted when responding to questions from the community.

### **Notifying a Local Government – for removal of up to and including 10m<sup>2</sup> of non-friable ACM**

With regards to Section 7.3.3, the Association can see the merit of establishing a notification system. However, any system would have to be carefully designed so that it does not become a disincentive to members of public, and an administrative and financial burden to Local Governments that cannot be enforced. In the event that the Department decides to progress this proposal, it will need to establish a clear objective and intent for the notification system and communicate the expectations related to this objective and intent to Local Government. To assist in defining the objective, the Association suggests considering the following questions. Will the notification system be designed to:

- Channel prospective household asbestos removalists towards education?
- Respond to complaints from neighbours of houses where asbestos is getting removed?
- Gathering information on the areas where asbestos is removed by householders, and the practices used?
- Regulating the removal and transport of <10m<sup>2</sup> of asbestos to an approved disposal facility (i.e. via inspections).

If a notification system is implemented, it would be beneficial for a consistent approach, training and documentation to be rolled out. In isolation, a notification system cannot control risks.

It is imperative that clear, consistent messages are communicated to the public that make it easy to do the right thing with regards to removal and disposal, as there is limited community awareness of risks and legislative requirements in some areas. If the improved regulatory framework is not easy to work within, there is a high risk that dangerous practises such as illegal dumping will occur. Local Government must not be burdened with the extra cost of cleaning up asbestos, as a result of an impractical regulatory framework.

### **Local Governments ability to grant exemptions to the requirements**

Section 7.3.4 states that removal of greater than 10m<sup>2</sup> of non-friable ACM must be undertaken by a licensed removalist but Local Governments are able to grant exemptions. The Association does not support this proposal. The Association understands why this proposal could be seen as applicable for remote areas where there are no licensed removalists. However it may present Local Government with a liability if the approved activity isn't carried out correctly. This exemption process would also require a higher level of involvement by Local Governments (e.g. carrying out an asbestos assessment on a property). The Association suggests that the Department investigates the processes used to grant exemptions in other states. In NSW, all removal over 10m<sup>2</sup> must be carried out by licensed removalists. Any exemptions to the conditions are granted by WorkSafe. Local Government does not play a role in this space, as it is related to workplaces.

### **Building refurbishment or demolition**

The Association recommends that careful consideration occurs when identifying the most suitable trigger point for requiring that a survey is undertaken (as outlined in section 7.6). There are numerous types of approval processes and several different Permit Authorities involved, which could create problems when attempting to implement this type of requirement.

In the first place, not all Local Governments issue approvals related to demolitions. The Local Governments that do issue demolition permits – can do so through either planning or building mechanisms. It is important to understand that Local Government is not the only 'Permit Authority' that can issue Demolition permits, therefore any system created must ensure other agencies are able to implement this requirement. The Building Commission can advise who the other 'Special Permit Authorities' are.

Not all refurbishment work involving >10m<sup>2</sup> asbestos removal would need to be approved. Approvals are generally only required for works which affect the integrity of a structure. This will need to be discussed further with the Building Commission and Building Industry Representatives as how to capture renovation work that does not require a permit to be issued.

Private Certification of Buildings can now be issued by a registered building surveying contractor, as well as a Local Government. The Building Commission registers these private Certifiers and should be involved in the discussions that connect this process to the Demolition and Building Permit process. The Australian Institute of Building Surveyors should also be contacted, to seek their views and assistance if education and training is going to occur.

A way forward in addressing this issue would be for DoH to meet with the Building Commission to discuss the possible connection of the HAR requirements into the Demolition Permit process. It may be possible to investigate the feasibility of including on the Application form for a Demolition Permit, a requirement for notification that if the house is pre 1990, than an ACM report is supplied. <http://www.commerce.wa.gov.au/sites/default/files/atoms/files/ba5final.pdf>

It is also worth considering the role of WorkSafe in work place situations where a building is refurbished or demolished.

### **Other Comments – Code of Practice**

It is important that the Western Australian Code mirrors the requirements of the National Code (particularly on removal).

### **Section 7.1 ACM Identification and Assessment**

The Association supports a cautionary approach, and having a threshold of pre 1990 buildings / structures. This threshold reduces the chance there will be asbestos present.

### **Section 7.3 ACM Removal**

The Association suggests it would be beneficial for transport by a licensed carrier and disposal at an approved site to be included in the ACM removal decision tree. With regards to limiting the time that wrapped ACM can be stored on site, most operators would be aware that removing asbestos within a relatively short timeframe would reduce the risk of damage by earthmoving equipment etc. Including a requirement that Asbestos should be removed as soon as practicable / within a defined time period is an important inclusion.

### **Section 7.4 Transport and Disposal**

It would be helpful to include some guidance on transport provisions. Transport to the disposal point, needs to occur with minimal disruption to the asbestos containing material. For example, the Code could highlight the risks associated with transporting asbestos in hook lift bins, as these bins drop material from height.

### **Section 7.8 ACM in Remote Areas**

A significant problem faced by Local Governments, is the clean-up of illegally dumped asbestos. The Department may find it useful to contact the Asbestos Safety and Eradication Agency (ASEA), as it is currently reviewing the issues and initiatives relating to illegal asbestos dumping across Australia. There is a possibility that this project will identify a range of solutions used by Local Governments to combat illegal dumping of

asbestos containing materials. These solutions may be applicable to other areas of non-compliant asbestos management.

## **Conclusion**

The draft Code and MoU are a positive step forward in beginning to improve the way asbestos is managed and regulated. However, there are other asbestos management issues that need to be addressed in parallel. For example, undertaking large scale community education and engagement, establishing an accessible network of approved disposal sites for the entire state and considering asbestos in emergency management situations.

The implementation of any changes to asbestos management regulation will need to be managed carefully. The Association looks forward to working with the Department of Health on asbestos management issues into the future.