

Circular	PS 09–031
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Related	PS 09-004 to 09-006, 09-012, 09-013, 09-020; LEP Practice Note PN 09-001

Exempt and Complying Development Codes – asbestos amendment

The purpose of this circular is to inform councils, accredited certifiers and the community of the Environmental Planning and Assessment Amendment (Asbestos) Regulation 2009 and State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Asbestos) 2009 (the Asbestos Amendments), which commence on 18 January 2010. The Asbestos Amendments impose new standards and requirements for anyone that removes or demolishes asbestos material in relation to complying or exempt development.

Background

Since 1998 with the introduction of complying development, certifiers have not been able to impose additional conditions that seek to apply safeguards relating to the handling of asbestos, unless the relevant environmental planning instrument, development control plan or the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) prescribed those conditions. The way individual councils deal with asbestos in their local environmental plans or development control plans varies greatly in adequacy between local government areas.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) commenced on 27 February 2009. Under the Codes SEPP, demolition or removal of dwelling houses and ancillary development can be undertaken as complying development (clauses 3.33 and 4.1). Demolition can also be undertaken as exempt development (clause 2.25).

Prior to the Asbestos Amendments the Codes SEPP did not impose any standards for the safe handling of asbestos as part of exempt development, and neither did it prescribe any conditions on the safe handling of asbestos as complying development.

Ensuring safe handling and disposal of asbestos is a Government priority. The Asbestos Amendments introduces a uniform response to asbestos related risks for complying development and exempt development.

If exempt or complying development is undertaken by contractors, as is the case with much home renovation, then the work is taken to be a workplace of employment, and therefore the Occupation Health and Safety Regulation 2001 (OH&S Regulation) would apply automatically. The OH&S Regulation provides appropriate safeguards and licensing requirements for the safe handling and removal of asbestos where a workplace is involved. However the problem has been that these same safeguards and requirements under the OH&S Regulation do not apply to work undertaken by an owner builder (who does not hire a contractor to do the asbestos removal work).

The Department wished to protect owner builders, but also avoid duplication of the requirements under the OH&S Regulation. Thus, in the interests of addressing environmental and public health risks, the Asbestos Amendments require that works involving asbestos removal as complying development must be undertaken by a contractor who is licensed under clause 318 of the OH&S Regulation. This means that the owner builder can not carry out such works by themselves.

Overview of Environmental Planning and Assessment Amendment (Asbestos) Regulation 2009

The Regulation amendment:

- inserts a new clause 136E into the EP&A Regulation
- clause 136E imposes conditions which require that any development involving asbestos

removal must be undertaken by a business that is licensed under clause 318 of the OH&S Regulation. An exception to this requirement is where less than ten square metres of bonded asbestos is being removed

- requires applications for complying development certificates (CDCs) to include details of the estimate area of bonded or friable asbestos involved in the works (so that applicants become aware whether the new clause 136E applies to them)
- requires a contract evidencing the engagement of a business licensed under the OH&S Regulation to be provided to the principal certifying authority
- requires such a contract to specify the landfill site lawfully able to accept asbestos to which the removed asbestos will be delivered. This will provide additional incentive to ensure that disposal of asbestos, being a hazardous substance, complies with clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.

Overview of State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Asbestos) 2009

The SEPP amendment:

- includes at the end of clause 2.26 (regarding demolition as exempt development) a note informing users of the code of their responsibilities and appropriate safeguards relating to asbestos. The note outlines which buildings may contain asbestos material, the licensing requirements of the OH&S Regulation and makes reference to WorkCover's *Working with asbestos: guide* (2008) and NSW Government's *Fibro and asbestos: a renovator and homeowner's guide* (2004)
- specifies that the demolition of any dwelling house as complying development under the General Housing Code, and any demolition that is part of internal alterations under the Housing Internal Alterations Code, must be carried out in accordance with the Australian Standard AS 2601–2001—*The demolition of structures*.

Prescribed conditions for safe handling and disposal of asbestos

Removal of asbestos as part of a complying development

The effect of the Asbestos Amendments is that after the 18 January 2010, a certifying authority when issuing a CDC in NSW under any environmental planning instrument or development control plan must impose on the CDC the condition specified in the new clause 136E of the EP&A Regulation. The requirements of that condition must be adhered to by the benefactor of the CDC as well as the principal certifying authority.

Removal of asbestos as part of an exempt development

Exempt development does not require any planning or construction approval, which means that there is no ability to impose safeguards for the handling of asbestos through conditions. Works that would constitute exempt development are low impact and would typically involve asbestos material below the threshold for OH&S Regulation licensing requirements. Nevertheless it would still be advisable for a home owner to engage a suitably licensed contractor to carry out the asbestos removal work.

Development standard for the demolition of structures

Demolition under the General Exempt Development Code (clause 2.26) already had to comply with Australian Standard AS 2601–2001—*The demolition of structures* as a development standard.

The Asbestos Amendments means that demolition work as complying development under both the General Housing Code and the Housing Internal Alterations Code must now also comply with AS 2601–2001.

Timing of changes

The amendment to the Codes SEPP and the Regulation amendment were both published on 18 December 2009. These amendments commence on 18 January 2010.

Further information

Asbestos Amendments

Copies of the amending legislation (as made) and the EP&A Regulation and Codes SEPP (as amended) are available on the NSW legislation website at: <http://www.legislation.nsw.gov.au>.

A copy of the Better Regulation Statement for these regulatory changes is available from the Department of Planning's website at: <http://www.planning.nsw.gov.au/PlanningSystem/Legislationandplanninginstruments/BetterRegulationStatements/tabid/80/Default.aspx>.

Codes SEPP

Information about the Codes SEPP is available on the Department's website at <http://www.planning.nsw.gov.au/housingcode>. For further information, please contact codes@planning.nsw.gov.au or call the Department of Planning's Information Centre on Freecall 1300 305 695 or 02 9228 6333.

Asbestos removal—information for the community

WorkCover's *Working with asbestos: guide* (2008) is available online at http://www.workcover.nsw.gov.au/Publications/OHS/SafetyGuides/Pages/working_with_asbestos_guide.aspx.

The NSW Government's *Fibro and asbestos: a renovator and homeowner's guide* (2004) is available online at: <http://more.nsw.gov.au/fibro>.

Planning circulars

This and other Department of Planning circulars are published on the web at <http://www.planning.nsw.gov.au/PlanningSystem/Circularsandguidelines/PlanningSystemCirculars/tabid/81/Default.aspx>.

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