

PLANNING AND ECONOMIC COMMITTEE	5
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14 AUGUST 2013	5
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LOCAL GOVERNMENT'S ROLE IN ASBESTOS REGULATION IN QUEENSLAND

Alex Skubij: 18/25/1-10: #4053662

RECOMMENDATION:

That Council advises the LGAQ that the Cairns Regional Council does not support altering the current administration and enforcement arrangements around the domestic asbestos related provisions of the *Public Health Act 2005* as these provisions should continue to be administered by the State Government.

EXECUTIVE SUMMARY:

The regulation of asbestos in Queensland is devolved to a number of state agencies and to local government. Under the *Public Health Act 2005* the regulation of asbestos in non-workplace settings is devolved to local government. Since the introduction of the legislation, the Local Government Association of Queensland (LGAQ) has lobbied the state government on behalf of Queensland Councils and considers the regulation of asbestos should remain a State Government responsibility.

Following a recent report by the Queensland Ombudsman regarding regulation of asbestos in Queensland, LGAQ is now seeking feedback from Local Government to ascertain the level of support for proposed changes to the current administration and enforcement provisions.

It is recommended by Council that the regulation of asbestos should continue to be administered by the State Government.

BACKGROUND:

The *Public Health Act 2005* introduced new provisions devolved to local government in relation to management of asbestos in non-workplace settings. Since that time, LGAQ and Local Governments have lobbied Queensland Health maintaining asbestos regulation should be a State Government role. In addition to this there are concerns about the lack of training and statutory indemnity for Local Government Officers. Over recent years, under a memorandum of understanding, Councils have referred asbestos complaints in non-workplace settings to Queensland Health for investigation and enforcement.

COMMENT:

The *Public Health Act 2005* devolves responsibility for managing public health risks associated with asbestos in non-workplace settings to Local Government. Since the introduction of the legislation, LGAQ and councils have lobbied the state government arguing that this should be a State Government responsibility. Issues relating to officer training, statutory indemnity and cost recovery have resulted in a lack of support from Local Government to undertake enforcement of asbestos related activities between State and Local Government. Currently, most Council's refer complaints relating to unsafe asbestos activities in non-workplace settings to Queensland Health for investigation and enforcement action.

LGAQ is seeking feedback from local government on the following:

1. Should LGAQ support altering the current administration and enforcement arrangements around the domestic asbestos related provisions of the *Public Health Act 2005*.
2. If the State Government implements its proposed policy, will the following changes be sufficient to protect Council and efficiently administer the responsibility?
 - a. Inclusion of a statutory indemnity under the *Public Health Act 2005* covering administration and enforcement of all local government public health risks.
 - b. The provision of training for local government officers by state Government officers qualified to do so from either Work Place Health and Safety QLD or Queensland Health on an as needs basis for asbestos and other local government public health risks.
 - c. Application at a minimum of the cost recovery provisions of the *Local Government Act 2009* to *Public Health Act 2005* enforcement, and preferably a standalone clean-up fund.

Costs:

If the State Government implements its proposed policy there may be initial costs incurred if the Local Government has to act to remedy a public health risk.

Costs would also result from any additional staffing requirements or from on-going/refresher training for Council staff involved in responding to asbestos complaints.

CONSULTATION:

Consultation has taken place between senior members of the Council's Environmental Health Unit and the Manager of Development and Regulatory Assessment in drafting the suggested comments.

However, if the proposed policy is implemented it is expected there will be appropriate consultation with the local Queensland Health Environmental Health team who are currently responding to asbestos-related complaints at the request of Council under the present arrangement.

CONSIDERATIONS:

Risk Management (including financials):

There is a possibility of risk, both safety-related and financial, to local government officers tasked with carrying out asbestos related investigations, which is linked to the LGAQ's concern about statutory indemnity and possibly increased insurance costs.

Corporate and Operational Plans:

This report's recommendation is consistent with:

- The Development and Regulatory Services Branch's mission of ensuring compliance with state legislation, Council Local Laws and the region's planning scheme to provide a safer, healthier environment and lifestyle for people living in and visiting Cairns and the region, and
- Corporate Plan strategic goal outcome 1.1, A safe, active and healthy community.

Statutory:

Public Health Act 2005

Contains provisions regarding state and local government public health risks

Public Health Regulation 2005

Contains provisions regarding carrying out prescribed work (cutting, cleaning, removing, maintaining etc) with asbestos devolved to local government.

Local Government Act 2009

Contains provisions about cost recovery including asbestos clean-up work.

Options

1. Advise LGAQ that Cairns Regional Council does not support altering the current administration and enforcement arrangements around the domestic asbestos related provisions of the *Public Health Act 2005* and considers these provisions should be administered by the State Government.

2. Advise LGAQ that Cairns Regional Council supports altering the current administration and enforcement arrangements around the domestic asbestos related provisions of the Public Health Act and believes the proposed changes will adequately address the Councils concerns.
3. Advise LGAQ that Cairns Regional Council supports altering the current administration and enforcement arrangements around the domestic asbestos related provisions of the *Public Health Act 2005* however the proposed changes are not considered sufficient and further changes and consultation is required.

ATTACHMENTS:

1. Letter from LGAQ, Cr Margaret de Wit (Doc#4046137)

LINKS

2. *The Asbestos Report – An investigation into the regulation of asbestos in Queensland*. Queensland Ombudsman, 2013
http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Inv_reports/Asbestos_Report_V1_web.pdf

Alex Skubij
Principal Environmental Health Officer

Graham Boyd
Manager, Development & Regulatory Services

1. Letter from LGAQ, Cr Margaret de Wit (Doc#4046137)



18 July 2013

Cr Bob Manning
 Mayor
 Cairns Regional Council
 PO Box 359
 CAIRNS QLD 4870

RECEIVED
 22 JUL 2013
 Office of the Mayor
 Cairns Regional Council

Dear Mayor, *Bob*

As you may be aware, the issue of asbestos management and regulation in Queensland has been undergoing significant review following a Queensland Ombudsman report released during March 2013.

Following its release, the Local Government Association of Queensland (LGAQ) has been in discussions with State Government representatives regarding asbestos management, seeking to reinforce its position that this issue should be a State Government matter.

Significant advocacy and lobbying work conducted by myself and others on behalf of the LGAQ has resulted in a number of positive developments in this area.

Please see attached a letter from the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice, who has written to me highlighting a number of important recommendations for local governments contained in the State Government's response to the Queensland Ombudsman report titled 'The Asbestos Report – An investigation into the regulation of asbestos in Queensland – March 2013'.

It is my opinion that the Queensland Government is undertaking genuine consultation on ways to implement the recommendations of this Report. The most important recommendation in the report for local governments is Recommendation 15, which provides that:

The Director-General of Queensland Health:

- (a) Work with councils to resolve whether asbestos should remain a local government public health risk as defined by the PH Act; and
- b) Take steps to implement this agreed approach.

There are a number of issues raised and commented on in the report which reflect the LGAQ's position that asbestos management should be a State Government matter.

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In particular, the difficulty in obtaining insurance coverage, training of staff (including capacity constraints) and cost recovery of work undertaken has been frequently identified by the LGAQ as key reasons for opposing the devolution of asbestos management to local government.

While meeting with the Honourable Lawrence Springborg MP, Minister for Health on 17 April 2013, I reinforced these issues, in addition to lobbying him to deem asbestos a State public health risk.

While the Government has formed the view that the domestic asbestos-related provisions should be administered and enforced by local government, for the reasons outlined in the Attorney-General's letter, there are a number of very positive signs to suggest that the Government is keen to work with local government and provide tools to effectively manage not only asbestos but to enhance its management of other local government public health risks. The discussions LGAQ officers and I have had with the Government on this matter have been constructive.

The State Government has also confirmed that the role of local government environmental health officers would not involve carrying out any asbestos removal work.

The proposed alterations would result in a number of significant benefits for councils not experienced under current legislation. In summary, the Queensland Government seeks to alter the current arrangements dealing with asbestos by:

- Proposing to train council officers for asbestos administration and enforcement – a significant and important policy shift for councils. The proposed training will assist local governments in identifying asbestos and proper use of protective equipment;
- Seeking to provide a statutory indemnity under the Public Health Act for administration and enforcement of all local government public health risks. The indemnity would cover council administration and enforcement activities on matters including waste, infection control, mosquito management, release of pesticides in non-workplace environments and asbestos; and
- Providing broader cost recovery options for local government against both the owner of the property and the occupier of the property.

Under the proposed alterations, the asbestos provisions to be administered and enforced by local governments would include issues such as the prohibition on the use of high pressure water cleaners on asbestos material, responding to complaints relating to disturbance of asbestos by residents at domestic premises, and referring complaints that involve asbestos removal work to Workplace Health and Safety. To assist councils in developing a response, a table outlining the numbers of complainants currently experienced throughout Queensland by Queensland Health is also attached.



The LGAQ is seeking to prepare a sector wide response on behalf of local government for the Attorney-General's consideration by close of business 16 August 2013 in response to his proposed changes.

Feedback on the following specific questions is requested by COB 15 August 2013:

1. Should LGAQ support altering the current administration and enforcement arrangements around the domestic asbestos-related provisions of the Public Health Act?
2. If the Government implements its proposed policy, will the following changes be sufficient to protect Council and efficiently administer the responsibility?
 - Inclusion of a statutory indemnity under the Public Health Act covering the administration and enforcement of all local government public health risks.
 - The provision of training for local government officers by State Government officers qualified to do so from either Work Place Health and Safety Qld or Queensland Health on an as needs basis for asbestos and other local government public health risks.
 - Application at a minimum of the cost recovery provisions of the Local Government Act and City of Brisbane Act to Public Health Act enforcement, and preferably a standalone clean-up fund.

Should you or your officers require further assistance in relation to this matter please do not hesitate to call Logan Timms, Team Leader – Strategic Policy and Intergovernmental Relations, on 30002238 or via email at logan_timms@lgaq.asn.au.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'M. de Wit'.

Cr Margaret de Wit
PRESIDENT

Enc (2)

cc: Mr Peter Tabulo, Chief Executive Officer, Cairns Regional Council



The Hon Jarrod Bleijie MP
Attorney-General and Minister for Justice

In reply please quote: 2224984

12 JUL 2013

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Councillor Margaret de Wit
President
Local Government Association of Queensland
PO Box 2230
FORTITUDE VALLEY BC QLD 4006

Dear Councillor de Wit

As you would be aware, the Queensland Ombudsman has completed an investigation into the regulation of asbestos by Queensland State Government agencies and local councils. The Ombudsman's report, *The Asbestos Report: An investigation into the regulation of asbestos in Queensland* (March 2013) has been tabled in Parliament and makes 36 recommendations covering a wide range of issues relating to asbestos.

The State Government has accepted the Ombudsman's recommendations in the *Asbestos Report* and acknowledges the issues it has raised will be of great assistance in improving the government's strategic response to asbestos regulation and management.

In particular, the Ombudsman recommended that the Department of Health (DoH) work with councils to resolve whether asbestos should remain a local government public health risk as defined by the *Public Health Act 2005* and take steps to implement this agreed approach (Recommendation 15).

The State Government has considered the Ombudsman's report and considers that local government has an important role in relation to compliance and asbestos public health risks. This is a distinct role which complements the broader responsibilities assumed by the State Government in relation to the regulation of asbestos at workplaces, which includes domestic premises where work is carried out by a person conducting a business or undertaking.

In contrast, the role of local councils in enforcing public health legislation relating to asbestos is limited to the sphere of residents who disturb asbestos containing material at their domestic premises.

Under this approach, the role of local councils would include:

- providing advice to homeowners about do-it-yourself activities involving disturbance of asbestos;
- enforcing the asbestos-related provisions in the *Public Health Regulation 2005*. For example, the prohibition on use of high pressure water cleaners on asbestos material;

(3)

I would like to emphasise that the State Government is seeking a collaborative model of compliance and will work with local councils to ensure the effective operation of regulatory arrangements for asbestos related matters. To assist with this in a practical way, I understand the DoH has agreed to provide contact points between their Department and local councils, to ensure technical advice and support is available to local councils when dealing with asbestos-related matters.

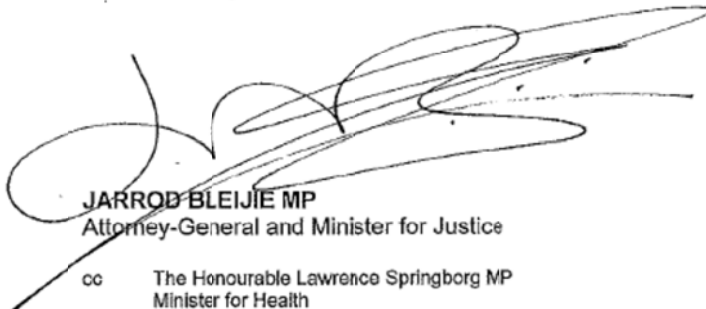
I have consulted with the Honourable Lawrence Springborg MP, Minister for Health on this matter and he is supportive of the collaborative model of compliance approach.

The State Government is seeking to finalise a *Statewide Strategic Plan for the Safe Management of Asbestos*, which will provide an integrated and strategic direction for the regulation and management of asbestos in Queensland. The initiatives in this plan will address many of the issues raised by the Ombudsman. Before finalising the plan, the State Government is seeking agreement from local councils that it will fulfil the role it has under public health legislation for asbestos and work with the Government to address the issues I have outlined.

I understand you will need time to consult with the 73 local councils your association represents. The Government would appreciate receiving your response by 16 August 2013.

Should you require any further assistance, please contact Mr Paul Goldsbrough, Senior Director – Policy and Business Engagement, DJAG, on 3247 4652.

Yours sincerely



JARROD BLEIJIE MP
Attorney-General and Minister for Justice

cc The Honourable Lawrence Springborg MP
Minister for Health
Member for Southern Downs
GPO Box 48
BRISBANE QLD 4001



INTERNAL BRIEFING PAPER

Local Government Compensation/Indemnification provisions and the Queensland Government's response to Queensland Ombudsman's Asbestos Report

DATE: 17 July 2013

TO: President Cr de Wit

RECOMMENDATION: That you:

- note the contents of this brief;
- **approve** this brief be provided out of session to the Policy Executive under the Acting CEO's hand;
- **approve** the proposed communication strategy and timelines; and
- **sign** the attached letters (**Attachment 1**) to all Queensland Mayors.

VIA: Acting Chief Executive Officer - Greg Hoffman PSM

FROM: Strategic Policy and Intergovernmental Relations Unit

BACKGROUND SUMMARY

Asbestos

- Queensland councils currently have responsibility for asbestos enforcement and management in non-workplace areas 10 square metres or less. Due to factors such as legal liability/lack of insurance capacity of staff and cost recovery issues, local governments refer all asbestos complaints directly to Queensland Health for action. This includes Queensland Health organising enforcement matters and contractors to remove asbestos.
- On 12 July 2013, the Honourable Jarrod Bleijie MP, Attorney-General and Minister for Justice wrote to you regarding the Queensland Government's response to the Queensland Ombudsman report titled 'The Asbestos Report – An investigation into the regulation of asbestos in Queensland – March 2013' (the Report). (**Attachment 2**)
- In summary, the Queensland Government seeks to alter the current arrangements dealing with Asbestos by:
 - Providing a statutory indemnity under the public health act for good faith decision making/ enforcement matters for all local government public health risks including asbestos. This indemnity would then cover council actions in relation to matters including mosquito management, infection control, water, waste and release of a pesticide in a non-workplace environment.
 - Providing training to local government officers for compliance activities. To be clear, the Government does not expect local government officers to remove asbestos; this will always be a function of licensed contractors.
 - Providing broader cost recovery options for local government against both the owner of the property and the occupier of the property.
 - Requiring local governments to enforce the domestic asbestos-related provisions. For example, the prohibition on the use of high pressure water cleaners on asbestos material, responding to complaints relating to disturbance of asbestos by residents at domestic premises; and referring complaints that involve asbestos removal work or other asbestos-related work being carried out by persons conducting a business or undertaking, to Workplace Health and Safety Queensland.
 - The current process where local governments refer complaints directly to Queensland Health, who then engage contractors for clean-up purposes, will no longer operate.

- o Exposed emergency services and military personnel who had been deployed to assist in the cleanup, but not necessarily equipped with appropriate PPE.
- More importantly the use of the "Mud Army" of untrained volunteers (generally self-equipped) who engaged in a variety of potentially hazardous activities, were witnessed handling asbestos material and *may* seek compensation from Council (as the sponsor of the volunteers) for any illness or injury in the future.

Proposed communication strategy & timeframes

- To determine support or otherwise from members, it is proposed to undertake the following communication and consultation process:
 - o Letters under President's hand to all Queensland Mayors to be sent on Thursday 18 July 2013 with a response date deadline of Thursday 15 August 2013.
 - o Supporting letters under Acting CEO's hand to all Queensland Council CEO's to be sent on Thursday 18 July 2013.
 - o Circulate this brief to the LGAQ policy executive out of session on Thursday 18 July 2013 for feedback.
 - o Local government circular to be distributed and published on Thursday 18 July 2013.
 - o Text message follow up to all Mayors advising of the letter to be sent on Friday 19 July 2013.
 - o Provide a response to the LGAQ Policy Executive out of session on Thursday 15 August 2013 for endorsement and provision back to Government by Close of Business Friday 16 August 2013.

INTERNAL AND LOCAL CONSULTATION

- o Michael Dickinson, Senior Advisor - Disaster Management
- o David Swan, Manager – Commercial Solutions
- o Glen Beckett, General Manager – Assist
- o Craig Johnstone, Media Executive
- o Samantha Dean – Communications Officer
- o Luke Hannan, Manager – Planning, Development & Natural Environment
- o Tony Goode, Workforce Strategy Executive
- o Tim Fynes-Clinton, Managing Partner – King and Company, Solicitors

QUEENSLAND GOVERNMENT CONSULTATION

- o Sophie Dwyer, Executive Director – Health Protection Directorate – Queensland Health
- o Paul Goldsborough, Senior Director, Office of Fair and Safe Work Queensland – Policy Unit, Department of Justice and Attorney-General
- o LGAQ is currently a member of the officer level Asbestos Interagency Working Group led by the Department of Justice and Attorney-General. This group met most recently on 23 April 2013. On Friday 3 May 2013, LGAQ officers met with an informal subcommittee of this group. Departmental officers representing Queensland Health and Department of Justice and Attorney-General attended. The purpose of the meeting was to discuss the policy options and key timeframes applicable to the Queensland Government's response to the Report. LGAQ's current policy position on asbestos was discussed, as well as available options for a potential compromise position including the requirement for genuine consultation.
- o The LGAQ met with the Minister for Health on 17 April 2013, raising a number of issues including asbestos. The 2013 Advocacy Action Plan was presented to the Minister. Minister Springborg subsequently wrote to LGAQ (letter dated 30 April 2013) responding in general terms to the Advocacy Plan; however his correspondence reinforced previous communications in relation to clandestine labs, namely that local government is expected to have a role in relation to these matters.