

ACT Asbestos Management Review - 2010

1 SEPTEMBER 2010

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1 Introduction

1.1 Purpose of the Review

The ACT Asbestos Management Strategy Review 2010 (2010 Review) is established to inquire into and report on the effectiveness of asbestos management and regulation in the Territory and recommend any measures to improve the governance and regulation of asbestos within the ACT with a view to addressing asbestos related hazards to population health.

1.2 Terms of Reference

In considering its inquiry and report, the 2010 Review should:

- 1 Review current progress in implementing the Government's response to the Report by the ACT Asbestos Task Force, August 2005;
- 2 Review the effectiveness of coordination and information sharing across relevant agencies in the Territory with respect to asbestos;
- 3 Assess the adequacy and effectiveness of legislative provisions governing asbestos including measures to regulate asbestos related risks and hazards through training, licensing and enforcement regimes;
- 4 Assess the adequacy of current education and health strategies that address the incidence and management of asbestos related disease and the enforcement of asbestos related laws and regulations; and
- 5 Identify opportunities to further improve the management of asbestos.

1.3 2010 Review

On behalf of the Minister for Industrial Relations, the Office of Industrial Relations (OIR) commissioned Jenny Dempsey from Join the Dots Consulting Pty Ltd to conduct the 2010 Review of the ACT Asbestos Management Strategy.

Consultation for the 2010 Review was conducted during March 2010 to June 2010 with representatives from unions, industry and ACT Government agencies. All parties provided open, honest and valuable input and were committed to ensuring appropriate outcomes were received for the ACT community. The participation and contribution of all these parties throughout the review is acknowledged and appreciated.

2 Background

2.1 ACT Asbestos Task Force Report 2005

The Asbestos Task Force (Task Force) was established in November 2004 following the passage of new legislation, the *Dangerous Substances (Asbestos) Amendment Act 2004*. At the time the Task Force identified the broad intentions of the new asbestos management arrangements in the ACT as providing:

- general community awareness of asbestos hazards and safe management;
- an enduring system for managing asbestos in the community;
- continuity of knowledge and advice about the location and condition of asbestos (i.e. fair disclosure as to the presence of asbestos); and
- education and warning for people at risk, whether undertaking an activity disturbing materials containing asbestos, or subject to environmental exposure.

In August 2005, the Task Force issued a report on asbestos management in the ACT in relation to residential properties, commercial properties and the building trades and asbestos industry. [ACT Asbestos Task Force, *Asbestos Management in the ACT*. Publication 05/0813, Publishing Services, Canberra, the "Task Force Report"]. The Task Force recommended that an ACT Asbestos Management Strategy be developed based on the report recommendations, accompanied by a five year program of implementation, together with an asbestos management team to provide effective coordination during implementation of the strategy. The ACT Government Response to the Task Force Report formed the basis for the strategy.

2.2 ACT Government Response to Task Force Report

The ACT Government supported the findings and agreed in principle with the majority of the recommendations in the Task Force Report by the ACT Asbestos Task Force, August 2005. A detailed response, "ACT Government response to asbestos management 23 August 2005", (the Response), was tabled in the Legislative Assembly in August 2005. A copy of the Response is at [Appendix A](#).

The Response identified a range of actions that were to be implemented over time. Many of the Response actions required substantial changes including changes to legislation, and the development and implementation of initiatives that required collaboration between a range of stakeholders and industry participants.

The Response confirmed that a review of the ACT Asbestos Management Strategy would occur in 2010.

3 Law and Policy

3.1 Current Asbestos Management Arrangements

Currently, management of asbestos related issues in the ACT Government is spread across a number of ACT Government agencies according to the Administrative Arrangements as follows:

Office of Industrial Relations (OIR) has policy responsibility for the *Dangerous Substances Act 2004* and the associated regulations dealing with asbestos management and asbestos registers for non-residential premises. OIR has ownership of the asbestos website and the ACT's training course materials about asbestos;

Department of Justice and Community Safety (JACS) deal with asbestos issues related to the sale of property transactions. The **Office of Regulatory Services, Work Safe ACT (ORS)**, under JACS, has regulatory responsibility for the *Dangerous Substances Act 2004* and *Work Safety Act 2008* and associated regulations. ORS regulate the management and safe handling of asbestos and the asbestos register requirement, including provision of advice, response to complaints, investigation and enforcement and compliance action.

ACT Planning and Land Authority (ACTPLA) has responsibility for all inquiries about building approvals, development applications and demolitions (including renovation work, identification and removal, laws and obligations and complaints). ACTPLA also deals with all industry licensing management for asbestos assessors and removalists, builders and trades people dealing with the handling, disturbance and removal of bonded and friable asbestos. ACTPLA administers relevant provisions of the *Building Act 2004* and *Construction Occupations (Licensing) Act 2004*;

Department of Territory and Municipal Services (TAMS) deals with all reports and inquiries about the dumping of asbestos on public land. Asbestos disposal services are provided by Thiess at two sites, under contract to ACT NoWASTE;

Department of the Environment, Climate Change, Energy and Water (DECCEW) administers the *Environment Protection Act 1997*, which covers waste classification and disposal, licensing of disposal facilities and regulation of pollution and land contamination; and

ACT Health deals with the public health aspects of asbestos management.

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3.2 Legislation in Force

Legislation and associated regulations in force in the ACT that include specific requirements for the management of asbestos are listed in Table 1.

TABLE 1: ACT ASBESTOS RELATED LEGISLATION IN FORCE AT 30 JUNE 2010

	Legislation	Ministerial Responsibility	Regulatory Responsibility
1	<i>Building Act 2004</i>	Minister for Planning	ACTPLA
2	<i>Construction Occupations (Licensing) Act 2004</i>	Minister for Planning	ACTPLA
3	<i>Civil Law (Sale of Residential Property) Act 2003</i>	Attorney-General	JACS (ORS)
4	<i>Dangerous Substances Act 2004</i>	Minister for Industrial Relations	Attorney-General/ JACS (WorkSafe)
5	<i>Environment Protection Act 1997</i>	Minister for the Environment, Climate Change and Water	DECCEW
6	<i>Residential Tenancies Act 1997</i>	Attorney-General	JACS(ORS)
7	<i>Work Safety Act 2008</i>	Minister for Industrial Relations	Attorney-General/ JACS (WorkSafe)

3.3 Legislative Change Since 2005

1. **The Asbestos Legislation Amendment Act 2006 (No 1)** amended each of the following in response to the Task Force Report:

- *Building Act 2004*
- Building Regulation 2004
- *Civil Law (Sale of Residential Property) Act 2003*
- *Construction Occupations (Licensing) Act 2004*
- Construction Occupations (Licensing) Regulation 2004
- *Dangerous Substances Act 2004*;
- Dangerous Substances (General) Regulation 2004, and
- *Residential Tenancies Act 1997*.

The amended laws and regulations provided for a range of measures dealing with minor maintenance work around homes and other types of buildings that may involve bonded asbestos, the licensing and training of construction and other occupations that handle asbestos on a regular basis and to provide for the supply of information at key transaction points on the likely location of asbestos in homes built prior to 1985.

The amendments gave effect to the Government's response to the Task Force Report to establish asbestos management regimes for the residential sector and those occupations that handle asbestos on a regular basis.

2. The *Asbestos Legislation Amendment Act 2006 (No 2)* then amended the commencement of the Asbestos Legislation Amendment Act 2006 (No 1) to commence on 1 July 2006 to reflect the Government's intention to allow stakeholders and affected industries to put in place necessary arrangements for the new residential asbestos management regime.

3. The *Dangerous Substances (General) Amendment Regulation 2007 (No 1)* amended the Dangerous Substances (General) Regulation 2004 to provide an asbestos-specific management and control regime for non-residential premises consistent with the recommendations of the Task Force Report.

This created a more effective system in directing resources towards best practice asbestos management procedures. The new regulatory regime introduced by the amendments only applied to non-residential premises built before 31 December 2003. This date is consistent with the national ban on the importation, manufacture and use of asbestos products. The regime provided that there be staged compliance dates for the new regime depending on the category of the premises:

- Commercial multi-storey 1 September 2008;
- Commercial single-storey 1 September 2009;
- Industrial 1 March 2010; and
- Community/Recreational 1 September 2010.

4. The *Dangerous Substances and Litter (Dumping) Legislation Amendment Act 2009* amended provisions of various Acts including the *Dangerous Substances Act 2004* in order to decrease incidences of illegal dumping and to facilitate the recovery of costs involved with removing illegally dumped material.

3.4 National Harmonisation of Occupational Health & Safety

The regulation of asbestos across Australia is being reviewed as part of the National Harmonisation of Occupational Health and Safety (OHS). It is intended that a Bill that supports a nationally harmonised asbestos regulatory framework will be introduced into the ACT Legislative Assembly in 2011. A national regulation will also be developed for the management of asbestos.

When the OHS harmonisation matters relating to asbestos have been settled through the Workplace Relations Ministers Council, it will be necessary to assess the impact of any proposed changes on the ACT's asbestos management regime and determine appropriate action at that time.

3.5 Australian Mesothelioma Registry

The establishment of the Australian Mesothelioma Registry (AMR) was announced by the Federal Government in May 2010 to commence in July 2010. The AMR replaces the Australian Mesothelioma Register which has been in operation since 1985.

The AMR will collect more detailed information about the incidence of mesothelioma in Australia, which is linked to exposure to asbestos. It will be managed by a consortium led by the Cancer Institute of New South Wales.

The AMR will collect notifications of new cases of mesothelioma from the State and Territory cancer registries and detailed information on the past exposure to asbestos of mesothelioma patients. The new Australian Mesothelioma Registry will collect more detailed and accurate information on mesothelioma and related asbestos exposure than has been possible in the past.

4 Review Approach/ Methodology

The 2010 Review was conducted over a four month period from March to June 2010. The review was broken into four phases; data gathering, analysis, findings and recommendations, and a written report.

The data gathering phase of the review included:

1. desk top review of reference documents, current in force legislation and guidelines, information provided by Agencies and current information readily available to the ACT community;
2. ACT Agency interviews to identify progress and any issues to be addressed;
3. stakeholder interviews and submissions to identify progress and any issues to be addressed; and
4. literature reviews completed by two experts involved in the original Report by the ACT Asbestos Task Force, August 2005 to identify any significant changes in available research relevant to this review.

The analysis phase compared available information from the various sources collected in the data gathering phase. Clarification and verification of information was sought from Agencies and stakeholders where necessary.

4.1 Assumptions

- The Report by the ACT Asbestos Task Force, August 2005 (Task Force Report) findings remain valid and unchanged.

In finalising their report, the Task Force completed extensive empirical research into asbestos incidence in the ACT and current management practices accepted at the time. The 2010 Review has been completed on the assumption that these findings remain valid.

To support this assumption, the 2010 Review team requested a literature review be completed by two experts involved in the Task Force Report. This literature review is described in more detail at section 4.6.

- Additional WorkSafe ACT resources have been approved effective 1 July 2010.

The ACT Government has recently approved additional inspectorate resources for WorkSafe ACT; which in part will be allocated to the regulation of asbestos. Recruitment for these resources commenced in June 2010.

4.2 Key Reference Documents

The following key reference documents were considered as part of the 2010 Review:

1. Asbestos Management in the ACT, Report by the ACT Asbestos Task Force, August 2005, (Task Force Report); and
2. ACT Government Response to Asbestos Management in the ACT, 23 August 2005, (Response).

4.3 Agency consultation

Agencies were provided with the 2010 Review Terms of Reference and were invited to meet with the 2010 Review team to provide input either through one to one discussions or a written submission. A list of agencies the 2010 Review team consulted is at Table 2.

TABLE 2 – 2010 REVIEW AGENCY CONSULTATION

	Agency	Division
1	Chief Minister’s Department	Office of Industrial Relations
2	ACT Planning and Land Authority	Construction Occupations Licensing
3	Department of the Environment, Climate Change, Energy and Water	Environmental Protection
4	Territory and Municipal Services	ACT NoWASTE
5	ACT Health	Health Protection Service, Coordinator Dangerous Substances; and Security Operations
6	Department of Justice and Community Services	Office of Regulatory Services – Work Safety Commissioner and WorkSafe ACT
7	Department of Justice and Community Services	Infrastructure and Security Management; and Manager, Environment and Compliance
8	Department of Justice and Community Services	ACT Fire Brigade
9	Department of Education and Training	School Capital Works
10	Cultural Facilities Corporation	
11	Department of Housing and Community Services	Property Management
12	Department of Land and Planning Services	Property Asset Management; and Government Accommodation Strategy
13	Canberra Institute of Technology	Facilities

A progress report against each Government response to the recommendations in the Report by the ACT Asbestos Task Force was prepared. Where these draft progress reports referred to any agency, they were provided to the agency for review and comment, prior to being finalised.

4.4 Stakeholder consultation

Stakeholders were provided with the terms of reference for the review and invited to meet with the 2010 Review team to provide input either through one to one discussions or a written submission. A list of stakeholders invited to participate is at Table 3.

TABLE 3 – STAKEHOLDER’S INVITED TO PARTICIPATE IN ASBESTOS REVIEW PROJECT

	Stakeholder Name	Oral Submission	Written Submission
1	ACT & Region Chamber of Commerce & Industry	No	No
2	Australian Institute of Occupational Hygienists	No	No
3	Bellchambers Asbestos Removal	No	No
4	Canberra Business Council	No	No
5	Classic Solutions Asbestos Removal & Treatment	No	No
6	Communication Electrical & Plumbing Union	Yes	No
7	Construction, Forestry, Mining & Energy Union	Yes	Yes
8	Electrical Trades Union	Yes	No
9	Environmental Investigation Services	No	No
10	Housing Institute of Australia	Yes	No
11	HEGGIES Pty Ltd	No	No
12	Master Builders Association	Yes	No
13	Noel Arnold & Associates	No	No
14	Parsons Brinckerhoff Australian Pty Ltd	No	No
15	Property Council of Australia	Yes	No
16	Real Estate Institute ACT	Yes	No
17	Robson Environmental Services	Yes	Yes
18	Safe Work & Environments	Yes	No
19	Unions ACT	Yes	No

The matters raised in these submissions were considered as part of this review and where appropriate have been incorporated into the progress reports against each recommendation in Section 5 of this report.

4.5 Literature Review

Two of the experts involved in the 2005 Asbestos Task Force were engaged to complete a literature review of recent developments in technical or medical advice provided to the 2005 Asbestos Task Force. Dr James Leigh reported on medical matters and Dr Steven Brown reported on technical matters.

Dr James Leigh, Consultant Occupational Physician, MD PhD MA MSc (Syd) BLegS (Macq) Ceng FAFOM FAFPHM, reported on “Recent Developments in Asbestos Related Diseases, [Appendix B](#). The findings of this review continue to support the recommendations of the 2005 Asbestos Task Force.

Dr Steven Brown, Principal Research Scientist and Certified Occupational Hygienist, CSIRO reviewed “Recent Technical and Scientific Knowledge of Significance to the 2005 ACT Asbestos Task Force Report”, [Appendix C](#). The findings of this review continue to support the recommendations of the 2005 Asbestos Task Force.

5 Progress Report - ACT Government Response

This section of the report includes:

- All recommendations made in the Report by the ACT Asbestos Task Force, August 2005;
- The ACT Government Response to Asbestos Management in the ACT; A Report by the ACT Asbestos Taskforce, 23 August 2005 recommendations,;
- A progress report prepared by the 2010 Review, of action taken by the ACT Government since 2005; and
- Actions the 2010 Review has identified that should be considered to fully implement the intention of the ACT Government Response to Asbestos Management in the ACT; A Report by the ACT Asbestos Taskforce, 23 August 2005 recommendations.

This section of the report presents the recommendations made in the, Report by the ACT Asbestos Task Force, and comments on progress made against the ACT Government Response. The progress is coded as follows:

- response implemented, no further action required or action to enhance progress identified
- significant progress, some action required to complete implementation
- minimal progress

The 2010 Review follows the order of recommendations as set out in the Report by the ACT Asbestos Task Force, August 2005.

5.1 Awareness & Education

5.1.1 Recommendation 2 (a) – Loose asbestos insulation removal program

“All current and future owners of houses involved in the Loose Asbestos Insulation Removal Program (1988–1993) are provided with appropriate information on the possible presence of residual loose-fill asbestos encased in wall cavities, and the need to take care when undertaking extension and renovation activities”.

Government Response - 2(a)

“Agreed. Action was taken during June and July 2005 to advise current owners, in writing, of their homes’ involvement in the Loose Asbestos Insulation Removal Program (1988-1993)”.

Progress Report - 2(a)

● **Response implemented - impacted homeowners were advised in 2005 of the insulation removal program.**

The Asbestos Task Force and ACTPLA sent a letter (co-signed in 2005) to all home owners, where loose asbestos insulation had been removed as part of the Loose Asbestos Insulation Removal Program (1989-1993). The letter cautioned home owners to take appropriate steps with any future additions and alterations, due to the possibility of residual asbestos material in wall cavities and the like.

Next Actions - 2(a)

1. To further progress the intent of the Asbestos Taskforce recommendation, modify the form letter to the Loose Asbestos Insulation Removal Program (1989-1993) homeowners to further strengthen the message and to further clarify legal obligations, for instance when homeowners undertake alterations or renovations to the property.

5.1.2 Recommendation 2(b) – Systematic advice to loose asbestos program houses

“A systematic approach be taken through the ACT Planning and Land Authority property system to ensuring that this advice is conveyed regularly to relevant building owners”.

Government Response - Recommendation 2(b)

“Agreed. A system will be developed for establishing a record on the ACT Planning and Land Authority property system. Consideration will be given to any supplementary work that may be required to strengthen the ACT Planning and Land Authority building file system.

Recognising the constraints of private certifier based building control and the success of recent direct homeowner correspondence, further active follow up is not considered warranted at this time. The use of building file searches to access will be monitored.

This issue will be considered again as part of the 5 year review to consider whether further follow up correspondence or other measures may be required”.

Progress Report - Recommendation 2(b)

● **Response implemented - a systematic approach to providing information has been implemented, consistent with the Asbestos Taskforce recommendation.**

The ACTPLA Planning and Lease Management (PaLM) database has been modified to identify properties where asbestos has been removed as part of the Loose Asbestos Insulation Removal Program (1989-1993). A message, "Asbestos related properties (please refer to Building File records)" is displayed on the operators screen when the electronic record for the property is accessed. Each 'paper' building file for these properties includes an identification label. These measures allow ACTPLA staff to identify potential asbestos hazards at these sites.

ACTPLA identify houses included in the Loose Asbestos Insulation Removal Program (1988-1993) as part of the standard residential lease conveyancing inquiry which is required as part of putting together a 'contract of sale' for a residential property. ACTPLA provides the potential seller (usually through their solicitor) with a report stating the current status of knowledge in relation to asbestos at the property. If the property was part of the removal program the report would state "ACT Planning & Land Authority (ACTPLA) records indicate that a form of asbestos is or has been present on this land. For further information please contact the ACT Planning & Land Authority on 6207-6262".

A prospective purchaser (usually through their solicitor) can request further information from ACTPLA in relation to the building file information prior to any purchase. JACS advise the sale of contract provisions operate effectively and as intended.

It is understood that ACTPLA is not notified of a change of land ownership following a property sale and therefore is unable to notify new land owners of the Loose Asbestos Insulation Removal Program (1988-1993).

Next Actions - Recommendation 2(b)

2. To further progress the intent of the Asbestos Taskforce recommendation,

(a) Provide information to the Loose Asbestos Insulation Removal Program (1989-1993) homeowners periodically to further build awareness;

(b) Implement a procedure whereby new home owners of relevant properties are provided with the letter, i.e. following the transfer of title.

5.1.3 Recommendation 4 (a) - Develop generic asbestos advice

"That generic Asbestos Advice: (a) be developed to provide a basic level of advice on materials containing asbestos and the locations where they are likely to be found in residential premises built before 1985".

Government Response - Recommendation 4(a)

"Agreed. The extent and impact survey indicates a rapid decline in the use of materials containing asbestos (MCAs) between 1982 and 1984. From a sample group of over 90 dwellings in 1984/5 only three samples of MCAs were identified in 1984, with only one as part of the residence in the external eaves, and in 1985 and only one as end tile support on a gable roof. The Task Force has adopted a

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conservative approach based on these findings to conclude that asbestos building materials had been virtually phased out by 1 January 1985.

This does not absolutely rule out the possibility of materials being used after this date in outbuildings such as dog kennels, or by building trades as off-cuts or packing materials. In light of this data and the Task Force's health risk assessment report, the policy approach recommended by Task Force remains valid and appropriate.

It is reasonable to conclude that:

- the vast majority of homes built before 1982 are likely to have MCAs
- that homes built between 1982 and 1984 may have MCAs
- that homes built from 1985 onwards are very unlikely to have MCAs.

The Task Force report included a draft version of the generic advice, based on the findings of the extent and impact survey. The content of the suggested Asbestos Advice form will be further refined prior to being introduced into regulation”.

Progress Report- Recommendation 4(a)

● **Response implemented - basic level generic advice has been developed consistent with the Asbestos Taskforce version.**

The Dangerous Substances (Asbestos advice) Notice 2006 (No 1) was developed in response to this recommendation and came into effect on 1 July 2006. The advice is a ‘notifiable instrument’ based on the generic advice included in the Report by the ACT Asbestos Task Force.

Notifiable instrument (NI2006-213) is available on the ACT Legislation Register website at <http://www.legislation.act.gov.au/ni/2006-213/notification.asp>

Feedback from stakeholders indicated that there is a need to review the generic advice to include additional examples of locations where asbestos may be found, such as letterboxes, swimming pools and ponds.

Next Actions - Recommendation 4(a)

3. Review and update the generic asbestos advice used widely in the ACT to include additional examples of locations where asbestos may be found, such as letterboxes, swimming pools and ponds.

5.1.4 Recommendation 4(b) – Generic advice provided at certain transactions

“That generic asbestos advice be required to be provided at the following points of transaction:

- (a) building approval (building certifier to provide to owner/applicant) ACTPLA
- (b) tenancy agreement (owner to provide to potential or actual tenant) ORS
- (c) sale of property (owner to provide to potential or actual purchaser) ORS”

Government Response 4(b)

“Agreed. The government will consider how to best legislate the provision of advice in a practical and effective manner”.

Progress Report - Recommendation 4(b)

● Response implemented – the *Building Act 2004*, *Residential Tenancies Act 1997* and the *Civil Law (Sale of Residential Property) Act 2003* were amended to ensure provision of asbestos advice at the relevant points of transaction.

Building Approvals – residential premises

Section 28A(1)(b)(iii) of the *Building Act 2004* requires a building certifier to attach an asbestos awareness sheet, “Asbestos Advice Notice 2006 (No 1)”, to approved building plans. ACTPLA review compliance with this requirement as part of their “Building Registration Audit Program”. ACTPLA report compliance with this legislative requirement is acceptable.

Tenancy Agreements – residential premises

Section 12 of the *Residential Tenancies Act 1997* requires lessors to include any relevant asbestos assessment report for a property, or if there is not one, a copy of the asbestos advice, in a tenancy agreement.

The Real Estate Institute of ACT has confirmed that real estate agents are advised to include the “Asbestos Advice Notice 2006 (No 1)”, with each residential tenancy agreement.

The Office of Regulatory Services (ORS) advise that it is difficult to measure the level of compliance among private landlords and real estate agents and was unable to provide data supporting the level of compliance. ORS has **produced a publication to assist landlords and tenants in relation to the laws applying to residential tenancies ‘The Renting Book’**. **However, this publication does not include any advice in relation to asbestos.**

Sale of Property – residential premises

The *Civil Law (Sale of Residential Property) Act 2003* requires vendors to include any relevant asbestos assessment report for a property, or if there is not one, a copy of the asbestos advice in a contract of sale for a property.

Progress report 2(b) describes the systematic process ACTPLA has implemented to ensure prospective purchasers are notified of the potential presence of asbestos at a property where their records indicate a known presence as part of the conveyancing process.

Next Actions - Recommendation 4(b)

4. Revise ‘The Renting Book’ to include advice to landlords and tenants regarding the potential risks from asbestos and associated legal obligations.

5.1.5 Recommendation 4(c) – Generic advice with conveyancing documentation

“That generic asbestos advice be included as part of standard conveyancing documentation, subject to satisfactory negotiations with the Law Society”.

Government Response - Recommendation 4(c)

“Agreed. The Government agrees to the recommendation, and positive discussions have been held with Law Society of the ACT and the Real Estate Institute of the ACT (REIACT) in relation to implementation”.

Progress Report - Recommendation 4(c)

● **Response implemented – the *Civil Law (Sale of Residential Property) Act 2003* was amended to ensure the asbestos advice is included in a contract of sale for a property.**

An asbestos advice, “Asbestos Advice Notice 2006 (No 1)”, is a required document under the *Civil Law (Sale of Residential Property) Act 2003* where there is no asbestos assessment report

Next Action - Recommendation 4(c)

No further action required at this time to complete Government response.

5.1.6 Recommendation 6 - Residential asbestos survey report

“Where an Asbestos Survey Report has been obtained for residential premises; that it be required to be provided at the following points of transaction:

- (a) building approval
- (b) tenancy agreement
- (c) sale of property
- (d) when engaging a tradesperson who is likely to disturb materials containing asbestos”.

Government Response Recommendation 6

“Agreed in principle. The principle of disclosure is supported. Where specific information is available on the presence of materials containing asbestos, it would be valuable to provide that information to others, particularly in situations where activities are likely to be undertaken which disturb the materials. The practical means of achieving this recommendation will be considered in legislative drafting”.

Progress Report Recommendation 6

● **Response implemented – the *Building Act 2004*, *Residential Tenancies Act 1997*, the *Civil Law (Sale of Residential Property) Act 2003* and the *Dangerous Substances Act 2004* were amended to ensure provision of any asbestos survey report at the relevant points of transaction.**

Building Approvals

Division 3.3 of the *Building Act 2004* provides that an application for building approval for residential premises built before 1985 must be accompanied by an assessment report (if previously obtained) and an asbestos removal control plan. This applies to building approvals for building classes 1, 2, 3, 4 or a class 10 building associated with any of the building classes 1, 2, 3 or 4.

If an application for building approval is lodged with ACTPLA with no Asbestos Assessment Report and the ACTPLA database identifies the property as a potential asbestos site, ACTPLA will refer the application to the certifier/homeowner or potentially issue a stop work notice. Since 2005, ACTPLA cited one example where an Asbestos Assessment Report had not been lodged with an application for building approval for these pre 1985 premises.

Tenancy Agreement

Section 12 of the *Residential Tenancies Act 1997* establishes obligations for the disclosure of Asbestos Assessment Reports. It is not a requirement of the lessor to obtain a report, however if one exists for the property the lessor must take reasonable steps to provide it to the tenant for new lease agreements commencing after the legislation came into force in 2006. If there is no report for the property the generic asbestos advice notice must be provided. If a lease agreement was already in place at the commencement of this legislation the lessor was required to provide any report or the asbestos advice within 12 months.

For a period following the Task Force the pro-forma Residential Tenancy Agreement (ref 2001/STAG) included a disclosure notice for the lessor. The disclosure notice required the lessor to declare knowledge of asbestos related materials at the premises to the tenant. The Real Estate Institute of ACT has reported this practice has now been replaced and that real estate agents are advised to include the generic asbestos advice with each residential tenancy agreement.

Sale of Property

Section 9(i) of the *Civil Law (Sale of Residential Property) Act 2003*, lists an asbestos assessment report which has been prepared by a Licensed Asbestos Assessor (Class A) as a required document and is to be attached to the contract for sale. It is not a requirement of the vendor to obtain a report for the property, however if there is a report, the vendor must take reasonable steps to provide it with the contract of sale. In the absence of a report, the vendor must include the generic asbestos advice in the contract for sale. ACTPLA will identify if their records indicate the presence of asbestos at the property and this advice will be included in the Planning and Lease Manager (PALM) Lease Conveyancing Enquiry Report provided to a vendor as part of preparation of contracts prior to sale.

ORS provides information to residential owners about their obligations to provide prospective buyers with information on what they know about asbestos at the premises. Guidance material is provided in ORS publication "Reality Check" and is available on www.ors.act.gov.au.

Tradesperson Engagement

If a person engages a worker at the premises and an asbestos assessment report exists they must provide the report under section 47L of the *Dangerous Substances Act 2004*.

Next Actions - Recommendation 6

5. The Government continue community and tradesperson education to reinforce the purpose and responsibilities for disclosure under legislation.

5.1.7 Recommendation 10 – Management education and awareness program

“That an asbestos management education and awareness program be implemented, with targeted communication strategies that:

- (a) focus on at-risk groups, particularly DIY home renovators and tradespeople
- (b) complement the training strategies for tradespeople
- (c) respond to community needs identified by Task Force market research
- (d) promote key asbestos management services, such as waste disposal
- (e) promote pathways to advice
- (f) assist in generating community self-enforcement of safe management practices”.

Government Response Recommendation 10

“Agreed. It is important that the community maintain a level of awareness of the presence of MCAs in our community and the need to manage them safely. The education and awareness program will be implemented during 2006/07 by the Asbestos Management Team, with strong industry partnerships, and support from the Chief Minister’s Department Communications group. Educational materials will be embedded in ACT Planning and Land Authority (ACTPLA), WorkSafe ACT and ACT Health”.

Progress Report- Recommendation 10

● **Response implemented – an extensive communication and information campaign was undertaken.**

Following the conclusion of the Task Force in 2005, an extensive communication and information campaign was completed in the ACT, targeting areas identified by the Task Force. The campaign is described in detail in “Asbestos Task Force Communications Strategy: Awareness of Asbestos and Associated Issues in the Australian Capital Territory: January 2005.” This campaign was comprehensive and included various advertisements and fact sheets targeted at DIY, tradespeople and the general community to increase awareness of asbestos, the associated risks and where to go to obtain further information. The campaign also included stakeholder briefings and a travelling display of asbestos materials.

“The Asbestos Task Force Communications Strategy 2005” recommended a campaign evaluation be conducted; including working closely with industry bodies, establishing mechanisms to monitor community response and surveys. A campaign evaluation was completed with a final evaluation report completed in June 2005. The Evaluation Report findings should be considered as part of any future communications strategy.

Several ACT government websites contain information on asbestos:

www.asbestos.act.gov.au was established as a central repository for ACT asbestos information resources. It is promoted in various ACT asbestos related publications with links from relevant ACT Government websites available. This website should continue to be actively promoted as the “one stop shop” for asbestos information. The management of this website should be assigned to one agency, possibly WorkSafe ACT, so as to ensure the content remains current.

www.actpla.act.gov.au includes a facility for a Planning and Lease Manager Lease Conveyancing Enquiry Report. If the property was included in the Loose Asbestos Insulation Removal Program (1988-1993) a warning message will be displayed.

www.nowaste.act.gov.au includes information about asbestos disposal.

www.workcover.act.gov.au includes information about dangerous substances; asbestos.

Generic information about asbestos is required by legislation to be provided at certain transactions, such as residential building approvals, sale of residential property and residential tenancy agreements. This ensures a basic level of asbestos awareness information is provided to parts of the community at the times when it is of most relevance.

Training programs and printed information resources for tradespeople have been modified in partnership with industry associations (MBA & HIA) and unions to include asbestos awareness. Examples include Certificate IV in Building, the Construction Induction Card, and the ACT Building and Construction Safety Handbook.

Stakeholders have raised concerns that there is a level of confusion within the community about to whom they should report an asbestos incident. Reporting of incidents requires careful review, in particular how to best achieve clear and direct communication between Canberra Connect and ORS, or other agencies required to act on a incident report.

Whilst the 2005 Task Force Communications Strategy has been completed, there has been no ongoing evaluation methodology put in place to assess current and changing community levels of asbestos awareness. Stakeholders also called for a continued focus on increasing awareness across the ACT. It would be beneficial to establish a mechanism to evaluate community awareness to ensure resources are directed in the future to the appropriate areas.

Next Actions - Recommendation 10

6. The management responsibility for www.asbestos.act.gov.au should be assigned to one agency to coordinate on behalf of the ACT.

7. Review existing asbestos incident reporting mechanisms to establish a streamlined approach that ensures a rapid and coordinated response to incidents.

8. Establish strong partnerships with industry bodies to understand the level of asbestos awareness across the community and industry to respond accordingly. Groups such as the Asbestos Regulator Forum (proposed), the Work Safety Council and the ACT Property Forum could be utilised for this purpose.

9. Develop a whole-of-government asbestos awareness and education communication strategy based on issues referred or performance reported to the Asbestos Regulator Forum.

5.1.8 Recommendation 15 - Asbestos disposal community education

“That a strategy be developed for educating the community on how to dispose of materials containing asbestos in accordance with the appropriate guidelines.”

Government Response - Recommendation 15

“Agreed. Improved arrangements for asbestos waste disposal were announced by the Minister for Urban Services on 12 July 2005. A complementary strategy for education will be developed and implemented by ACT NoWASTE.”

Progress Report – Recommendation 15

● Response implemented – developed improved arrangements for waste disposal and implemented complementary strategy for education.

This recommendation primarily related to disposal of small quantities of asbestos by the public and building sub-contractors not the disposal by licensed asbestos removalists.

Information about disposing of materials containing asbestos is included on www.asbestos.act.gov.au, www.tams.act.gov.au and in the NoWASTE brochure “2009 Guide to Waste Disposal Charges”. However, the information made available to the community could be improved, for example, the “Waste and Recycling FAQ’s” could be expanded to include asbestos specific information and a safety policy similar to the “Disposal of Synthetic Mineral Fibres” published to cover asbestos removal.

Next Actions – Recommendation 15

10. Review the information that is available to the community about the disposal of asbestos and asbestos containing materials.

5.2 Assessment and Management

5.2.1 Recommendation 7 - Asbestos work plans pre 1985 renovations

- (a) “All renovation work on homes built prior to 1985, be required, via the approval process, to prepare an asbestos work plan addressing asbestos disturbance, handling and disposal and the safety of workers, occupants and others potentially subject to exposure;
- (b) the work plan be communicated to those people who are potentially subject to exposure;
- (c) education be carried out within the building industry in relation to asbestos work plans for renovation work not requiring approval”.

Government Response Recommendation 7

(a) “Agreed. The Government sees this as an important step in ensuring that where work is undertaken in the residential sector, appropriate steps are taken to protect workers and occupants. Building certifiers will be asked to implement the policy so that asbestos work plans are prepared in association with works being undertaken on pre 1985 homes.

(b) Agreed. Communication of the content of the work plan is an essential component of ensuring that people are not unwittingly exposed to asbestos fibres during renovation activities, and can be assured that adequate controls are being put in place.

(c) Agreed. Industry acceptance of the new practice is important. Cooperation of the Master Builders Association (MBA) and the Housing Industry Association (HIA) and their members will be central to achieving this”.

Progress Report Recommendation 7(a)

● **Response implemented – the *Building Act 2004* was amended to give effect to this recommendation.**

The requirements for building approvals are set out in *Division 3.3 of the Building Act 2004*. Section 26(2)(d) requires an application for building approval to be accompanied by an asbestos removal control plan where the work relates to a class 1, 2,3,or 4 building or an associated class 10 building, and was erected before, or the erection of which started before 1985. ACTPLA review compliance with this requirement as part of their “Building Registration Audit Program”.

Section 29(1)(e) requires a certifier to ensure that an asbestos removal control plan complies with the asbestos code. ACTPLA review compliance with this requirement as part of their “Building Registration Audit Program”.

Asbestos Removal Control Plans are provided to asbestos removalists and certifiers through the building approval process

However, the requirements for asbestos removal control plans do not apply to works where a building application is not required (for example, certain non-structural alterations). As such there is no requirement for an asbestos removal control plan. This means there is a portion of the community who may be unaware of the potential risks of renovating and may not have appropriate risk control measures in place.

Co-operation by the MBA and HIA has been achieved and is ongoing. Industry courses conducted by these bodies include the identification and safe handling of asbestos.

Next Actions – Recommendation 7(a)

11. Continuing promotion of asbestos awareness is needed to ensure people undertaking work which does not require an application for building approval are aware of the potential risks.

5.2.2 Recommendation 8 - Non residential management legislation

“That a non-residential asbestos management regime be introduced by legislation, based on the National Occupational Health and Safety Commission’s Code of Practice for the Management and Control of Asbestos in Workplaces (2005) and relevant components of the United Kingdom Control of Asbestos at Work Regulations 2002, establishing that each owner/occupier/controller of non-residential premises:

- has a duty to manage asbestos within their premises

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- must maintain a current Asbestos Register that is provided at the request of any employee within the premises; to any worker (employee or contracted tradesperson) whose work activity is likely to disturb material containing asbestos within the premises; and at the point of sale of the property
- must have an active Asbestos Management Plan to support the Asbestos Register, and fulfil the requirements of the duty to manage.

The regime should apply to any non-residential premises:

- not used for residential purposes, where business activity is required
- used for sporting, cultural, educational or other activities
- classified in Classes 3 to 9 under the Building Code of Australia; and
- be implemented as a staged approach, recognising the need to support different non-residential sectors in fulfilling their duties prior to undertaking enforcement activities”.

Government Response Recommendation 8

“Agreed. The Government supports the need for improved management of materials containing asbestos in the non-residential sector. There are varying ranges of asbestos materials found internally and externally in non-residential sector which are likely to be disturbed during maintenance activities and during refurbishments.

The NOHSC Code of Practice provides a nationally endorsed model for managing asbestos in the non-residential sector, and coupled with components of the United Kingdom model, would provide the basis for the development of practical and effective means of managing asbestos.

The Government intends to introduce, through legislation, the new arrangements in mid 2006. However, in order to determine the most suitable model for the ACT, further investigation is warranted in relation to implementation timeframes.

The Government supports the need for a staged approach to “supported implementation” of the new regime, particularly recognising that some sectors of the community may be more able and prepared to meet the new requirements than others.

The Government will also give consideration to the appropriate level of effort and resource ultimately required for regulation and compliance.

How such an approach is couched within the management of other dangerous substances also requires consideration”.

Progress Report – Recommendation 8

● **Response implemented – the *Dangerous Substances Act 2004* was amended to give effect to this recommendation. However, note the low level of compliance with these measures.**

Asbestos management arrangements for non-residential premises are set out in Part 3.4 of the Dangerous Substances (General) Regulation 2004. This part applies to non-residential premises built before 31 December 2003. ‘Built’ in this clause is taken to be built on the day a certificate of occupancy for the premises, or the earliest certificate of occupancy for part of the premises, is issued.

A staged implementation for these changes was adopted as follows and included in the regulation:

- (a) for multi-storey commercial premises—1 September 2008;
- (b) for single storey commercial premises—1 September 2009;
- (c) for industrial premises—1 March 2010; and
- (d) for community or recreational premises—1 September 2010.

Stakeholders and Agencies report low compliance with these regulations. Reasons include a lack of awareness of the requirements, ambiguity around the duty holder for the requirement (i.e. the person in control of the premises) and therefore who is responsible for the implementation at a particular premises and a perceived lack of asbestos assessors. The 2010 Review has identified that further work by WorkSafe ACT is required to reach adequate compliance in this area.

The ACT Property Forum endorsed the “2008 Asbestos Management in Non-Residential Government Properties Guidelines” to assist ACT Government Authorities and agencies with legislation compliance and meet duty of care responsibilities. The Guidelines acknowledge the foreseeable risk associated with asbestos materials and clearly set out a cautious management approach for dealing with asbestos materials. The 2010 Review identified ACT Government agencies are at various stages of implementation of these Guidelines. Oversight of the implementation of these Guidelines by a central coordinating group such as the ACT Government Property Forum would be beneficial.

Guidelines for the non-government sector similar to “2008 Asbestos Management in Non-Residential Government Properties Guidelines” have not been developed. Consideration should be given to working with stakeholders to develop suitable guidelines for the non-government sector to assist this sector with compliance.

A uniform guideline for both government and non-government premises would have the advantage of ensuring a consistent approach across the ACT. Ensuring that all building managers, contractors and tradespeople and other interested stakeholders are familiar with a standard approach to the provision of asbestos management data about a property and where the data is to be located at a premises would also be beneficial and this element should also be covered in the guidelines.

Next Actions- Recommendation 8

12. Oversight of the implementation of the “Asbestos Management in Non-Residential Government Properties Guidelines” (2008) by a central coordinating group such as the “ACT Government Property Forum” would be beneficial. It would be appropriate to set target dates for completion.

13. The Government should work with stakeholders to develop suitable guidelines for the non-government sector with the view to improving compliance with the provisions.

5.2.3 Recommendation 9 - Legislative change education campaign

“That a targeted education campaign about the new regulatory arrangements, coupled with a short training program on how to comply with the regime, be developed for the non-residential sector”.

Government Response - Recommendation 9

“Agreed. The Government will deliver an education campaign which outlines the new regulatory requirements to support the implementation of the new regime”.

Progress Report – Recommendation 9

● **Response implemented - education campaign completed, lack of understanding across the sector exists.**

An education and awareness campaign that targeted non-residential premises commenced in 2007. Commencement dates of the legislative changes for the non-residential sector ranged from 1 September 2008 to 1 September 2010. Ongoing education continues through various channels such as www.asbesto.act.gov.au, industry associations and the ORS news bulletin that is circulated to over 4000 businesses.

However, feedback from some stakeholders and agencies indicated that there is a lack of awareness of the regulatory changes and a low level of compliance within the non-residential sector.

Next Actions - Recommendation 9

14. Review education and awareness raising measures with a view to improving compliance with the requirements to obtain asbestos registers in non-residential building. This should be undertaken in partnership with appropriate industry representatives.

5.2.4 Recommendation 16 - Two tiered asbestos assessment system

“That a two-tiered system be developed for conducting asbestos assessments and preparing asbestos reports, consisting of:

Level 1: asbestos assessors, whose role it is to undertake field surveys and sampling of MCAs

Level 2: asbestos surveyors, whose role it is to prepare asbestos survey reports and carry out risk assessment judgments, based on the Level 1 field surveys.”

Government Response Recommendation 16

“Agreed in principle. The Government fully agrees that it is necessary for a standard to be developed that distinguishes those people competent to perform the functions of an asbestos assessor, and those competent to perform the functions of an asbestos surveyor.

However, it is considered that other work is required to be completed, such as improved insurance arrangements (recommendation 19), to contribute to the detailed system for asbestos assessors and surveyors.”

Progress Report - Recommendation 16

● **Response implemented - the *Construction Occupation Licensing Act 2004* was amended to include the construction occupation classification of Asbestos Assessor on 1 July 2006.**

A two tiered system has been implemented for conducting asbestos assessments and preparing asbestos reports.

The *Construction Occupation (Licensing) Act 2004* was amended to include the construction occupations of Asbestos Assessor Class A and Asbestos Assessor Class B on 1 July 2006.

On June 17 2010, there were fifty-one (51) 'Class A' Asbestos Assessors and nine (9) 'Class B' Asbestos Assessors licensed to provide an asbestos assessment service in the ACT.

Qualifications for these construction occupations are set out in the Construction Occupations (Licensing) Regulations 2004 Mandatory Qualifications Schedule.

Insurance matters are covered under section 5.2.6.

Next Actions - Recommendation 16

No further action required at this time to complete the Government's response.

5.2.5 Recommendation 18 - Three tiered standard for asbestos surveys

"That a three-tiered standard for surveys be adopted, which defines:

- presumptive surveys;
- sampling surveys; and
- comprehensive surveys".

Government Response - Recommendation 18

"Agreed. The Government supports the defining of particular standards for asbestos surveys as a means of providing guidance on the most appropriate survey method to be adopted, relative to the management needs. The government intends that the definitions outlined in the United Kingdom's *Methods for the Determination of Hazardous Substances MDHS 100: Surveying, Sampling and Assessment of Asbestos-Containing Materials*, will form the basis of the definitions adopted in the ACT."

Progress Report - Recommendation 18

● **Response implemented - a three-tier standard has been adopted as standard industry practice.**

Presumptive – are undertaken by identifying suspected ACM without taking samples. This type of asbestos inspection presumes that the material contains asbestos. Presumptive asbestos inspections reduce the cost by deferring asbestos testing before demolition or refurbishment. A risk assessment based on the material condition is tabulated as part of an asbestos register.

Sampling - Is similar to the presumptive method, however; representative samples of the suspected asbestos containing material are collected for analysis. Asbestos testing during inspection, generally

proves cost effective in the longer term because precautions and expensive maintenance procedures are not required if no asbestos is detected in the material.

Comprehensive - A comprehensive survey which can be destructive and involves inspections of areas not accessible when the building was occupied (e.g. wall cavities). The asbestos will be moved before demolition or major refurbishment commences.

The findings of asbestos surveys form the basis of asbestos assessment reports.

Next Actions – Recommendation 18

No further action required at this time to complete the Government's response.

5.2.6 Recommendation 19 - Long term insurance arrangements in ACT

"That the Australian Capital Territory's strategies for long-term management of materials containing asbestos:

(a) require best available insurance arrangements within the asbestos industry, recognising that this would ordinarily be more limited than Territory policies of minimum coverage, and noting that an element of residual liability may fall to one or more parties.

(b) facilitate investigations by the insurance and asbestos industries with a view to securing improved professional indemnity insurance coverage for the asbestos industry, subject to minimum standards of competency and active risk management being established".

Government Response Recommendation 19

"Agreed. The Government recognises that inability to secure satisfactory levels of insurance is an important factor in the development of industry and services to identify, assess, work with, remove and manage MCAs.

The Government sees the further investigation of insurance issues as a priority contributing to implementation of other recommendations. While it is noted that it is likely to be difficult to find insurers willing to provide adequate insurance, the government will investigate the possibility of improved insurance arrangements."

Progress Report - Recommendation 19

● **Significant progress – the Construction Occupations (Licensing) Regulations 2004 was amended to ensure asbestos assessors are adequately insured however further work is required to establish parameters for 'adequate' insurance and whether asbestos removalists be subject to the statutory insurance requirement.**

Section 16A of the Construction Occupations (Licensing) Regulations 2004, was amended to require Asbestos Assessors to satisfy the registrar that they are 'adequately insured'. Adequately insured is not defined given that at the time of commencement of these provisions, applicants encountered difficulties in securing professional indemnity insurance. Applicants provide evidence of professional indemnity insurance at the time of license application or renewal that indicates an occupation of asbestos assessment services.

There are no legislative requirements for Asbestos Removalists to have adequate insurance and therefore licenses are issued to removalists without any knowledge of the insurance status of the licensee.

Next Actions - Recommendation 19

15. Establish parameters to determine 'adequate' insurance cover for asbestos assessors and review insurance requirements for asbestos removalists.

5.2.7 Recommendation 20 - Data management policy for asbestos surveys

"That a data management policy for asbestos survey reports be developed, in association with the asbestos industry".

Government Response - Recommendation 20

"Agreed. Asbestos survey data should be in a consistent format, and readily accessible to trades people and property owners or managers. For some, the data could be stored in hard copy or electronic files, dependent upon the resources and management approaches of the property owners. The Government will develop a data management policy on appropriate methods for storing and accessing asbestos survey reports, noting that a number of systems, such as those in Government, will require support to implement improved data management of asbestos information."

Progress Report - Recommendation 20

● **Significant progress –The ACT Government has developed data management methods for the storage and management of asbestos registers. Consideration should be given to developing standard templates and guidelines applying to the private sector.**

Work commenced between government and industry to develop standard templates for asbestos registers and management, however a standard template was not agreed and examples have been modified by assessors to suit their particular requirements.

The ACT Government has developed data management methods for the storage and management of asbestos registers. This information is incorporated in Part 7.4 of the "Management of Asbestos in Non-Residential Government Buildings Guidelines". An 'Asbestos Management Plan' template was also developed based on a pilot exercise at the Dickson Motor Vehicle Registry. The 2010 Review recommends that this document be considered as a standard template in both the government and non-government sector. The Government also maintains 'The Property Register' which is a comprehensive database containing details of the location of asbestos in ACT Government properties.

The minimum data requirements for asbestos assessment reports for residential properties are included in the *Dangerous Substances Act 2004, Section 47K*. Reports are to: (a) identify the location, type and condition of asbestos, (b) assess the risk resulting from the identified asbestos, (c) advise how the asbestos should be managed and (d) everything required by regulation is included in the report.

It would be valuable to assess any ongoing need for the development of a standard template and to develop guidelines for the private sector to ensure building managers, contractors and tradespeople and other interested stakeholders are familiar with a standard approach.

Next Actions - Recommendation 20

16. Assess the benefit of developing templates for asbestos registers and management plans, such as the template developed as part of the pilot exercise at the Dickson Motor Vehicle Registry

17. Recommendation 13 provides that the Government should work with stakeholders to develop suitable guidelines for the management of asbestos for the non-government sector. These guidelines should include data management methods for the storage and management of asbestos registers.

5.3 Training

5.3.1 Recommendation 13 - Building certifier – training and performance audits

“That in relation to building certifiers licensed under the *Construction Occupations (Licensing) Act 2004*: (a) they be required to undertake a core asbestos management training program (b) the annual program of building certifier audits conducted by the ACT Planning and Land Authority include a documented assessment of asbestos management performance”.

Government Response - Recommendation 13

“(a) Agreed . As a key part in the building approval process, builder certifiers should have a reasonable level of understanding of asbestos containing materials and how they should be managed. Building certifiers will not be expected to make technical assessments or judgements in relation to asbestos, but have sufficient knowledge of the requirements to appropriately apply conditions and policies and receive reports from asbestos surveyors

(b) Agreed. The ACT Planning and Land Authority will adopt this practice as part of their annual audit program to ensure that building certifiers are adequately addressing the requirement of asbestos work plans during the building approval process.”

Progress Report - Recommendation 13

(a) ● **Significant progress – the Construction Occupations (Licensing) Regulation 2004 was amended to require certifiers to undergo relevant training, the Government developed courses for this purpose but is prevented from mandating the requirement for training as no RTO is currently delivering the relevant course.**

(b) ● **Response implemented - audit program implemented**

(a) Section 17 (1)(a) of the Construction Occupations (Licensing) Regulation 2004, requires, that an applicant for a building surveyor (certifier) licence satisfy the Construction Occupations Registrar that they have successfully undertaken asbestos management training that has been approved by the Registrar under Section 17 (2). Section 17 (7) requires that an approval under subsection (2) is a

Notifiable Instrument. The Government commissioned the development of course 80805 – ‘Course in Asbestos Management Planning’ which is suitable for this purpose. However as no RTO is currently delivering the course an instrument has not been made.

It should be noted that training requirements for asbestos is currently subject to review as part of the national harmonisation of work health and safety legislation.

(b) The Building Inspectorate Unit within the Construction Services Branch of ACTPLA, undertake an audit program of building registrations. This process involves checking the documentation contained in a building file, including any Asbestos Removal Control Plan. However the audit does not verify the content or quality of this plan.

Next Actions - Recommendation 13

20. Subject to consideration of the national work on harmonisation work health and safety legislation (including training requirements for asbestos), the ACT Government take all measures to publicise availability of 80805 ‘Course in Asbestos Management Planning’ to facilitate and support training institutions to deliver this course.

5.3.2 Recommendation 14 - Establish industry training programs

“That in relation to asbestos training in the building and trade industry:

(a) the government, in association with the relevant industry, trade and union bodies, make representations to appropriate national forums seeking the establishment of an accredited asbestos module that would become part of minimum training requirements for apprentice and trainee trade groups, and, that this module establish demonstrated competencies in knowledge of materials containing asbestos, and its safe handling and removal;

(b) at a local level:

- a course in handling and removing bonded materials containing asbestos be developed to satisfy the requirements necessary to obtain an asbestos certificate of competency (see Recommendation 12);
- recognising that it may take time to achieve a national training approach, an education component be developed for inclusion in existing training programs for apprentices and trainees that raises awareness of materials containing asbestos and their health effects, who is allowed to handle them and how to work safely with them;
- from national competencies for the asbestos removalist industry, minimum training requirements be developed for new licence holders, and for Class D (specialist asbestos work) licence holders at the point of licence renewal;
- all employers of people working with materials containing asbestos be obliged to provide asbestos management training to those workers; and

(c) an industry advisory group representing key industry stakeholders, unions and registered training organisations be established to assist in the above process”.

Government Response - Recommendation 14

(a) "Agreed. While materials containing asbestos materials remain in buildings, there will always be particular trade groups who will have to deal with the materials on a regular basis, as part of their work. Apprentices and trainees in the building and related trades should receive a minimum level of training on asbestos materials and safe work methods. The Government supports this being adopted as a national approach and will make appropriate representations.

(b) Agreed. Until a national approach to asbestos training is developed for trade groups, the Government agrees with the need to provide education and awareness to young trainees and apprentices. Increased awareness and knowledge of safe practices will provide assistance in ensuring that the risks associated with working with asbestos can be controlled.

The Government supports the training for tradespeople which will enable them to handle up to 10 square metres of bonded asbestos cement sheeting. Such training will provide trades people with knowledge and skills in identifying and working with materials containing asbestos.

It is particularly important, given the activities undertaken by asbestos removalists, that they receive training in appropriate and safe work methods to protect themselves, their employees and building occupants.

As a further measure of protection, the Government supports the proposals for general asbestos training and education to be provided to employees whose activities are likely to involve the disturbance and/or management of materials containing asbestos.

(c) Agreed. The Government will seek advice from key industry groups on appropriate standards to be set for training."

Progress Report - Recommendation 14

● Response implemented – Course content developed in consultation with industry and training courses provided by industry.

The ACT Government contracted the Construction Property Industry Skills Council to develop four courses in consultation with industry:

- 80803ACT – The Identification and Safe Handling of Asbestos
- 80804ACT – Asbestos Removal and Supervision.-
- 80805ACT – Asbestos Management Planning
- 80806ACT Asbestos Assessment

The Construction Occupations Registrar has made these courses mandatory qualifications for licensing of Asbestos Removalists and Asbestos Assessors.

Industry Associations and Unions deliver training courses that include general asbestos awareness, identification and safe handling of less than 10 meters squared.

Industry feedback suggests that training course content could be expanded to include a practical on-site component to reinforce the adoption of safe work practices in the workplace.

Schedule 1, Part 1.3, Item 25 of the Building (General) Regulation 2004, provides an exemption in relation to handling less than 10 square meters of bonded asbestos. This is conditional and subject to the person performing work in accordance with removal code, being in a prescribed occupation and having completed an asbestos awareness course. This course is outlined in the Building (General) (Asbestos Handling Occupation and Qualification) Declaration 2009 (No 1), which was notified as an instrument, by the Construction Occupations Registrar. This instrument is available on the ACT Legislation Register at <http://www.legislation.act.gov.au/ni/2009-317/default.asp>

To be issued an owner-builder licence, the Construction Occupations (Licensing) (Mandatory Qualifications) Declarations 2009 (No 1) requires that an applicant must have completed a course or examination, which is recognised by the Construction Occupations Registrar.

The Registrar has recognised the following courses; Access Building Education, Absolute Owner Builder Online, CIT Solutions and Australian Owner Builder Course Online. Generic information about asbestos is included in the course content. The courses have been available since 2007 and are available on-line, by correspondence or on a face to face basis. For the years 2007 to 2009, in excess of 1000 owner builder licenses have been issued.

Industry participated in the development of the four asbestos related courses which were subsequently accredited by the ACT Accreditation and Registration Council.

Next Actions Recommendation 14

21. Consider requiring all occupations covered by *Construction Occupations (Licensing) Act 2004* to attend asbestos general awareness training as a mandatory requirement for obtaining a new licence or licence renewal.

5.3.3 Recommendation 17 - Minimum training standards for asbestos assessors

That:

- (a) "a minimum required training standard be developed for asbestos assessors;
- (b) asbestos assessors and surveyors be licensed under the *Construction Occupations (Licensing) Act 2004* recognising that the minimum training requirements would need to be met to obtain a licence; and
- (c) a minimum training standard be developed for asbestos surveyors."

Government Response Recommendation 17

(a) "Agreed. It is important that those undertaking activities in the identification and sampling of asbestos materials hold a recognisable level of skills and training. The development of a minimum standard of skills and competencies may also be useful in improving insurance arrangements. Further investigation of current industry practices and an approach to training is required, along with consideration of how these training requirements would be recognised if a licensing regime were to be introduced.

(b) Agreed in principle. Having a regulated licensing system for asbestos assessors and surveyors would reduce the risk of inappropriate practices and advice being provided when undertaking the

identification, sampling and analysis of MCAs and their associated risks. However, such a licensing regime would be contingent upon the capacity of the industry, given the current paucity of asbestos assessors and surveyors in the ACT and restricted access to professional indemnity cover and agreement on the necessary skills and competencies required to obtain a licence.

(c) Agreed in principle. The government supports a recognisable benchmark for asbestos surveyors given that their role will be to make judgement of risks associated with MCAs. The current expectations for asbestos surveyors are to hold appropriate university qualifications, field experience, and be a qualified as a National Association of Testing Authorities signatory”.

Progress Report Recommendation 17

● Response implemented - Asbestos assessor minimum training standards developed

The ACT Government contracted the Construction Property Industry Skills Council to develop a suite of asbestos related courses. One course was developed to meet the stated intention of the ‘asbestos surveyor’ which would become the construction occupation of a ClassA Asbestos Assessor.

The course in asbestos assessment has a National Training Information Service (NTIS) national accreditation and the code is: 80806ACT. Whilst the course content has been developed, there have been difficulties in identifying a training organisation with the capability to deliver the course. This means no participants have completed this course.

The Construction Occupations Registrar requires accreditation in course ‘80806ACT’ as a mandatory requirement to be become a licensed ACT Asbestos Assessor. However as this course is not currently being offered by any training organisation, the Registrar has imposed a licence condition that the applicant must complete the course within 12 months of it being available. A suitably qualified applicant will be granted a licence with a condition, if they agree in writing to the condition of completing the course within 12 months of the course being made available. All applicants must provide details of adequate insurance coverage, before being issued an asbestos assessors licence.

Under the Construction Occupations (Licensing) Regulation 2004 Mandatory Qualifications Schedule, a university qualification in any of the following;

- occupational or industrial hygiene;
- occupational health and safety;
- an environmental or biological science discipline
- a discipline encompassing building construction; or
- another qualification that the registrar is satisfied provides a comparable level of knowledge in asbestos assessment.

There is also a requirement of not less than 2 years full time or 4 years part time, relevant work experience in performing or supervising the work of an asbestos assessment service.

Next Actions Recommendation 17

22. Subject to consideration of the national work on harmonisation work health and safety legislation (including training requirements for asbestos), the ACT Government take all measures to publicise availability of 80806ACT, ‘Course in Asbestos Assessment’ to facilitate and support training institutions to deliver this course for the licensing of asbestos assessors.

5.4 Legislation

5.4.1 Recommendation 3 - Dangerous Substances Act amendments

“Sections 47J, 47K and 47L of the *Dangerous Substances (Asbestos) Amendment Act 2004* be significantly amended to reflect the asbestos management model outlined in Section 14.”

Government Response - Recommendation 3

“Agreed. The Government believes that the regime proposed by the Task Force will provide an effective model for improving asbestos management in both the residential and non-residential sector. The Government will repeal ss. 47 K and L in the short term in light of the new regime. Section 47 J will be repealed during 2006 in favour of the new legislative package.”

Progress Report - Recommendation 3

- **Response implemented – section 47J *Dangerous Substances 2004* was amended to this effect.**

Due to confusion over the requirement to provide information to identified persons about the presence of MCA at residential premises, section 47J *Dangerous Substances 2004* was amended by the *Asbestos Legislation Amendment Act 2006*. The new requirement was for the Minister to prepare asbestos advice about the likely location of asbestos in residential premises built, or the building of which started before 1985. This advice is Asbestos Advice notice 2006(1)

Next Actions - Recommendation 3

No further actions required at this time to complete the Government’s response.

5.4.2 Recommendation 11 - Home owner DIY renovator provisions

“That unlicensed DIY home renovators and people undertaking maintenance be permitted to undertake minor maintenance activities, such as low-speed drilling into asbestos cement sheeting, provided that work is done in accordance with the NOHSC *Code of Practice for the Safe Removal of Asbestos* and EnHealth ‘*Guidelines on The Management of Asbestos on the Non-occupational Environment*.”

Government Response - Recommendation 11

“Agreed. The health risk assessment conducted by the Task Force determined that minor maintenance activities, such as those that would be undertaken by property owners, are unlikely to result in an increased risk of exposure to asbestos fibres, or an increased risk of asbestos-related diseases. In addition, it is practical to allow individuals to undertake minor activities necessary to maintain their properties. However, despite the low risk in undertaking such activities, it is important information be provided on safe work methods for undertaking minor maintenance activities.”

Progress Report - Recommendation 11

- **Response implemented – section 6 (5) of the *Building (General) Regulation 2008* was amended to this effect.**

Section 6 (5) of the Building (General) Regulation 2008, makes provision for an exemption in relation to “minor maintenance work” that involves low speed drilling, sealing, painting or coating provided it is done by the owner or occupier of premises.

Asbestos information is available through a range of sources across the ACT, including www.asbestos.act.gov.au.

Next Actions – Recommendation 11

No further actions required at this time to complete the Government’s response.

5.4.3 Recommendation 12 – Trade groups to handle up to 10 square metres

(a) “the following trade groups be allowed to handle no more than 10 square metres of bonded asbestos cement sheeting (with appropriate training and a current asbestos certificate of competency):

- *Construction Occupations (Licensing) Act 2004* (COLA)–licensed trade groups
- unlicensed trade groups holding trade certificates or any other people who can demonstrate that they work in the building trades industry, such as plasterers, painters, carpenters and tilers
- holders of COLA owner-builder licences

(b) the COLA and the *Building Act 2004* be amended to recognise the new asbestos certificate of competency and to remove requirements for building approval for working with material containing asbestos or handling and removing bonded material containing asbestos up to 10 square metres, subject to detailed regulations limiting the number of jobs over time;

(c) The above arrangements not override the authority of COLA licences that otherwise authorise asbestos work;

(d) the *Building Act 2004* be amended for building approvals to apply only in circumstances where work is to be carried out which involves the handling, disturbance or removal of any friable or weathered material containing asbestos or bonded materials containing asbestos in excess of 10 square metres.”

Government Response - Recommendation 12

“(a) Agreed. A range of trade groups are likely to encounter MCAs as part of their daily work. The current arrangements which only allow licensed builders to handle and remove asbestos materials, regardless of the amount, is restrictive, impractical, and unlikely to be adhered to. While not wanting to create a new industry of trade groups who are able to handle and remove asbestos materials, it should be recognised that certain trade groups will need to work with MCAs from time to time, incidental to their regular trade activities. A limit of 10 square metres provides sufficient capacity for trade groups, such as plumbers, electricians and others, to continue with their work without being restricted by the presence of MCAs. It is important however that this requirement be restricted to bonded asbestos cement sheeting due to the increased risk associated with friable materials.

(b) Agreed. The necessary legislative amendments will be made to recognise the new certificate.

(c) Agreed. It is important that the existing arrangements for class A, B and C builders, and class D (specialist asbestos work) licence holders be maintained. In situations where large amounts of bonded MCAs, or friable MCAs are to be handled and/or removed, it must be done so by appropriately qualified and licensed people.

(d) Agreed. These amendments will remove current impracticalities within the Building Act which require that building approvals be submitted for any work involving asbestos materials, regardless of the amount. The requirements for approvals for works greater than 10 square metres, or on friable materials (of any amount) will be maintained.”

Progress Report – Recommendation 12

● Response implemented – the Building Act 2004 was amended to this effect.

Schedule 1, Part 1.3, Item 25 of the Building (General) Regulation 2004, provides an exemption in relation to handling less than 10 square meters of bonded asbestos. This is conditional and subject to the person performing work in accordance with removal code, being in a prescribed occupation and having completed an asbestos awareness course. This course is outlined in the Building (General) (Asbestos Handling Occupation and Qualification) Declaration 2009 (No 1), which was notified as an instrument, by the Construction Occupations Registrar. This instrument is available on the ACT Legislation Register at <http://www.legislation.act.gov.au/ni/2009-317/default.asp>

Section 35 of the Construction Occupation (Licensing) Regulation 2004, makes provision for services that can be provided without a licence. This regulation makes provision for an individual to work with supervision provided they have a relevant asbestos qualification. That qualification is the same qualification as set out in the Building (General) (Asbestos Handling Occupation and Qualification) Declaration 2009 (No 1).

Section 5 of the Building (General) Regulation 2004, expands the definition of building work to include handling asbestos or disturbing friable asbestos, unless exempt under section 6(2) of the *Building Act 2004*.

On the 1 July 2006 the Building Regulation 2004 (now Building (General) Regulation 2008) was amended to provide a range of exemptions. These exemptions are found at Schedule 1, Part 1.3, Items 1-24. Section 6(5) of the Building Regulation (General) 2008.

The exemptions do not include the handling of asbestos, however item 25 of this schedule, provides the exemption for less than 10 meters squared. This is conditional and subject to the person performing work in accordance with removal code, being in a prescribed occupation and having completed an asbestos awareness course.

There are no exemptions in relation to friable asbestos.

Next Actions – Recommendation 12

No further actions required at this time to complete the Government’s response.

5.4.4 Recommendation 21 - Dangerous Substances Act amendments, defer 47K & 47L

“That the implementation of ss. 47K and 47L of the Dangerous Substances (Asbestos) Amendment Act 2004 be deferred from 16 January 2006 until a later date.”

Government Response - Recommendation 21

“Not Agreed. A more effective approach is available to achieve the objective of this recommendation.

The Government will repeal sections 47 K and 47L in light of agreement given to implement new regimes for the residential and non-residential sector, based on the recommendations of the Task Force report.”

Progress Report - Recommendation 21

● **Response implemented.**

Sections 47K and 47L of the *Dangerous Substances (Asbestos) Amendment Act 2004* were repealed.

Next Actions – Recommendation 21

No further actions required at this time to complete the Government’s response.

5.4.5 Recommendation 22 - Dangerous Substances Act amendments, risk and safety

“That any legislative review of the *Dangerous Substances (Asbestos) Amendment Act 2004* considers amendments to the terms of the preamble statement and associated clauses, having regard to the work of the Task Force.”

Government Response - Recommendation 22

“Agreed. Whether new legislative amendments are included in the existing *Dangerous Substances (Asbestos) Amendment Act 2004*, or included in other legislation considerations will have regard to investigations on risk management and safety issues.”

Progress Report – Recommendation 22

● **Response implemented.**

Next Actions - Recommendation 22

No further actions required at this time to complete the Government’s response.

5.5 Monitor and Review

5.5.1 Recommendation 1 - Improved data collection

That:

- (a) "local data be collected on asbestos-related diseases, and reported through the Chief Health Officer's report;
- (b) representations be made to the appropriate national bodies with a view to improving data collection associated with the Australian Mesothelioma Register."

Government Response - Recommendation 1

"(a) Agreed in part. Rather than collecting information on all asbestos related diseases, the Government considers that it is only necessary in the context of the ACT to collect information on mesothelioma. Diseases associated with high levels of exposure to asbestos fibres, such as asbestosis, are unlikely to be linked to events in the ACT and are likely to be decreasing due to the phase out of the production and use of MCAs. The incidence of mesothelioma is more likely to be observed due to its relationship to low dose exposures. Limited data will be able to be secured on mesothelioma in time for the next Chief Health Officer report in June 2006. Data collection methods will be well established for the 2008 report.

(b) Agreed. Actions taken now to reduce exposure to asbestos fibres and improve management of MCAs are likely to have a positive impact in reducing future incidence of mesothelioma. It is important that rates of the disease and particulars around exposure scenarios continue to be tracked over time to monitor improvements as a result of new management practices, and inform future policy directions."

Progress Report - Recommendation 1

- **Response implemented - as this data is now reported in the Biennial Chief Health Officer report.**
- **Response implemented - collaboration with National Mesothelioma Registry is occurring**

(a) Mesothelioma is now reported in the Biennial Chief Health Officer's report. The 2010 report covering the period 2006-08 is due for release in August 2010. Information on mesothelioma is also reported in the biennial ACT Cancer Registry reports

(b) The ACT Cancer Registry is collaborating with the National Mesothelioma Registry to collect information on mesothelioma cases

Next Actions - Recommendation 1

No further actions are required at this time to complete the Government's response.

5.5.2 Recommendation 23 -Removal of asbestos from Government premises

"That the Australian Capital Territory supports a long-term goal of achieving practical removal of materials containing asbestos from all government Category 1 and Category 2 non-residential premises."

Government Response –Recommendation 23

“Agreed in principle. During 2005 the Government embarked on an accelerated audit program of all territory assets to update information held on the location and conditions of MCAs. Updated asset management policies will be developed during 2005/6.”

“Further work will be carried out to assess the implications across Territory assets in terms of appropriate management strategies and economic impacts of removal. This recommendation would only be implemented over many years. Risk assessment strategies will continue to be applied to decisions concerning removal.”

Progress Report – Recommendation 23

● Response implemented – Government agreed to this recommendation in-principal.

The ACT Government Property Forum endorsed “Asbestos Management in Non-Residential Government Properties Guidelines” (2008) to assist agencies with regulatory compliance, in dealing with the presence of asbestos within premises owned or occupied by an agency

The 2010 Review has identified that ACT Government agencies are at various stages of implementing these guidelines. Oversight of the implementation of these guidelines by a central coordinating group such as the ACT Government Property Forum would be beneficial to ensure whole of government regulatory compliance.

Next Actions – Recommendation 23

23. Oversight of the implementation of the “Asbestos Management in Non-Residential Government Properties Guidelines” 2008 by a central coordinating group such as the ACT Government Property Forum would be beneficial. It would be appropriate to set target dates for completion.

24. Develop guidance on how mixed-used premises (i.e. residential and non-residential premises) can achieve compliance with the asbestos register and management plan requirements (in particular whether a register and plan is required).

5.5.3 Recommendation 24 -Implementation team oversight for 12 months

“That the government continue to seek advice from an external advisory group during the first 12 months of implementation.”

Government Response –Recommendation 24

“Agreed. During the implementation of the recommendations of the report, a number of external stakeholders will be involved in giving feedback on detailed provisions, implementation timeframes, and industry considerations.

A refocussed advisory group (including the Law Society of the ACT; ACT Chamber of Commerce) will be established later this year to fulfil this role.

The existing Asbestos Task Force and its members will continue in the meantime with an important role, particularly in communication of the report itself to stakeholders.”

Progress Report – Recommendation 24

● Response implemented.

The Asbestos Management Advisory Committee was established. This was an external advisory group supported by various subcommittees (legal and training) to provide feedback and advice to Government during the first year of implementation of the Asbestos Task Force Report.

The members were as follows; Michael James, Law Society of the ACT, Marion Whalan, ACT Chamber of Commerce and Industry, Ken Roberts, Real Estate Institute of the ACT, Jerry Howard, Master Builders Association, Caroline Lemezina Executive Director, Housing Industry Association, ACT and Mr Glenn Parry Unions ACT

Next Actions – Recommendation 24

No further actions required at this time to implement the Government's response.

5.5.4 Recommendation 25- Develop an ACT asbestos management strategy

“That:

- (a) an ACT asbestos management strategy be developed, based on the recommendations of this report, and accompanied by a five year program of implementation;
- (b) an asbestos management team be established to provide effective coordination during implementation of the strategy;
- (c) a review of the strategy be undertaken after five years.”

Government Response – Recommendation 25

“(a) Agreed. Implementation of the Task Force report will require significant amendment to legislation, the introduction of new practices, and resource considerations. The Government considers that the recommendations and 6 principles of the report establish the basis of asbestos management strategy for the Territory. The strategy and a detailed implementation plan will guide work over the next 5 years.

(b) Agreed. It is appropriate that there be a clear central agency role in coordinating and reporting on implementation, to ensure that the long term strategy for improving asbestos management is achieved.

(c) Agreed. A review of the strategy will ensure that the implementation of the recommendations are proceeding as intended, and where required, can be reviewed and adjust to support practical approaches to asbestos management.”

Progress Report – Recommendation 25

- Response implemented - an implementation team was assigned this responsibility, late 2005 to early 2007.
- Response implemented – assigned to the Chief Ministers Department.
- Response implemented - this review commenced in March 2010.

Next Steps –Recommendation 25

No further actions required at this time to complete the Government's response.

5.6 Progress Report Summary

The following table provides a summary of the progress made by the ACT Government in responding to the recommendations of the 2005 Asbestos Task Force report.

No.	Recommendation	Ref	Progress
AWARENESS & EDUCATION			
2a	Loose asbestos insulation removal program advice	5.1.1	●
2b	Systematic advice to loose asbestos program houses	5.1.2	●
4a	Develop generic asbestos advice	5.1.3	●
4b	Generic advice provided at certain transactions	5.1.4	●
4c	Generic advice with conveyancing documentation	5.1.5	●
6	Residential asbestos survey report	5.1.6	●
10	Education and awareness program	5.1.7	●
15	Asbestos disposal community education	5.1.8	●
ASSESSMENT & MANAGEMENT			
7	Asbestos work plans pre 1985 renovations	5.2.1	●
8	Non residential management legislation	5.2.2	●
9	Legislative change education campaign	5.2.3	●
16	Two tiered asbestos assessment system	5.2.4	●
18	Three tiered standard for asbestos surveys	5.2.5	●
19	Long term insurance arrangements in ACT	5.2.6	●
20	Data management policy for asbestos surveys	5.2.7	●
TRAINING			
13a	Building certifier – training	5.3.1	●
13b	Building certifier –performance audits	5.3.1	●
14	Establish industry training programs	5.3.2	●
17	Minimum training standards for asbestos assessors	5.3.3	●
LEGISLATION			
3	Dangerous Substances Act amendments	5.4.1	●
11	Home owner DIY renovator provisions	5.4.2	●
12	Trade groups to handle up to 10 square metres	5.4.3	●
21	Dangerous Substances Act amendments, defer 47K & 47L	5.4.4	●
22	Dangerous Substances Act amendments, risk and safety	5.4.5	●
MONITOR & REVIEW			
1	Improved data collection	5.5.1	●
23	Removal of asbestos from Government premises	5.5.2	●
24	Implementation team oversight for 12 months	5.5.3	●
25	Develop an ACT asbestos management strategy	5.5.4	●

Key

- response implemented, no further action required or action to enhance progress identified
- significant progress, some action required to complete implementation
- minimal progress

6 Findings

The following findings by the 2010 Review addresses the terms of reference cited in Section 1.2 of this document.

6.1 Implementation of Report by ACT Asbestos Task Force, August 2005 Recommendations

The ACT Government has completed or commenced action to implement the recommendations of the Report by the ACT Asbestos Task Force, August 2005. The approach has been consistent with the ACT Government Response made in August 2005.

All legislative changes identified in 2005 have since been passed by the Legislative Assembly. Given the diversity of the legislative changes, and the varying responsibility across the ACT Government, a standard means for assessing compliance with the provisions has not been devised. As such, information on compliance levels varies between agencies and regimes. There is evidence of compliance with some building regime requirements determined via standard audit processes and anecdotal evidence of compliance within the legal and real estate sectors in relation to disclosure of information at point of sale and tenancy. There is also evidence of low levels of compliance with the requirement for registers and management plans for non-residential premises.

There was no formal assessment of the level of community awareness conducted during the 2010 Review. Anecdotal evidence suggests there is an increased awareness of asbestos across the community; which in part is a result of the education and information campaign conducted by the Taskforce. A high level of information from this campaign still exists within the community today. Community awareness activities completed during 2005-06 resulted in an increased awareness of asbestos in the ACT, as confirmed by the Communications Strategy Evaluation Report.

The legislative changes made since 2005 and the provision of information to the community by the various agencies responsible for administering this legislation is also likely to have contributed to community awareness.

However it is difficult to ascertain how much of the Taskforce campaign and the legislative changes are attributable to the increased awareness given that an amount of national attention was directed toward asbestos awareness during the same period with coinciding campaigns and attention through the plight of high profile individuals such as Bernie Banton.

6.2 Effectiveness, coordination and information sharing across relevant agencies

Information sharing across the ACT Government in relation to the performance of asbestos management in the ACT does not occur in a systematic manner. Information sharing across ACT agencies generally occurs through informal networks established over time; Agencies provided examples of this throughout the 2010 Review.

The 2010 Review did not identify any examples of cross-agency initiatives that had been implemented since 2005 to target asbestos management, rather individual agencies have focussed on their own specific areas and legislation. Agencies did cite examples where they worked together to resolve matters, however at the time of the 2010 Review there was no 'formal' coordination mechanism in place.

6.3 Adequacy and effectiveness of legislative provisions governing asbestos including measures to regulate asbestos related risks and hazards through training, licensing and enforcement regimes.

The *Asbestos Legislation Amendment Act 2006* (No 2) enacted a range of legislative changes to give effect to the recommendations contained in the Report by the ACT Asbestos Task Force, August 2005. The *Civil Law (Sale of Residential Property) Act 2003*, *Dangerous Substances Act 2004* and the *Building Act 2004* enabled progress to be made in the notification of the presence of asbestos. The *Construction Occupations (Licensing) Act 2004* provided for the establishment and licensing of asbestos occupations. Progress has also been made regarding the development and delivery of the following accreditation courses, 'The Identification and Safe Handling of Asbestos' (80803ACT) and 'Asbestos Removal and Supervision' (80804ACT).

The package of asbestos related legislative changes made since the Report by the ACT Asbestos Task Force, August 2005 was comprehensive and affected different stakeholders and the community in many different ways. However, the performance of the legislation in terms of compliance and enforcement activity is not generally well understood by the agencies responsible to administer the various legislative requirements. It is therefore difficult at this time to fully assess the adequacy or effectiveness of legislative changes other than by anecdotal feedback from agencies.

6.4 Adequacy of current education and health strategies that address the incidence and management of asbestos related disease and the enforcement of asbestos related laws and regulations

The introduction of legislative changes following the ACT Asbestos Task Force was supported by an extensive public awareness campaign on the premise that the community needed to be aware of their changing obligations, in order to bring about changes in behaviour.

The Communication, Education and Awareness campaign initiated by the Task Force was implemented with some elements of the campaign still in operation today. The effectiveness of this campaign has not been evaluated in recent years and therefore it is difficult to confirm if the objectives of the campaign are still being met. However there is a considerable amount of asbestos information available in the ACT and importantly this is directed to the areas of risk identified by the Task Force.

Feedback from stakeholders throughout the 2010 Review indicated strong support for another education and awareness campaign and increased availability of health specific information for people who are exposed or are potentially exposed to asbestos.

6.5 Opportunities to further improve the management of asbestos

6.5.1 Actions identified to further progress the intent of the Asbestos Taskforce Report recommendations

Section 5 of this document identifies a number of actions that if implemented could further improve the management of asbestos in ACT. Section 5 references are included in () for ease of reference.

The actions recommended are summarised below:

- 1.** Modify the form letter to the Loose Asbestos Insulation Removal Program (1989-1993) homeowners to further strengthen the message and to further clarify legal obligations, for instance when homeowners undertake alterations or renovations to the property. (5.1.1-R2a)
- 2a.** Provide information to the Loose Asbestos Insulation Removal Program (1989-1993) homeowners periodically to further build awareness. (5.1.2-R2a)
- 2b.** Implement a procedure whereby new home owners of relevant properties are provided with the letter, i.e. following the transfer of title. (5.1.2-R2b)
- 3.** Review and update the generic asbestos advice used widely in the ACT to include additional examples of locations where asbestos may be found, such as letterboxes, swimming pools and ponds. (5.1.3 -4a)

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- 4.** Revise 'The Renting Book' to include advice to landlords and tenants regarding the potential risks from asbestos and associated legal obligations.(5.1.4-R4b)
- 5.** The Government continue community and tradesperson education to reinforce the purpose and responsibilities for disclosure under legislation. (5.1.6-R6)
- 6.** The management responsibility for www.asbestos.act.gov.au should be assigned to one agency to coordinate on behalf of the ACT. (5.1.7-R10)
- 7.** Review existing asbestos incident reporting mechanisms to establish a streamlined approach that ensures a rapid and coordinated response to incidents. (5.1.7-R10)
- 8.** Establish strong partnerships with industry bodies to understand the level of asbestos awareness across the community and industry to respond accordingly. Groups such as the Asbestos Regulator Forum (proposed), the Work Safety Council and the ACT Property Forum could be utilised for this purpose. (5.1.7-R10)
- 9.** Develop a whole-of-government asbestos awareness and education communication strategy based on issues referred or performance reported to the Asbestos Regulator Forum. (5.1.7-R10)
- 10.** Review the information that is available to the community about the disposal of asbestos and asbestos containing materials.(5.1.8-R15)
- 11.** Continuing promotion of asbestos awareness is needed to ensure people undertaking work which does not require an application for building approval are aware of the potential risks. (5.2.1-R7a)
- 12.** Oversight of the implementation of the "Asbestos Management in Non-Residential Government Properties Guidelines" (2008) by a central coordinating group such as the "ACT Government Property Forum" would be beneficial. It would be appropriate to set target dates for completion.(5.2.2-R8)
- 13.** The Government should work with stakeholders to develop suitable guidelines for the non-government sector with the view to improving compliance with the provisions. .(5.2.2-R8)
- 14.** Review education and awareness raising measures with a view to improving compliance with the requirements to obtain asbestos registers in non-residential building. This should be undertaken in partnership with appropriate industry representatives. (5.2.3-R9)
- 15.** Establish parameters to determine 'adequate' insurance cover for asbestos assessors and review insurance requirements for asbestos removalists. (5.2.6-R19)
- 16.** Assess the benefit of developing templates for asbestos registers and management plans such as the template developed as part of the pilot exercise at the Dickson Motor Vehicle Registry. (5.2.7-R20)
- 17.** Recommendation 13 provides that the Government should work with stakeholders to develop suitable guidelines for the management of asbestos for the non-government sector. These

guidelines should include data management methods for the storage and management of asbestos registers. (5.2.7-R20)

18. Subject to consideration of the national work on harmonisation work health and safety legislation (including training requirements for asbestos), the ACT Government take all measures to publicise availability of 80805 'Course in Asbestos Management Planning' to facilitate and support training institutions to deliver this course. (5.3.1-R13)

19. Consider requiring all occupations covered by Construction Occupations (Licensing) Act 2004 to attend asbestos general awareness training as a mandatory requirement for obtaining a new licence or licence renewal. (5.3.2-R14)

20. Subject to consideration of the national work on harmonisation work health and safety legislation (including training requirements for asbestos), the ACT Government take all measures to publicise availability of 80806ACT, 'Course in Asbestos Assessment' to facilitate and support training institutions to deliver this course for the licensing of asbestos assessors. (5.3.1-R13)

21. Consider requiring all occupations covered by *Construction Occupations (Licensing) Act 2004* to attend asbestos general awareness training as a mandatory requirement for obtaining a new licence or licence renewal (5.3.2-R14)

22. Subject to consideration of the national work on harmonisation work health and safety legislation (including training requirements for asbestos), the ACT Government take all measures to publicise availability of 80806ACT, 'Course in Asbestos Assessment' to facilitate and support training institutions to deliver this course for the licensing of asbestos assessors.(5.3.3-R17)

23. Oversight of the implementation of the "Asbestos Management in Non-Residential Government Properties Guidelines" 2008 by a central coordinating group such as the ACT Government Property Forum would be beneficial. It would be appropriate to set target dates for completion. (5.5.2-R23)

24. Develop guidance on how mixed-used premises (i.e. residential and non-residential premises) can achieve compliance with the asbestos register and management plan requirements (in particular whether a register and plan is required). (5.5.2-R23)

6.5.2 Share asbestos related information across agencies

As the understanding of asbestos identification, management, and treatment develops nationally and across the world, a mechanism for ACT Government agencies to access the latest information to assist with policy development and management could be considered. OHS Harmonisation may present an opportunity to access information from a broader national base which should be leveraged if possible. The Asbestos Regulator Forum (proposed) should consider the merits of this opportunity and if supported identify a mechanism for this exchange to occur.

6.5.3 Ongoing development of asbestos assessors

80806ACT, 'Course in Asbestos Assessment' is currently not delivered at any training institution in the ACT or NSW. Subject to national OHSD harmonisation, this course should be included in the curriculum of an educational institution in the ACT or NSW within the next twelve months.

6.5.4 Disposal of asbestos

Tighter controls could be introduced for asbestos removal by the inclusion of a condition which would require that a Certificate of Occupancy could not be issued until ACTPLA is in receipt an invoice form NoWASTE in relation to the legal disposal of asbestos. This control will not increase the costs of removal and may lead to an increase in the legal disposal of asbestos.

7 Recommendations

Measures to improve the governance and regulation of asbestos within the ACT are described in this section.

7.1 Establish a coordinated action response model for the management of significant asbestos incidents in ACT

A coordinated action response model should be established to ensure a timely, appropriate and coordinated response from multiple ACT Government agencies, to incidents involving occupational or public health asbestos exposure.

WorkSafe ACT, as the agency responsible for the Dangerous Substances Act, should be the agency appointed to lead any coordinated response to a significant asbestos incident. This role is an operational role, which is why it is not appropriate for the Chief Ministers Department to be the lead agency.

Principles of Coordinated Action Response Model

1. All agencies involved should complete response activities within their usual functions allocated through statute wherever possible;
2. The safety of the community is paramount and is the key consideration for decision making;
3. The Response Co-ordinator is responsible to lead decision making for any response activities, taking account of each agencies statue responsibilities and expertise at all times; and
4. Prevention measures remain the responsibility of the agency allocated this responsibility through statute by the Territory

A detailed description of the proposed Co-ordinated Action Response Model (CARM) is attached as [Appendix D](#).

7.2 Establish an ACT Asbestos Regulator Forum

Establish an ACT Asbestos Regulator Forum as the coordinating body responsible to oversee the performance of asbestos management in ACT and to advise the Minister for Justice and Community Safety on the performance of asbestos matters in the ACT.

The Asbestos Regulators Forum would meet quarterly. It is recommended this forum be chaired by the Work Safety Commissioner/Senior Director WorkSafe ACT, who is responsible for overseeing the *Dangerous Substances Act 2004*, as major component of the Asbestos Management and community protection framework in the ACT.

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The purpose of the Asbestos Regulator Forum is:

- Develop and oversee the implementation of the ACT Asbestos Management Strategy;
- Exchange information and data about the performance of the legislation (in terms of education, compliance and enforcement activity) each agency is responsible for in the quarter;
- Exchange information and data about the responses each agency has managed in the quarter;
- To promote information sharing about emerging issues and trends relating to asbestos management;
- Share new technical information about asbestos handling and management;
- Build the collective asbestos incident management expertise across government; and
- Review the Co-ordinated Action Response Model and ensure it is updated

Agencies should report on compliance and enforcement activity with their respective asbestos legislation to the forum. The forum should consider this information and any outcomes when recommending action priorities or any changes to the overall management arrangements.

The minutes of each meeting and any recommendations from this group should be provided to the CEO Justice and Community Safety. WorkSafe ACT should be tasked with providing secretariat support to the forum.

A memorandum of understanding or similar should be considered for all involved agencies to formalise arrangements.

7.3 Establish monitoring & evaluation mechanisms to assess the implementation and effectiveness of asbestos legislation

Develop and implement consistent monitoring and evaluation mechanisms for use by agencies that have responsibility for the management of asbestos. Due to the integrated nature of asbestos management where numerous requirements are contained in different pieces of legislation it will be important that a “system wide view” is considered during the development of the methodology.

The objective of this approach would be to enable a whole of government approach to evaluating the effectiveness of the various pieces of legislation and to assess if the ACT Asbestos Management Strategy is achieving the desired outcomes. Information obtained through this evaluation should be shared across all agencies through the Asbestos Regulator Forum and be used to identify further enhancements to future legislative changes. The information would also provide an insight into the level of community awareness of asbestos management practice across the ACT.

7.4 Asbestos Regulator Forum establish a strategic plan and oversee implementation

The Asbestos Regulator Forum, as one of their first priorities, should establish an asbestos management strategic plan for the next five years. The plan should also identify priority activities, responsible agencies, timeframes and regular progress review points.

The Asbestos Regulator Forum should retain the 2005 Asbestos Management Strategy Priorities listed below:

1. Raise and maintain community awareness of ACM's
2. Educate people who engage in high risk activities
3. Enhance the capacity of the asbestos and building industries
4. Establish a management system for the non-residential sector

The Asbestos Regulator Forum should also consider the addition of a new strategic priority:

5. Enhance the reporting and monitoring of performance of asbestos management in the ACT

In formulating the strategic plan and priority actions, The Asbestos Regulator Forum should consider the opportunities for improvement outlined in Section 6.5 and the Recommendations in Section 7 of this document.

7.5 Community Awareness

As noted earlier, community awareness activities completed during 2005-06 resulted in an increased awareness of asbestos in the ACT, as confirmed by the Communications Strategy Evaluation Report. However throughout the 2010 Review, some stakeholders reported that they considered the level of awareness across the ACT had diluted in comparison to the one to two years following the 2005 Asbestos Task Force. The 2010 Review also identifies area of non-compliance with legislative provisions and areas where compliance levels is not effectively monitored. Ongoing education and awareness raising is critical in maintaining industry and community awareness as to the dangers of asbestos and to improve and/or maintain the level of compliance with statutory requirements.

A priority for the Asbestos Regulator Forum should be to consider the ongoing need for further community awareness and education. The Forum should also identify priority areas for education and awareness raising and oversee the coordination and implementation of these measures.

1.

8 Common Terms

The following terms are commonly used throughout this report, the majority of which relate specifically to instruments or documents that are used in the management of asbestos. . Meanings of these terms are included below.

ACM

Asbestos Containing Material, referred also as MCA, in the Report by the ACT Asbestos Task Force, August 2005.

Asbestos Assessors

An **asbestos assessor** is an individual who provides, has provided or proposes to provide and asbestos assessment service.

An **asbestos assessment service** is the doing or supervising of all or any of the following:

- (a) air monitoring for asbestos;
- (b) identifying the location, type and condition of asbestos in a building, including by taking samples;
- (c) assessing the risk resulting from the identified asbestos;
- (d) advising on how the asbestos should be managed; and
- (e) reporting about the work mentioned in this list.

Asbestos Management Plan

Plan that describes how the presence of asbestos is to be managed at a site.

Asbestos Register

Register that describes the location and type of asbestos located in a non-residential property. Asbestos Registers are not required for residential properties.

Asbestos Removalist

An **asbestos removalist** is an entity that provides, has provided or proposes to provide an asbestos removal service.

An **asbestos removal service** is the doing or supervising of building work that involves all or any of the following:

- (a) handling (including disturbing) asbestos in buildings; and
- (b) removing and disposing of asbestos from buildings.

Asbestos Removal Control Plan

The plan should include, at a minimum, the:

- (a) method proposed to be used to remove the asbestos;
- (b) approximate quantity and kind of asbestos to be removed;
- (c) equipment proposed to be used to remove the asbestos, including any personal protective equipment; and
- (d) details of a program for monitoring airborne asbestos.

9 Appendices List

Appendix A – ACT Government Response to the ACT Asbestos TaskForce Report, August 2005
Recommendations

Appendix B - Recent Developments in Asbestos Related Diseases; June 2010; Dr J Leigh.

Appendix C -Recent Technical and Scientific Knowledge of Significance to the 2005 ACT Asbestos
Task Force; June 2010; Dr SK Brown.

Appendix D – Proposed Coordinated Action Response Model.

Reliance and Limitations

This document relies on the completeness and accuracy of information provided by various ACT Government agencies and stakeholders that have been consulted during the review, which are listed in Section 4 of this report. An independent review of this information was not conducted to verify its accuracy. No liability is accepted for loss or damage arising from the use of this document by the ACT Chief Minister's Department, or third parties cited in this document.