

Submission to proposed Residential Tenancies Regulations 2020

BY

Latrobe Valley Asbestos Taskforce

18 December 2019

The Latrobe Valley Asbestos Taskforce welcomes the opportunity to present a submission to the new regulations for rental housing. Due to the dangers asbestos containing materials present, the **taskforce submits that any rental or rooming house applicant needs to know:**

1. the exact location of any asbestos containing material (ACM) present in the proposed rental property or rooming house, and the:
 - 1.1. friability of the ACM
 - 1.2. condition of the ACM
 - 1.3. the disturbance potential of the ACM.

The Latrobe Valley Asbestos Taskforce was established by the Victorian Government in early 2019 to review how asbestos is identified, managed and disposed of in the Latrobe Valley across all sites and locations including industrial, commercial and domestic. The Latrobe Health Advocate, Jane Anderson, has been appointed as the Independent Chair. Secretariat support is being provided by the Department of Environment, Land, Water and Planning (Gippsland region).

The taskforce Terms of Reference¹ are broad and include designing complete asbestos management plans, identifying any gaps in regulatory frameworks, making recommendations to Government, as well as building a common vision that prioritises the health of Latrobe Valley communities.

Australia was one of the world's biggest consumers of asbestos products per capita, consuming over 700,000 metric tonnes at its peak in the 1970s, with over 3,000 products containing asbestos on the market. A nationwide ban on all forms of asbestos containing materials came into effect on 1 January 2004, however it still remains in the built environment. This legacy means that we are still living with this toxic material today.²

Approximately 4000 Australians die from asbestos related diseases each year³ – this is higher than the annual road toll. While the majority succumbing to asbestos related diseases have been exposed in workplace settings, we are now seeing a 'third wave' of asbestos victims in Australia. The first wave of victims included people involved in the mining and transportation of asbestos, and the second wave included those who worked with asbestos containing materials. The third wave includes people who haven't been exposed to asbestos in the workplace but are developing asbestos related diseases from exposure at home, and are mostly do-it-yourself (DIY) home renovators.

¹ See Appendix A

² *Mesothelioma in Australia*, Australian Institute of Health and Welfare, 2019

³ *National Asbestos Profile for Australia*, Asbestos Safety and Eradication Agency, 2017

It is estimated that third-wave cases in Australia represent one in every three diagnoses of Mesothelioma³, a fatal and incurable disease which like other asbestos related diseases, is totally preventable by avoiding asbestos exposure.

As asbestos products are now either at, or are nearing, the end of their life span, the need to heighten awareness of the dangers of decaying asbestos products to human health is absolutely critical. It is a myth that undisturbed asbestos is safe. There is no known safe level of asbestos exposure.

While the taskforce is pleased that the proposed Residential Tenancies Regulations 2020 includes reference to asbestos for the first time, the proposed regulations will not ensure that all prospective tenants are informed about the presence of asbestos or otherwise in a property they wish to make their home.

Section 16(2) of the proposed regulations states that information the residential rental provider⁴ must disclose to rental applicant includes:

- (b) if the rented premises is known by the residential rental provider to—
 - (iii) have previously been assessed to have friable or non-friable asbestos on the rented premises;

Under this proposal no protection is provided to a tenant unless a previous assessment has taken place. In many cases it will not deliver the information necessary for a rental or rooming house applicant to know if asbestos is present.

As previously stated, **the taskforce submits that any rental or rooming house applicant needs to know:**

2. the exact location of any asbestos containing material (ACM) present in the proposed rental property or rooming house, and the:
 - 2.1. friability of the ACM
 - 2.2. condition of the ACM
 - 2.3. the disturbance potential of the ACM.

Further, if the asbestos assessment reveals that there is a risk of exposure to friable or broken, deteriorated non-friable asbestos on the property, then **the residential rental provider or rooming house operator must ensure that this is removed by licensed professionals immediately and prior to any occupation as it presents an extremely serious health hazard.** This specialised risk of exposure assessment could be undertaken using the model developed by the Victorian Asbestos Eradication Agency⁵ to assess ACMs in government owned buildings.

In regards to potential material compliance costs for asbestos removal by residential rental providers or rooming house operators, there is a proposed Australian Taxation Office ruling [3712]⁶ regarding income tax deductions for expenditure on environmental protection activities. The draft ruling, to be determined this month, clearly sets out that asbestos

⁴ Section 42(b)(iii) requires the same of rooming house operators.

⁵ <https://www.vaea.vic.gov.au>

⁶ <https://www.ato.gov.au/law/view/document?DocID=DTR/TR2019D3/NAT/ATO/00001> retrieved 5 December 2019

removal is considered an environmental protection activity, and therefore asbestos removal will qualify as a tax deduction (in the prescribed circumstances).

There is no need for any more people to suffer from asbestos related diseases. While regulations have made workplaces much safer, exposure to asbestos in the home environment is lagging behind. One in three homes in Australia built before 1990 contain asbestos. Asbestos is commonly found in walls, ceilings and floors, splashbacks, insulation around hot water units, downpipes, roof sheeting, eaves, guttering and garden sheds.

Part C of the proposed regulations outlines safety related activities, including gas and electrical safety checks, smoke alarms, carbon monoxide alarms, pool fences, and areas prone to bushfire. **Asbestos ought to be added to this list, with regular checks to report on the status of ACMs.**

The taskforce submits that residential rental providers and rooming house operators have a duty of care to ensure that their premises will not pose a hazard to the safety and wellbeing of anyone who occupies them.

APPENDIX A

Terms of Reference

Latrobe Valley Asbestos Taskforce

Background

The Latrobe Valley Asbestos Taskforce (LVAT) was formally commissioned by the Minister for Workplace Safety, the Hon. Jill Hennessy MP in February 2019. The establishment of the LVAT is a key election commitment of the Andrews Labor Government and states in part, that the Victorian Government will commission the Latrobe Health Advocate to Chair a regional asbestos forum to design a plan for the management, demolition, transportation and disposal of asbestos in the Latrobe Valley.

Following a Government decision in March 2019, responsibility for the LVAT was transferred to the Minister for Energy, Environment and Climate Change, the Hon. Lily D'Ambrosio, with coordination and secretariat services to be provided by the Department of Environment, Land, Water and Planning (DELWP).

The establishment of the LVAT is an opportunity to ensure the health and wellbeing of Latrobe Valley communities is prioritised. It will give confidence to the community that government is not only listening to their concerns, but is committed to the development of a transparent process to develop meaningful long-term plans and activities to deal with contaminated materials. Latrobe Valley communities have expressed a clear expectation for transparency, responsiveness and effective feedback processes regarding asbestos complaints and handling.

It is intended that the scope of the LVAT is broad, encompassing public and private, industrial and residential sites and locations. The work and outcomes of the LVAT are likely to be the basis for state-wide systems and reform.

Purpose

The LVAT brings together a diverse range of stakeholders including State and Local Governments and authorities, workers representatives and community groups. It aims to bring about consistency, collaboration and improved community engagement and awareness for management of asbestos.

The LVAT will build on existing policies and practices and will jointly develop initiatives, programs and plans. It will identify shortcomings in the current systems for identifying and managing asbestos. An agreed process will be developed to ensure the proper management of asbestos waste material across the Latrobe Valley. This will bring about greater transparency, consistency and collaboration to ensure public safety and confidence.

The LVAT will prioritise community engagement and education. It will communicate with the Latrobe Valley communities via a range of channels and will remain open to feedback and respond to community concerns in a consistent and transparent manner.

Functions

The functions of the LVAT are to:

1. **Enquire into and report to Government** on current asbestos waste handling processes and safety practices within the public and private sector
 - a. Reach a clear understanding of the roles and responsibilities of the various regulatory bodies and authorities in relation to asbestos identification, handling and disposal
 - b. Report to Government on current asbestos waste handling processes and safety practices
 - c. Identify the gaps in knowledge of where asbestos is and how it is managed in the Latrobe Valley across all jurisdictions
 - d. Identify shortcomings in existing practices of responding to community concerns and make recommendations to improve the responsiveness, information sharing and feedback experienced by communities.

2. **Design a plan** for the management, demolition, transportation and disposal of asbestos for all Latrobe Valley sites and locations
 - a. Provide leadership and direction to deliver the Government's commitment to manage asbestos waste in the Latrobe Valley.
 - b. Build a common vision that prioritises the health of Latrobe Valley communities
 - c. Consolidate current knowledge of asbestos and identify asbestos sites and locations that are not officially registered.
 - d. Consider the potential health risks associated with asbestos and the importance of informing and educating Latrobe Valley communities about the measures in place to protect their health

3. **Make recommendations to Government** on the way asbestos waste material will be dealt with in a formal and consistent manner.
 - a. Identify the regulatory frameworks currently in place for asbestos management, and identify any gaps in those frameworks.
 - b. Consider the views and perspectives of Latrobe Valley communities including local residents, workers, businesses and industry and identify opportunities for collaboration, communication and education.
 - c. Ensure that all decisions made around asbestos waste are communicated to the community in a transparent and timely manner.

4. **Engage with and inform** the community and industry in the Latrobe Valley on the work and progress of the LVAT.
 - a. Know the importance of community involvement and education recognising both the benefit of gathering intelligence from communities about asbestos and the need to provide informative and easy to understand education about the risks.
 - b. Collaboratively develop a communication and engagement plan to ensure there is a clear and shared understanding of level and method of engagement and responsibility amongst Latrobe Valley communities and key stakeholders.
 - c. Provide Latrobe Valley communities with the information required to contact and engage with relevant authorities in relation to asbestos management
 - d. Facilitate public forums and other engagement activities with residents, business and industry as required.

Membership

The LVAT will be chaired by the Latrobe Health Advocate.

Membership will include representatives from the agencies and stakeholders listed below.

- Department of Environment Land Water and Planning (DELWP)
- WorkSafe Victoria (Worksafe)
- Environment Protection Authority (EPA)
- Department of Health and Human Services (DHHS)
- Latrobe Health Assembly
- Latrobe Valley Authority (LVA)
- Latrobe City Council
- Wellington Shire Council
- Baw Baw Shire Council
- Asbestos Council/Gippsland Asbestos Related Disease Support Group (GARDS)
- Australian Manufacturing Workers Union (AMWU)
- Construction, Forestry, Mining and Energy Union (CFMEU)
- Electrical Trades Union (ETU)
- Australian Workers Union (AWU)
- Australian Services Union (ASU)
- Resource Recovery Gippsland.

Other authorities and agencies including Gippsland Water, the Victorian Building Authority and the Municipal Association of Victoria may be invited to attend and participate in LVAT discussions and activities as needed.

Frequency of Meetings

The LVAT will meet initially every month and after the first six months will review this with the intent to meet every two months thereafter.

Resources

DELWP will provide secretariat and technical support for the LVAT. This will include a dedicated team that is based in the Latrobe Valley for the duration of the LVAT.

In addition, the LVAT will look to utilise and realign existing resources of the various regulatory bodies in relation to asbestos identification, handling and disposal.

Duration

The LVAT will have an intended duration of up to four years.

Reporting

The LVAT will report to the Minister for Energy, Environment and Climate Change through DELWP on an annual basis.

Terms of Reference Review

The LVAT Terms of Reference will be reviewed on an annual basis.