



***Responding to the asbestos  
problem: The need for significant  
reform in NSW***

**NSW Government Response  
2011**

**9 August 2011**

**Response to the NSW Ombudsman's Report:  
*Responding to the asbestos problem: The need for significant  
reform in NSW***

The NSW Ombudsman's report *Responding to the asbestos problem: The need for significant reform in NSW* was tabled in the NSW Parliament on 17 November 2010. The NSW Ombudsman's report investigates how Government agencies respond to significant safety issues arising out of asbestos related risks and incidents.

The report makes four key recommendations in relation to the establishment of an Asbestos Coordination Authority, an Asbestos Act, a state-wide plan and funding to resource those arrangements. A further four recommendations were also made in the report in relation to: the remediation of the Woods Reef Mine; a comprehensive public awareness program; a model asbestos policy for local councils; and consideration of vendor disclosure laws for asbestos in residences.

The New South Wales Government response to the eight recommendations of the Ombudsman's report is set out below.

## Recommendation 1

*An Asbestos Coordination Authority (ACA) be established and adequately funded. The ACA could form part of an existing agency with expertise in dealing with asbestos such as Department of Environment, Climate Change and Water (DECCW) or WorkCover. Alternatively it may be appropriate for the ACA to be a standalone body with its own board of management.*

### **NSW Government Response**

The NSW Government agrees that asbestos coordination should be improved and will achieve this through the establishment of a cross-agency coordination group.

The NSW Government will establish the Heads of Asbestos Coordination Authorities (HACA) governed by a Charter which sets out the arrangements for the coordination of the activities of statutory authorities in relation to all aspects of asbestos information, assistance, compliance and enforcement. This approach will deliver similar or better outcomes than a separate Authority and will be more cost-effective and efficient.

HACA will aim to ensure that NSW Government agencies and local councils effectively coordinate the safe management of asbestos at all stages of the asbestos lifecycle and across the policy areas of workplace health and safety, public health and environment protection.

The HACA will comprise the following membership:

- A. The Chief Executive Officer, WorkCover NSW, to chair and
- B. One senior official (head of agency or representative) from the following state Government agencies or their successor organisations:
  - I. Office of Environment and Heritage;
  - II. Division of Local Government;
  - III. Department of Health;
  - IV. Ministry for Police and Emergency Services;
  - V. Department of Trade & Investment, Regional Infrastructure and Services;
  - VI. Department of Planning and Infrastructure;
  - VII. Workers' Compensation Dust Diseases Board; and

- C. One senior official nominated by the Local Government and Shires Associations to represent the local councils and shires.

The terms of reference of the HACA are:

- A. To develop and oversee a State-wide Asbestos Plan for the safe management of asbestos in NSW to help prevent asbestos-related diseases in consultation with key stakeholders and the community;
- B. Coordinate the governance framework for the regulation of asbestos and identify, consider and resolve any unintended consequences, regulatory duplication, service delivery or operational issues arising from the practical application of the State-wide Asbestos Plan;
- C. Promote the exchange and deliberation of each organisation's interventions, projects and communications strategies regarding asbestos matters;
- D. Provide technical and policy advice as appropriate on how asbestos policy initiatives that have cross-portfolio or cross-jurisdictional implications might be best coordinated and progressed; and
- E. Apply new information and learning outcomes to asbestos management policy, advice and control strategies.

The HACA will build upon the work of the former Asbestos Co-regulators Working Group, which was initiated and chaired by WorkCover NSW, and has developed the *Asbestos Blueprint: A guide to roles and responsibilities for operational staff of State and Local Government*.

The *Asbestos Blueprint* provides clarity about the roles and responsibilities of all Local Councils and relevant Government agencies at each stage of the asbestos lifecycle.

The *Asbestos Blueprint* will be promoted amongst all Local Councils and relevant Government agencies to improve service delivery to the community through improved coordination and increased collaboration on asbestos issues. The *Asbestos Blueprint* may be updated from time to time.

## Recommendation 2

*An Asbestos Act to be introduced to facilitate effective measures to appropriately address asbestos issues in NSW.*

### **NSW Government Response**

The NSW Government does not support this recommendation. The legislative control framework for asbestos includes: work health and safety; environmental protection; planning; local government; consumer safety; emergency response; international trade; and compensation.

The NSW Government response to Recommendation 1 and Recommendation 3 acknowledges the need for improved coordination of asbestos issues. The creation of a cross-agency coordination group is the mechanism that will facilitate effective measures to appropriately address asbestos issues.

Asbestos regulation and administration is most effectively and efficiently managed where agencies and operational staff with expertise in specific disciplines (e.g. work health and safety, environmental protection, public health) are responsible for compliance and enforcement within their existing legislative frameworks.

There are many other significant hazardous substances that can affect public health and safety that are managed with a consistent approach through existing legislation and do not require a standalone Act.

A standalone Act is inconsistent with the “all-hazards” approach taken in occupational, environmental, public health and emergency response legislative regimes

The creation of further legislation through a standalone Act has the potential to create additional regulatory red-tape without any additional service delivery benefits.

The key focus on improved coordination of asbestos management particularly in residential areas will be through the HACA and the development of a State-wide Asbestos Plan.

This will provide the most cost effective mechanism to promote and improve the community’s understanding of the asbestos control framework, to coordinate a consistent approach and to continuously improve the framework.

### **Recommendation 3**

*The NSW Government develop a state-wide plan for dealing with asbestos.*

### **Recommendation 4**

*Adequate funding is allocated for implementing the state-wide asbestos plan.*

### ***NSW Government Response***

The NSW Government supports a whole-of-Government approach to the management of asbestos through a State-wide Asbestos Plan and the allocation of adequate funding for implementation of the Plan. The HACA will be given the task of developing the State-wide Asbestos Plan within 18 months of its formation. The State-wide Asbestos Plan will provide a comprehensive action plan to ensure a coordinated and effective approach to the management of asbestos in NSW.

The State-wide Asbestos Plan will aim to ensure the safe management of asbestos in NSW which will contribute to the prevention of asbestos-related diseases. The Plan will be developed in consultation with the community, industry, unions, Government agencies, local councils and the Asbestos Diseases Foundation of Australia.

The HACA will provide an annual progress report for the State-wide Asbestos Plan. Both the Plan and the progress reports will be made available to the community through HACA member's websites. The WorkCover NSW Annual Report will include information on the activities of the HACA.

The NSW Ombudsman's Report found that there are many Government buildings that still contain asbestos including schools and other buildings used by the public. The report recommends that the state-wide asbestos plan should include plans for the prioritised removal of asbestos from all Government buildings and should include a future date for this action to be completed.

The setting of a date for the removal of all asbestos would divert scarce resources to low risk activities, for example the removal of asbestos cement located under bathroom flooring and behind wall tiles where the asbestos material is isolated and well sealed would not achieve any significant health outcome but would have significant cost impacts.

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A better health and safety outcome will be to ensure that all Government buildings have asbestos management plans which identify removal priorities and that asbestos is safely removed prior to any renovation or demolition work. This approach will be included in the State-wide Asbestos Plan.

### **Recommendation 5**

*Funding to be allocated for the \$5.5 million remediation project at the Woods Reef Mine sought by the Department of Industry and Investment in 2009.*

### **NSW Government Response**

The NSW Ombudsman was critical of the delay in the remediation of the former Woods Reef asbestos mine site and sought urgent remediation work which would include removing derelict buildings and equipment, providing security measures and closing public access to Mine Road (formerly known as Crow Mountain Road). The need for a long term remediation plan was also identified.

The recommendation is supported. The Government has provided funding of \$6.3 million over three years for a risk mitigation program at the site that will include demolition of the dilapidated Mill House and silos, undertaking of a comprehensive air monitoring program, a health risk assessment and identification of appropriate management options for Mine Road including road closure to reduce access to the mine site. This program has commenced.

The program is managed under the Department of Trade & Investment, Regional Infrastructure and Services Derelict Mines Program by the Woods Reef Taskforce. The taskforce has representatives from Department of Trade & Investment, Regional Infrastructure and Services, Tamworth Regional Council, Office of Environment and Heritage, NSW Health, WorkCover NSW and the Land and Property Management Authority.

## Recommendation 6

*Government develop a comprehensive public awareness program for asbestos for all sections of the community.*

### **NSW Government Response**

The NSW Government supports the need for a coordinated and consistent approach to providing asbestos awareness information to the NSW community. The State-wide Asbestos Plan will include communication strategies that will provide a public awareness and education campaign particularly targeted to local communities and local councils.

## Recommendation 7

*The Chief Executive of the Division of Local Government issues a model asbestos policy to all NSW Councils.*

### **NSW Government Response**

The NSW Government supports the Chief Executive of the Division of Local Government issuing a model asbestos policy to all local councils. The development of the policy will be undertaken by the HACA and will commence within six (6) months of cabinet approval.

The Asbestos Co-regulators Working Group, which was initiated and chaired by WorkCover NSW, has developed the *Asbestos Blueprint: A guide to roles and responsibilities for operational staff of State and Local Government*.

The *Asbestos Blueprint* provides clarity about the roles and responsibilities of all Local Councils and relevant Government agencies at each stage of the asbestos lifecycle.

The *Asbestos Blueprint* is to be promoted amongst all Local Councils and relevant Government agencies to improve service delivery to the community through improved coordination and increased collaboration on asbestos issues. The Asbestos Blueprint will be updated from time to time.

## **Recommendation 8**

*Consideration be given to the introduction of vendor disclosure laws making it mandatory for property vendors to provide certification of the presence of asbestos in buildings.*

### ***NSW Government Response***

The NSW Government supports further consideration of asbestos risk communication requirements, including vendor disclosure laws, for asbestos in residential buildings. This will require community consultation and any proposal would need to be fully assessed and supported by a cost-benefit analysis to quantify potential costs and benefits to the community and the risks associated with incomplete or inaccurate records. The consideration of asbestos risk communication requirements for residential buildings will be included in the State-wide Asbestos Plan.