



Survey of local government and other regulators experience with asbestos incidents in the public sector

Executive Summary

In July 2011 the Western Australian Department of Health (DOH) conducted a survey of Local Governments, with input by other relevant Government agencies, due to the high numbers of incidents it was encountering from asbestos associated with building demolitions, asbestos removals and illegal dumping. DOH was also prompted by other State and national developments which would benefit from the data collected, such as the DOH review of the *Health (Asbestos) Regulations 1992*.

Responses were received from 28 of the 140 Local Government Environmental Health Offices (EHOs) and comments also provided by WorkSafe, Department of Environment and Conservation and the DOH Environmental Health Hazards Unit. The Local Government response included 40% of all Metro Councils, which probably have the greatest problems, and 15% of all Regional Councils.

Although the survey did not attempt to be comprehensive and only had limited take up, when combined with the other material a number of conclusions could be confidentially drawn.

Local Government and other regulators have a substantial and increasing burden of work (many hundreds of incidents annually) associated with demolition, removal and dumping activity. More importantly, this presents a risk to the public in a range of situations as well as causing considerable community anxiety. In addition there are often major costs and delays for development projects if mishandled asbestos contaminates the site and is spread elsewhere through uncontrolled fill material and recycled demolition waste.

Local Government was particularly concerned about limitations in the current regulatory systems to address these problems, especially in terms of regulatory penalties, interagency cooperation, and guidance and training available to their EHOs.

This report recommends that some of the actions already in train to address these issues be better resourced, expanded and fast tracked. These include the revision of the *Health (Asbestos) Regulations 1992* and the further development of formal asbestos regulatory agency cooperation and coordination.

Purpose

This report provides the results of a 2011 survey of Western Australian (WA) Local Government and other regulators information on asbestos incidents of potential public health concern.





Background

In July 2011 the Environmental Health Hazards Unit (EHHU) of the Department of Health (DOH) undertook a survey of Environmental Health Officers (EHOs) of the 140 WA Local Governments to identify patterns of public health risk from asbestos that may need to be better managed. The survey was conducted following the occurrence of a number of asbestos contamination issues arising from the demolition of buildings and removal (including dumping) of asbestos containing materials (ACM) in residential and public areas. DOH was made aware of these incidents through public complaints, Local Government EHO requests for advice and Department of Environment and Conservation (DEC) notifications of asbestos contaminated sites, pollution, illegal dumping and contaminated recycled demolition products.

As well as the increasing occurrence of asbestos incidents, the survey was also prompted by several important WA and national asbestos management activities including:

- The ongoing review by DOH of the *Health (Asbestos) Regulations 1992*. This is the primary legislation used by Local Government and DOH to protect the public from asbestos risks;
- Development of a National Asbestos Management Strategy;
- Efforts by DOH and other regulators to build a system of awareness raising, consultation and coordination between all major asbestos-related agencies and groups within WA; and
- Developments in the area of Occupational Health and Safety associated with asbestos including the harmonisation of Work Safety Laws in Australia including on asbestos removal licensing requirements.

Comments were also obtained from WorkSafe, DEC and from within EHHU and incorporated within this report. A follow up in September 2011 added limited additional information.

This survey report was compiled by the DOH with the assistance of David E Jackson: Peer Review Services. Note that the survey was not rigorous or comprehensive but the quantity of information obtained gives considerable confidence in the findings.

Principal findings

1) Current Experiences in Local Government

Of the 140 Local Governments consulted, DOH received 28 responses (*20% of total WA Councils*) of which 12 were Perth Metropolitan Councils (*40% of all Metro Councils*) and 16 were Regional WA Councils (*15% of all Regional Councils*). Some other Metro and Regional Councils indicated substantial problems with asbestos but were not in a position to complete the survey due to resource constraints.

Respondents reported that, since January 2010 (about 18 months), they had received a total of 762 complaints relating to the management of asbestos in their communities, with Metro EHOs



reporting 534 complaints (70% of total reports) and Regional EHOs reporting 228 complaints (30% of total reports). Metro and Regional Council's complaint reporting rates vary considerably from one Council to another, although Metro Councils appear to have an overall higher prevalence and range of reported complaints (Metro: Mean=48; SD=62; Regional: Mean=14; SD=20).

EHOs were asked to categorise reported complaints arising from specific "Demolition", "Removal" and "Dumping" activities. A separate category "Other", not defined in the survey, could be used by EHOs to capture issues like asbestos fence disputes, condition of asbestos structures, and incidents of import of asbestos contaminated fill. Figure 1 shows the distribution of complaint categories, Statewide and in Metro and Regional Council areas.

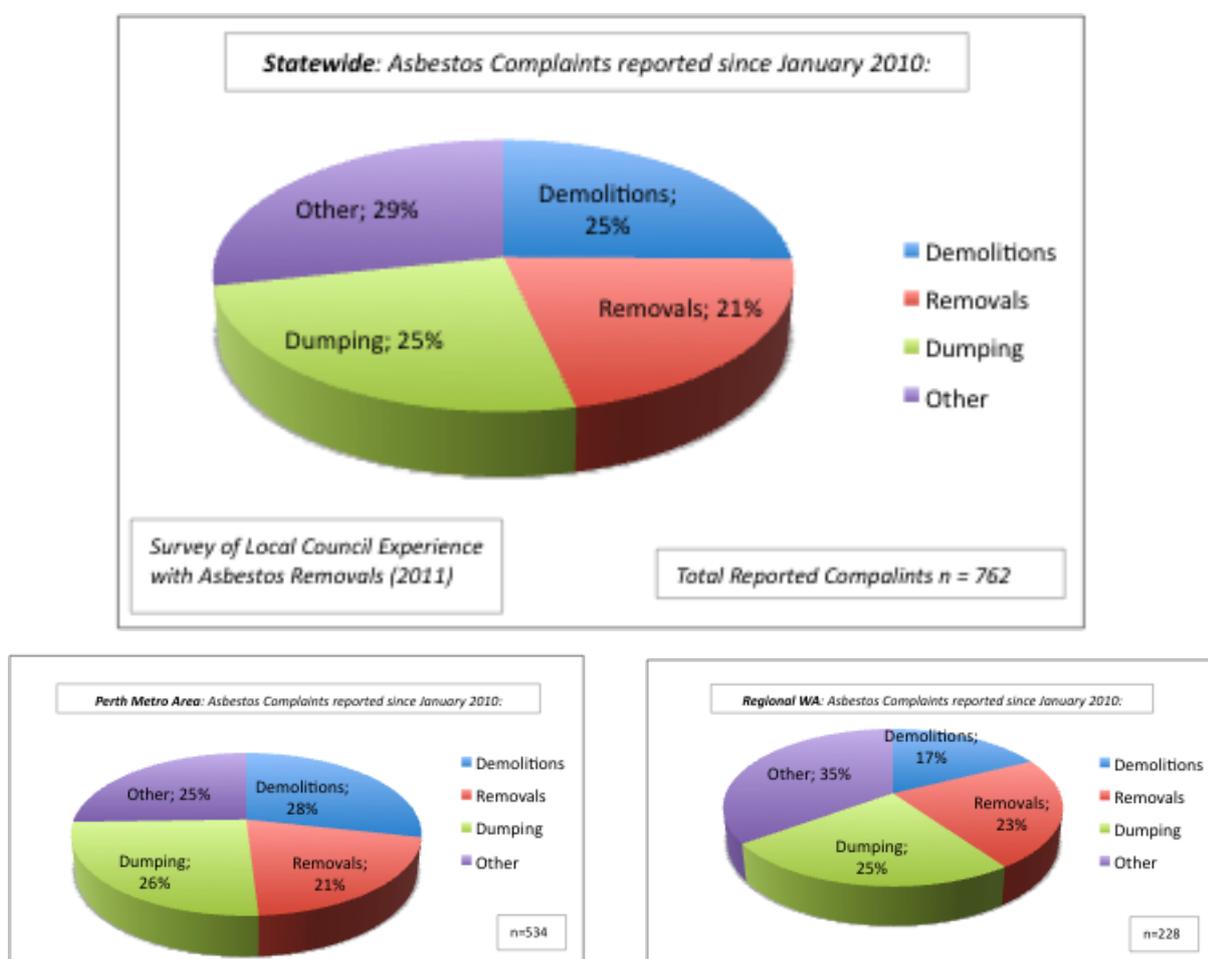


Figure 1: Distribution of reported complaints by category for Statewide, Metro and Regional Councils.

Survey data suggests that at a Statewide level, there is no specific bias towards any particular activity category. A comparison of Metro with Regional complaint categories suggested *less* "Demolition" related complaints, and *more* "Other" concerns in Regional Council areas than in their Metro counterparts.

This apparent trend could be explained, on the one hand, by higher residential clearance and redevelopment rates in older Perth suburbs, as observed by a number of Metro EHOs, *“Increased number of demolitions resulting from infill development”*, and the high prevalence of older and more dilapidated housing stock giving rise to community concern, in regional centres, as observed by a Regional EHO *“expect concerns to increase with aging (deteriorating) asbestos products and the communities 'awareness' of asbestos”*. DOH is also aware of numerous occurrences of problems with uncontrolled use of fill material contaminated with asbestos in some rapidly developing regional areas.

However, in some regional centres, particularly where increased mining and infra-structure projects have created demand for new housing, EHOs have observed an increasing trend in asbestos complaints arising from demolition and disposal activities, *“Increasing incidence of complaints due to housing renewal demand public awareness”* and the sale of older houses where asbestos may be present, *“Sale of asbestos houses in the future”*.

EHOs were invited to provide comments on the general nature of complaints received. Figure 2 provides a qualitative illustration of the general nature of complaints received in Metro and Regional Council areas. Again, the principal initiators of complaints are *“incorrect removal and handling practices”*, *“illegal disposal of asbestos”* and *“poor demolition practices”* with EHOs observing that, *“Most people are now aware of the hazard associated with asbestos, but there is still a significant amount of uncertainty as to how they should be handling/ disposing of it”*.

Both Metro and Regional EHOs report illegal waste disposal of asbestos as a major source of complaint, with one observing, *“Illegal dumping continues to be an ongoing issue requiring action and assistance from the State Govt.”* and *“the cost of ACM disposal at landfill is \$100 /tonne and \$7.50 per sheet. Need to incentivise correct disposal by reducing costs that can be a factor in illegal disposal”*. Many EHOs report numerous instances of *“Dumping of asbestos on council verges”* and one Regional EHO went so far as to recommend a *“free asbestos removal and disposal service”* in areas where illegal tipping was a problem.

In addition, Metro EHOs reported a significant number of complaints derived from a *“general concern about neighbourhood activities”* and observed, *“Most complaints coming from neighbours of poor removal practices or asbestos dumped near their land”* and *“Fence complaints are increasing as they age”*.

An increased community awareness in Regional Council areas has led to a significant increase in complaints relating to the *“lack of notification & Community Consultation”* prior to the commencement of asbestos removal works, with EHOs observing, *“People enquire about safety measures & EHOs need to find what is happening, who the operator is, is he qualified, & who employed him to carry out the work?”* placing additional demand on already scarce EHO resources.

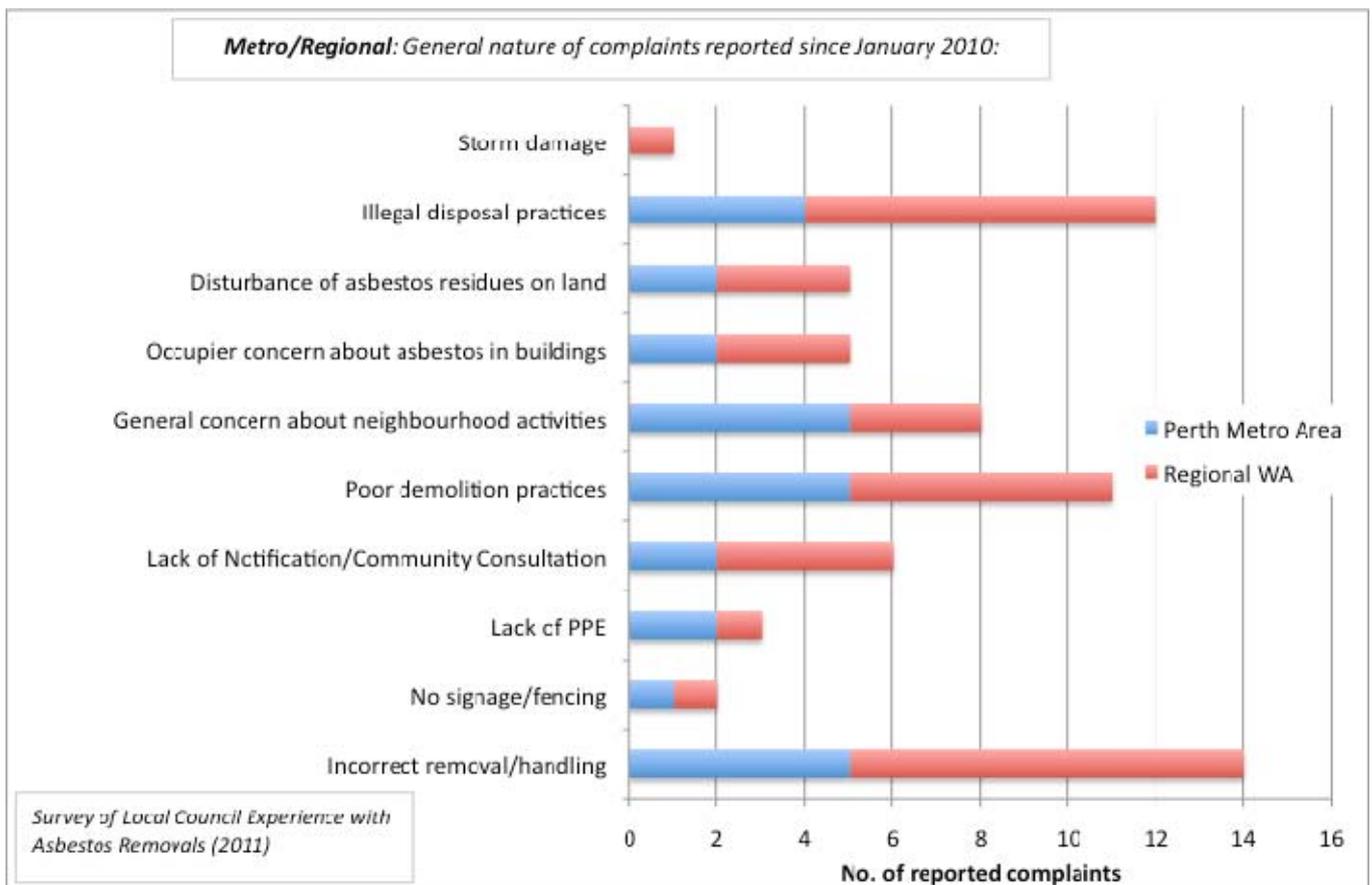


Figure 2: General nature of reported complaints in Metro and Regional Council areas.

However, one Metro EHO pointedly observes that “Probably an increased number of asbestos related complaints based on greater public awareness but not always based on a proper understanding of the risks” and “Increase in property owners using asbestos concerns to resolve fencing disputes with neighbours”.

EHOs were invited to indicate the rate at which complaints were resolved. Statewide data suggests an average complaint resolution rate of 94%, with Metro EHOs reporting an average of 97% and Regional EHOs 91%. EHOs were also invited to provide two typical examples of compliance and enforcement action undertaken. Typically EHOs resolved complaints through education and negotiation, but where regulatory and enforcement action was required, EHOs typically utilised provisions under the *Health (Asbestos) Regulations 1992*, (13 reported instances) and OHS Regulations and National Occupational Health and Safety Commission (NOHSC) Code of Practice for Safe Removal of Asbestos – 2005 (4 reported instances).

2) Local Government Proposals for Future Changes

EHOs were invited to recommend further Local and/or State action that may assist them in the future. Figure 3 illustrates the range and intensity of support for various proposed actions, although specific numbers are small. Of particular note, is the very strong support, across Metro and Regional Council areas for “Increased regulatory penalties/fines”, “Higher fines are

desperately needed as current fines do not deter offenders. Current low fines are not consistent with other legislation (e.g. higher fines for making noise, litter and Food Act issues than causing asbestos health hazard to the public)” and “Higher penalties under Health (Asbestos) Regulations, \$1000 is a pittance for large earthmoving companies”.

Metro EHOs typically support greater regulatory controls on asbestos removal and disposal activities, such as through the “Introduction of an enforceable Code of Practice/Standard”, particularly to control dust generation and to require prior notification/community consultation.

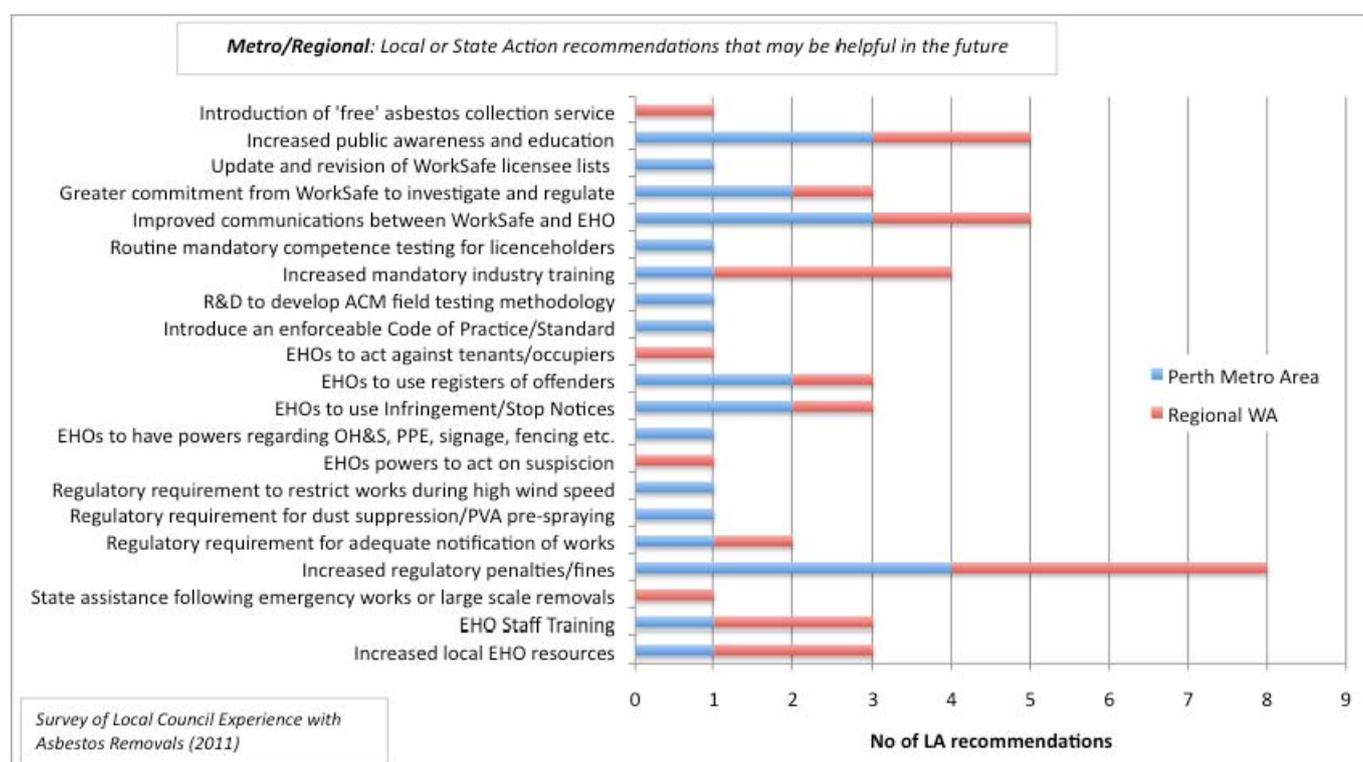


Figure 3: Local and State actions recommended by Metro and Regional Council areas.

By contrast Regional EHOs tend to favour more “Mandatory Industry Training” programs, perhaps validated by mandatory competency testing as a part of licensing requirements, “Increased public awareness and education” and a heightened enforcement support and leadership role for WorkSafe, perhaps reflecting already stretched EHO resources in Regional areas.

Two specific proposals that were well supported in both Metro and Regional Council areas were:

- Improved *intra-* and *inter-*Council and EHO-WorkSafe communications possible through the introduction of a central “Register of repeat offenders”; and
- Use of “Infringement/Stop Notices” by EHOs, particularly where asbestos contamination was *suspected*. To assist in this proactive response one Metro EHO recommended that

DOH/WorkSafe commission the development of a robust asbestos testing procedure for use in the field.

3) WorkSafe Experiences

WorkSafe is the primary regulator of hazards in the workplace, including asbestos, and it issues licenses for some building demolitions and asbestos removals. In August 2011 DOH requested WorkSafe to provide comments on problems associated with asbestos demolitions and removals, as part of the Local Government survey. Unfortunately WorkSafe's database does not readily allow compilation of the asbestos incident data that would provide quantitative material to assist this survey. However based on the views expressed in the response and other discussions with WorkSafe, the following general comments were made:

- There has been a general increase across WA in the development of new residential housing sites from previous single story asbestos dwelling houses;
- Asbestos problems can arise from inappropriate demolitions when asbestos may be present as well as inadequate asbestos removal practices;
- WorkSafe can take enforcement action by way of improvement notices, prohibition notices and can and do at times (subject to the evidence) prosecute;
- The investigation of inadequate demolition contractor practice consumes much of a WorkSafe construction inspector's available investigation time;
- WorkSafe receive a number of complaints about demolition of single story dwelling houses in WA, however under OSH Laws a demolition license is not required for this;
- In 2010 the OSH Regulations were amended to require persons (in the course of work) who remove 10 sq metres or more of ACM to hold a Restricted Asbestos License. This increases the need for demolitions to include proper asbestos removal;
- Due to the great increase in the number of Restricted Asbestos License holders resulting from the industry's response to the 10 sq metre threshold (more than 700), WorkSafe is undertaking an audit of these license holders to ensure service quality;
- In late 2010 WorkSafe communicated with Local Government Building Departments to attempt to better control the granting of local government building permits to demolish single story dwelling houses where the property was more than 30 years old and thus could contain ACM building products. This has improved the situation but better communication between Local Government Building Departments and EHOs would further assist this initiative; and
- Education and prevention are key elements of asbestos risk management. Action after the event especially in regard to obtaining prosecution evidence often is limited.

4) Department of Environment and Conservation (DEC) Experience

DEC has a number of responsibilities that relate to asbestos including management of its own properties (especially extensive public reserves), regulating controlled waste and contaminated sites and being a first responder to spills or releases of hazardous substances including asbestos. As a result DEC have a pollution hotline service to provide expert around the clock assistance.

In regard to the *Contaminated Sites Act 2003* (CS Act), DEC has classified 161 sites out of 1000 or so (i.e. 16%) as being or having been contaminated with asbestos. This does not include the suspected sites. DEC also has another reported 2000 sites yet to be classified and ones yet to be identified. On a 16% basis it indicates the possibility of many hundreds of likely asbestos associated sites, most of which in DOH's experience likely arose from poor demolition or asbestos removal.

In the period from January 2010 to the present, DEC also received about 300 or so asbestos contamination complaints or queries, many of which were referred on to Local Governments due their responsibility to apply the *Health (Asbestos) Regulations 1992* in their jurisdictions. DEC also responded to a small number of asbestos-related house fires and ACM spills during transport. In addition there were of the order of 100 separate reported dumps of ACM material, usually small quantities, on DEC properties.

5) Department of Health Experience

DOH is the administrator of the *Health (Asbestos) Regulations 1992* (Regulations), with Local Government as the enforcing authority, and DOH is also a key advisor to DEC on asbestos and other public health issues related to the *Contaminated Sites Act 2003*.

DOH is currently revising and updating the Regulations which are nearly 20 years old and were initially intended primarily to reinforce the prohibition on the sale and supply of asbestos and associated products. Contemporary needs relate more to empowering and guiding Local Government in protecting the public from asbestos risks and harmonizing with other asbestos legislation such as OHS, at a time when asbestos building stocks are deteriorating or being removed rather than being installed.

The proposed main changes to the Regulations have been informed through extensive consultation with Local Government and so are likely to help address some of the issues identified more systematically by the survey. However the finalization timeframe is uncertain. The main proposed amendments include:

- Greater controls over demolition of buildings and structures where asbestos is involved;
- Strengthening requirements for working with or removing any asbestos containing materials;

- Requiring a person removing >10m² of 'bonded' or any friable asbestos to be regulated;
- Giving greater enforcement powers to Authorised Persons, i.e. a Local Government EHOs;
- Providing power for Authorised Persons to deal with damaged/ deteriorated ACM that are in situ;
- Increased penalties for non-compliance;
- Additional requirements for disposal of asbestos materials; and
- Providing support and guidance through an accompanying Code of Practice.

To assist the management of asbestos contaminated sites, DOH has published a comprehensive guidance package of documents including the *Guidelines for the Assessment, Remediation and Management of Asbestos-Contaminated Sites in Western Australia – May 2009* (Guidelines). This includes several guidance notes or brochures to help LG EHOs and members of the public in addressing this issue in a more practical and inexpensive manner in situations where the Guidelines are not warranted. DOH also offers an advisory service to LG EHOs in this regard.

In parallel with the above review and publication program, DOH has handled of the order of 200-300 queries or tasks related to asbestos risks in the 18 month period from January 2010. The bulk of these have been involved with demolitions, asbestos removals, contaminated sites (many from imported asbestos contaminated fill and dumped ACM) and concerns about weathered or damaged asbestos cement building structural elements. A high proportion of these were addressed in conjunction with Local Government.

Some general conclusions formed by DOH on these issues are:

- A major proportion relate to contemporary or recent activities and not just legacy problems from historical poor practice;
- Poor demolition or asbestos removal practices pose a number of potential associated or flow-on risks to the public including asbestos dust exposure of the public or nearby residences at the time; possible contamination of the site with asbestos and long term risk to the occupiers, and possible contamination of soil or building rubble which may be used for recycling purposes off-site where people may be exposed;
- In addition to public health risks, poor asbestos practice can cause major and unnecessary costs in terms of clean-ups, time delays, legal action and in public angst;
- A common problem is the demolition of single residences where regulation and monitoring are not as strong. As there is normally no external check that this was properly conducted any problem emerges usually through resident complaints;

A Real Life Example

A Government agency (in this case) used a well known licensed asbestos company to remove ACM and demolish a small group of buildings for a residential development. A neighbour lodged a complaint with photographs allegedly showing asbestos panels being broken with a hammer by a man wearing PPE. Before action occurred the building was demolished and debris removed for recycling. A site investigation by LG EHO and DEC officers showed areas of asbestos fragments on and likely under the surface because mechanical trawling for general debris had occurred. Prior to a professional investigation, soil was imported and distributed around the site thus compounding the situation. The site was classified as *Possibly Contaminated – Investigation Required* under the CS Act. A full investigation, remediation and validation was necessary to demonstrate the site was clean and suitable for development. Other consequences were a 1 year delay, ongoing complaints by an action group about possible asbestos dust exposure, Ministerial correspondence, a high extra management burden, and nearly \$200, 000 in additional costs. Successful litigation against the removalist was considered too difficult.



- There is a strong need for coordination and collaboration between the range of regulators with differing although often overlapping asbestos responsibilities and legislation;
- Removal of landfill levy fees on small amounts of asbestos associated and/or a Local Government asbestos pick up or assisted disposal service would be invaluable in reducing illegal dumping; and
- Industry and public concerns have been expressed on the proper management of asbestos loads when offloaded and secured at tip sites.

6) Relevant National Developments

DOH has some awareness of and involvement in national asbestos-related issues. This includes the development of a national Asbestos Management Strategy (AMS) and the

harmonization of Work Safety Laws as previously mentioned.

Although the AMS is still being prepared some of the issues it has flagged as possibilities are relevant here, such as undertaking a national asbestos material survey, required removal of all asbestos building materials, establishment of a national asbestos authority, and the likely rising asbestos risks to DIY home renovators. The release of a report on the proposed strategy is planned for mid 2012. DOH submitted comment on the proposal included its limited consideration of some asbestos issues such as demolitions and public risk from asbestos contaminated sites.

The issues paper associated with the AMS drew attention to the fact that a number of other States have existing Government or whole-of-community asbestos management coordination committees and/or State asbestos management strategies. Coordinated asbestos management in WA is embryonic.

In conjunction with the Work Safety Law initiative a number of model documents are being revised including the Code of Practice for Safe Removal of Asbestos. In this process DOH and other interstate health authorities continue to try to ensure that the OHS legislation meshes well with asbestos public health requirements. However, it is often the latter having to fit around the former.

7) Other Relevant Statistics

No attempt has been made to research and incorporate relevant literature or experiences of non-WA jurisdictions. However, the following external reference provides useful information.

In 2007 the Heads of Workplace Safety Authorities produced a campaign report entitled “*Demolition and Asbestos Removal in the Construction Industry*” (2007). New Zealand and all Australian States and Territories except Tasmania participated. The campaign underpinning the report was conducted in 2006 and included alerting the industry beforehand and then undertaking an agreed number of site visits in each jurisdiction, to both commercial and residential properties being demolished, and assessing compliance. The report compared non-compliance rates for fifteen specific issues, including *asbestos removal* and *dust control*.

Conclusions most relevant to the DOH survey were:

- “The highest compliance was for site services at 97.0%, with the lowest compliance relating to asbestos removal at 73.3%”;
- WA had 79.4% compliance (27/34 inspections) for asbestos removal related to demolition, with NSW and Queensland being below the overall average;
- If a competent supervisor was on site, there was a greater level of compliance on each issue, and in the case of asbestos it was an 11% improvement; and

- Of the 67 non-compliances identified in WA, 19 (28%) resulted in the issuing of a “Notice” (i.e. Improvement/Prohibition/Infringement), 47 (70%) in “Verbal Directions” and 1 (2%) in “Further Investigations”.

The results of the campaign provide a useful counterpoint to those of the survey and other regulators information. Problems associated with asbestos removal during demolition as seen by WorkSafe inspections in WA although significant seem not to be as great as indicated by the other information contained in the current report. This could be partly due to the campaign involving pre-warning but is also likely because Local Government etc only have their attention brought to emergent problems. Also WorkSafe only checks the site at one point in time, and if unknown asbestos is still present in the building it may still subsequently create a contamination problem upon final demolition.

It is worth noting that since the campaign, WorkSafe in line with national practice has lowered the threshold of asbestos removal that will require an unrestricted license. As a result there has been a great increase in the number of these license holders in response to the additional removal opportunities. These new removalists are likely to have less experience than pre-existing removalists and have been operating during much of the survey period.

Conclusions

Although this report does not attempt to be comprehensive it is based on considerable amount of material from a range of relevant sources, especially the Local Government survey. It is important to note that currently only DEC has reasonable systems to collect and readily report on asbestos incidents, which were drawn upon, though on an individual basis Local Governments may also be able to do so.

The main conclusions that are reached in general terms are that:

- a) Local Government EHOs have a substantial work burden associated with asbestos issues roughly evenly divided between demolitions, asbestos removals, asbestos dumping and other relevant incidents. This is most pronounced in Metro areas, and in Regional areas where considerable development is occurring.
- b) Other Government regulators also handle a considerable volume of requests or incidents in these regards and often do so in concert with each other and Local Government;
- c) The level of work appears to be increasing which is to be expected given OHS legislation changes, continued urban infilling and regional development, and the deteriorating condition of in situ aged asbestos building materials;
- d) The proportion of asbestos problems associated with activities such as demolitions is uncertain but could be of the order of 20%, and may be more so for residential demolitions which are likely less well regulated;

- e) The potential impact on public risk of these problems is unclear but further risks could also occur down-stream from the issue if it is not addressed through contamination of the site or off-site areas such as through re-use of contaminated fill or demolition waste;
- f) Regardless of public risk, these issues present a resource drain on regulators, create concern in the community and can result in very high costs associated with delays and remediation especially for contaminated sites;
- g) LG EHO complaint resolution seems typically achieved through education and negotiation. However where regulation and enforcement is required it is achieved through provisions of the *Health (Asbestos) Regulations 1992* and to a lesser extent OHS Regulations and NOHSC Code of Practice. Actions taken were reported to be generally effective, with between 80-100% of complaint resolution.
- h) Despite being able to cope, EHOs indicated a strong need for assistance and made several observations and recommendations in relation to current regulation and management practices in their respective areas. In particular, both Perth Metropolitan Council and Regional Council EHOs expressed support for:
- A significant increase in penalties and fines under existing regulatory frameworks;
 - Infringement/Stop Notices should be used where breaches of Regulations are suspected;
 - Improved EHO/EHO and EHO/WorkSafe communications including through the introduction a central register of repeat offenders;
 - Introduction of Infringement/Stop Notices, particularly where asbestos contamination is suspected; and
 - Increased resources and training for EHOs;
- i) Generally more Metro EHOs supported increased regulation through the introduction of an enforceable Code of Practice, including specific requirements for dust suppression, notification and community consultation prior to commencement of works, and more Regional EHOs supported the introduction of mandatory industry training programs with competency testing, greater public awareness and education programs, and increased involvement and leadership from WorkSafe;
- j) The potential health risks and considerable work and costs associated with managing illegal dumping may be best addressed by making legal disposal cheaper and easier;
- k) As indicated above and in the results of the survey, the needs of Metro and Regional areas, especially remote ones, may differ and will need to be accounted for;
- l) There are a number of WA and national asbestos initiatives that have potential to help address at least some of Local Government needs (e.g. Regulations revision) and in some



cases possibly complicate or compound the situation (eg Work Safety Law harmonization, Asbestos Management Strategy);

- m) The hoped for relief that may come from the Revised Regulations is likely some time away and may not be till early 2013; and
- n) WA seems to be behind some other States in regard to coordinating and prioritising the management of asbestos risks, and in certain areas. This is despite WA's substantial history of asbestos mining, use and associated health problems.

Recommendations

This analysis has identified and characterised to some extent the nature of the problems and needs associated with asbestos issues faced by Local Government and other regulators. In doing so, it is evident that some of these can be and may be in the process of being addressed. Some proposed means to facilitate this are listed below:

- a) The revision of the *Health (Asbestos) Regulations 1992* is one of the key projects likely to assist Local Government and other regulators. This revision should take account of this report and be expedited to the extent practical. Given the still likely protracted process, suitable important associated provisions should be fast-tracked such as increasing the level of fines;
- b) As proper asbestos management is hampered in WA in comparison to some other States by the lack of coordination and collaboration, further efforts should be made to create and convene an adequately resourced and empowered regulatory group for this purpose;
- c) That group should develop a plan of work and mechanism such as subgroups to undertake activities which may include:
 - o Identifying issues of concern from this report or other sources which are not in the process of being addressed and determining ways to address them in a prioritized manner, such as making asbestos disposal easier and cheaper;
 - o Monitoring and coordinating WA input to national initiatives related to asbestos management;
 - o Identifying and assisting development of relevant collaborative arrangements such as MOUs between Government Departments e.g. on complementary inspection systems;
 - o Developing means of collecting data and being able to report upon asbestos incidents whether they are of potential occupational or public health concern; and
 - o Developing a standardised and consistent response procedure for asbestos incidents and complaints across WA, including after hours emergency arrangements.

December 2011