



LATROBE VALLEY
ASBESTOS TASKFORCE

YEAR ONE RECOMMENDATIONS

2020

RECOMMENDATIONS

Following Year One activities of the Latrobe Valley Asbestos Taskforce, these recommendations are submitted to minimise the risk of asbestos exposure to the Victorian community, both in workplaces and in homes.

As activities of the Latrobe Valley Taskforce progress, it is anticipated that further recommendations will be made.

These recommendations were approved by the members of the Latrobe Valley Asbestos Taskforce at the meeting held on 7 October 2020.

SUMMARY

The Latrobe Valley Asbestos Taskforce was established in February 2019 following a state election commitment to review how asbestos is managed, handled and disposed of in the wider Latrobe Valley. The Latrobe Health Advocate, Jane Anderson, is the independent Chair, with representatives from the following organisations forming the membership body:

- Department of Environment Land Water and Planning
- WorkSafe Victoria
- Environment Protection Authority
- Department of Health and Human Services
- Sustainability Victoria
- Latrobe City Council
- Wellington Shire Council
- Baw Baw Shire Council
- Resource Recovery Gippsland
- Latrobe Valley Authority
- Latrobe Health Assembly
- Asbestos Council of Victoria/Gippsland Asbestos Related Disease Support Group
- Australian Manufacturing Workers Union
- Construction, Forestry, Mining and Energy Union
- Electrical Trades Union
- Australian Workers Union
- Australian Services Union.

The Taskforce has been commissioned to review current strategies and regulatory frameworks and make recommendations relating to the identification, management, and disposal of asbestos across industrial, commercial and residential sites and locations. It aims to bring about consistency, collaboration and improved community engagement and awareness for the management of asbestos.

This is an important undertaking, as the health risks and costs to the community are great. The Centre for International Economics 2018 study on The economic burden of asbestos-related disease found that in Australia, the costs to the health system for asbestos-related disease was estimated at \$192 million¹, with associated productivity losses for patients and carers estimated at \$321 million² in the 2015-16 year. Key factors not included in these estimations was the burden of associated mental health costs for sufferers, carers and families, nor the ongoing asbestos governance and reporting framework costs.

¹ The economic burden of asbestos-related disease, Centre for International Economics, ASEA Report, 2018, p20

² *ibid*, p35

A significant proportion of these costs can be directly assigned to Victoria, which, along with New South Wales, was the most heavily industrialised jurisdiction in Australia from 1940 – 1980 and which has been therefore identified as having the highest pro-rata consumption of asbestos products.³

Sufferers of asbestos-related diseases, including mesothelioma, asbestosis, pleural plaques, and lung cancer, have mainly been those that worked in the mining and manufacturing of asbestos products, identified as the first wave of asbestos victims, and the second wave, being those who worked with asbestos products. However, an increasing third-wave of non-occupational asbestos sufferers is now being seen, represented mainly by DIY home renovators who are largely unaware of the risks of asbestos exposure. Of all reported new cases of mesothelioma, one in three is identified as belonging to the third wave.⁴

DIY home renovators not being aware of the risks of asbestos exposure was identified as one of the greatest areas of concern for the Taskforce. This was confirmed in the results of the Latrobe Valley Asbestos survey,⁵ which sought information about the renovation of residential properties built before 1990. The results showed that only 56% of DIY home renovators reported doing an asbestos assessment before commencing work, and that 36% are undertaking that assessment themselves. This was higher than the national figure of 22% performing their own assessments.⁶ Further, only 13% DIY home renovators had undertaken any type of formal training in asbestos removal and disposal.

While the national figure is that one in three Australia homes contains asbestos, the preliminary findings of the Taskforce's own Asbestos Legacy Analysis report show that that figure is likely to be much higher in Victoria, and could be closer to one in two. This is significant when a very great proportion of the population is unaware of the potential risks, and are buying and/or renting properties not even knowing if asbestos-containing materials (ACMs) are present or not.

Workers involved in the renovation or demolition of both residential and commercial buildings in Victoria have benefitted from the safeguards progressively introduced since the production of ACMs ceased in the 1980s. However asbestos awareness training is not compulsory, and there are still incidents involving "rogue" operators which continue to put workers across various occupations at risk of asbestos exposure. Education is needed as well as increased oversight of pending demolition works to increase compliance and protect workers.

With such high incidence of legacy asbestos remaining in Victoria, reform and education is urgently needed to minimise the risks of asbestos exposure and effect behavioural change across the community.

³ Preparing an estimate of the national pattern of exposure to asbestos in cases of malignant mesothelioma, Australian Safety and Compensation Council, Australia Government, 2008, p.12

⁴ Future Projections of the burden of mesothelioma in Australia, Finity Consulting, ASEA Report, 2016, p. 26.

⁵ Latrobe Valley Asbestos Benchmark Survey 2019, Latrobe Valley Asbestos Taskforce. <https://www.asbestostaskforce.net/latrobe-valley-asbestos-survey-results/>

⁶ National benchmark survey of awareness and attitudes to asbestos 2018, ASEA. <https://www.asbestossafety.gov.au/research-publications/national-benchmark-survey-awareness-and-attitudes-asbestos-2018>

The National strategic plan for asbestos awareness and management 2019 – 2023,⁷ to which the Victorian Government is a signatory, outlines nine targets,⁸ the first of which is:

increased awareness of the health risks of ACMs and where to source information: all tradespersons whose work brings them into contact with ACMs; all workers in workplaces with ACMs; 80 per cent of homeowners and occupiers, 80 per cent of property managers and real estate agents

The following four recommendations presented by the Latrobe Valley Asbestos Taskforce will go some way to meeting the above targets set in the National strategic plan.

⁷ National strategic plan for asbestos awareness and management, Asbestos Safety and Eradication Agency. <https://www.asbestossafety.gov.au/research-publications/national-strategic-plan-asbestos-awareness-and-management-2019-2023>

⁸ *ibid*, p9

Recommendation No. 1

Asbestos removal only permitted on residential properties in prescribed circumstances

Background

Increasingly Australia is seeing more and more cases that have been identified as the “third wave” of asbestos victims, and this relates entirely to non-occupational exposure; the largest group in this cohort being DIY home renovators. Unless the issue of asbestos removal in residential properties is addressed, it is likely that we will see more people joining the third wave of victims, especially in light of the ongoing popularity of home renovation shows and the boom in home improvement activities as a result of the restrictions due to the COVID-19 pandemic.

There is a widespread understanding/belief that a homeowner is only permitted to remove up to 10m² of non-friable asbestos themselves, in line with the Occupational Health and Safety (OHS) Regulations that permit limited asbestos removal by non-licensed persons. However, the OHS regulations apply only to workplaces, and currently a homeowner can in fact remove as much asbestos as they want, including the most dangerous type: friable asbestos (such as the loose-fill ‘Mr Fluffy’ insulation). A private residence only becomes a workplace when the homeowner engages someone to perform work on their property, and thus the OHS regulations become applicable at that time.

Of the laws/regulations applicable to asbestos and residential properties, the Environment Protection Act permits the EPA to investigate complaints about asbestos removal/disturbance on private residential properties where it is believed that there is imminent danger to human health or the environment, and the EPA can issue a direction to stop the activity and put in place controls to mitigate the risk. Likewise, through the Public Health and Wellbeing Act, local governments will investigate nuisance complaints relating to asbestos and may issue improvement or prohibition notices.

The Taskforce is aware that it is not uncommon for council officers to insist that homeowners engage licensed asbestos removalists following the investigation of a complaint, even though there seems to be limited regulatory backing underpinning this.

RECOMMENDATION

The funding of a trial which through the enactment of local laws, permits a homeowner to remove up to a maximum of 10m² of non-friable asbestos-containing materials as long as the homeowner has undertaken asbestos awareness training. Removal of friable asbestos can only be undertaken by a Class A licensed removalist as defined in the Occupational Health and Safety Regulations.

Benefits

Homeowners, their families and immediate adjacent neighbours will be better protected under law with regards to asbestos exposure, in the same way workers are protected under OHS regulations. This will significantly reduce the risk of asbestos exposure by ensuring removal and disposal is done correctly, and will also reduce the burden on the health system in years to come associated with those who succumb to asbestos related diseases.

Additionally, this will further strengthen local government to address asbestos concerns and complaints on residential properties, and see the move towards a statewide approach.

Risks/impacts

It is not proposed that the training takes the same form as that for the specified occupations listed in Recommendation No. 2. Instead, it is proposed that the whole program is managed by local government, with a proposed 12-month trial to be funded in the municipalities represented on the Taskforce: Baw Baw, Latrobe City and Wellington.

In Latrobe City, a program to educate homeowners about asbestos has been in place since 2010. This program saw the development of an 'asbestos removal kit' which is provided at a subsidised cost for residents. The kit includes PPE and packing materials, as well as a voucher for asbestos disposal at the local licensed waste facility. Part of the conditions of purchasing a kit, is the requirement to undertake an asbestos awareness session with the council officer, which details the necessary precautions to take when handling asbestos.

The above program is considered an integral part of any proposed trial, which ought to consider resourcing including education of council officers, compliance and enforcement issues, etc.

For homeowners to be aware of the changes, it is also critical that an education campaign is introduced at the same time.

Recommendation No. 2

Compulsory asbestos awareness training for specified occupations

Background

There is currently no mandated base-level requirement for an apprentice in any field to understand the risks of asbestos exposure when commencing a trade. This is especially concerning as there are numerous situations in which asbestos-containing materials may be encountered across many different industries.

It is also common for a person to be working in a trade, and not necessarily have completed an apprenticeship, and therefore introducing compulsory training for apprentices only will not capture all persons working in trades, nor will it address the lack of asbestos awareness that exists more broadly.

Recent data from the Australian Institute of Health and Welfare⁹ reveals that the trades which have the highest likelihood of exposure to asbestos are builders, plumbers and gasfitters at 85%, electricians at 84% and metal fitter/tuner/toolmakers next at 74%.

In response to the dire ‘Mr Fluffy’¹⁰ situation in the A.C.T. which saw numerous homes using loose-fill asbestos as insulation material, the A.C.T. Government brought in compulsory asbestos awareness training for a large list of specified occupations,¹¹ however this list does not include all occupations that may encounter asbestos-containing materials in Victoria, notably fitters and vehicle mechanics. It is estimated that up until 1990, approximately 60% of the total amount of raw asbestos imported into Australia, was used in Victoria in the automotive manufacturing industry.¹²

RECOMMENDATION

Alter the Occupational Health and Safety Regulations to mandate asbestos awareness training for all tradespeople (specified occupations) to reduce the risk of asbestos exposure, and thereby the incidence of asbestos-related disease and future impacts on the Victorian health system.

Benefits

By educating all tradespeople about the dangers and potential dire health consequences of asbestos exposure and their likely interaction with it, the risks of exposure will be significantly reduced and the

⁹ Mesothelioma in Australia 2019, AIHW. <https://www.aihw.gov.au/getmedia/558c0b6d-e872-4a0f-953d-23ae6afab3b0/aihw-can-134.pdf.aspx>

¹⁰ <http://www.asbestostaskforce.act.gov.au/about/history>

¹¹ https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3093#tabs-2

¹² Victorian Occupational Health and Safety Commission, Asbestos: Usage in Victoria, substitutes and alternatives, October 1990

widespread increased knowledge will result in behaviour change in the workplace and flow into the broader community.

To introduce the behavioural change urgently required to reduce the risk, it is suggested that all apprentices and specified high-risk trades complete asbestos awareness training within the next 12 – 18 months, followed by the rest of specified occupations in the following 12 months.

Having all trades complete this training will also mean that for the most part, apprentices will be more empowered to say 'No' to bosses who insist they continue to work on a site where asbestos could be present but the site has not been assessed for asbestos-containing materials.

Risks/impacts

There will be a cost to business to ensure employees undertake this training, however for apprentices this could be included as part of the Occupational Health and Safety unit of the relevant TAFE apprentice training program and so not necessarily an additional cost.

As part of the training for apprentices, it is proposed that all apprentices complete a general asbestos module in Year One, followed by a trade-specific asbestos module in Year Two or Three for those trades considered high-risk.

The need for a 'refresher' training course for high-risk trades could also be considered, with a suggested frequency of every five years.

There are a number of registered training organisations (RTOs) that deliver asbestos awareness training, and part of the consideration would be readying RTOs for the roll-out of statewide training.

Recommendation No. 3

Notice of intent to undertake demolition work to be made compulsory

Background

The demolition sub-sector is widely considered an area of concern with regards to the adequate identification, removal and disposal of asbestos containing materials.

Regulatory Agencies (i.e. Victorian Building Authority (VBA), WorkSafe, Environment Protection Authority (EPA), local governments) currently receive no 'forward-notification' of imminently pending demolition work, so are incapable of effecting strategic proactive oversight or targeted inspections to verify appropriate management of asbestos at the critical 'immediate-pre-commencement' phase of demolition work.

The VBA currently mandates that building surveyors report the commencement date for demolition works as a 'Notifiable Event', however, the notification is not required to be lodged until the month's end, well after demolition works are typically completed.

RECOMMENDATION

Alter the Victorian Building Authority's legal framework to bring forward the notification of 'pending demolition' so that is reported in advance of the commencement of works. It is recommended that the demolition contractor gives 5 days' advance notice of the commencement of demolition works, however in the case of an emergency, notice within 24 hours of the demolition occurring is recommended

Benefits

This will enable the VBA and relevant regulatory agencies (i.e. WorkSafe/EPA) to access this information under auspices of existing or new MOU's and effect targeted actions to promote compliance and detect non-compliance.

This will enable regulatory agencies to engage with the duty holder/site and verify that all asbestos containing materials within the structure have been identified and managed in a compliant manner.

The 5-day notice period is recommended to permit effective oversight in regional areas where vast distances are covered by agency inspectors. A reasonable notice period is required to allow for the planning of inspections.

Risks/impacts

The impact on administrative duties for business is considered negligible, as the timeline for providing the existing required notification is merely being brought forward.

In regards to the notice itself, it is acknowledged that there are circumstances in which the demolition may not be able to commence as advised, such as bad weather or contractor scheduling conflicts, and therefore the mechanism in which repeat notifications are to be provided needs further exploration with the view to minimise the administrative burden.

Recommendation No. 4

Provision of an Asbestos status certificate/report compulsory on the sale or rental of a residential property built before 1990

Background

As asbestos products are coming to the end of their lifespan, the adage that “it’s safe as long as you don’t touch it” is no longer a true statement. Nearly every home built before 1990 contains asbestos in some form, and it is important that if asbestos is present in the home, it is identified, including the condition it is in and the risk disturbance potential.

RECOMMENDATION

- i. The Sale of Land Act be amended so that an asbestos status certificate/report to be mandated for inclusion in the Property Vendor statement (commonly referred to as the section 32 statement) for all residential properties built prior to 1990.
- ii. The Residential Tenancies Regulations be amended so that an asbestos status certificate/report is mandated for all residential properties built prior to 1990 and provided to a rental applicant 7 days prior to entering into a lease.

Benefits

Home buyers and rental applicants will know in advance if the property has asbestos, and can budget/prepare/respond accordingly. Landlords will ensure their properties are better maintained as rental applicants will likely become more discerning about the risk of asbestos exposure. This will mean that more asbestos containing materials will be removed from the residential built environment, thus increasing the safety of the community.

Risks/impacts

It is proposed that the cost burden of providing an asbestos status certificate falls on the vendor/landlord. In consideration of vendors on low incomes, it is proposed that the cost for the asbestos assessment and the provision of a status certificate could be paid upon property settlement in the same way that conveyancing fees are typically handled.

With the introduction of ATO ruling No. 2020/2 Income tax: deductions for expenditure on environmental protection activities,¹³ a landlord can now claim a full tax deduction for the removal of asbestos on rental properties. The cost of an asbestos assessment may also be claimed under this new ruling.

¹³ <https://www.ato.gov.au/law/view/document?LocID=%22TXR%2FTR20202%2FNAT%2FATO%22&PIT=99991231235958>

As the introduction of these proposed changes would see an increase in demand for qualified persons to perform asbestos assessments and issue asbestos status certificates, the need to skill-up a new workforce is recognised. This may involve further training for occupational hygienists in the area of asbestos identification, or perhaps of building inspectors/surveyors, or the introduction of licensed asbestos assessors such as exist in other jurisdictions. As the presence of asbestos can only be determined by laboratory testing, it may also necessitate the accreditation of more testing facilities by the National Association of Testing Authorities (NATA).

While costs for asbestos assessments are currently in the range of \$500 – \$1500, it is anticipated that these costs will come down as market forces come into play.

Other identified potential risks include the impact on property values and how this may affect both the buying and rental market, with careful consideration required so as not to inadvertently widen the socio-economic gap. People on low incomes may not be able to afford certain houses if the rental/purchase price is inflated due to being cleared of asbestos, and similarly, people on low incomes may not be able to sell a house if it has asbestos, and may also not be in the financial position to remove the asbestos prior to sale.