



Australian Government
Asbestos Safety and Eradication Agency

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RE: The review of the *Residential Tenancies Act 1997*

Dear Sir/Madam

The Asbestos Safety and Eradication Agency commends the Victorian government on its review of the *Residential Tenancies Act 1997*.

Please find attached the agency's submission to the review.

If you would like to discuss this submission further, please contact Assistant Director Merrin Hambley. Merrin can be reached on (02) 9246 0481 or merrin.hambley@asbestossafety.gov.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'PT', written over a circular scribble.

PETER TIGHE
Chief Executive Officer



Attachment A: Asbestos Safety and Eradication Agency submission to the review of the Residential Tenancies Act 1997

Background

The agency provides a national focus on asbestos issues which goes beyond workplace safety to encompass environmental and public health concerns. This includes residential asbestos issues which are relevant to this review.

Historically Australia was one of the world's highest users of asbestos per capita, with at least one third of all homes built prior to 1990 thought to contain asbestos products. Asbestos is a known carcinogen. The inhalation of fibres is associated with increased incidences of a number of respiratory diseases including asbestosis, mesothelioma, pleural and lung cancers.

Research shows that there is an increasing trend in the number of victims of asbestos-related disease occurring from non-occupational exposure to asbestos¹, with projections that over 19,000 new cases of mesothelioma will be diagnosed in Australia between 2015 and 2100. Approximately 42% of these (or over 8,000 cases) are projected to be caused by non-occupational exposure².

What this research tells us is that exposure to asbestos in the residential sector will result in a significant number of diagnoses of asbestos-related disease into the future. Greater attention needs to be paid to the issue by all levels of government to reduce these long-term impacts.

Current state of residential asbestos management

The Australian Government's *Asbestos Management Review Report* (June 2012) found that the lack of a consistent approach towards asbestos identification in the residential sector is an issue of concern. The lack of an identification register or process for residential premises was noted as presenting a major safety risk for both occupiers of those premises and tradespeople who undertake work in the domestic setting. Three-quarters of the submissions received by the review called for improvements to the identification process of asbestos in the built environment. Submissions across all stakeholder groups indicated support for a requirement for private property or home owners to identify the presence of asbestos on their property.

What are other jurisdictions doing to address the problem?

The asbestos disclosure requirements outlined below are examples of some current requirements my agency is aware of operating in other jurisdictions. I note that some of the examples apply during the sale process, and are not exclusive to disclosure prior to tenancy.

¹ N. J. Olsen, P. J. Franklin, A. Reid, et al., "Increasing Incidence of Malignant Mesothelioma after Exposure to Asbestos During Home Maintenance and Renovation," *Medical Journal of Australia*, Vol. 195, No. 5, 2011, pp. 271-274.

² Asbestos Safety and Eradication Agency (March 2016). *The Third Wave: Australian Mesothelioma Analysis and Projections*.

ACT

Under the ACT *Civil Law (Sale of Residential Property) Act 2003*, if there is a current asbestos assessment report for the property, the seller must provide a copy of the report with a contract for sale. If no report exists, the seller must provide general asbestos awareness advice prepared under the ACT *Dangerous Substances (Asbestos advice) Notice 2006 (No 1)*.

Under the ACT *Residential Tenancies Act 1997*, if there is a current asbestos assessment report for the property, the lessor must provide the tenant with a copy of that report. If no report exists, the lessor must provide general asbestos awareness advice prepared under the ACT *Dangerous Substances (Asbestos advice) Notice 2006 (No 1)*.

Under the *Dangerous Substances Act 2004*, if an owner/occupier has an asbestos assessment report, this must be provided when engaging a tradesperson or maintenance worker to undertake work on the property.

SA

The *Statutes Amendment (Real Estate Industry Reform) Act 2008* contains provisions that require the seller of a property (or real estate agent acting on their behalf) to provide a buyer's information notice to all prospective purchasers. This buyer's information notice (Form R3) includes a question to prompt potential purchasers to think about whether asbestos may be present in any of the buildings or elsewhere on the property.

Unlike in the ACT, there is no requirement that this general information be provided to tenants at the beginning of a residential tenancy agreement.

France

French law dictates five different situations where an asbestos assessment (known as a diagnostic) will be required:

- General assessment on all buildings built prior to 1997 (Diagnostic Technique Amiante)
- **Assessment prior to a residential property being leased** (Dossier Amiante Partie Privative)
- Assessment prior to sale (Diagnostic Avant Vente)
- Assessment prior to demolition work (using invasive diagnostic techniques) (Diagnostic Avant Demolition)
- Assessment prior to any alternation work that may release asbestos fibres (Diagnostic Avant Travaux)

What Victoria could consider as part of this review

As part of the review of the *Residential Tenancies Act*, the Victorian government could consider clarifying the roles and responsibilities for the safe management of asbestos in properties subject to a residential tenancy arrangement. One option would be to insert reference to the requirement that ACMs be kept in good condition so as not to pose a health risk to tenants and tradespeople engaged to perform work and maintenance tasks.

Another option could be to look at developing separate guidance material to assist tenants, property managers and owners understand their rights and responsibilities. The agency would be happy to partner with the Victorian government on this initiative. Guidance developed could then be shared with other jurisdictions, contributing to the outcomes of the *National Strategic Plan for Asbestos Management and Awareness 2014-2018*. This type of guidance would directly target outcome 3.5 of the Identification strategy, *improved practice in the residential sector to identify and minimise the risk of exposure, in particular for DIY home renovators*.