QUEENSLAND ombudsman

# The Asbestos Report

*An investigation into the regulation of asbestos in Queensland.*

March 2013

Report of the Queensland Ombudsman

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An investigation into the regulation of asbestos in Queensland

Report under s.50 of the *Ombudsman Act 2001*

March 2013

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QUEENSLAND
ombudsman

21 March 2013

The Honourable Fiona Simpson MP
Speaker
Parliament House
George Street
BRISBANE QLD 4000

Dear Madam Speaker

In accordance with s.52 of the *Ombudsman Act 2001*, I hereby furnish to you my report, *The Asbestos Report: An investigation into the regulation of asbestos in Queensland*.

Yours faithfully

Phil Clarke

Queensland Ombudsman

Enc

# *Foreword*

This report presents the findings of an investigation into asbestos regulation by Queensland state agencies and local councils. It focuses on the lack of coordination of state agency and council responses to asbestos across a number of different issues and in a range of circumstances. This lack of coordination lies at the heart of my concerns about asbestos regulation and response in Queensland.

The report considers a complex regulatory framework that at present suffers from a lack of strategic oversight and coordination. It also considers issues such as the education of the public about asbestos risk, licensing of asbestos removalists and the transport and disposal of asbestos.

Asbestos regulation is a rapidly changing area, and I acknowledge that various government agencies have already taken some very positive steps to respond to issues raised in this report. The investigation was not, and nor was it intended to be, an in-depth investigation into the circumstances and response to specific asbestos incidents in Queensland. Rather, my purpose was to highlight areas which require further attention by the agencies involved in the management and regulation of asbestos, and in particular areas that require an integrated approach.

In my view, there is significant public interest in ensuring that the framework for asbestos regulation in Queensland operates in an effective and efficient manner, without duplication, gaps or confusion about roles or responsibilities. The recommendations made in this report are aimed at ensuring that asbestos regulation occurs in a more coordinated and strategic fashion, with greater linkages between different regulatory agencies.

This report will assist agencies concerned with asbestos regulation to improve their processes. Further, the creation of a lead agency for asbestos regulation will facilitate the development of a coordinated, strategic response to asbestos regulation in Queensland, including by providing strategic oversight, developing an integrated strategic plan for the management and regulation of asbestos in Queensland and ensuring interagency coordination on operational issues.

I wish to thank all of the agency staff who assisted the investigation and particularly pay tribute to Senior Investigator Jessica Wellard and Investigator Lauren Zanetti of my office for their hard work and professionalism in conducting the investigation and preparing the report.

Phil Clarke

Queensland Ombudsman

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# Dictionary

| | |
|---|---|
| ACT | Australian Capital Territory |
| Agency or agencies | State government agencies |
| Asbestos | Asbestos-containing material |
| BEMIR | Built Environment Materials Information Register |
| BSA | Queensland Building Services Authority |
| Codes | Two documents titled *How to Manage and Control Asbestos in the Workplace Code of Practice 2011* and *How to Safely Remove Asbestos Code of Practice 2011, produced by WHSQ* |
| Councils | Local governments in Queensland |
| DATSIMA | Department of Aboriginal, Torres Strait Islander and Multicultural Affairs |
| DCS | Department of Community Safety |
| DEHP | Department of Environment and Heritage Protection |
| DHPW | Department of Housing and Public Works |
| DJAG | Department of Justice and Attorney-General |
| DPC | Department of the Premier and Cabinet |
| DSDIP | Department of State Development, Infrastructure and Planning |
| EHO | Environmental health officer |
| EP Act | *Environmental Protection Act 1994* |
| EP Regulation | Environmental Protection Regulation 1998 |
| EP Waste Regulation | Environmental Protection (Waste Management) Regulation 2000 |
| Fary Report | The Commonwealth Asbestos Management Review Report (2012) by Mr Geoff Fary, prepared for the Commonwealth Department of Education, Employment and Workplace Relations |
| Hotline | The single portal government hotline (13 QGOV) run by Smart Services Queensland |
| IAG | The Interagency Group, a committee consisting of representatives from a number of different Queensland agencies with responsibility for asbestos management or regulation |
| Integrated strategic plan | A strategic plan that will set out the whole-of-government response to the management and regulation of asbestos in Queensland |
| LGAQ | Local Government Association of Queensland |

| | |
|---|---|
| Model OHS legislation | The uniform national Work Health and Safety Act and accompanying Regulation, which provides the template for state and territory OHS laws |
| OHS | Occupational health and safety |
| PH Act | *Public Health Act 2005* |
| PH Regulation | Public Health Regulation 2005 |
| PHO | A public health order made under the PH Act |
| PPE | Personal protective equipment |
| QH | Queensland Health |
| Single portal website | The new whole-of-government website on asbestos issues created at www.qld.gov.au/asbestos |
| WHS Act | *Work Health and Safety Act 2011* |
| WHS legislation | The WHS Act and WHS Regulation |
| WHS Regulation | Work Health and Safety Regulation 2011 |
| WHSQ | Workplace Health and Safety Queensland, a unit within DJAG |
| WHSQ Action Plan | The Asbestos Work Health and Safety Action Plan 2011-2016, published by WHSQ as a list of the actions to be taken by WHSQ to reduce exposure to asbestos over a five-year period. The Plan can be accessed at: http://www.deir.qld.gov.au/workplace/resources/pdfs/asbestos-action-plan.pdf |

# *Executive Summary*

This report outlines the findings of an investigation into Queensland state agencies' and local councils' approaches to asbestos regulation. It focuses on the coordination of the government's response to asbestos across different agencies and councils. The report also considers issues such as the education of the public about asbestos risk, licensing of asbestos removalists and the transport and disposal of asbestos.

Asbestos disease is receiving increased attention across Australia and internationally. The World Health Organization estimates that more than 107,000 people die annually from asbestos-related lung cancer, mesothelioma and asbestosis arising from occupational exposure to asbestos.[1] Australia has the highest reported rates of mesothelioma worldwide.[2]

The investigation revealed different views among agencies, agency officers and stakeholders about the risk of asbestos exposure, suggesting that further information and education is required. It is, however, common ground that exposure to asbestos poses a health risk, particularly for Queenslanders working in occupations that carry a risk of exposure as well as for home renovators.

The investigation found that the framework for regulating asbestos in Queensland is complex and contains a number of gaps and areas of confusion. Despite there being a number of agencies and statutes involved, there is no whole-of-government, integrated strategic plan for coordinating the agencies' responses to asbestos issues. A lack of coordination lies at the heart of many of the areas of concern in the agencies' responses to asbestos issues in Queensland.

The investigation was conducted on my own initiative as a result of, among other things, asbestos-related complaints made to this Office and in light of recent similar reviews of government responses to asbestos across other jurisdictions.[3]

Asbestos regulation is a rapidly changing area, and I acknowledge that various government agencies have already taken some very positive steps to respond to issues raised in this report. The investigation was not, and nor was it intended to be, an in-depth investigation into the circumstances and response to specific asbestos incidents in Queensland. Rather, my purpose was to highlight areas which require further attention by the agencies involved in the management and regulation of asbestos, and in particular areas that require an integrated approach.

During the investigation, I sought input from a range of stakeholders, including the main state government agencies involved in asbestos management and regulation, some councils, the Local Government Association of Queensland, the Queensland Building Services Authority, the Department of Local Government, Community Recovery and Resilience and a number of key industry peak bodies and stakeholders. I would like to thank the many agency officers and individuals who aided this investigation.

This report makes both specific and general recommendations about areas in need of reform. In particular, there is emphasis on the need for an integrated strategic approach to asbestos to ensure an effective framework for managing asbestos in Queensland. The lack of a coordinated, whole-of-government response was apparent not only during the investigation, but also in the responses of some agencies to the proposed report.

For this reason, I have recommended the creation of a lead agency for the coordination of issues relevant to the management and regulation of asbestos in Queensland. This lead agency will facilitate the development of a coordinated, strategic response to asbestos regulation in Queensland, including by providing strategic oversight, developing an

1 World Health Organization, Fact Sheet No. 343, Asbestos: elimination of asbestos-related diseases, 2010, http://www.who.int/mediacentre/factsheets/fs343/en/index.html.

2 Leigh, J and Driscoll, T, 'Malignant mesothelioma in Australia, 1945–2002', *International Journal of Occupational and Environmental Health*, 2003, 9(3): 206–217.

3 NSW Ombudsman, *Responding to the asbestos problem: The need for significant reform in NSW*, 2010; Workplace Standards Tasmania, I*mproving Asbestos Management in Tasmania: Report to the Minister for Workplace Relations by the Asbestos Steering Committee*, 2010; ACT Asbestos Taskforce, *Asbestos Management in the ACT*, 2005; Fary, G, *Asbestos Management Review Report*, 2012, page 36.

integrated strategic plan for the management and regulation of asbestos in Queensland and ensuring interagency coordination on operational issues. The Director-General of this agency will be responsible for reporting on asbestos issues to a single Minister and, through the Minister, to Cabinet. While agencies will still be responsible for delivering policy and undertaking their individual functions, the lead agency will effectively act as a coordination body and single decision-maker who could take responsibility for coordination and strategic oversight, as well as ensuring that actions are taken in a timely manner.

Finally, of particular importance to a successful response to asbestos issues in Queensland is the resolution of the current arrangements between the state government and councils about the appropriate role for councils in responding to specific asbestos matters. This issue affects many of the other matters outlined in this report and must be resolved as soon as possible to provide certainty to councils, agencies and the public about who is responsible for specific asbestos issues.

**Summary of opinions:**

**Opinion 1**

The use by QH and councils of a practical arrangement that is not strictly in keeping with the regulatory framework for asbestos has the potential to create confusion about responsibility for asbestos regulation under the PH Act and therefore has the potential to impede the effective regulation of asbestos in Queensland.

**Opinion 2**

It is essential that the government provide strategic direction and coordination for an integrated approach to asbestos management and regulation in Queensland.

**Summary of recommendations:**

**Recommendation 1**

The Directors-General of QH, DJAG and DEHP urgently work with councils to:

(a) finalise the 'Guidance Note – Decontamination and clean-up of debris arising from fire damaged buildings that contain asbestos materials'

(b) provide clear guidance to all agencies on:

- (i) which agency has the primary responsibility for responding to asbestos issues in which type of fire situation
- (ii) how agencies will coordinate their response efforts after fires
- (iii) particular confusion that may arise regarding the jurisdiction of agencies in relation to asbestos issues after fires.

**Recommendation 2**

The Directors-General of DJAG and QH work with relevant agencies and councils to:

(a) finalise the Asbestos Multiagency Incident Response Plan

(b) ensure there are mechanisms within Local Disaster Management Plans to identify responsibility for asbestos issues and communication with the public about asbestos risks during natural disasters.

**Recommendation 3**

The Directors-General of QH, DJAG and DEHP urgently work with councils to develop a protocol that assigns responsibility for managing the response, clean-up and costs of asbestos incidents where the responsible party is not immediately identifiable or is unable or unwilling to carry out the necessary clean-up activities.

**Recommendation 4**

The Director-General of DATSIMA:

(a) work with DHPW and other relevant agencies, including councils, to facilitate the effective utilisation of the BEMIR in relation to the location of asbestos in discrete Indigenous communities

(b) provide a forum through the established Technical Working Groups to ensure that each community is informed of all activities related to buildings containing asbestos.

**Recommendation 5**

The Directors-General of DJAG and QH jointly develop and provide clear advice to all relevant WHSQ and QH officers about the precise limits of each agency's jurisdiction in relation to the situations identified in this report and any other situations where the jurisdiction of WHSQ and QH is unclear to officers.

**Recommendation 6**

The Director-General of DJAG consider the issues of concern raised by WHSQ officers relating to the suitability of existing fines and enforcement tools available to regulate asbestos in the workplace and respond to these issues by:

(a) providing further information and training to WHSQ officers, or

(b) progressing amendments to the model OHS legislation.

**Recommendation 7**

The Director-General of DJAG ensure that all inspectors maintain a current understanding of the provisions of the asbestos legislation to minimise areas of confusion or uncertainty for inspectors with regard to the application of the WHS Act and WHS Regulation to asbestos issues.

**Recommendation 8**

The Director-General of DJAG review and continue to take steps to address:

(a) any additional information or data that inspectors need to access in order to effectively enforce the WHS Act and WHS Regulation

(b) any factors impeding WHSQ's ability to prosecute breaches of the WHS Act in relation to asbestos, including the need for training to be provided to WHSQ inspectors and officers about how to facilitate the prosecution of breaches of the asbestos provisions

(c) any factors impeding WHSQ's ability to suspend or cancel asbestos licences.

**Recommendation 9**

The Director-General of DJAG work with the BSA to make best use of the BSA's licensing regime to both provide education to contractors and address non-compliance with the asbestos provisions of the WHS legislation.

**Recommendation 10**

The Director-General of DJAG:

(a) create a public online register of licensed asbestos industry workers where the public can easily check licensing and compliance records of contractors who work with asbestos (including proven breaches of asbestos laws)

(b) take adequate steps to advise stakeholders and the public of the existence and location of the register.

**Recommendation 11**

The Director-General of DJAG review the arrangements for out-of-hours and weekend work by WHSQ inspectors and finalise all relevant procedures to ensure that urgent asbestos issues can be adequately addressed as they arise.

**Recommendation 12**

The Director-General of DJAG finalise steps to:

(a) ensure that relevant policies and procedures are maintained across all regions to provide guidance to WHSQ inspectors on when PPE should be worn to prevent exposure to asbestos

(b) ensure all WHSQ inspectors have adequate PPE available to them and that this equipment has been fit-tested where necessary

(c) ensure all WHSQ inspectors are provided with regular training on using PPE and conducting decontamination procedures in relation to asbestos.

**Recommendation 13**

The Director-General of DJAG finalise steps to develop and implement a process for reporting and recording employees' exposure to asbestos.

**Recommendation 14**

The Director-General of DJAG:

(a) continue to develop and implement an audit regime for compliance with asbestos provisions, to be commenced as soon as practicable once the new requirements for asbestos registers and asbestos management plans commence

(b) work with the BSA and councils to investigate suitable options for identifying compliance with requirements to maintain asbestos registers, including whether there are other inspection/regulatory regimes which can be used to monitor compliance.

**Recommendation 15**

The Director-General of QH:

(a) work with councils to resolve whether asbestos should remain a local government public health risk as defined by the PH Act

(b) take steps to implement this agreed approach.

**Recommendation 16**

The Directors-General of QH and DJAG work with councils to:

(a) identify the types of situations where asbestos response work may be stymied by a lack of jurisdiction in the first-response agency

(b) consider whether these situations may result in an increased risk of exposure to asbestos while the response is delayed

(c) consider options to improve the ability of agencies to respond to urgent issues regardless of which agency initially responds to the complaint.

**Recommendation 17**

The Director-General of QH provide clear and detailed guidance to QH officers, other agencies, industry stakeholders and the public about how the $10m^2$ rule is applied.

**Recommendation 18**

The Director-General of QH review and take steps to address:

(a) the adequacy of enforcement tools available under the PH Act

(b) any areas of confusion or uncertainty for QH inspectors or council officers with regard to the application of the PH Act and PH Regulation to asbestos issues

(c) factors impeding inspectors' ability to take enforcement action under the PH Act.

**Recommendation 19**

The Director-General of QH review QH's on-the-ground capacity to respond to out of hours and weekend asbestos incidents across all regions.

**Recommendation 20**

The Director-General of DJAG review the effectiveness of the licensing framework within two years of the commencement of the model OHS legislation.

**Recommendation 21**

The Director-General of DJAG raise at a national level the issue of whether there should be an asbestos surveyor's licence in the model OHS legislation.

**Recommendation 22**

The Director-General of DJAG continue to consult with industry stakeholders in considering whether all Queensland building and trades apprenticeships should include a mandatory, practical training component tailored to the relevant trade which deals with the identification, handling and removal of asbestos as well as relevant asbestos legislation.

**Recommendation 23**

The Director-General of the lead agency (see recommendation 35) work with relevant state agencies, councils and the LGAQ to ensure that:

(a) there are adequate facilities in each local government area to enable homeowners and contractors to dispose of asbestos waste safely and lawfully

(b) council websites contain adequate information for members of the public to determine whether a landfill accepts asbestos, what the arrangements for asbestos disposal are and the fees involved.

**Recommendation 24**

The Director-General of DEHP consider whether the current regime for the transport and disposal of asbestos by contractors and homeowners operates as a disincentive to the proper disposal of asbestos waste.

**Recommendation 25**

The Director-General of DEHP continue to take steps to increase awareness in the asbestos industry about the requirement to hold both a regulated waste transport licence and a waste transport certificate for transporting asbestos.

**Recommendation 26**

The Director-General of DEHP work with councils to reach agreement on which agency has responsibility for cleaning up illegal dumping in specific situations.

**Recommendation 27**

The Directors-General of DJAG, QH and DEHP work with councils to develop a formal mechanism for passing information between agencies about possible illegal dumping or improper transport of asbestos.

**Recommendation 28**

The Director-General of QH work with councils to develop guidelines regarding the provision of information about asbestos on council websites to ensure that the information provided on council websites is accurate, consistent and comprehensive, or that council websites link to the single portal website for asbestos information.

**Recommendation 29**

The Directors-General of DJAG, QH and DEHP:

(a) agree on common wording to explain clearly, with sufficient detail, each agency's role in relation to asbestos

(b) ensure the agreed statement of each agency's role is available on each agency's website together with a reference to each agency's governing legislation.

**Recommendation 30**

The Director-General of the lead agency (see recommendation 35):

(a) ensure that all government websites that mention asbestos have a link to the single portal website

(b) ensure that the single portal website contains a comprehensive list of all asbestos legislation with clear explanations

(c) ensure that the single portal website links to the register of asbestos industry workers (see recommendation 10)

(d) consult with industry stakeholders to determine what information may be missing from the single portal website, in particular in relation to commonly asked questions and key areas of confusion, and provide this information on the single portal website.

**Recommendation 31**

The Director-General of the lead agency (see recommendation 35):

(a) develop a strategy for advising relevant agencies, stakeholders and the public about the use of the single hotline in relation to asbestos

(b) work with other agencies and councils to ensure the hotline is advertised on all agency and council websites relating to asbestos.

**Recommendation 32**

The Director-General of the lead agency (see recommendation 35), in consultation with other relevant agencies, develop a whole-of-government communication strategy that:

(a) uses identifiable 'trigger points' to communicate information about asbestos before exposure to asbestos occurs

(b) tailors information and communication methods to the target group or trigger point

(c) includes a component of broader community awareness

(d) addresses key areas of confusion that are identified in this report or through further discussions with agencies and industry stakeholders

(e) ensures a consistent message is provided by all government agencies.

**Recommendation 33**

The Director-General of the lead agency (see recommendation 35) consult with all relevant agencies and develop an integrated strategic plan for the management and regulation of asbestos in Queensland, including by addressing such areas as:

(a) risk management

(b) enforcement and response

(c) licensing

(d) reporting and coordination between agencies

(e) education and community awareness

(f) linkages to any national asbestos strategy.

This plan should be signed by all relevant agencies and agreements reached to implement the plan in accordance with agreed timeframes.

**Recommendation 34**

The Director-General of the lead agency (see recommendation 35) work with all relevant agencies to prepare an agreed position on risk, including the risk posed by low density board. This risk information should be adopted in all agency publications and inform the integrated strategic plan.

**Recommendation 35**

The Director-General of the DPC formally designate a lead agency for the coordination of issues relevant to the management and regulation of asbestos in Queensland.

**Recommendation 36**

The Director-General of the lead agency (see recommendation 35):

(a) ensure that all government agencies that deal with asbestos track trends on asbestos complaints, compliance and relevant asbestos issues and provide this information to the lead agency

(b) use this information to inform the integrated strategic plan.

# Chapter 1: Introduction

## What is asbestos?

Asbestos[4] is a naturally occurring mineral which can cause significant health impacts or death in humans. Between the 1940s and 1980s, asbestos was used extensively in Australia in manufacturing, transport, and building materials[5] due to its durability, and fire resistant and insulating qualities.[6]

Since 31 December 2003, there has been an Australia-wide ban on importing, manufacturing, selling and using asbestos.[7] However, asbestos is still in many Queensland buildings and workplaces and while asbestos that is left undisturbed is not considered to pose a health risk, exposure to sufficient quantities of air-borne asbestos fibres does.

## Bonded and friable asbestos

There are two main types of asbestos: bonded asbestos, also referred to as non-friable asbestos material, and friable asbestos.

Bonded asbestos materials (often called 'fibro' or 'AC sheeting') generally consist of up to 15% of asbestos fibres, which are usually bonded with other materials, such as cement.[8] The asbestos fibres are tightly bound so there is a lower risk of fibres being released during handling.[9]

Friable asbestos materials are loosely bound and can be easily turned to powder with light pressure. They can consist of up to 100% asbestos and pose a higher risk than bonded asbestos.[10]

## Use of asbestos in Queensland

Any buildings built before 1990 in Queensland may contain asbestos. Common forms of bonded or non-friable asbestos products are found widely and include:

- asbestos cement sheeting (for example, fibro or AC sheeting)
- profiled sheets used on roofs (for example, Super 6 sheeting) and walls and flat sheets in flashings
- imitation brick cladding and roof shingles
- water or flue pipes
- fire protection material, fire doors, chemical tanks, linings of fire places
- old domestic heaters, stoves, hot water systems and associated pipe lagging
- plaster patching compounds
- gaskets and packing, paints, coatings and sealants
- ceiling tiles and vinyl floor tiles, linoleum floor coverings
- friction products such as brake shoes, disc pads, clutch plates in cars or elevator brakes
- insulation materials

4 In this report, the term 'asbestos' will be used to include all asbestos-containing materials, whether natural or manufactured.
5 Asbestos Diseases Research Institute, *Asbestos: What is asbestos?*, http://www.adri.org.au/asbestos.html viewed 16 July 2012.
6 Queensland Government, A*sbestos: A home renovator's and tradesperson's guide for minor work in domestic buildings*, page 2, http://www.deir.qld.gov.au/workplace/resources/pdfs/asbestos-home-renovators-trades-guide.pdf viewed 16 July 2012.
7 Australian Customs Service, *Importing Asbestos into Australia*, http://www.customs.gov.au/webdata/resources/ files/FS_ImportingAsbestos.pdf viewed 23 October 2012.
8 Queensland Government, *Asbestos: A home renovator's and tradesperson's guide for minor work in domestic buildings*, http://www.deir.qld.gov.au/workplace/resources/pdfs/asbestos-home-renovators-trades-guide.pdf viewed 16 July 2012.
9 EnHealth, 2012, *Asbestos: A guide for householders and the general public*, http://www.public.health.wa.gov. au/cproot/4774/2/Asbestos%20-%20A%20guide%20for%20householders.pdf viewed 30 October 2012.
10 Queensland Health, 21 December 2011, *The two types of materials containing asbestos*, http://www.health.qld. gov.au/asbestos/about_asbestos/materials_containing.asp viewed 23 October 2012.

- table pads and heat protective mats and small appliance components.[11]

### *What are the effects of exposure to asbestos?*

Exposure to a quantity of airborne asbestos fibres can pose a significant health risk. Asbestos fibres are 50 to 200 times thinner than a human hair, and if breathed into the lungs the possible health effects include:

- asbestosis[12]
- lung, larynx and ovarian cancer[13]
- mesothelioma, a cancer of the linings around the lungs and abdomen[14]
- non-cancerous diseases that affect the linings around the lungs and abdomen.[15]

Asbestos-related diseases can take between 10 and 40 years to develop.[16] Safework Australia reports that in 2008 there were 661 new cases of mesothelioma diagnosed and 551 deaths attributed to mesothelioma in Australia.[17] More than 640 people died from asbestos-related conditions in 2010.[18] Studies suggest that incidences of mesothelioma are predicted to peak between 2013 and 2021.[19] An increase in future incidences of mesothelioma from non-occupational exposure from home renovation has also been predicted.[20]

According to Queensland Health (QH), while asbestos is widespread in the environment at very low levels either from natural sources or from past extensive industrial and commercial use, no direct links have been found between background levels of exposure and mesothelioma. QH's position is that current evidence suggests that sufficient exposure to airborne asbestos fibres over a period of time is required in most cases for adverse health risks to develop. QH noted that most asbestos-related diseases are the result of mining or the use of asbestos in an occupational setting, and advised this office that:

> The prediction that there will be an increase in future incidence of mesothelioma from non-occupational exposure from home renovation is based on assumptions regarding the use of poor work practices by people undertaking renovations. It is unclear whether this 'third wave' of disease will occur.[21]

I have not sought to reach a firm position in relation to the scientific opinion. However, what appears clear is that people undertaking unsafe or improper asbestos removal, maintenance or renovations who disturb and release fibres into the air are at most risk of exposure.

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11 Queensland Government, *Asbestos: A home renovator's and tradesperson's guide for minor work in domestic buildings*, pages 3-4, http://www.deir.qld.gov.au/workplace/resources/pdfs/asbestos-home-renovators-trades-guide.pdf viewed 16 July 2012; Asbestos Diseases Research Institute, *Asbestos: What is asbestos?*, http://www.adri.org.au/asbestos.html viewed 16 July 2012; Queensland Government, *How was asbestos used?*, http://www.deir.qld.gov.au/asbestos/general/how-used.htm viewed 16 July 2012.

12 Progressive and irreversible scarring of lung tissue that impairs breathing. Queensland Health, *What are the possible health effects of asbestos?*, 2011, http://www.health.qld.gov.au/asbestos/about_asbestos/health_effects.asp viewed 29 October 2012.

13 World Health Organization, Fact Sheet No. 343, *Asbestos: Elimination of Asbestos Related Disease*, http://www.who.int/mediacentre/factsheets/fs343/en/index.html viewed 23 October 2012.

14 Queensland Health, *What are the possible health effects of asbestos?*, 2011, http://www.health.qld. gov.au/asbestos/about_asbestos/health_effects.asp viewed 29 October 2012.

15 Queensland Government, *Asbestos, A home renovator's and tradesperson's guide for minor work in domestic buildings*, page 2, http://www.deir.qld.gov.au/workplace/resources/pdfs/asbestos-home-renovators-trades-guide.pdf viewed 16 July 2012; World Health Organization, Fact Sheet No. 343, *Asbestos: Elimination of Asbestos Related Disease*, http://www.who.int/mediacentre/factsheets/fs343/en/index.html viewed 23 October 2012.

16 Safework Australia, 'Mesothelioma in Australia: Incidence 1982 to 2005, deaths 1997 to 2006', 2009, page 6, http://www.safeworkaustralia.gov.au/sites/SWA/AboutSafeWorkAustralia/WhatWeDo/Publications/Documents/191/MesotheliomaInAustralia_Incidence1982_2005_Deaths1997_2006_PDF.pdf viewed 23 October 2012.

17 Safework Australia, 'Mesothelioma in Australia: Incidence 1982 to 2008, deaths 1997 to 2007', 2012, page 3, http://www.safeworkaustralia.gov.au/sites/SWA/AboutSafeWorkAustralia/WhatWeDo/Publications/Documents/706/MesotheliomaInAustralia2012.pdf viewed 23 October 2012.

18 ComCare, 'Managing asbestos—its dangers and its risks', http://www.comcare.gov.au/news_and_media/ media_centre/managing_asbestosits_dangers_and_its_risks viewed 23 October 2012.

19 Safework Australia, 'Mesothelioma in Australia: Incidence 1982 to 2008, deaths 1997 to 2007', 2012, page 6, http://www.safeworkaustralia.gov.au/sites/SWA/AboutSafeWorkAustralia/WhatWeDo/Publications/Documents/706/MesotheliomaInAustralia2012.pdf viewed 23 October 2012.

20 Nola J Olsen et al, 2011, *Increasing incidence of malignant mesothelioma after exposure to asbestos during home maintenance and renovation*, MJA 195 (5).

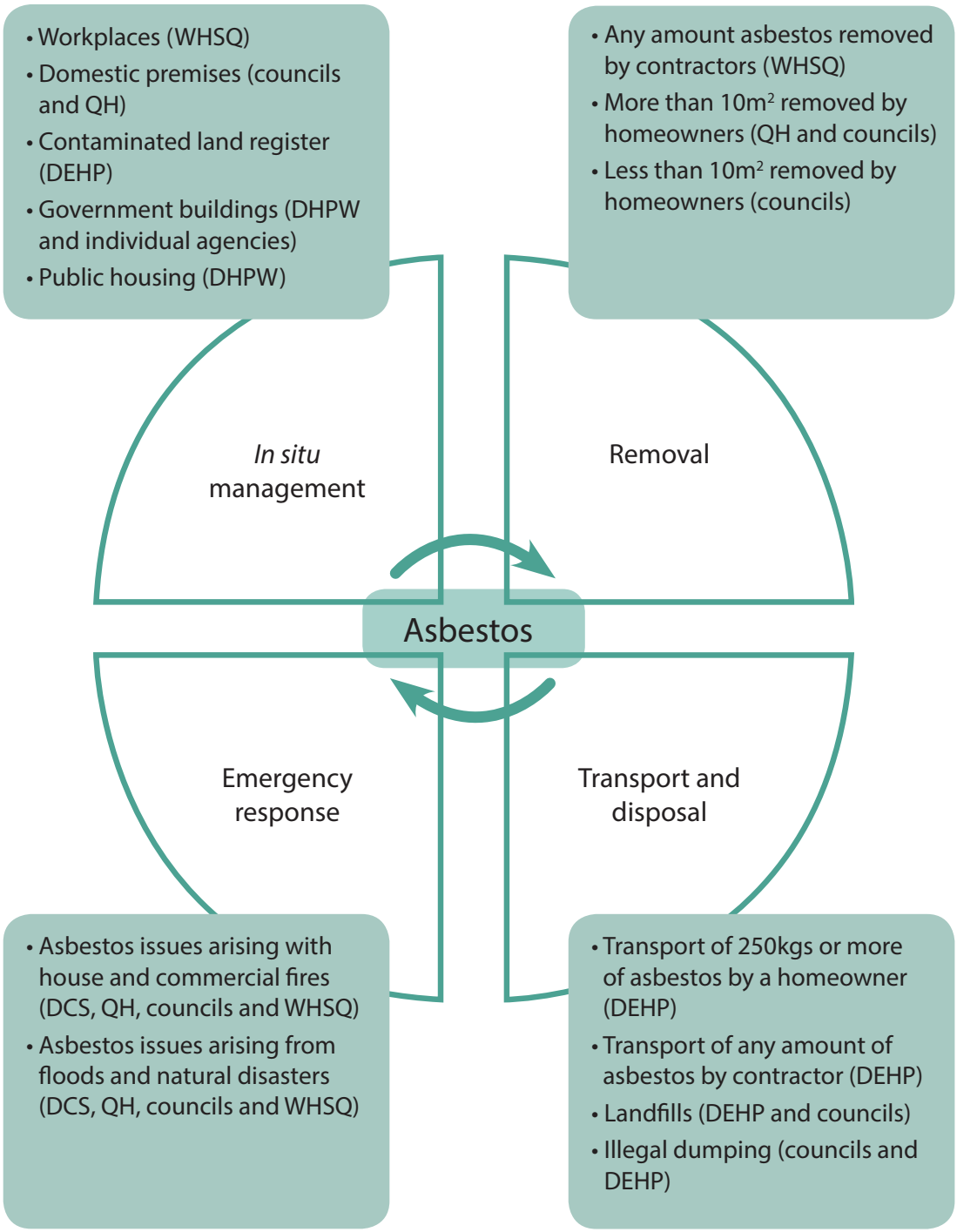
21 Submission from the Director-General of Queensland Health to the Ombudsman dated 29 November 2012.

# *Chapter 2 – Agency roles and responsibilities*

The investigation considered the adequacy of the current regulatory framework for managing asbestos-related matters in Queensland. The regulatory framework is complex, with responsibility shared across multiple agencies.

This chapter sets out the roles and responsibilities of agencies involved with asbestos regulation and provides context for concerns about coordination and complexities discussed later in this report.

## *The current framework: agency roles and responsibilities*



The regulatory framework is governed by 10 main statutes[22] and two codes of practice,[23] administered by various state government agencies and 73 councils.[24]

### Workplace Health and Safety Queensland

Workplace Health and Safety Queensland (WHSQ), within the Department of Justice and Attorney-General (DJAG), regulates the management, control and removal of asbestos in workplaces under the *Work Health and Safety Act 2011* (WHS Act) and the Work Health and Safety Regulation 2011 (WHS Regulation).[25] This regulatory regime is underpinned by two asbestos codes[26] (the Codes) which serve as a guide to achieving the standards of health, safety and welfare required under the WHS Act and WHS Regulation.[27]

WHSQ's jurisdiction over asbestos matters is limited to workplace activities and applies to domestic premises only where work is being carried out by a contractor. WHSQ's responsibilities include licensing of asbestos removalists, responding to complaints, auditing workplaces and providing guidance about asbestos risk management.

### Queensland Health

QH has primary responsibility for the regulation of public health risks under the *Public Health Act 2005* (PH Act) and the Public Health Regulation 2005 (PH Regulation). Asbestos in non-workplace areas is one such risk.

The responsibility for regulating asbestos in non-workplaces is shared with councils.[28] Currently, most councils receive complaints of unsafe asbestos activities at non-workplaces and forward requests to QH to investigate and take appropriate action.

QH also provides information and advice to the general public on asbestos and its health risks and works in partnership with other agencies in response to incidents involving asbestos.

### Councils

Councils have responsibility for a wide range of asbestos-related activities including:

- regulating asbestos in non-workplace settings under the PH Act and PH Regulation (however, most councils refer all or part of this role to QH)
- managing landfills and transfer stations where asbestos is accepted under the *Environmental Protection Act 1994* (EP Act), and associated regulations: the Environmental Protection Regulation 2008 (EP Regulation) and Environmental Protection (Waste Management) Regulation 2000 (EP Waste Regulation)
- cleaning up the illegal dumping of asbestos material under the EP Act and the WHS Act (where council officers are undertaking any clean-up) and any relevant local laws
- regulating building standards and approval processes through the *Building Act 1975* including the demolition of buildings and structures which contain asbestos.

### Department of Environment and Heritage Protection

The Department of Environment and Heritage Protection (DEHP) is responsible for maintaining public registers of contaminated land (including land contaminated by asbestos) and licensing disposal facilities. The DEHP also regulates the transportation and

22 *Work Health and Safety Act 2011*, Work Health and Safety Regulation 2011, *Public Health Act 2005*, Public Health Regulation 2005, *Environmental Protection Act 1994*, Environmental Protection Regulation 2008, Environmental Protection (Waste Management) Regulation 2000, *Building Act 1975*, *Mining and Quarrying Safety and Health Act 1999*, *Coal Mining Safety and Health Act 1999*.

23 Workplace Health and Safety Queensland, *How to Manage and Control Asbestos in the Workplace Code of Practice 2011*; Workplace Health and Safety Queensland, *How to Safely Remove Asbestos Code of Practice 2011*.

24 Including Weipa Town Authority.

25 The WHS Act supersedes the former *Workplace Health and Safety Act 1995*.

26 Workplace Health and Safety Queensland, *How to Manage and Control Asbestos in the Workplace Code of Practice 2011*; Workplace Health and Safety Queensland, *How to Safely Remove Asbestos Code of Practice 2011*.

27 The courts may rely on the Codes in determining what is reasonably practicable in the circumstances to which the Codes relate: Workplace Health and Safety Queensland, *How to Safely Remove Asbestos Code of Practice 2011*, page 4.

28 Section 14 of the PH Act.

disposal of asbestos waste under the EP Act, EP Regulation and EP Waste Regulation.[29]

**Department of Housing and Public Works**

The Department of Housing and Public Works' (DHPW) *Asbestos Management and Control Policy for Government Buildings* applies to all government agencies and imposes obligations to manage and control asbestos in government-controlled buildings, including workplaces, employee housing and public housing. The DHPW is the management authority overseeing and supporting the implementation of this policy and provides information, technical advice and removal expertise to other agencies. QBuild, as part of the DHPW, assists with these functions as well as carrying out asbestos removal work in government buildings.

**Other agencies and councils**

All agencies and councils are responsible for dealing with asbestos within their own assets. Agencies do this under the *Asbestos Management and Control Policy for Government Buildings*.

### *The Interagency Group*

In late 2009, the state government established an Interagency Asbestos Group (IAG) to identify ways to improve the coordination of state agency and council activities relating to asbestos. The IAG's terms of reference include:

- clarifying the roles and responsibilities of various agencies
- identifying barriers that adversely influence the interagency coordination or management of asbestos issues
- considering available options for improving the effectiveness of the management of asbestos in Queensland
- providing technical and policy advice on asbestos-related issues
- promoting the exchange of information between agencies and councils.

The IAG meets approximately monthly and comprises representatives from WHSQ, DJAG, QH, the Local Government Association of Queensland (LGAQ), DEHP, DHPW and the Department of State Development, Infrastructure and Planning (DSDIP). Meetings are chaired by senior WHSQ officers. At the IAG meeting on 21 September 2012, it was agreed that a representative from the Department of the Premier and Cabinet (DPC) would also become a permanent member of the IAG.

29 Under Schedule 7 (Regulated Waste) of the EP Regulation, any amount of asbestos qualifies as regulated waste.

## *Chapter 3 – Confusion about agency responsibility*

A recurring theme during the investigation was a lack of coordination between different agencies and councils in situations where their jurisdictional spheres meet or overlap. In some areas there is significant confusion about agency and council responsibilities, overlap between agencies and councils, and a number of areas where no agency or council claims responsibility. The investigation also identified that some agency and council officers have difficulty understanding the scope of their role and responsibilities or the jurisdiction of other agencies.[30]

Key areas of poor coordination or confusion among some agency and council officers and stakeholders identified by the investigation include:

- the responsibility for asbestos after house fires and natural disasters (see below)
- the responsibility for cleaning up asbestos contamination that extends beyond a domestic premises or workplace (see below)
- the extent of asbestos in discrete Indigenous communities (see below)
- the definition of a workplace (see below and Chapters 4 and 5)
- the application of the 10m$^2$ rule to domestic premises (see Chapter 5)
- the availability of landfill facilities that accept asbestos (see Chapter 7).

In each case, different agency officers had different views about the limits of their jurisdiction and, as stated above, some areas were identified with no agreement on which agency had responsibility. This has at times resulted in a poor service to the public, who rightly expect that the government as a whole will be able to provide a coordinated, timely and efficient response to asbestos matters. In fact, a review of complaints received by various agencies and councils identified that interagency coordination is one of the key issues for the management and regulation of asbestos in Queensland.

A lack of information sharing between agencies and a failure by agencies to track trends in asbestos complaints and issues also increases the difficulties faced by agencies in providing an effective response to asbestos.

**Case study – Asbestos in a neighbour's yard**

In late 2011, a complainant became very concerned about piles of asbestos on her neighbour's property following the removal of sections of the neighbour's house.

The complainant telephoned the council in late September 2011 to complain about the situation and her concerns that the asbestos had been incorrectly removed. She also contacted WHSQ two weeks later.

Although the council agreed to look into the matter, the complainant heard nothing further from the council. The complainant contacted the council a number of times through October and finally had her lawyer write to the council. Six weeks after making her original complaint to the council, the complainant was advised that the complaint was not within the jurisdiction of the council and she should contact WHSQ with her complaint.

In the meantime, the complainant had not heard from WHSQ in relation to her complaint. However, WHSQ records show that a WHSQ inspector had visited the neighbour's property the day after the complaint was made. No asbestos removal was in progress when the inspector arrived and while there were signs for a contractor posted at the front of the property, the inspector found that the asbestos had been removed from the house by its owner. This would suggest that the matter fell within QH's and the council's jurisdiction under the PH Act.

30 I note that the WHSQ Action Plan identifies key deliverable number 11 as 'Improving government department interagency cooperation regarding regulation and response to asbestos events.'

Nevertheless, the inspector took samples from the site which laboratory tests the next day confirmed contained asbestos. A few days later, the neighbour advised the inspector that since the inspector's visit the asbestos had been removed by a waste contractor, and based on this verbal advice the inspector determined that no further action was required. The complainant was not notified of this outcome.

Following the council's advice that the matter was within the jurisdiction of WHSQ, the complainant's lawyer complained in writing to WHSQ on 8 November 2011 that the asbestos in the neighbouring property had not been disposed of correctly. After further contact between WHSQ and the complainant's lawyer (during which WHSQ asked whether the complainant had proof that asbestos had been removed, despite WHSQ having already conducted its own tests that proved the material was asbestos), WHSQ wrote to the complainant's lawyer on 14 December 2011 advising that the investigation had been undertaken on 5 October 2011 and:

> … at the time of the inspection the Workplace Health and Safety Act 1995 did not have application as the address was not considered to be a workplace.

Therefore, aside from the delay in responding to the distressed complainant, it is clear that in this situation neither regulator claimed jurisdiction over the asbestos removal issue, and no inspections were conducted to confirm whether the asbestos had been cleared up appropriately after its removal. The complainant's impression was that:

> … no-one in any of the email/letter/telephone scripts has at any time shown any consideration for the health impacts on both the workers and the surrounding residents in the removal of asbestos from [the property].

The complainant sold her home and moved away before her concern was resolved.

The confusion surrounding the limits of WHSQ's and QH's/councils' respective jurisdictions in relation to domestic premises and the definition of a 'workplace' under the WHS Act and the PH Act are discussed further in Chapters 4 and 5.

### *Asbestos in house fires*

The investigation identified specific difficulties experienced by agencies in responding to asbestos issues after house fires. These difficulties include a lack of coordination or strategic approach, lack of communication between agencies and confusion about agency roles and responsibilities for issues such as fencing and cleaning up asbestos contamination on the site.

**Case study – Asbestos in house fires**

Investigators were told of a vacant, unfenced house in Maroochydore. The house, which had an asbestos roof and fibro walls, was severely damaged by fire. WHSQ, QH and council officers were involved in discussions, and there was disagreement about which agency was responsible for the site. The property was eventually deemed a public health risk under the PH Act and signage was erected. However, it took over a month to have a fence erected, during which time members of the public including children entered the site and were potentially exposed to asbestos. Despite efforts from agency officers involved and concerns about public health risks, no agency was able to take action to erect a fence around the property quickly to appropriately deal with the risk.

Officers from each agency interviewed during the investigation advised that responsibility for domestic premises after fires lay with another agency. There was no consensus among these officers about which agency was responsible or how asbestos should be managed after fires.

In many cases, investigators were told that councils refer matters involving a fire-affected house or an abandoned fire-damaged property that is being vandalised to QH for management on the basis of the presence of asbestos. However, investigators were also advised that QH considers that often the public health risk from asbestos is very low and application of the PH Act is not required. Instead, QH's view is that it is more appropriate for councils to manage the property from a building/public safety perspective rather than a perspective of the presence of fire-affected asbestos.

There was particular confusion with house fires around the following issues:

- whether the situation constitutes a workplace or not and complications with whether a contractor steps on the property or not
- whether a 'prescribed activity' is being undertaken to enliven the jurisdiction of the PH Act
- which agency is responsible for removing asbestos from neighbouring properties after fires, and who should bear the costs of the clean-up
- the role of councils, who have access to demolition orders under their building legislation
- how the presence of more than 10m$^2$ of asbestos in a fire-damaged commercial or residential building that was not or is no longer a workplace is dealt with under the PH Act and WHS Act.

The investigation therefore identified a need for a consistent, coordinated and strategic approach to asbestos issues arising from fires.

Since commencing this investigation, a draft 'Guidance Note – Decontamination and clean-up of debris arising from fire damaged buildings that contain asbestos materials' has been developed by agencies. The draft guidance note states that QH, WHSQ, DEHP and the relevant council 'will coordinate a response to public concern or health risk' upon agreement between the relevant agencies that one agency assumes the role of coordinating agency to ensure the site is managed. However, issues such as how such coordination will work, and details of what would be expected from the coordinating agency, are not outlined in the guidance note.

Further, the need for coordination and agreement between the agencies at the time of the incident may make it difficult for quick action to be taken to respond to a situation. A better approach may be to have a default agency that is to respond to the situation unless by agreement otherwise, or to have a designated response agency for each listed category of situation.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General of DJAG advised that the department will continue to work with other agencies on finalising the draft 'Guidance Note – Decontamination and clean-up of debris arising from fire damaged buildings that contain asbestos materials'. He stated that this document was expected to be finalised by January 2013. However, he noted that resolving the issue of the role of local government in enforcement of Public Health legislation is a critical element in addressing agency response in the clean-up of debris arising from fire-damaged buildings that contain asbestos.

**My response:**

***I agree with the Director-General of DJAG that the role of local governments in this and other asbestos issues needs to be settled. I have made further comment on this in Chapter 5.***

**QH response:**

The Director-General of QH advised that he had no issues with the proposed recommendation, but noted that the presence of asbestos in ash or rubble following building fires does not pose a risk of exposure to asbestos unless the ash is disturbed. He advised that prevention of access to a fire damaged site as soon as possible is necessary for general safety reasons, and this will also manage any risk associated with asbestos.

The Director-General also stated that:

> In these situations it is more appropriate to use the demolition provisions in the Building Act 1975 as the main concern is public safety and not the presence of asbestos containing material.

***I acknowledge the further work that has been done by a number of agencies, including QH, to determine a clearer picture of the risk posed by asbestos fibres following house fires. While this information had not been widely disseminated among agencies when my investigation began, the situation in relation to house fires now appears more settled. Further steps may need to be taken to provide clear information to agency officers and the public about this issue.***

***I also note that there appears to be some ongoing disagreement between councils and QH about the most appropriate way of managing building sites following fires. This clearly requires resolution and is discussed further in Chapter 5.***

**DEHP response:**

The Director-General of DEHP accepted this recommendation and stated:

> There is a need to proactively decide all possible roles and responsibilities, then consistently follow these decisions. Reliance on inter-agency committees resolving issues while incidents are occurring is not practical. [DEHP] is currently revising its Procedure Guide 2.4 – Asbestos release and has circulated it to the Interagency Asbestos Group for comments.

The Director-General of DEHP suggested that QH keep a listing of councils which have agreed to take on responsibilities under the PH Act, to minimise uncertainty of roles and responsibilities for those council areas.

***I accept the above comments, and particularly the statements made by the Director-General of DEHP about the practicality of relying on interagency committees to resolve incidents while they are occurring.***

**Recommendation 1**

The Directors-General of QH, DJAG and DEHP urgently work with councils to:

(a) finalise the 'Guidance Note – Decontamination and clean-up of debris arising from fire damaged buildings that contain asbestos materials'

(b) provide clear guidance to all agencies on:

- (i) which agency has the primary responsibility for responding to asbestos issues in which type of fire situation
- (ii) how agencies will coordinate their response efforts after fires
- (iii) particular confusion that may arise regarding the jurisdiction of agencies in relation to asbestos issues after fires.

### *Asbestos in natural disasters*

The effect of a lack of a whole-of-government asbestos strategy was also evident during the investigation by the ad hoc approach by agencies to asbestos issues arising in natural

disasters (in particular, floods and cyclones).

For example, buildings containing asbestos may be damaged during natural disasters such as floods and cyclones, potentially exposing people to asbestos fibres when the material is being cleaned up or if damaged asbestos is left without remediation. There are also dangers if asbestos waste is mixed together with other flood waste and disposed of without any safety precautions. While these dangers do not necessarily mean that people will inhale asbestos fibres, it is important that adequate plans are in place to manage the risk posed by asbestos in natural disasters.

The impression gained by investigators was that at the time of the investigation, agencies had not generally considered in detail the issue of asbestos in natural disasters and prepared a strategy for response. Consequently, the adequacy of asbestos response mechanisms in recent natural disasters varied widely.

Investigators were told that:

- asbestos response is not currently a core part of disaster management plans, even though this would ensure that councils and other agencies had the knowledge and mechanisms to respond to asbestos issues if these arose in natural disasters[31]
- there is confusion over response roles for asbestos in natural disasters, particularly because agencies generally responsible for responding first to natural disasters are not those agencies that regularly respond to asbestos issues
- conversely, there were concerns about the appropriateness of having a regulatory agency responding to asbestos matters during a natural disaster, because regulatory mechanisms such as penalties and infringement notices may be inappropriate for such situations
- poor interagency communication and communication with the public about asbestos contributed to difficulties in managing asbestos issues in natural disasters.

I note that these views are consistent with the conclusion in the 2012 *Commonwealth Asbestos Management Review Report* by Mr Geoff Fary (Fary Report) that:

> [t]he January 2011 floods in Brisbane and the surrounding areas highlighted the need for coordinated awareness measures relating to the dangers of asbestos during clean-up and recovery activities.[32]

The complex jurisdictional framework for responding to asbestos in Queensland may also complicate a response following a natural disaster.

In my view, there is a need for a consistent, coordinated and strategic approach to asbestos response during natural disasters.

Since commencing this investigation, a draft Asbestos Multiagency Response Plan has been developed by WHSQ and QH in conjunction with DEHP, DHPW and councils. The plan outlines the responsibilities of government agencies when managing an emergency incident that involves asbestos. It also allows for a Multiagency Asbestos Incident Group to be formed upon notification or identification of an incident or impending incident. The Multiagency Asbestos Incident Group is responsible for:

- establishing a lead agency for the incident
- identifying support agencies required for the management of the incident
- providing a central point for decision-making on complex issues (for example, controversial or community sensitive issues, boundaries of operation and/or significant resource allocation) that require cross-agency action.

This plan has not yet been finalised, but is at an advanced stage.

31 While asbestos may be covered in some local or district disaster management plans, this does not appear to occur in many instances.
32 Fary, G, *Asbestos Management Review Report*, 2012, page 36, http://www.deewr.gov.au/WorkplaceRelations/Policies/AMR/Pages/AMRReport.aspx viewed 29 October 2012.

I also note that the Asbestos Multiagency Response Plan requires cooperation and communication between a number of agencies to designate roles and responsibilities on an incident-by-incident basis. Given the speed which may be needed to address asbestos in natural disasters, and the number of competing priorities in such emergency situations, it may be that a mechanism with more clearly designated roles that applies in particular categories of emergency situation should be developed.

While a finalised plan in this form would go some way towards addressing my concerns, I understand that Local Disaster Management Plans rarely address asbestos matters. They may provide an additional mechanism to clarify response roles and how asbestos matters will be handled, as well as which agency is responsible for communication with the public about asbestos matters.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General of DJAG advised that the department will continue to work with other agencies on finalising the Asbestos Multiagency Incident Response Arrangements. He noted that the IAG decided in September 2012 to amend the draft Response Plan to:

- discriminate between different types of asbestos event responses, such as fire and water pressure damaged asbestos versus natural disasters
- clarify when matters should be escalated to senior agency officers
- clarify the relationship with the State Disaster Management Group.

**QH response:**

The Director-General of QH had no issues with the proposed recommendation.

**DEHP response:**

The Director-General of DEHP accepted the proposed recommendation and noted that existing disaster management arrangements allow for relevant agencies to provide advice and be involved in the development of incident action plans relating to asbestos during disasters. The Director-General further noted that:

- District Disaster Management Groups and Local Disaster Management Groups are the key decision-making bodies during disasters, and QH, WHSQ, DEHP and councils all have representatives on these bodies
- Local Disaster Management Groups have infrastructure recovery committees to develop incident action plans to deal with any asbestos recovery issues.

He stated that agency representatives on these groups 'should actively promote actions relevant to asbestos issues'.

***I note that further work is already underway to implement these changes.***

**LGAQ response:**

LGAQ officers noted that the role of councils during disaster response is not yet settled, and that the importance of the extensive planning process before disasters occur should not be underestimated. They also noted the importance of agencies negotiating with councils about key issues in relation to natural disasters.

**Recommendation 2**

The Directors-General of DJAG and QH work with relevant agencies and councils to:

(a) finalise the Asbestos Multiagency Incident Response Plan

(b) ensure there are mechanisms within Local Disaster Management Plans to identify responsibility for asbestos issues and communication with the public about asbestos risks during natural disasters.

### *Cleaning up asbestos*

Another area requiring clarification is which agency bears responsibility for cleaning up asbestos in situations where there is no contractor or person to clean up, or where the contractor or person refuses to do so and a lengthy legal process is required to recover payments for clean-up costs. This was identified at interview by several agency and council officers as a key issue requiring resolution.

**Case study – Cleaning up asbestos contamination**

In one situation, investigators were told a painter had pressure-cleaned an asbestos roof causing extensive splashing of asbestos particles but had then left the site. WHSQ officers said they did not have a role in arranging the clean-up of the asbestos contamination as it was no longer a worksite because the contractor had left.[33] Officers from the then Department of Environment and Resource Management (now DEHP) also denied responsibility.

On the basis of information given to investigators, it is possible that QH and the relevant council could also have denied responsibility on the basis that a contractor had caused the damage.

Some incidents, particularly those involving water blasting of asbestos roofs, involve significant clean-up costs. Investigators were told that at least nine such incidents have occurred between 2009 and 2011, and in one case the clean-up bill came to over $100,000.[34] These costs tend to be borne by one of the regulatory agencies, which then faces recouping the costs from contractors or homeowners.

It is not clear which agency is responsible for bearing the costs of such clean-ups. In particular, it was not clear to stakeholders and many agency officers interviewed during the investigation whether QH, councils or WHSQ is responsible for regulating domestic clean-up situations and the clean-up of any neighbouring properties where the contamination was caused by a contractor. The role of DEHP was also not clear in this situation, despite the potential for environmental contamination.

There appears to have been recent discussion among agencies about responsibilities in such situations. For example, the Director-General of DJAG informed this office in late 2012 that in situations such as this, WHS legislation provides powers for inspectors to direct a person conducting a business or undertaking who has caused asbestos contamination to clean up asbestos debris.

However, while these powers may exist, it did not appear to investigators that there was the same level of knowledge or certainty among frontline officers conducting the responses, or among officers from other agencies. I have discussed this issue further in Chapter 4.

During discussions with investigators, LGAQ officers noted the difficulties inherent in councils being left with greater responsibility for cleaning up asbestos and being forced to meet the costs of such clean-ups. It was noted that although councils do have the option of recovering costs from a property owner under the *Local Government Act 2009*, this can take a long time.

33 I note that this advice appears inconsistent with the official WHSQ position on jurisdiction over workplaces (see Chapter 4 of this report).
34 These figures are set out in text accompanying key deliverable number 24 of the WHSQ Action Plan.

LGAQ officers further noted that the issue of councils having adequate insurance cover to enforce the PH Act (discussed in Chapter 5 below) is relevant to whether councils can take on a role in cleaning up asbestos incidents. LGAQ officers commented that the application of the 'Orphan Spill Fund', a DEHP fund available to councils to assist with clean-up of significant environmental contamination, is also not settled.

In my view, the responsibility for addressing such situations urgently requires clarity and the agreed position needs to be communicated to frontline officers.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DEHP response:**

The Director-General of DEHP advised that DEHP has a comprehensive set of Procedure Guides setting out appropriate protocols to follow for asbestos and other incidents. He also stated that:

> The most important point is to agree on the roles and responsibilities as highlighted in Recommendation 1. Each agency then needs to have appropriate legislative tools to carry out their assigned responsibilities. [DEHP] has found the clean-up notices and cost recovery notices ideal for minimising uncertainty over recovery of costs.

The Director-General of DEHP also commented that agencies should follow the Australasian Interagency Incident Management System as the preferred way to manage agency roles in any incidents, and that training in this system would be desirable.

**QH response:**

The Director-General of QH advised that QH had no issues with the proposed recommendation.

**DJAG response:**

The Director-General of DJAG noted that to some extent, recommendation 3 could also be addressed through recommendations 2 and 5 (that is, through the proposed Asbestos Multiagency Incident Response Plan and providing clear advice about the limits of jurisdiction between agencies). However, he noted that:

> ... the key difficulties associated with managing the response, clean-up and costs of asbestos incidents where the responsible party is not immediately identifiable or is unable or unwilling to carry out the necessary clean-up activities include:
>
> - the capacity to take enforcement action or recover costs depending on the nature of the incident, and
> - the capacity of an agency to pay for this given the costs can be significant.

The Director-General also noted that the implementation of recommendation 3 was at least partly dependent on resolving the roles of local councils and QH in enforcing the PH Act.

The Director-General of DJAG further advised that:

> In relation to the types of situations mentioned in the proposed report where officers indicated jurisdiction was not clear, it should be noted the department has provided information of this kind to WHSQ officers regarding the scope of the definition of a "workplace". Based on different views expressed in the proposed report it would appear there may be a need to provide information about this again … The explanatory notes for the WHS Act 2011 provide some explanation on the intent of the definition of a "workplace" which is a pivotal concept in the Act. The explanatory notes state:
>
> A 'workplace' is a place where work is performed from time to time and is treated as such under the Bill even if there is no work being carried out at the place at a particular time. … A place does not cease being a workplace simply because there is no work being carried out at a particular time. This means for example that a shearing shed used

> for shearing only during the few weeks of the shearing season does not cease to be a workplace outside of the shearing season and a department store does not cease to be a workplace when it is closed overnight.
>
> The department considers any activity associated with a person conducting a business or undertaking causing the disturbance of asbestos … is not completed until all asbestos waste associated with the activity has been contained, labelled, and disposed of so far as reasonably practicable. Although the person conducting the business or undertaking may have left the site, the area is still considered a workplace under section 8 of the WHS Act 2011. This information was conveyed to WHSQ inspectors during the first half of 2012.

***I acknowledge that the resolution of this and other issues throughout the report is contingent on a satisfactory resolution of recommendation 15 regarding the role of councils in managing asbestos. For this reason, I have recommended that recommendation 15 be implemented as a matter of priority. However, I note that even if agencies are unable to reach a satisfactory resolution with councils, agencies will still need to take appropriate action on the remainder of the recommendations.***

***I acknowledge the Director-General's advice on what constitutes a 'workplace'. The fact that investigators were not provided with this clear advice by WHSQ officers during the investigation and that officers from other agencies were not clearly aware of this confirmed position demonstrates that further work is needed to communicate this information to WHSQ officers and other agencies.***

**Recommendation 3**

The Directors-General of QH, DJAG and DEHP urgently work with councils to develop a protocol that assigns responsibility for managing the response, clean-up and costs of asbestos incidents where the responsible party is not immediately identifiable or is unable or unwilling to carry out the necessary clean-up activities.

### *Asbestos in discrete Indigenous communities*

The investigation sought specific information from various agencies about the management of asbestos in discrete Indigenous communities.

Investigators were unable to obtain a clear picture of whether asbestos is an issue in these communities.[35] Despite asbestos having been identified as a problem requiring management in Indigenous communities in the Northern Territory,[36] investigators were told that asbestos was generally down the list of priorities in Queensland's discrete Indigenous communities because of the many areas of higher need.

A review of IAG minutes suggests that this issue has not been substantially discussed to date. I note that key deliverable 23 in WHSQ's *Asbestos Work Health and Safety Action Plan 2011-2016* (WHSQ Action Plan) is to deliver information and appropriate training to Aboriginal and Torres Strait Islander councils, businesses and individuals in meeting asbestos safe handling, and removal and management requirements. Only preliminary work has been carried out on this objective and an expected delivery date has not been advised.

While there are many other areas of significant need in discrete Indigenous communities, asbestos exposure carries potentially serious health consequences. Agencies should be able to determine the extent of the problem, if any, so that consideration can be given to appropriate responses.

35 Most agencies were not able to identify any specific asbestos-related research or programs in Indigenous communities that they were undertaking. While some agencies advised investigators that little asbestos was present in Indigenous communities, other agencies advised that the extent of the problem was unknown or that asbestos is as much of an issue in Indigenous communities as in other communities. It was also suggested that asbestos was often used in Indigenous communities because it was robust and easily transported. Further, investigators were told that the disposal of asbestos may be a particular issue in remote communities.

36 See Australian Government, Budget 2012-13, *2012 13 Budget initiatives to close the gap in housing*, http://www.budget.gov.au/2012-13/content/ministerial_statements/indigenous/html/indigenous-06.htm viewed 29 October 2012.

As this issue concerns discrete Indigenous communities, I proposed a recommendation to the Director-General of the Department of Aboriginal, Torres Strait Islander and Multicultural Affairs (DATSIMA), who has responsibility for a significant number of issues affecting such communities.

**DATSIMA response:**

The Director-General of DATSIMA stated that:

> Current buildings and infrastructure in remote Indigenous communities include council owned assets, social housing, infrastructure and related facilities, airport facilities and state and federal government owned buildings. The different ownership of these buildings would limit this department's scope in ensuring the development of a comprehensive asbestos register in each community.
>
> While the department supports the identification and recording of asbestos presence in remote Indigenous communities, the scope of the task and the effort required to undertake this activity is beyond the current resources available to the department.

The Director-General suggested that the existing Technical Working Groups network, supported by DATSIMA's Remote Indigenous Land and Infrastructure Program Office, would be able to 'facilitate the development and maintenance of asbestos registers by each state government agency for every property they have responsibility for in discrete Indigenous communities'. She advised that the Technical Working Groups bring together relevant officers from all levels of government to progress local issues related to capital works projects in each community and can assist as a resource to establish asbestos registers for these communities.

DATSIMA officers also advised that the current *Asbestos Management and Control Policy for Government Buildings*, which is administered by the DHPW, applies to all government buildings in Queensland, including those in discrete Indigenous communities. The Built Environment Materials Information Register (BEMIR) contains a number of departments' asbestos information based on asbestos surveys conducted in the past by either QBuild workers or QBuild contractors. Therefore, the DHPW is already to an extent performing the role of identifying and recording asbestos in discrete Indigenous communities.

DATSIMA therefore proposed that to give effect to the intent of the proposed recommendation, it could:

(a) work with DHPW to ensure the currency and effective utilisation of the BEMIR in relation to discrete Indigenous communities

(b) use Technical Working Group meetings as a forum to ensure each community is informed of all activities related to asbestos-containing buildings, including minuted references to information provided by DHPW and sourced from the BEMIR.

***I accept that this is a reasonable approach to this issue and have amended the recommendation to reflect this agreement with DATSIMA.***

**Recommendation 4**

The Director-General of DATSIMA:

(a) work with DHPW and other relevant agencies, including councils, to facilitate the effective utilisation of the BEMIR in relation to the location of asbestos in discrete Indigenous communities

(b) provide a forum through the established Technical Working Groups to ensure that each community is informed of all activities related to buildings containing asbestos.

I would also encourage DJAG to take action to implement key deliverable 23 in the WHSQ Action Plan and deliver the necessary information and training to Aboriginal and Torres Strait Islander councils, businesses and individuals.

### *Need for integration*

The above examples demonstrate the need for a more integrated asbestos response in Queensland. The lack of such strategy has resulted in significant coordination difficulties, and meant that some aspects of asbestos response have received more attention and resources than others.

The absence of a whole-of-government asbestos strategy is also evident in the lack of information sharing between agencies on breaches or potential intelligence for audits.[37] Stakeholders commented specifically on the lack of coordination between agencies, and investigators were told that the level of coordination and information sharing between agencies varied considerably depending on the region, both at formal and informal levels.

The following chapters of this report set out other difficulties attributable to the lack of an integrated strategy for responding to asbestos issues in Queensland.

In my view, the confusion about responsibility for asbestos issues in various situations should be addressed through an integrated strategy. I discuss this in Chapter 9 of this report.

37 For example, removal and transport are governed by different agencies but investigators were told that no formal mechanisms exist for information-sharing when the agency that regulates removal knows or suspects that asbestos has been transported or disposed of incorrectly.

# Chapter 4 – Regulation of asbestos in workplaces

The investigation considered the enforcement framework and methods adopted by the key regulators for asbestos: WHSQ, QH and councils, and DEHP.

## Current framework for workplaces

Asbestos issues in workplaces are regulated by WHSQ under the WHS Act (formerly the *Workplace Health and Safety Act 1995*), and specifically by chapter 8 (part 8.3) of the WHS Regulation (formerly part 13 of the Workplace Health and Safety Regulation 2008). The critical determinant of whether the Regulation applies is whether the site is a 'workplace' under the WHS Act. Section 8 defines a workplace as:

> ... a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work.

This definition is adopted by section 2B of the PH Regulation, which defines a non-workplace area as a place that is not a workplace under the WHS Act.

This chapter considers the current framework for workplaces, while Chapter 5 of the report addresses the situation in relation to non-workplace areas under the PH Act.

As stated above, the investigation identified confusion about how the definition of a 'workplace' applied to asbestos matters, with agency officers reporting different views or expressing uncertainty about whether a certain situation constituted a 'workplace'. Some areas of confusion included:

- where a contractor has left a domestic premises after finishing a job that involved the improper removal of asbestos
- where a contractor has left a domestic premises during a job that involves the improper removal of asbestos but is intending to return
- who had responsibility for regulating the removal of asbestos by owner-builders
- where asbestos contamination by a contractor extends beyond the property borders
- where asbestos contamination in a domestic premises was caused by a contractor and it is not discovered until some time has passed
- where asbestos contamination is discovered in a vacant building
- where asbestos is found on a property that is not properly characterised as a domestic premises, but is not a workplace (such as a property used for storage of old houses and car parts).

Complaint data and interviews identified that confusion about jurisdiction has caused delayed responses, resulted in complaints being bounced between agencies, and in some cases resulted in there being no agency willing to respond to a situation.

It was clear from the information available that issues concerning overlapping jurisdiction have been discussed previously by the agencies. However, it is also apparent that these issues remain a problem. Investigators were informed that the IAG has developed a document setting out 'roles and responsibilities' of various agencies which can be signed off by agencies and councils, although the council representative has indicated that councils are not in a position to do so at this stage. Notwithstanding this document, it appears that some confusion remains among agency officers about the application of each agency's jurisdiction to particular circumstances.

In my view, it is critical that each agency and council is clear about the precise limits of its jurisdiction, and how its jurisdiction interacts with that of other agencies and councils.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General of DJAG advised that DJAG will work with QH to ensure clear and consistent information is available about each agency's jurisdiction in relation to the situations mentioned in the proposed report. He also noted that while the department had provided information of this kind to WHSQ officers regarding the scope of the definition of a 'workplace', there appeared to be a need to provide this information again.

The Director-General also noted that the explanatory notes for the WHS Act provide some explanation on the intent of the definition of a 'workplace', and advised that DJAG considers any activity associated with a person conducting a business or undertaking that causes the disturbance of asbestos is not completed until all asbestos waste associated with the activity has been contained, labelled, and disposed of.

***It appears that some of the difficulties that arise with regard to the definition of a 'workplace' may be misunderstandings on the part of agency officers. It is critical that DJAG ensures that its officers, and those officers of other agencies who are affected by the limits of WHSQ's jurisdiction in relation to 'workplaces', fully understand the relevant definitions and application of this legislation.***

**QH response:**

The Director-General of QH had no specific response to the proposed recommendation, other than to note the existence of the IAG document setting out 'roles and responsibilities' of various agencies.

**Recommendation 5**

The Directors-General of DJAG and QH jointly develop and provide clear advice to all relevant WHSQ and QH officers about the precise limits of each agency's jurisdiction in relation to the situations identified in this report and any other situations where the jurisdiction of WHSQ and QH is unclear to officers.

### *Enforcement framework for asbestos in workplaces*

The WHS Act provides a range of enforcement tools, including prohibition and improvement notices, fines, prosecution, and suspension or cancellation of asbestos licences. The current enforcement framework for asbestos in workplaces is drawn from the new national uniform health and safety legislation (model OHS legislation), which was introduced in Queensland from 1 January 2012.

The investigation identified some areas of concern among stakeholders and agency officers about the current enforcement framework, and particularly whether it is adequate to address the peculiarities of asbestos, where exposure has generally occurred by the time enforcement agencies arrive but the consequences do not manifest for decades. The number of concerns raised with investigators about the enforcement framework and the adequacy of enforcement tools justifies me raising these concerns as issues for the Director-General of DJAG's consideration.

In particular, WHSQ officers expressed the view that enforcement tools in relation to asbestos issues had been diminished under the new Act. In particular, WHSQ inspectors were very concerned that the improvement notice offences for asbestos work under the new Act appear to relate more to administrative issues rather than addressing the actual risk that incorrect removal presents. For example, the current on-the-spot fines for asbestos breaches contained in the WHS Act are for matters such as a failure to ensure an asbestos register is prepared and kept at a workplace,[38] a failure to ensure that a record was kept of asbestos training undertaken by workers as prescribed[39] and available for inspection,[40] and

38 Regulation 425(1) of the WHS Regulation.
39 Regulation 445(3) of the WHS Regulation.
40 Regulation 461(2) of the WHS Regulation.

a failure to pay all expenses for health monitoring as prescribed.[41]

WHSQ officers advised that they were seeking additional improvement notice offences to be added to a number of provisions of the WHS Regulation, including:

- duties to train asbestos removal workers and hold certain licences[42]
- the duty not to use certain equipment on asbestos-containing material[43]
- duties to dispose of asbestos waste and personal protective equipment (PPE) correctly[44]
- duties related to limiting access to sites, testing and clearance certificates[45]
- the duty to notify of asbestos removal.[46]

A related issue raised with investigators is whether the amount of the on-the-spot fines for specific asbestos-related breaches of the WHS Regulation are sufficient to deter the non-compliant behaviour. Although the number of fines issued by WHSQ inspectors between 2008 and 2011 indicates that fines are not regularly used, inspectors generally felt that the threat of fines can be a deterrent.

However, stakeholders generally had a different view. In fact, a number of interviewees told investigators that contractors merely factor fines into their quotes, while one stakeholder told investigators that fines were not a deterrent for their members.

Finally, the rationale for certain new legislative provisions was questioned by both WHSQ inspectors and industry stakeholders. Most significantly, concerns were raised about the requirement under section 466(1) of the WHS Regulation that a five-day notification period be given for any work with any asbestos-containing material. Stakeholders noted that this requirement has major ramifications for relatively straightforward removal work of even small volumes of bonded asbestos, and may require a contractor to stop work for five days if they discover asbestos when performing other work. While there is an option to lodge an urgent work notification for emergency work and continue the work within the five-day notification period, this requirement was seen as unnecessarily disruptive, unrealistic and likely to have the opposite effect to that intended.

Stakeholders told investigators that the new notification requirement will in fact have the unintended effect of increasing the likelihood that contractors will cover up the presence of asbestos, and will result in people who follow the law losing work to those who do not. Further, such a notification requirement if used for auditing purposes is likely to have the effect of only catching the people who do the right thing by notifying WHSQ of their intention to carry out asbestos work in accordance with the legislation. Those who do not notify of asbestos removal work know that they are unlikely to get caught.

Overall, the enforcement framework was criticised for not adequately incentivising compliance, and in fact encouraging poor behaviour. An industry stakeholder noted that where there are opportunities to do the wrong thing, this is where many builders will operate.

One stakeholder told investigators that:

> 'There's [sic] not enough inspectors out there … as a result … those within the industry that don't follow the right policies and procedures take a chance.'

In general, an effective enforcement framework will incentivise compliance by providing incentives for compliance and disincentives for non-compliance. However, I have made no finding about whether the current national asbestos enforcement framework is adequate in this regard.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address the above issues.

41 Regulation 438(1) of the WHS Regulation.
42 Regulations 445 & 460, 485 & 487 of the WHS Regulation.
43 Regulation 446 of the WHS Regulation.
44 Regulations 472 and 484 of the WHS Regulation.
45 Regulations 470, 473, 474 and 479 of the WHS Regulation.
46 Regulation 466 of the WHS Regulation.

**DJAG response:**

The Director-General and senior DJAG officers disagreed with statements made by inspectors and provided advice on how enforcement can be carried out under the new WHS Act. The Director-General advised that the inspectors' concerns appear to relate to which duties are improvement notice offences under the Act, and that other duties remain offences to which fines attach on successful prosecution. He noted that prohibition notices remain available to inspectors to stop dangerous work, and that inspectors have been provided with a series of scripted prohibition notices specific to common asbestos events. The Director-General further advised that WHSQ is developing a fast-track prosecution process for specific regulatory breaches.

However, the Director-General did concede that there are differences between the previous legislation and the new WHS Act in relation to what duties have improvement notices attached.

The Director-General also advised that the penalties under the harmonised WHS legislation were set at a national level, and that some penalties are higher than those that were in place in Queensland previously, while others are lower.

***While I note the Director-General's advice, this does not negate the fact that some WHSQ inspectors and other WHSQ officers expressed to investigators the view that the current WHS Act provisions are inadequate to enable inspectors to effectively regulate asbestos.***

***I also note that the concerns expressed by WHSQ officers about some offences not having improvement notices attached have not been challenged by the Director-General. Rather, the Director-General has responded by providing advice on ways the provisions could be enforced. I note, however, that WHSQ inspectors did not seem to be aware of this advice when interviewed by investigators.***

The Director-General also stated:

> The fines and enforcement tools available to WHSQ inspectors were developed and agreed to though a national process to develop harmonised national model WHS legislation under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*. The model WHS legislation was endorsed at Ministerial and Cabinet level under the then Queensland Government. Consequently, the fines and enforcement tools provided in the legislation may be regarded as policy decisions made by a Minister or Cabinet, and the department queries the extent to which these should be canvassed in the proposed report (s.16 Ombudsman Act 2001).

***I wish to make it clear that I am not questioning whether DJAG should or should not have entered into the harmonised national model or the relevant Ministerial or Cabinet decisions of the time. My concern is that WHSQ officers raised issue with investigators in relation to their ability to effectively regulate asbestos. It is not clear to what extent the Director-General is aware of the WHSQ officers' concerns or has attempted to address them (whether through education about the provisions of the WHS Act or through seeking legislative change if necessary). I have amended my proposed recommendation to better reflect my concerns.***

**Recommendation 6**

The Director-General of DJAG consider the issues of concern raised by WHSQ officers relating to the suitability of existing fines and enforcement tools available to regulate asbestos in the workplace and respond to these issues by:

(a) providing further information and training to WHSQ officers, or

(b) progressing amendments to the model OHS legislation.

**Access to information about the changed asbestos legislation**

The new WHS Act substantially changed a number of details about how asbestos is regulated in workplaces, including by prescribing new offences, altering penalty amounts and creating a new regime for licensing and working with asbestos (such as notification and asbestos register requirements).

The WHS Act was passed by Parliament on 26 May 2011. The WHS Regulation containing the chapter regulating asbestos was endorsed in principle by the majority of state workplace relations Ministers in August 2011 and was approved by the Queensland Governor in Council on 24 November 2011. Most provisions commenced five weeks later on 1 January 2012.

When interviews were conducted with WHSQ inspectors and stakeholders four months after the new legislation commenced, there was still confusion about a number of aspects of the new provisions. Although WHSQ advises that it carried out significant educational activities about the changes to the legislation,[47] the success of this communication about the new asbestos provisions was not apparent from investigators' discussions with stakeholders and WHSQ inspectors.

For example, the investigation found that the specific infringements, penalties, definitions and other key aspects of the new WHS Act in relation to asbestos (including key jurisdictional questions) were still poorly understood by both stakeholders and WHSQ inspectors four months after the new legislation commenced, notwithstanding the steps that WHSQ had taken to provide information about the changes. There were a significant number of uncertainties around issues such as the new notification requirements, the requirement for asbestos surveys, the interaction between the Codes and the legislation, and terms which remain undefined.

There was also confusion among WHSQ inspectors about the scope of enforcement tools, including:

- whether there is an ability to stop a person from breaking up asbestos under the new Act
- whether the Act contains penalties for unlicensed persons
- whether there is a penalty or infringement available to target a contractor who removes or demolishes asbestos without a licence, or a homeowner who is removing more than $10m^2$
- whether inspectors can require people to clean up asbestos contamination
- whether inspectors can take action other than issuing an improvement notice if inadequate PPE is being worn, or for incorrect removal, smashing of asbestos or for incorrect fencing
- whether they can force homeowners to clean up asbestos contamination, since their understanding was that the WHS Act is tied to a 'workplace' and jurisdiction is not clear once the contractor has left the site
- who is responsible for clean-up of asbestos contamination if the contractor refuses, and how this can be facilitated under the Act
- whether costs of clean-up can be recovered under the Act.

Investigators were told that the application of the new WHS Act was creating frustration in trying to enforce the law.

It is concerning that WHSQ inspectors repeatedly referred to the perceived need to 'bluff' about their enforcement powers because of uncertainties about what they can lawfully do

47 The Director-General of DJAG advised in his response to the proposed report that WHSQ took a number of steps to advise officers and the public about the new legislation, including publishing Guidelines in November 2011, conducting information sessions, producing website resources and videos, and establishing a temporary hotline to ensure the public and stakeholders were provided with timely and consistent responses to their questions on the WHS laws. He also advised that a number of fact sheets were updated and published on the WHSQ website in December 2011.

or inadequacies in the legislation and its inability to give them adequate powers to control the risk presented by asbestos.

Some of these concerns of inspectors may be due to a lack of training in the new regime. I note that this training was not scheduled to be delivered to inspectors until at least July 2012, which was seven months after the new WHS Act commenced. Although WHSQ has now begun training its inspectors in the new requirements, further training may be necessary to address other areas of confusion identified in this report. If so, then this training should be delivered as soon as possible to ensure that all inspectors have the skills and knowledge necessary to undertake their role in regulating asbestos in workplaces.

I note that the WHSQ Action Plan includes a key deliverable to better understand the new legislation and it is intended that training will be provided to the inspectorate. This will no doubt assist in their capacity to educate duty holders.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General stated that, in his view, there had been a significant amount of training for WHSQ inspectors relating to the harmonised model WHS legislation. In relation to asbestos, this included:

- two hours of specific training on the asbestos regulations at the end of 2011
- two days of training for inspectors involved in enforcement and compliance of the asbestos regulations, with a particular focus on asbestos removal, related work, demolition and refurbishment, and registers and asbestos management plans. Scripted notices were provided in relation to the asbestos regulations
- a comparative table of key differences between the former WHS legislation for asbestos and the new asbestos regulation.

The Director-General provided details of further online training that will be delivered to inspectors, and advised that the department is developing operational guidance documents on assessing and managing asbestos exposure risk relating to inspectorial activities. Finally, the Director-General noted that inspectors already had significant knowledge of the former WHS legislation, and therefore were not starting from a zero-base level of knowledge in the process of understanding the model WHS legislation.

The Director-General also advised that regular information sessions will be in place for the inspectorate regarding asbestos compliance and enforcement.

***At the time of interviews, WHSQ inspectors interviewed clearly did not have a sufficient understanding of new asbestos provisions to enable them to be confident in their enforcement of the provisions. While I accept that the new WHS Act changed a number of different areas, of which asbestos was only one, and that detailed training on the new asbestos provisions has now been conducted with WHSQ inspectors, it is important for the Director-General to ensure that regular training and refresher courses continue to be provided to inspectors so that they can confidently and competently perform their important duties in relation to asbestos regulation.***

**Recommendation 7**

The Director-General of DJAG ensure that all inspectors maintain a current understanding of the provisions of the asbestos legislation to minimise areas of confusion or uncertainty for inspectors with regard to the application of the WHS Act and WHS Regulation to asbestos issues.

### Use of enforcement tools

The investigation considered information from WHSQ inspectors and stakeholders about how the current asbestos legislation is enforced.

#### *Access to information*

Investigators were told that a factor contributing to the current difficulties experienced by inspectors in enforcing the asbestos legislation is their lack of access to information. WHSQ inspectors told investigators that they:

- cannot readily access a database of asbestos licences
- do not have access to a database of the notifications about asbestos removal work received by WHSQ under the new Act
- have difficulty in obtaining up-to-date licensing information about the status of a contractor's licence, even from within WHSQ.

A further hindrance is the lack of formal arrangements between agencies to assist officers on a practical, day-to-day level. For example, investigators were told that WHSQ officers:

- when escalating matters to some large councils, can only ring the general council information line rather than having a contact to whom they could escalate their matters quickly
- are not able to access council real property data about ownership of a property when responding to an asbestos complaint, and some councils have refused to provide this information for privacy reasons.

WHSQ inspectors also highlighted difficulties in searching for information about licensees on their computer system, as it has difficulty dealing with situations where a company has changed address, Australian Business Number or company name.

#### *Prosecutions*

Stakeholders told investigators that WHSQ rarely prosecuted asbestos breaches in the past, and this is supported by WHSQ data showing only 10 asbestos-related incidents that resulted in prosecution between June 2000 and May 2012.[48] In contrast, between 15 March 2008 and 30 July 2011, 77 infringement notices, 386 improvement notices and 236 prohibition notices were issued for asbestos-related issues.

Some interviewees told investigators that some persons in the asbestos industry factor the cost of fines into their quotes. If this is the case, it is important that the full range of enforcement tools is available to ensure that compliance with the asbestos laws can be achieved and enforced if necessary.

WHSQ inspectors told investigators that prosecution was expensive and lengthy, with the ultimate fines being small compared to the cost of prosecution even if successful. Further, WHSQ inspectors and officers commented on the difficulty of prosecuting under both the past and present asbestos laws, and confusion among inspectors about the interpretation of the new asbestos provisions and how prosecutions could be successfully brought. There was confusion about whether air-monitoring was required, or whether it is necessary to prove 'repeated and prolonged' exposure to prosecute, and how this might be demonstrated.

It is important that WHSQ inspectors are aware of how breaches of asbestos legislation may be prosecuted and what evidence is required for a successful prosecution of a particular breach. Further training of WHSQ inspectors and officers may be required to address and resolve these areas of confusion.

48 While WHSQ figures provided during the investigation showed 12 prosecutions, two incidents resulted in prosecutions of both an individual and a company. Therefore, I have counted only 10 incidents that resulted in prosecutions.

I note that key deliverable 13 of the WHSQ Action Plan is to ascertain what can be reasonably prosecuted and what type of evidence is needed, with a goal of increasing the ability to prosecute. In my view, this information is critical to ensuring an effective framework for enforcing compliance with asbestos regulations.

***Suspension and cancellations of licences***

Another issue raised by WHSQ inspectors was their frustration at the lack of other methods of handling poor performers (those asbestos industry workers or companies which repeatedly breach asbestos laws). Investigators were told that licence suspensions and cancellations for poor performers is now a focus for WHSQ.

The ability to suspend or remove licences is an important part of a regulatory regime. In fact, industry stakeholders noted that the loss of a licence would be a greater motivating factor to comply with asbestos laws than a fine.

In my view, the Director-General of DJAG should review the current administrative arrangements in place that would enable inspectors to have licence suspension or cancellation as an option available to them in enforcing the asbestos provisions of the WHS Act. This may include considering the availability of information to inspectors and how WHSQ tracks information on poor performers across different business names and sites. It may also require consultation with inspectors and stakeholders.

In the proposed report provided to the relevant agencies for comment, I proposed a global recommendation to address the above three issues.

**DJAG response:**

The Director-General of DJAG advised that steps have been or will be taken to address these issues to some extent, including further training for inspectors (as discussed previously) and a dedicated asbestos enforcement and compliance site on the department's intranet.

The Director-General further stated:

> As there are some differences in the range of infringement notice offences available under the new WHS legislation compared with the former WHS legislation, the department is developing a fast track prosecution process for specific regulatory breaches. The department anticipates it will be able to implement this new fast track prosecution process in 2013. Prosecuting serious breaches of workplace asbestos laws is a key deliverable in the Asbestos Work Health and Safety Action Plan 2011-16 (key deliverable 13).

In relation to the suspension or cancelling of licences, the Director-General stated:

> The WHS legislation provides mechanisms to suspend or cancel asbestos removal licences (refer Part 8.10, division 6, WHS Regulation 2011). As the legislation only commenced on 1 January 2012 and there are transitional arrangements associated with licensing, the new suspension and cancellation provisions are largely untested. However, the department considers that if an inspector can show evidence to meet the criteria for suspending or cancelling an asbestos removal licence, then this process could commence. The department is developing a new protocol involving a demerit point system for considering action to take against licence holders who are failing to operate safely and competently. It is anticipated the new protocol will be able to be implemented in 2013.

**Recommendation 8**

The Director-General of DJAG review and continue to take steps to address:

(a) any additional information or data that inspectors need to access in order to effectively enforce the WHS Act and WHS Regulation

(b) any factors impeding WHSQ's ability to prosecute breaches of the WHS Act in relation to asbestos, including the need for training to be provided to WHSQ inspectors and officers about how to facilitate the prosecution of breaches of the asbestos provisions

(c) any factors impeding WHSQ's ability to suspend or cancel asbestos licences.

**Interagency cooperation**

Adequately addressing poor regulatory compliance may also require interagency cooperation and coordination. Investigators were told that the BSA may provide an additional avenue for managing poor compliance, as many contractors who perform asbestos removal work also hold building licences with the BSA.

Section 5(1)(zh) of the Queensland Building Services Authority Regulation 2003 prescribes that work done under part 8.3 of the WHS Regulation (the asbestos provisions) is not building work regulated under the *Queensland Building Services Authority Act 1991* (QBSA Act).

However, the BSA licensing regime and the WHSQ asbestos framework may intersect in the following situations:

- where the BSA is considering cancelling a contractor's licence because they are not considered a 'fit and proper person' under section 48 of the QBSA Act, a proven breach of the WHS Act may be a relevant consideration to this determination
- where there are 'proper grounds', the BSA may impose a condition on a contractor's licence to require the licensee to complete a course module included in technical or managerial national competency standards relevant to the building industry. A proven breach of the WHS Act could be sufficient for section 36(3A) of the QBSA Act to be invoked
- where WHSQ becomes aware of a person performing work without a required BSA licence, such as painting an asbestos cement sheet roof following water blasting, WHSQ could refer the person's details to the BSA which would then have the option of prosecuting the unlicensed person under the QBSA Act.

The BSA may also be able to assist WHSQ by providing a means of educating contractors about the requirements for working with asbestos under the WHS legislation.

I understand that previously there had been little formal communication between WHSQ and the BSA about the above matters.

Such action is now partly envisaged by key deliverable 14 of the WHSQ Action Plan, which aims to leverage the BSA's licensing actions to enforce compliance with the WHS Act. This will be accomplished by WHSQ notifying the BSA of breaches of the WHS Act and WHS Regulation or of unlicensed persons found performing asbestos work requiring a licence, so that the BSA can take any appropriate action in relation to the licence holder.

Since the initiation of this investigation, WHSQ has pursued this matter and I understand that the BSA has committed to cooperating with WHSQ on this project. However, further work needs to be done to implement this approach.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**BSA response:**

The General Manager of the BSA provided further information and clarification, but did not object to the proposed recommendation.

**DJAG response:**

The Director-General of DJAG stated that DJAG is liaising with the BSA to explore options for sharing information and utilising the BSA's licensing scheme in relation to asbestos-related matters, including in relation to:

- incorporating competency attainment in asbestos safe work procedures related to work on asbestos-containing materials as part of BSA licensing requirements
- the placing of conditions on licences if WHSQ provides sufficient evidence of a breach of the WHS legislation
- the referral of unlicensed contractors to the BSA for possible prosecution.

***I note that the Director-General's response, and key deliverable 14, do not include a reference to one of the above situations where the sharing of information between WHSQ and the BSA may yield positive results (namely the sharing of information regarding proven breaches of the WHS legislation that may be relevant to a determination by the BSA to cancel a contractor's licence). I consider that this is a further key area where cooperation between regulators can provide a positive outcome in the regulation of asbestos matters in Queensland.***

**Recommendation 9**

The Director-General of DJAG work with the BSA to make best use of the BSA's licensing regime to both provide education to contractors and address non-compliance with the asbestos provisions of the WHS legislation.

A further way that the BSA may be able to assist with the asbestos enforcement framework is through its existing register of licensees.

There is currently no way for the public to check an asbestos removalist's credentials other than to ring WHSQ, where they will simply be told if the person holds a valid assessor licence or not. Short of lodging an application under the *Right to Information Act 2009*, there is no other way to gain access to information about the removalist's track record of compliance with asbestos regulations or any substantiated disciplinary proceedings.

This is contrasted with the construction industry, which has a searchable register held by the BSA that not only shows the credentials of builders and other licence holders but also any substantiated disciplinary action which has been taken against them. I note that Tasmania has an online register of licensed asbestos removalists,[49] and the New South Wales state-wide asbestos plan proposes to publish a list of licensed removalists, demolition contractors and asbestos assessors on the New South Wales WorkCover website.[50] However, neither of these schemes includes information about substantiated disciplinary action against contractors.

Having a similar public register for asbestos removal licences in Queensland would allow the public to make informed decisions about contractors. It would allow potential customers to identify whether an asbestos removalist has an adequate track record of compliance with health and safety obligations (by listing breaches of asbestos law) and also allow contractors to refer potential customers to the website to check their credentials.

I note that during the investigation, industry stakeholders and relevant agency officers agreed about the benefits of a public register of asbestos industry workers.

49 Workplace Standards Tasmania, 'Licensed Asbestos Removalist Search', 27 August 2012, http://workplacestandards.tas.gov.au/resources/licence_search/asbestos_removalists/_nocache viewed 1 February 2013.

50 Workcover NSW, *The NSW state-wide asbestos plan Consultation draft*, page 22, http://www.workcover.nsw.gov.au/FORMSPUBLICATIONS/Pages/default.aspx?CatalogueNo=WC03760 viewed 1 February 2013.

While such a public register could be managed by WHSQ, it seems that greater efficiencies may be created by providing licensing information to the BSA for inclusion in the existing online licence search facility.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General stated that DJAG currently publishes breaches of asbestos laws online and is reviewing its asbestos web page to include a specific icon on breaches of asbestos law.

***I note that this information is only in relation to prosecutions, and not substantiated disciplinary proceedings. Given that prosecutions in relation to asbestos laws are relatively rare, I do not believe that this information provides an adequate picture for the public to gain a full understanding of the qualifications and compliance of their contractor.***

The Director-General also provided information on key steps that are being undertaken to provide information about asbestos removal or assessor licence holders (key deliverable 9 of the WHSQ Action Plan).

In relation to asbestos removal licence holders, the Director-General advised that WHSQ will:

> … explore establishing a public register of asbestos licences that are issued to a person conducting a business or undertaking (business licence). Class B asbestos removal licences issued under the former WHS legislation are transitional (expiring in December 2013) and are issued to individuals. Consequently, privacy requirements must be complied with, which makes disclosure of personal details in a public register problematic.

The Director-General advised that in the short term, the department proposes to publish a list of business licences in PDF format on the department's website.

In relation to licensed asbestos assessors, the Director-General advised that DJAG proposes to publish a list of licensed asbestos assessors on its website.

The Director-General also advised that stakeholders and the public will be notified of the existence and location of the published information through the single portal website (discussed in Chapter 8 of this report); agency web pages that relate to asbestos; publications of industry, employer, and union bodies; and the WHSQ eSafe newsletter.

***I acknowledge that there are privacy implications associated with the publication of information about asbestos removal licence holders. However, I recommend that the Director-General further investigate means of achieving publication of information about asbestos removal licence holders. Publication of this information would be consistent with the publication of information about the holders of other licences, including asbestos assessor licences and others used in the building industry.***

**Recommendation 10**

The Director-General of DJAG:

(a) create a public online register of licensed asbestos industry workers where the public can easily check licensing and compliance records of contractors who work with asbestos (including proven breaches of asbestos laws)

(b) take adequate steps to advise stakeholders and the public of the existence and location of the register.

### Asbestos response in non-business hours

WHSQ inspectors reported that a large proportion of asbestos removal work takes place on weekends. However, investigators were repeatedly told of concerns that WHSQ and QH were not adequately resourced to regulate out-of-hours and weekend asbestos work. Industry stakeholders told investigators that enforcement does not occur to the same extent on weekends and out of hours, and it was common knowledge among contractors that they were far less likely to be inspected by WHSQ on weekends.

Although WHSQ advised that it has a process for managing weekend work with inspectors on call, WHSQ inspectors told investigators that the process necessary to activate weekend call-outs was laborious.

I note that out-of-hours and weekend work may be critical to the enforcement of asbestos provisions, as delays may allow further exposure to occur and may impede the ability of inspectors to take compliance action (for example, if evidence is disposed of).

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General stated that the department has reviewed and made operational a comprehensive after-hours 'On-Call' policy and operational procedure document that relates to all WHS matters. He further advised that after-hours telephone arrangements treat all asbestos complaints as a dangerous situation, and all actual or potential asbestos contamination issues are sent immediately to the region for action. Finally, he stated that:

> ... the department considers the marshalling of specialist resources to matched tasks will be enhanced by a procedure in the final stages of development which will require the use of WHSQ specialists in the management of significant incidents.

***I acknowledge the additional procedures that have been or are being developed by DJAG. However, the investigation identified a strong perception among stakeholders and the industry that after-hours or weekend enforcement work does not occur to the same extent. In addition to ensuring that the after-hours arrangements work satisfactorily, the Director-General may also need to take further action to address this perception among stakeholders and the industry so that it does not increase the risk or incidence of non-compliance with asbestos legislation.***

**Recommendation 11**

The Director-General of DJAG review the arrangements for out-of-hours and weekend work by WHSQ inspectors and finalise all relevant procedures to ensure that urgent asbestos issues can be adequately addressed as they arise.

### WHSQ inspectors' perceptions of risk

The investigation identified further concerns about the training of WHSQ inspectors which did not relate to the new legislation, but to the inspectors' own perceptions of their risk of asbestos exposure when carrying out their duties under the WHS Act. Investigators were told that:

- some inspectors had not been properly trained to deal with asbestos issues and provided with personal protective equipment (PPE)
- refresher training was not always provided to inspectors
- there was a perception of insufficient training and experience with PPE
- different regions had different approaches to safety and decontamination

- there was uncertainty about whether inspectors were required to wear PPE at all times on sites that may contain asbestos.

WHSQ inspectors also told investigators that there was insufficient knowledge and training for inspectors on their own risk of exposure to asbestos, and some inspectors felt that they were putting themselves and their families at risk from responding to asbestos incidents.

A number of key deliverables in the WHSQ Action Plan address some of the above issues.[51] However, timeframes for these deliverables have not been identified. In my view, this is essential knowledge which needs to be provided to inspectors as a matter of urgency.

I also note that during the investigation, investigators identified that WHSQ inspectors do not have a formal method for reporting exposure to asbestos while working. While investigators were provided with a draft incident report form, this has yet to be implemented. No adequate reason was given for why there has not been a formal reporting process up to now.

In the proposed report provided to the relevant agencies for comment, I proposed two recommendations to address this issue.

**DJAG response:**

In relation to the proposed recommendations, the Director-General stated that DJAG has over the years made inspectors aware of appropriate PPE to use while performing their duties, including when they are addressing asbestos-related issues. He noted substantial progress in this area, including the allocation and fit-testing of respirators for WHSQ inspectors involved in asbestos compliance and enforcement work that commenced in April 2012 and should be finalised by December 2012. Repeat fit-testing will occur every two years. Further, a PPE policy and operational procedure document has been reviewed and is now operational.

The Director-General also advised that the department is developing a specific procedure for inspectors on sample collection, transportation, microscope identification, storage and disposal, including specific PPE requirements for different asbestos-containing materials.

The Director-General further advised that the department is taking steps to address the lack of process for reporting and recording employees' exposure to asbestos, including by drafting an operational guidance document on assessing and managing asbestos exposure risk relating to inspectorial activities. The Director-General stated that a process for reporting and recording WHSQ employees' exposure to asbestos is being developed. This will most likely be done through an 'event' based exposure record, rather than a record of actual fibre exposure which would most likely not be available if air monitoring was not being carried out at the time.

***I note the Director-General's advice that steps have already been taken to give effect to the matters raised in the proposed recommendation. I consider this a positive development, but note that further work needs be done to ensure that all WHSQ officers can safely and confidently enforce the asbestos provisions of the WHS Act. I have amended the recommendations to reflect the need for these steps to be finalised.***

51 Key deliverable numbers 15, 16 and 18 of the WHSQ Action Plan.

**Recommendation 12**

The Director-General of DJAG finalise steps to:

(a) ensure that relevant policies and procedures are maintained across all regions to provide guidance to WHSQ inspectors on when PPE should be worn to prevent exposure to asbestos

(b) ensure all WHSQ inspectors have adequate PPE available to them and that this equipment has been fit-tested where necessary

(c) ensure all WHSQ inspectors are provided with regular training on using PPE and conducting decontamination procedures in relation to asbestos.

**Recommendation 13**

The Director-General of DJAG finalise steps to develop and implement a process for reporting and recording employees' exposure to asbestos.

**Proactive compliance work**

It became evident in the investigation that the previous enforcement framework was largely based on a reactive enforcement model, with little spot-checking and few proactive audits. WHSQ was also unable to track trends in complaints to inform a proactive enforcement process.

The changes to the WHS Act may go some way towards encouraging a proactive approach. For example, the new notification requirement may permit WHSQ to conduct random audits of asbestos removal. I discuss this further below.

The WHSQ Asbestos Unit has recently prepared a five-year plan, and is now attempting to take a more proactive approach to asbestos regulation. While I support such an approach, it is not clear whether there has been any consideration of what additional resources will be required to ensure that proactive activities can occur on a regular basis to improve enforcement responses overall.

### *Workplace asbestos registers*

The previous Workplace Health and Safety Regulation 2008 and the *Code of Practice for the Management and Control of Asbestos in Workplaces* (2005) required that all commercial buildings built prior to 1990 have an asbestos register and an asbestos management plan.[52]

WHSQ conducted an audit in 2009-10 of workplaces' compliance with these requirements and found that 46% of workplaces were not fully compliant.

The new WHS Act has now extended these requirements to pre-2004 commercial buildings. The implementation date for this requirement has been further extended, and is now due to commence from 1 January 2014.[53]

Currently the only way WHSQ will know if a workplace is complying with the requirements for asbestos registers and management plans is through audits. The WHSQ Action Plan requires ongoing compliance auditing of workplaces over the next five years, as well as communication strategies targeted at alerting businesses about their obligations.[54] In light of the significant known non-compliance for pre-1990 buildings, WHSQ will need to ensure that adequate information is provided to stakeholders in sufficient time to enable them to meet the deadline under the WHS Act. Significant proactive compliance work may also be required to ensure businesses comply with the new requirements.

52 Section 145 of the former Workplace Health and Safety Regulation 2008.
53 The WHS Regulation and associated Codes contain an exception where no asbestos is identified or likely to be present at the workplace (see regulation 425).
54 Key deliverable number 25 of the WHSQ Action Plan.

I also note that there may be scope for these requirements to be linked to other enforcement regimes or laws (such as commercial leasing laws or council inspections) to further encourage and oversee compliance.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General of DJAG advised that the Minister held an industry roundtable in August 2012 to discuss issues surrounding the implementation and operation of the model WHS laws in Queensland. In particular the Queensland Government sought views on whether any aspects of the legislation are unworkable or have had unintended consequences, including any unanticipated or inequitable compliance or cost burdens. The Director-General advised that the outcome of this meeting was that:

> ... it was agreed a special working group would be established to look into the asbestos regulations and report back to the Attorney-General. An asbestos working group consisting of industry and union representatives has been established and has met twice to consider various issues associated with the asbestos regulations, including asbestos register requirements for workplace buildings.

The Director-General also noted that the department has taken steps in relation to audits and conducted 1,380 audits of workplace registers and asbestos management plans since January 2012 (in accordance with key deliverable 25 of the WHSQ Action Plan). He further advised that transitional arrangements for workplace register and asbestos management plan requirements have been extended until 1 January 2014.

***I acknowledge that WHSQ has taken some steps towards considering this issue, together with industry representatives, including through the special working group. I assume also that any changes to the current legislative position will require national support.***

***Notwithstanding the steps taken, in my view, the Director-General should proceed to develop and implement an audit regime for asbestos compliance, and engage with other related agencies to identify options for monitoring compliance with the requirements.***

**Recommendation 14**

The Director-General of DJAG:

(a) continue to develop and implement an audit regime for compliance with asbestos provisions, to be commenced as soon as practicable once the new requirements for asbestos registers and asbestos management plans commence

(b) work with the BSA and councils to investigate suitable options for identifying compliance with requirements to maintain asbestos registers, including whether there are other inspection/regulatory regimes which can be used to monitor compliance.

## *Chapter 5 – Regulation of non-workplaces*

The regulation of asbestos in non-workplaces presents unique challenges, including the regulation of homeowners who have generally less knowledge of asbestos risks and proper handling procedures, as well as fewer resources to deal with asbestos appropriately.

### *Interaction between QH and councils*

The release of asbestos fibres is designated as a public health risk under section 11(1)(b)(xi) of the PH Act. The PH Act aims to protect the public from health risks by preventing, reducing or controlling those risks.

Although QH retains overall responsibility for the PH Act, the Act divides health risks into those that are the responsibility of QH and those that are the responsibility of councils. Asbestos is a 'local government public health risk' as defined by section 10 of the PH Act, and is therefore the responsibility of councils. If councils do not adequately manage the public health risk, the State retains ultimate responsibility to respond under section 15. Many councils in Queensland have never exercised these powers.

Section 14 of the Act permits some public health risks to be managed between QH and councils by agreement. Asbestos is one of these identified public health risks.

There has been ongoing discussion between QH and councils about the role of councils in responding to the public health risk posed by asbestos.

A review of the responses of councils to complaints about asbestos demonstrates that most councils do not carry out any actions as a regulator under the PH Act and simply refer all asbestos complaints to QH. Some councils do carry out limited asbestos response work to varying degrees. For example, some councils may conduct a desktop or 'drive by' assessment of the property before referring the complaint to QH. However, nearly all asbestos matters are referred back to QH for response under section 14 of the PH Act.

My understanding is that this situation arose from discussions about the PH Act in 2005. In 2008, the LGAQ wrote to councils advising them not to carry out any work with asbestos as councils did not have adequate insurance cover for staff to carry out this work. LGAQ officers told investigators that it is expensive to obtain this insurance cover on behalf of councils, and that councils are not able to afford to pay the premiums for asbestos-related work and should not have to absorb the costs for additional responsibilities devolved from the State.

Resourcing, costs and expertise issues were also raised as potential barriers to councils carrying out asbestos regulatory work. Obviously, the capabilities and resources of councils vary widely.

I note that this issue has been on the IAG agenda for resolution since 2009, and investigators were advised that the LGAQ and QH have been in discussions about this issue since at least 2008. Investigators were also told that this issue was the subject of a five-year agreement between QH and councils under which councils would refer asbestos matters to QH for resolution, and that this agreement lapsed in June 2012. The issue has yet to be resolved, and investigators were informed that a resolution may require significant negotiations, Ministerial approval and legislative change.

In the absence of a further agreement or a resolution to the situation, councils and QH are proceeding as if the agreement that expired in June 2012 is still in force. The agreed arrangements between QH and councils under section 14 of the PH Act mean that QH is unable to take action to respond to a specific asbestos incident until councils have formally referred the matter to it.

This creates a situation where response action is put on hold until a council can complete a formal referral to QH. Such situations may lead to delays in QH receiving complaints, with investigators told of instances where this referral process has taken up to two full days. I note that delays may be a particular issue for the enforcement of asbestos provisions, as

even short delays in responding may allow further exposure to occur and may impede the ability of environmental health officers (EHOs) to take compliance action (for example, if evidence is disposed of).

The agreed referral process also creates a curious situation in that members of the public who contact QH about asbestos are told to contact their local council, which takes the complaint and then formally refers it to QH for action. This can only add both to the response time for asbestos complaints and the frustration of complainants.

Despite the significant passage of time, the appropriate balance of responsibilities between QH and councils has never been resolved. This means that the responsibility for managing asbestos issues is complex, with obligations that lie with councils under the PH Act being referred back to QH on a case-by-case basis because the council does not want to exercise the powers. While the present situation may work on a case-by-case basis, in my view the framework for response needs work to clarify responsibilities, address the outstanding issues of concern, and ensure that the legislative and policy framework provides the best possible support for the on-the-ground response.

It is clear under the legislation that QH has overarching responsibility to enforce the PH Act. Therefore, in my view QH needs to take the lead in resolving this situation.

In the proposed report provided to the relevant agencies for comment, I proposed an opinion and recommendation to address this issue.

**QH response:**

The Director-General of QH agreed that 'the current arrangements are not desirable as a permanent means of managing asbestos-related complaints and support the recommendation that the matter be resolved'.

However, the Director-General also noted that there was no evidence that any matters referred from councils had not been addressed or that any public health risk arose as a result. He advised that examples provided throughout the report were indicative of administrative delays by councils or a preferred initial assessment process, not of a failure of the process itself. He stated that referrals were promptly responded to once they were received.

The Director-General stated that with goodwill and appropriate action, any risk can be managed within the existing system.

Finally, the Director-General noted that while cost recovery options are somewhat limited for QH under the PH Act, this has not stopped QH from taking the necessary action to respond to asbestos matters.

In relation to the proposed recommendation, QH noted that the resolution of the issue of responsibility for asbestos under the PH Act may also have implications for the administration of other conditions defined as local government public health risks.

***I agree with the Director-General's statement that the current arrangements are not desirable and should be resolved. I maintain my view that QH should take the lead in resolving this issue.***

***I also note the comments elsewhere in this report that the lack of agreement between QH and councils is affecting the response to other asbestos issues, including clean-up response to house fires. In my view, this issue should be resolved in the near future.***

***I agree with the Director-General's assertion that there is no evidence provided in the report that the current situation has caused or contributed to a specific public health risk. Whether such evidence exists was not investigated in depth during the investigation.***

***However, investigators were advised of cases where delays in responses occurred. While the cause of these delays is less relevant, what is important is ensuring a timely response by agencies to asbestos concerns. It is the role of the regulatory framework to***

***facilitate this. My concern is therefore to ensure that the practical arrangements reflect the legislative and policy framework for asbestos response, to provide certainty for agencies involved and for the public. I have amended the proposed opinion to reflect this concern.***

***I disagree that the existing system can or should be maintained. While the current practical response arrangements may be working, there is no reason why any legislative or policy framework cannot be amended to reflect long-standing practice, or alternatively why the government cannot take action to enforce legislated responsibilities. Continuing to operate under an expired agreement is not a desirable approach when the government has the ability to resolve the issue.***

***Finally, I acknowledge that the issue of jurisdiction for asbestos matters raises a number of other issues relevant to other local government health risks. However, in my view these matters should either be resolved within the existing legislative and policy framework, or changes sought to the framework. An informal agreed process that is not entirely consistent with the intent of the legislative or policy framework is unnecessary, and should certainly have been resolved within such a lengthy period of time.***

**LGAQ response:**

The President of the LGAQ confirmed that a key preliminary barrier to councils taking on greater responsibility for asbestos matters under the PH Act was the issue of insurance. The LGAQ position is that costs associated with the performance of activities devolved from the state government should be met by the State. The President stated that:

> In the case of asbestos, local government is administering devolved legislative responsibilities created by the Queensland government and ratepayers should not have to fund these specialised activities through increased insurance premiums.

However, the President of the LGAQ also confirmed that further barriers, including resourcing and capability, would need to be addressed before councils would agree to taking on a further role.

The LGAQ also noted that the issue of insurance may be relevant to councils' role in relation to many of the other recommendations in this report. The President of the LGAQ stated:

> LGAQ agrees that there needs to be better coordination, adequate resourcing and greater clarification around asbestos management in Queensland but the role of local government in management of asbestos needs to be carefully considered to ensure best value for money for ratepayers and the best outcomes for public health.

***I acknowledge that there are substantial issues that need to be resolved between QH and councils to address this situation. I also note similar comments made by LGAQ officers that a 'one size fits all' approach to this issue may not be suitable given that the capacity, resourcing and expertise of councils differ greatly.***

***I acknowledge that there may be barriers to the councils taking on a greater role in relation to asbestos, and that asbestos is only one of the issues that require clarification between the state and local governments. However, the resolution of the issue of responsibility between the state and local governments will allow the resolution of other issues, thereby significantly improving the coordination of asbestos regulation in Queensland.***

**Opinion 1**

The use by QH and councils of a practical arrangement that is not strictly in keeping with the regulatory framework for asbestos has the potential to create confusion about responsibility for asbestos regulation under the PH Act and therefore has the potential to impede the effective regulation of asbestos in Queensland.

**Recommendation 15**

The Director-General of QH:

(a) work with councils to resolve whether asbestos should remain a local government public health risk as defined by the PH Act

(b) take steps to implement this agreed approach.

### *Application of the PH Act*

The PH Act applies only to non-workplace areas, which are defined as areas that are not workplaces under section 8 of the WHS Act. The PH Act applies to:

- the removal of less than 10m$^2$ of bonded asbestos by non-contractors, which does not require any licence
- the removal of more than 10m$^2$ of bonded asbestos by non-contractors, which requires a certificate from QH[55]
- the removal of friable asbestos by non-contractors, which requires a Class A licence from WHSQ.[56]

The PH Act regulates 'prescribed work', which includes breaking, cleaning, cutting, maintaining, removing, repairing, storing or using asbestos, or separating asbestos waste from other waste.[57]

Under part 3 of chapter 2 of the PH Act, a regulator may issue a public health order (PHO) requiring a person to take action to remove or reduce a public health risk (section 21). If the PHO is not complied with, the regulator may apply to a magistrate for an enforcement order under section 24 of the PH Act.

QH officers identified a number of difficulties with this framework.

#### Overlapping jurisdiction

The issue most commonly raised was the distinction between a workplace and a non-workplace. This distinction is critical because it delineates the responsibilities of WHSQ from QH.

As has been identified above, the split jurisdiction between workplaces and non-workplaces creates a situation where if a complainant is not aware of the involvement of a contractor, the wrong agency may respond initially and this may delay response times. There was substantial confusion among agency officers about when a property was a workplace and when it was not, even though the Director-General of DJAG advised that the position on this issue was settled. A review of complaints and information received from agency officers and stakeholders identified instances where the first agency that responded did not in fact have jurisdiction because of the presence or absence of a contractor, and the other relevant agency was required to respond. This necessarily results in some delay in responding to the situation.

It may be that further information needs to be disseminated to agency officers to ensure that the operation of the split jurisdiction is understood and implemented in practice.

However, perhaps as a result of this confusion, the investigation identified a need to better coordinate first-response activities so that the first agency officer on the scene could respond to any urgent issues, such as stopping work, restricting access to a site or seizing evidence, regardless of whether it is a workplace or non-workplace. This could be done, for example, by authorising WHSQ inspectors under the PH Act to undertake certain limited response functions in relation to asbestos. QH or council officers may be able to be similarly

55 Regulation 2E of the PH Regulation.
56 Regulation 2D of the PH Regulation.
57 Regulation 2C of the PH Regulation.

authorised under the WHS Act to enable an EHO who first arrives at a domestic premises where a contractor is found to be working (that is, within WHSQ jurisdiction) to take action to ensure that unsafe work does not continue without having to wait for a WHSQ inspector to arrive.

Any enforcement action would of course be passed over to the relevant agency at the earliest opportunity. This approach would relate only to urgent actions, and would not result in any consequential changes in how that incident would be managed.

This approach may also have some benefits for the provision of out-of-hours responses and remote response capabilities.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**QH response:**

The Director-General of QH sought clarification of what was regarded as 'urgent' in the context of this recommendation. He also noted that domestic and work-related asbestos issues are administered separately in Queensland, and that this approach is taken in most Australian jurisdictions.

The Director-General noted that the types of exposure in these environments are often different, and the risks arising in each type of location are different as a result. He noted that EHOs are not trained to investigate occupational incidents and this would be a significant expansion of their role.

***My intention in making this recommendation was not for EHOs to take on the full role of WHSQ inspectors, or vice versa. Instead, my intention was for the Directors-General to investigate whether it is possible to make a limited range of tools available to each other's officers in limited circumstances, such as where unsafe asbestos work is occurring and the agency who has responded has no jurisdiction to stop that work from occurring. Any subsequent investigations or regulatory actions would be then taken by officers from the appropriate agency. This recommendation was raised purely as a response to evidence identified in the investigation that at times agency officers are unable to act to stop unsafe work because of a lack of jurisdiction, and there is a delay in having the appropriate agency attend the site. The most appropriate method for doing this is a matter that can be agreed between the agencies.***

***In relation to the issue of what should be considered as 'urgent', this is a matter for QH (and other relevant agencies) based on the considered scientific opinion about any particular incident. To make it clear, I do not express an opinion in this report in relation to what should be regarded as 'urgent'. I am interested in ensuring that where urgent intervention is required to prevent or minimise a public health risk having regard to the specific risk of a particular situation, administrative arrangements between responsible agencies allow for such urgent intervention.***

**DJAG response:**

The Director-General of DJAG also sought clarification of what I considered to be 'urgent' work. He raised similar issues to the Director-General of QH about the separate regulation of domestic premises and workplaces, and noted that while those in a workplace setting are subject to duties under the WHS Act, there are often no similar duties for those in domestic settings.

The Director-General also noted that WHSQ receives a large proportion of its funding through Queensland's workers' compensation scheme, based on the premise that WHSQ's activities are primarily directed at preventing work-related fatalities, injuries and diseases, thereby reducing claim numbers and claim costs to the scheme.

***My comments in relation to the Director-General of QH's submission are also relevant here. My intention in making this recommendation was for the respective***

***Directors-General to consult and identify in what type of situations asbestos response work may be stymied by a lack of jurisdiction in the first-response agency, and whether this needs to be addressed and how it might be done. Therefore, the definition of what is 'urgent' is a matter to be properly determined by the regulators involved. I have amended my proposed recommendation slightly to better reflect my intent.***

**Recommendation 16**

The Directors-General of QH and DJAG work with councils to:

(a) identify the types of situations where asbestos response work may be stymied by a lack of jurisdiction in the first-response agency

(b) consider whether these situations may result in an increased risk of exposure to asbestos while the response is delayed

(c) consider options to improve the ability of agencies to respond to urgent issues regardless of which agency initially responds to the complaint.

***The 10m² rule***

There was significant confusion among agency officers and stakeholders around the operation of the 10m² rule. Currently, homeowners can remove up to 10m² of bonded asbestos without needing a licence or undergoing any training. However, there was confusion around the application of the rule, including how the 10m² should be measured, the length of time applicable to the removal of 10m² (that is, is it 10m² per day or per job) and whether different people can each remove 10m² from a property in a single day.

Overall, the 10m² rule was criticised as being arbitrary, with interviewees noting that the risk of exposure by removing 8m² is the same as by removing 12m². It was suggested that the 10m² rule may give a false impression that the risk of asbestos exposure from less than 10m² is lower.

Queries were also raised over whether the 10m² rule is essentially a workload indicator, rather than a risk indicator, and whether there should be a public health response to a public health risk regardless of the volume of asbestos. Several agency officers questioned why homeowners should be permitted to remove 10m² of asbestos by themselves if the goal was to ensure that removal occurred correctly. One stakeholder noted that encouraging homeowners to remove asbestos themselves was counterintuitive, and questioned why asbestos was being treated differently to other dangerous activities such as electrical work which homeowners are prohibited from performing.

Stakeholders also noted that the 10m² rule leads to situations where contractors advise homeowners to remove some or all asbestos themselves before the contractor does the work. There were concerns from some stakeholders about the introduction of an online QH training course for homeowners wishing to remove more than 10m² of asbestos in place of the previous requirements for such homeowners to undertake the same WHSQ Class B licensing process for removing bonded asbestos as contractors were required to undertake. This change means that homeowners are performing the same task as more experienced contractors with far less training.

However, some agency officers believed the rule was reasonable and necessary as the high costs of using a contractor for removal mean that homeowners will do it themselves anyway. Further, QH noted that regulation needs to be balanced with actual risk, not perceived risk.

In my view, the limits on asbestos removal need to be consistent with other knowledge and regulation of asbestos, such as risk and licensing rules. While I agree that interventions should be based on actual risk, if there is a significant difference between the actual risk and the public's perception of the risk posed by asbestos, then further education may be required to address this discrepancy.

In the proposed report provided to the relevant agencies for comment, I proposed a

recommendation to address this issue.

**QH response:**

The Director-General of QH stated:

> The report is incorrect in its statement that the 10m$^2$ rule is arbitrary.
>
> While any amount of asbestos or asbestos containing material should be subject to requirements to remove it safely using proper controls, the establishment of the 10m$^2$ threshold nationally for removal of non-friable asbestos is essentially about establishing reasonable licensing parameters at a level where the health risk was low. The 10m$^2$ threshold has been in place in Queensland's workplace health and safety legislation since 1 July 2006 and was introduced into the Public Health Regulation 2005 in 2007 to be consistent with the workplace health and safety legislation. It is now a well-understood threshold in industry and is an element of the national model Work Health and Safety (WHS) legislation.
>
> The 10m$^2$ threshold for non-friable asbestos removal is generally regarded as a practical balance between the risks associated with exposure to asbestos and the regulation of work which has a higher degree of cumulative exposure and should require licensing, or similar, controls. The threshold makes a distinction between small non-friable asbestos removal jobs that are most likely to occur on an ad hoc or incidental basis, such as a plumber removing one or two sheets of asbestos cement sheet from a bathroom, and larger scale asbestos removal work. The threshold of 10m$^2$ would generally permit the removal of up to 3 sheets, with such asbestos sheets typically being 2400mm by 1200mm. Removal in excess of this would generally start moving into the realm of larger asbestos removal jobs where the scale of the job would involve control measures used by persons with appropriate knowledge and experience.
>
> QH considers that consistency with the threshold established in the Work Health and Safety Act 2011 in relation to licensing for Class B asbestos removal work, or similar arrangement, is preferable to avoid confusion in the community. The absence of a threshold would be impracticable and unenforceable and would be more at risk of being ignored by the community.

***I accept the Director-General's explanation of why the 10m$^2$ threshold has been set. However, I note that there is still confusion among stakeholders about how the threshold is applied. The suggestion that the rule was arbitrary came from other agency officers and stakeholders. Such comments only highlight the need for further education about the practicalities surrounding the 10m$^2$ rule, and perhaps the reasons for this rule.***

**DJAG response:**

The Director-General of DJAG made similar submissions to the Director-General of QH. He also stated that:

> The department would be concerned about the PH legislation establishing a different threshold in relation to requirements for removal of more than 10m$^2$ of non-friable asbestos in non-workplace areas. The department considers that consistency with the threshold established in the WHS legislation in relation to licensing for Class B asbestos removal work is preferable to avoid confusion in the community.

**Recommendation 17**

The Director-General of QH provide clear and detailed guidance to QH officers, other agencies, industry stakeholders and the public about how the 10m$^2$ rule is applied.

### *Enforcement tools*

Agency officers and stakeholders identified several other areas of confusion around the provisions and limits of the PH Act. Key areas of confusion were:

- powers to enter properties in relation to asbestos

- jurisdiction for naturally caused public health risks. One view given by a QH officer was that public health provisions did not apply to naturally caused public health risks, such as the example given of a tree rubbing against asbestos roofing and dispersing fibres. However, I note that if naturally caused public health risks do not fall within the ambit of the PH Act, then there may not be any other legislative mechanism that would address these issues
- whether there is any legislative power, including under the WHS Act, to require neighbours to relocate due to asbestos contamination
- whether homeowners with a Class B licence are required to comply with the asbestos removal Codes, including by notifying neighbours before working with asbestos
- whether laboratory testing is required to issue an infringement notice, with views varying across QH regions
- whether a higher standard of proof than the 'reasonable belief' required for issuing a public health order should be required to issue an infringement notice
- procedures for obtaining samples of asbestos where the asbestos has not been demolished, for example, water blasting on roofs assumed to be asbestos
- the ability to require the clean-up of contamination, including where such contamination extends beyond property boundaries and the owner of the adjoining property refuses to allow the person who caused the contamination to enter.

The mechanism for recovery of costs for clean-up operations is unclear. While councils are able to put a charge on the land to recover costs of an enforcement order under sections 32 and 33 of the PH Act, QH can only recover costs associated with asbestos clean-up activities through civil proceedings. In some instances, the costs of clean-up have totalled many thousands of dollars (see Chapter 3).

As discussed in Chapter 3, it is also not clear which agency bears responsibility for cleaning up asbestos in incidents where there is no contravening party to conduct the clean-up, or where the person refuses to do so and a lengthy process is required to enforce payment for clean-up costs. This was identified by several agencies as a key issue requiring resolution, particularly as many household insurance policies do not cover asbestos clean-up.

Agency officers identified the following key changes that would enhance their ability to respond to asbestos issues under the PH Act:

- stronger stop work tools
- the ability to require a person to clean up asbestos contamination and pay for the clean-up
- additional powers to enter premises without consent
- processes to make infringement notices easier to issue
- the ability to enforce notices without needing to apply to a Magistrate.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**QH response:**

The Director-General of QH advised that he has no issues with this recommendation.

**Recommendation 18**

The Director-General of QH review and take steps to address:

(a) the adequacy of enforcement tools available under the PH Act

(b) any areas of confusion or uncertainty for QH inspectors or council officers with regard to the application of the PH Act and PH Regulation to asbestos issues

(c) factors impeding inspectors' ability to take enforcement action under the PH Act.

### *Asbestos response in non-business hours*

Concerns were raised about whether QH was accessible to the public to have an urgent asbestos complaint responded to out of hours. The response to asbestos incidents out of hours and on weekends was identified as a particular problem with QH, with QH inspectors noting that asbestos is not the only issue dealt with by inspectors, and not always the most pressing.

Although some form of on-call arrangements existed in some QH regions, other regions had no officers able or willing to respond on weekends.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**QH response:**

The Director-General of QH noted that QH has an after-hours response capability, and stated that:

> … the EHOs in the Public Health Units and the QH System Manager's environmental health staff will continue to participate in the duty arrangements for responding to out-of-hours incidents.

***I acknowledge that QH has an after-hours arrangement in place. However, information provided to investigators suggested that there may be issues with this response arrangement in some regions. These issues relate more to on-the-ground capacity rather than the existence of a framework for out-of-hours response. For this reason, I have kept the recommendation in place with a minor amendment to clarify my intention that a review be conducted of how the after-hours arrangements operate in practice across all regions.***

**Recommendation 19**

The Director-General of QH review QH's on-the-ground capacity to respond to out of hours and weekend asbestos incidents across all regions.

# Chapter 6 – The asbestos remediation industry

The investigation considered a number of issues in relation to the asbestos remediation industry, which includes those who inspect, remove, demolish or maintain asbestos.

## The current licensing framework

The investigation considered whether the current system for licensing asbestos removalists was adequate.

On 1 January 2012, the WHS Act commenced to regulate the licensing of asbestos removalists by WHSQ. There are currently three asbestos licences:

- a friable asbestos removal Class A licence, which continues to be held by an owner of a business
- a bonded asbestos removal Class B licence, which is now held by an owner of a business rather than an individual worker. The owner is required to ensure that workers:
    - have attended an approved training course (which includes a new, additional practical component)
    - are supervised by a Class B supervisor who has completed more substantial training and has 12 months demonstrated experience in asbestos removal
- an asbestos assessor's licence, which can only be held by an individual.

The change in the Class B licensing model was intended to increase business owners' awareness of risk management and health and safety obligations.

The licensed asbestos assessor role was created so that WHSQ could control who is allowed to conduct air monitoring and clearance inspections, and issue clearance certificates in relation to friable asbestos removal. The introduction of the assessor's licence also addressed a concern within the asbestos industry that anyone could call themselves an 'occupational hygienist' without any particular qualifications and perform the roles now undertaken by a licensed assessor.[58]

A number of the training requirements have not yet been finalised by WHSQ, and WHSQ has put in place transitional arrangements for licences until the new training regimes are underway.

Some stakeholders voiced concerns about the changes to the Class B licence and the new assessor's licence, arguing that:

- the financial and administrative cost of establishing the new regime (that is, the cost of training and licensing for workers and supervisors) for small business owners would add significantly to the cost of asbestos removal, renovations and refurbishments, which will in turn encourage inexperienced homeowners and renovators to remove asbestos unsafely themselves
- Class B supervisors do not have to be on-site when work is being undertaken by trained (but not licensed) Class B workers. The supervisor must just be 'readily available', which the *How to Safely Remove Asbestos Code of Practice 2011* notes may be satisfied by being contactable by phone and able to arrive at the workplace within 20 minutes
- the training provided to assessors was not being delivered by trainers with experience in Class A friable asbestos removal work, despite licensed assessors being able to provide clearance certificates certifying Class A work was correctly completed. One stakeholder commented that this has the potential to undermine the whole purpose of the regime.

58 See further, NSW Ombudsman, *Responding to the asbestos problem: The need for significant reform in NSW*, 2010, page 13, for details of the issue of the lack of regulation of occupational hygienists.

It was believed by some industry stakeholders that the new system will encourage a culture of non-compliance. Others suggested that a dual licensing model (with Class B licences held by both the company and the individual) would better encourage personal responsibility.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General of DJAG noted that a review of the asbestos removal licensing framework is currently occurring through the asbestos working group arising from the industry roundtable held by the Attorney-General.

He also stated that since the commencement of the model OHS legislation on 1 January 2012, WHSQ has completed 61 audits of the work practices of licensed asbestos removalist businesses. He advised that these audit results will provide WHSQ with useful information on the effectiveness of the licensing system, as well as enabling WHSQ to target education and awareness for these businesses.

**Recommendation 20**

The Director-General of DJAG review the effectiveness of the licensing framework within two years of the commencement of the model OHS legislation.

Concerns were also raised about the lack of a licensing process for those who carry out asbestos surveys. This role is distinct from the role of an asbestos assessor, who is a licensed individual who can approve asbestos removal work. An asbestos surveyor may be used to identify the presence of asbestos.

There are currently no minimum qualifications or experience requirements to carry out asbestos surveys, despite the risk that an incorrect survey may increase the risk of incidental exposure to asbestos and increase costs to building owners if construction work is undertaken and unidentified asbestos is located.

Currently a business must engage a 'competent person' to do an asbestos survey. There was some confusion among stakeholders about who would be considered 'competent' to conduct a survey. I note that WHSQ has a fact sheet on its website regarding the knowledge and skills a competent person should have to identify asbestos at a workplace,[59] and that this information is outlined in the *How to Manage and Control Asbestos in the Workplace Code of Practice 2011*. It may be that further education is needed around this issue.

Investigators were told that the draft uniform health and safety legislation originally provided for a training course for asbestos surveyors, but this was not pursued. I note that the ACT has a specific licence for asbestos surveyors.[60]

Given that the new WHS Act requires many pre-2004 buildings to be surveyed (instead of just pre-1990 buildings), in my view consideration should be given to whether a licence for asbestos surveyors should be introduced in Queensland.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

59 http://www.deir.qld.gov.au/workplace/resources/pdfs/asbestos_factsheet1.pdf

60 ACT Government, Environment and Sustainable Development, 'Asbestos assessors' licensing', http://www.actpla. act.gov.au/topics/hiring_licensing/licence_registration/asbestos_assessors viewed 29 October 2012.

**DJAG response:**

The Director-General stated that while the prospect of a surveyor's licence or establishing competency requirements for persons carrying out asbestos surveys was considered in the development of the uniform legislation, it was not incorporated in the final licensing regime. However, he advised that this issue has been addressed in the Fary Report and will be explored further in the development of the new National Strategic Plan for asbestos.[61]

**Recommendation 21**

The Director-General of DJAG raise at a national level the issue of whether there should be an asbestos surveyor's licence in the model OHS legislation.

### *Asbestos training for tradespersons*

Tradespersons other than asbestos removalists (such as plumbers, carpenters, painters and electricians) frequently encounter asbestos while working. The 2010 Safework Australia report *Asbestos Exposure and Compliance Study of Construction and Maintenance Workers* found that:

> Although tradespersons believe they can identify many or most [asbestos], in practice, the ability of tradespersons to reliably identify [asbestos] was limited. This was generally because their identification skills were insufficient, asbestos registers were often absent or inaccurate and few premises had labelling of materials or areas containing [asbestos].[62]

Training in asbestos identification and safety is not currently a mandatory component of building and trades apprenticeships in Queensland. A number of stakeholders suggested that such training should be required. In addition, the Safework Australia report recommends that all future trade apprentice training incorporate asbestos training specific to the trade.[63] One industry stakeholder particularly stressed the importance of any such training including a practical component.

WHSQ's Action Plan proposes to design a curriculum that can be used for asbestos safety training for apprentices.[64] Although WHSQ held initial meetings with industry stakeholders in early July 2012, it is still unclear whether training will be mandatory for all building and construction trade apprenticeships.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

61 Recommendation 3, *Asbestos Management Review Report – June 2012*.
62 Safe Work Australia, 'Asbestos Exposure and Compliance Study of Construction and Maintenance Workers', 2010, page vii, http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/309/AsbestosExposureAndComplianceStudyOfConstructionAndMaintenanceWorkers_2010_PDF.pdf viewed 29 October 2010.
63 Safe Work Australia, 'Asbestos Exposure and Compliance Study of Construction and Maintenance Workers', 2010, page ix, http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/309/AsbestosExposureAndComplianceStudyOfConstructionAndMaintenanceWorkers_2010_PDF.pdf viewed 29 October 2010.
64 Workplace Health and Safety Queensland, 'Asbestos Work Health and Safety Action Plan 2011-16, 2011, page 9, http://www.deir.qld.gov.au/workplace/resources/pdfs/asbestos-action-plan.pdf viewed 29 October 2012.

**DJAG response:**

The Director-General noted that WHSQ's response to this recommendation is captured in key deliverable 5 in the WHSQ Action Plan, and includes:

- placing asbestos training material on a dedicated asbestos training section of the department's website
- promoting the new asbestos training material to registered training organisations and others who provide relevant trade training to building trades apprentices, young workers, and vocational education students.

The Director-General noted that an industry reference group assisting with this work includes representatives of Queensland VET Development Centre (DETE), Queensland Asbestos Related Disease Support Society, Asbestos Industry Association, Construction Skills Queensland, Demolishers, Recyclers and Asbestos Contractors Association of Queensland, SkillTech Australia, Curriculum Studies Authority, Australian Council for Private Education and Training Queensland, Construction and Property Services Industry Skills Council, and the Construction Skills Training Centre. This work will be completed by June 2013.

**Recommendation 22**

The Director-General of DJAG continue to consult with industry stakeholders in considering whether all Queensland building and trades apprenticeships should include a mandatory, practical training component tailored to the relevant trade which deals with the identification, handling and removal of asbestos as well as relevant asbestos legislation.

# *Chapter 7 – Transport and disposal of asbestos*

The transport and disposal of asbestos is an important issue because incorrect methods potentially expose landfill workers and the general public to a potentially significant health risk.

The investigation considered the adequacy of arrangements and facilities for the disposal of asbestos in Queensland. Key issues identified included the costs of disposal, the availability of suitable landfills, illegal dumping, and the transport of asbestos waste.

The transport of asbestos is regulated and enforced by the DEHP. Homeowners can transport up to 250kg of asbestos at no cost and without a licence.[65] However, contractors cannot transport any quantity of asbestos without obtaining a licence from the DEHP.

## *Disposal by homeowners*

The cost of disposing of asbestos legally and the availability of refuse facilities which accept asbestos were identified as key hurdles to the correct disposal of asbestos. In particular, agencies and stakeholders told investigators that the costs of disposal (transport and landfill fees) were too high and this acted as a disincentive for people to dispose of asbestos correctly. One stakeholder also saw the dumping of asbestos as a symptom of a bigger problem: that people do not know how to properly dispose of asbestos.

The majority of landfills are run by councils. The investigation therefore considered whether councils are providing adequate information to homeowners about the disposal of asbestos on their websites.

Investigators found that:

- just over two-thirds of councils provide general information about how to dispose of asbestos safely. Most of these websites advise the reader to contact the council for further information
- only just over half of council websites advise whether the council landfills accept asbestos. However, in many cases this information is difficult to locate on websites
- over half of councils do not offer a price for disposing of asbestos at a council landfill
- the cost of disposal differs significantly across different council areas, and ranges up to $375 per tonne
- some council areas, including Brisbane City, do not allow homeowners to dispose of asbestos (although contractors are able to dispose of asbestos at some landfills).

LGAQ officers told investigators that most councils will accept asbestos at one or more landfills, but they prefer people to contact them directly first so that they can make adequate arrangements for the quantity and location of the asbestos. While some councils prefer not to accept commercial quantities of asbestos, most will discuss options where necessary. The one exception is Brisbane City Council, which will only accept asbestos from licensed transporters and will not accept any quantity of asbestos from homeowners.

I note that the information on which council areas and landfills will accept asbestos was only available once the LGAQ had conducted a survey of councils, and members of the public may find it difficult to identify this information or may not be aware of the need to contact council to negotiate the acceptance of asbestos at the local landfill.

The obvious risk of not having sufficient locations to dispose of asbestos lawfully, or in not making disposal information readily available, is that people will dispose of their asbestos waste unlawfully, such as by breaking it up and mixing it with general waste.

I note that the extent of illegal dumping of asbestos in Queensland is unclear. While anecdotal evidence suggests that illegal dumping does occur, the extent of improper disposal is impossible to determine on currently available information.

65 EP Regulation, Schedule 2, Part 12, ERA 57.

Although very few infringement notices are issued for illegal dumping, industry stakeholders and agency and council officers told investigators that:

- some landfill sites accept asbestos at certain times without permits
- asbestos is regularly dumped in parklands and public areas in some council areas
- asbestos is being broken into small pieces by homeowners to be put into wheelie bins
- asbestos is being disposed of improperly as general construction waste
- there are differences in approaches between landfills. For example, investigators were told that a landfill in one location applies fees and permits to dispose of asbestos at an agreed time and a landfill at another location allows entry and no fees to dispose of asbestos
- it was common knowledge in the industry that a mine shaft in south-east Queensland is being used to dump asbestos illegally.

It is likely that the difficulties discussed in this chapter contribute to at least some illegal dumping activities.

While the DEHP is responsible for assessing development applications for landfill facilities, DEHP officers informed investigators that the DEHP has no role in planning the availability of asbestos disposal or the fees charged by landfills for such disposal. Instead, whether to accept asbestos is left to the discretion of the site operator and depends on a number of factors, including the conditions on an operator's development approval for the site.

In my view, the availability of landfills for asbestos disposal is a key area requiring coordination and strategic oversight.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**Agency responses:**

The Director-General of the DEHP advised that his department plays no role in the planning for landfill facilities to accept asbestos and did not accept responsibility for the recommendation, stating that his agency was not the appropriate agency to take on a public infrastructure planning role. He stated:

> [DEHP's] role in relation to asbestos is as the regulator of entities that transport or dispose of it, and to a limited extent as an agency with a role in responding to incidents where there is a risk of serious or material environmental harm being caused by the release of asbestos to the environment. [DEHP] (or its predecessor agencies) never has had, nor should it have had, a role in planning for the presence of adequate facilities for the disposal of asbestos (or any other waste).

Senior officers from the DSDIP also advised that DSDIP does not play a role in this area.

***In my view, the inability of any agency to take on responsibility for ensuring that an important service is provided to the public is another indicator that the current fragmented approach to asbestos coordination in Queensland is not working.***

***While I understand the positions of the DEHP and DSDIP that the issue may not currently fall within their respective portfolios, there needs to be some agency within the government that can take responsibility for ensuring sufficient asbestos landfills are available for the public and contractors to dispose of asbestos. If insufficient disposal sites are available, a potentially serious public health risk may be created.***

***The LGAQ advised investigators that as a result of recent work it had undertaken at the request of the Minister for Housing and Public Works, a review of council landfill facilities had identified that most councils permitted the disposal of asbestos in at least one landfill in the local government area (other than Brisbane City Council). However, the fact that disposal may be available is not widely publicised in many cases, and members of the public would have to contact the council by telephone to find out this***

***information.***

***In my view, this current approach is inadequate.***

***While I accept that under current legislation, there may be no mechanism by which state agencies can force council landfills or privately owned landfills to accept asbestos, I consider that the issue of the availability of facilities for asbestos disposal must be addressed. Such a mechanism is necessary because asbestos waste has been declared as 'regulated waste' under the EP Regulation and cannot be disposed of through regular landfills. The State also imposes penalties for incorrect disposal. I consider that in these circumstances it is incumbent on the State to ensure that correct disposal is possible. One of the issues it must consider to do this is whether there are adequate landfills to dispose of the waste.***

***Discussions with the DEHP and DSDIP have not been successful in identifying which agency should be responsible for ensuring the availability of landfills. Being satisfied that such a role is necessary, I will leave it to the lead agency to coordinate discussions to determine how to meet this responsibility and which state agency will assume this role.***

***I am also not satisfied with members of the public having to telephone councils to identify whether the council landfills will accept asbestos, without any information to that effect being placed on the council website. While I understand that some councils would prefer to negotiate acceptance of asbestos and the location at which it is accepted on a case by case basis, it would not be difficult for them to include a statement to this effect on their websites so that the public can easily see what the situation is. This information should include disposal locations (if necessary with clarifications that disposal is by prior arrangement) as well as disposal fees. This information is easily provided in relation to other types of waste, such as tyres and car batteries, so I can see no justification for not providing this information in relation to asbestos.***

**Recommendation 23**

The Director-General of the lead agency (see recommendation 35) work with relevant state agencies, councils and the LGAQ to ensure that:

(a) there are adequate facilities in each local government area to enable homeowners and contractors to dispose of asbestos waste safely and lawfully

(b) council websites contain adequate information for members of the public to determine whether a landfill accepts asbestos, what the arrangements for asbestos disposal are and the fees involved.

### *Disposal by contractors*

Asbestos falls within the definition of 'regulated waste' under schedule 7 of the EP Regulation. Contractors cannot transport any quantity of asbestos without a regulated waste transport licence from the DEHP. Licences cost approximately $1,500 per year for one to five vehicles, and contractors are also required to hold a waste transport certificate for each load (which costs approximately $3). This means that asbestos removalists must either obtain a regulated waste transport licence to transport and dispose of asbestos or use a contractor with a regulated waste transport licence.

The justification for a different disposal regime between homeowners and contractors is unclear. It seems counterintuitive that untrained and unlicensed homeowners are able to dispose of significant quantities of asbestos without regulation, while trained and licensed contractors are heavily regulated when disposing of even small quantities of asbestos. Investigators were told that this situation has led to contractors suggesting to homeowners that the homeowner dispose of asbestos because it is easier and cheaper for the owner to do it instead of the contractor.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DEHP response:**

The Director-General of the DEHP advised that he accepted the recommendation, but sought guidance as to whether there was a preference to remove asbestos from the regulated waste scheme entirely, or to regulate the disposal of asbestos by homeowners.

He also stated that:

> The Ombudsman should note that the exemption from having a registration certificate for ERA 57 – Regulated waste transport for the non-commercial carrying of less than 250kg of asbestos applies to all of the categories of regulated waste. That is, it is not asbestos alone that is singled out for regulation in this way. While the department believes that the rationale behind this approach is sound – it avoids placing a regulatory burden on non-commercial carriers of small quantities of waste (such as homeowners) where the risk (due to the quantity being carried) is relatively low – the department is happy to consider the issue raised by the Ombudsman.
>
> …
>
> As part of its reform agenda, the department is working with representatives of the waste and waste-generator sectors to develop an industry-led waste strategy for Queensland, with a target date of mid-2014 to have developed and published the strategy. One of the issues for discussion with industry representatives will be the definitions of the environmentally relevant activities that relate to waste, and whether those definitions should be amended. This would take in ERA 57, and would seem to be an appropriate mechanism through which to address the Ombudsman's recommendation. As the waste strategy is industry-led, EHP will be guided to a large extent by industry representatives as to the timing of such a review.

***While I do not believe it is my place to mandate a particular solution to this complex problem, I acknowledge that there are risks and benefits to each approach. Ultimately I consider it is a matter for government to determine after DEHP has conducted the review, worked through the relevant issues and identified the preferred position that is consistent with other principles underlying the current regulatory approach of the Queensland Government in relation to asbestos.***

**Recommendation 24**

The Director-General of DEHP consider whether the current regime for the transport and disposal of asbestos by contractors and homeowners operates as a disincentive to the proper disposal of asbestos waste.

DEHP has recently conducted an audit of the prevalence of unlicensed waste handlers in Queensland across all regulated waste types. The review found that asbestos accounted for almost three-quarters of the total waste transported by unlicensed waste handlers. In some instances, very large volumes of asbestos are being transported without a certificate.

The key justification given by unlicensed asbestos transporters was a lack of understanding or ignorance of registration certificate requirements. It was found that transporters believe they have fulfilled all their legislative requirements on obtaining an asbestos removal licence and fail to obtain waste transport certificates. This was most obvious by the number of waste handlers who entered an asbestos removal licence number on the waste tracking certificate in the registration certificate number field.

DEHP advised investigators that it is presently intending to conduct further analysis of this data specifically focusing on waste tracking in the asbestos industry with a view to better understanding the type and extent of non-compliance and developing compliance and enforcement strategies. Such strategies are likely to include an education campaign to

address the apparent lack of understanding among transporters. I note that the Class A or Class B asbestos removal training by WHSQ could be an appropriate time for alerting asbestos removalists of these requirements.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DEHP response:**

The Director-General of DEHP accepted this recommendation and advised that the DEHP has already taken a number of steps to educate the waste transport industry about its obligations, including by:

- conducting a mail-out to the waste transporters and waste receivers reminding them about their legislative requirements in relation to waste tracking and the penalties for non-compliance
- updating existing industry guidelines and developing new guidelines to assist the waste transport industry to understand its obligations.

The Director-General also noted that the DEHP supports the use of the Class A and B asbestos removal training provided by WHSQ as being a useful vehicle to provide information to the asbestos transport industry.

**Recommendation 25**

The Director-General of DEHP continue to take steps to increase awareness in the asbestos industry about the requirement to hold both a regulated waste transport licence and a waste transport certificate for transporting asbestos.

### *Coordination issues*

As with other areas of asbestos regulation, the investigation identified issues with a lack of coordination between agencies and unclear jurisdiction in relation to asbestos disposal and dumping.

It was clear there was confusion as to which agency is responsible for cleaning up asbestos dumped on public land, and investigators were told of instances where negotiations between agencies have taken up to several weeks. Agency officers also told investigators that they were not sure who to contact when asbestos-containing material was dumped on private property, or whether there is any regulatory trigger to have it removed.

**Case study**

Investigators were told of a situation where asbestos was dumped on Crown land. The land was gazetted as a road, although it was unused. DEHP advised that the removal of the asbestos was the responsibility of the council. However, the council argued that it was only required to mow the grass and not to remove waste on the side of the road. Investigators were informed that the asbestos remained where it had been dumped as no agency would take responsibility for removing it.

The existence of the 'Orphan Spill Fund' for environmental spills was also raised, and it was suggested that this may have some application to cleaning up instances of asbestos dumping. However, it is not clear whether this fund is available to councils to assist with meeting the costs of cleaning up illegal dumping of asbestos. This issue should be considered further by the relevant agencies and councils.

The investigation also identified a lack of any formal mechanism for passing information between agencies. For example, there is no mechanism for WHSQ to pass information to DEHP about contractors suspected of transporting asbestos improperly. Such a mechanism

would increase the ability of DEHP to catch offenders and even to conduct proactive audits to encourage compliance.

In the proposed report provided to the relevant agencies for comment, I proposed two recommendations to address this issue.

**DEHP response:**

The Director-General of DEHP stated that, in relation to the proposed recommendation about responsibility for illegal dumping, the DEHP has developed a proposed list of roles and responsibilities which sees it taking on a role in ensuring that the relevant state agency responsible for state land on which asbestos is illegally dumped attends to any required clean up.

In relation to the proposed recommendation about information sharing, the Director-General recognised that the challenges in getting effective information sharing between agencies is not limited to the issue of asbestos, nor to the agencies mentioned in the report. The Director-General advised that the DEHP has established a compliance project with a large council that, among other things, is looking at ways in which communication with that council can be improved when it comes to waste regulation in general.

**DJAG response:**

In relation to the proposed recommendation about information sharing, the Director-General advised that WHSQ will work with other agencies to develop a formal mechanism for passing information between agencies about possible dumping or improper transport of asbestos.

The Director-General also advised that the department has memoranda of understanding with other agencies that address information sharing, and this could also be considered in relation to this recommendation.

**Recommendation 26**

The Director-General of DEHP work with councils to reach agreement on which agency has responsibility for cleaning up illegal dumping in specific situations.

**Recommendation 27**

The Directors-General of DJAG, QH and DEHP work with councils to develop a formal mechanism for passing information between agencies about possible illegal dumping or improper transport of asbestos.

# Chapter 8 – Education and community awareness

Public knowledge of regulatory areas can have a number of benefits. For example, knowledge of risks may decrease the likelihood of non-compliance with regulatory provisions and enable people to take responsibility for their own actions. Public knowledge of the regulatory frameworks and provisions also enables people to assist the regulator by informing authorities of any problems. I also note that key deliverable 8 in the WHSQ Action Plan states that educating property owners about asbestos risk management may lead to them influencing contractors working on their property. In my view, public awareness is therefore a key aspect of effective regulation.

I am of the view that it is essential that the public is aware of the health risk posed by asbestos, as well as the proper procedures for handling and disposing of asbestos. It is clear that government agencies are best placed to provide this information.

The investigation considered the approach by agencies and councils to the provision of information to the community and to particular target groups, as well as the adequacy of communication by individual agencies.

While some steps have been recently taken by agencies to present a single portal of information to the public, in my view further steps are required to ensure that the information provided by all agencies is consistent and presents a clear, coherent picture of the regulatory framework for tradespersons, industry stakeholders and members of the public.

## *Community access to information*

The investigation considered the availability of information to the general public and ease of access to that information. Each relevant agency's website was reviewed, as well as the websites of a large number of councils, to assess the adequacy of the information provided.

Investigators found that the information presently available to the public is fragmented and confusing, and complicated by the complex regulatory framework for responding to asbestos. Asbestos information is contained on council websites and websites of a range of agencies (in particular, QH, WHSQ, DHPW and DEHP), as well as on the new single portal website (discussed below). The sheer volume of the relevant legislation also contributes to the confusion, with the introduction of the WHS Act, WHS Regulation and two new Codes from 1 January 2012 further complicating the regulatory landscape.

During the investigation, many agencies and stakeholders expressed confusion over the legislative framework.

An industry stakeholder said:

> 'We've gone from a three to four page regulation under the old regime to an 80-90 page regulation with two codes, each about 70 pages.'

It seems that it would be a considerable challenge for tradespersons, homeowners and others to remain informed about the regulatory framework with the current publicly available information.

A council CEO submitted:

> ... it is difficult for persons not aware of the legal requirements of safe asbestos removal to obtain clear and concise information. The laws pertaining to asbestos removal are generally contained in the [then] Workplace Health and Safety Act 1995, however, similar provisions appear to exist in other legislation, which is not easy to locate, let alone understand …

### Council websites

Councils are often the first point of contact in relation to asbestos. This investigation reviewed 60 council websites in March 2012 to determine whether they were providing adequate and accurate information to members of the public about asbestos.[66]

66 Excluding discrete Indigenous councils.

Investigators found that:

- only seven out of 60 council websites contained an explanation of their role in relation to asbestos, with a further seven councils briefly mentioning that the council has some role with asbestos. No council fully explained the different responsibilities held by councils in relation to asbestos (for example, issuing building and demolition approvals, managing landfills and responding to asbestos in domestic premises)
- more than half the councils did not refer to the roles of WHSQ and QH or explain these roles. Mentions of WHSQ and QH roles were generally very brief and involved links to documents or provided contact numbers for more information
- only five council websites linked to the websites of both WHSQ and QH. A further six councils contained a link only to WHSQ
- although most council websites discussed ways to make a complaint generally, only six councils discussed complaints management in relation to asbestos, how to make a complaint and to which agency
- less than half of council websites provided information about asbestos risks, which products contain asbestos or where asbestos can generally be found in a house
- less than half of councils had information on their website about the safe removal of asbestos
- just over two-thirds of council websites contained general information about how to dispose of asbestos, with most of these websites advising the reader to contact the council for further information. Just over half of council websites advised that they accept asbestos at specific locations; however, in many cases this information was difficult to locate
- more than half of councils did not state the cost of disposing of asbestos.

Overall, it was clear that the nature and quality of information being provided by councils varied considerably.

In my view, guidance is needed to ensure that accurate, consistent and comprehensive information is presented by councils. This information should include:

- relevant agencies' roles and responsibilities in relation to asbestos
- licensing requirements for asbestos removal
- requirements for demolitions and renovations of buildings containing asbestos
- regulatory measures in place to ensure compliance when demolitions and development are carried out
- links to relevant agency websites containing up-to-date information on dealing with asbestos.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**QH response:**

The Director-General of QH had no issues with this recommendation.

**Recommendation 28**

The Director-General of QH work with councils to develop guidelines regarding the provision of information about asbestos on council websites to ensure that the information provided on council websites is accurate, consistent and comprehensive, or that council websites link to the single portal website for asbestos information.

### *Agency websites*

Investigators reviewed the websites of the key regulatory agencies (QH, WHSQ and DEHP) as well as DHPW.[67]

The websites generally provided some information about each agency's responsibilities for asbestos. However, the websites did not clearly state how the agency's role fitted in with those of other agencies. Further, no agency website provided a summary of the whole-of-government approach or outlined each government agency's role or stated where the public and contractors should go for more information about different aspects of asbestos regulation in Queensland.

It is important that agency websites provide adequate information to enable tradespersons and members of the public to gain a clear picture of each agency's role, how this fits in with the roles of other agencies, and what the requirements of the legislation are. One way to do this may be to simply link agency websites to the single portal website (discussed below).

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**QH response:**

The Director-General of QH did not object to this recommendation, but requested that the report note that significant progress has been made by the IAG in the development of a document on this matter.

**DJAG response:**

The Director-General of DJAG advised that the department will work with relevant agencies on this issue. He also noted that this outcome has been substantially achieved through a 'roles and responsibilities' document developed through the IAG.

**Recommendation 29**

The Directors-General of DJAG, QH and DEHP:

(a) agree on common wording to explain clearly, with sufficient detail, each agency's role in relation to asbestos

(b) ensure the agreed statement of each agency's role is available on each agency's website together with a reference to each agency's governing legislation.

#### The new whole-of-government website

On 1 January 2012, the Queensland Government launched a new asbestos website at www.qld.gov.au/asbestos (single portal website). This single portal website is intended to be a single site for access to information on Queensland asbestos issues for the public and the asbestos remediation industry. It contains information about asbestos generally, common locations where it can be found, health risks, information on how to remove or repair asbestos, dealing with asbestos after natural disasters or storms, the transport and disposal of asbestos, and laws applying to asbestos issues including prohibited activities and asbestos registers and management plans.

There is also an online contact form as a way to make a complaint about asbestos misuse.

While the single portal website includes links to four agency websites (WHSQ, QH, DEHP and DHPW) accompanied by a very brief description of each agency's role in relation to asbestos, this information is not easy to find. There is also no discussion of which agency is responsible for regulating the areas under the relevant topic headings, such as renovating, clean-up and disposal of asbestos.

67 This review was conducted in the week commencing 25 June 2012.

This initiative of a single portal website for asbestos is a valuable addition to the information landscape. However, its introduction was not without problems.

First, the investigation found that only the WHSQ website contains a link to the single portal website. Further, QH is the only agency that notes the contact telephone number for the single portal government hotline (13 QGOV) which can now provide information on asbestos (discussed below), but the QH website does not mention the single portal website.

Further, the interaction between the single portal website and agency websites is unclear. As stated above, only one of four key agency websites links to the single portal website, and the information on the single portal website mostly duplicates information on each agency's website but presents it in a different manner. Having information housed on various sites and presented in different ways gives the public a confusing picture.

The single portal website also appears to have been introduced without a strategy for promotion. Although it was introduced in late 2011, a number of the agency officers and stakeholders were still unaware of the website or its location in April 2012. One agency reported that it had received no official communication about the single portal website, but had rather 'stumbled over it'. Investigators were advised that there is not a lot of knowledge about the website even among WHSQ inspectors. One stakeholder also noted that putting things on a website did not solve anything if there was not a trigger that made people visit the website.

Investigators were not provided with any material suggesting that the government intends to advertise the single portal website even though this issue was discussed by the IAG in February 2012.

In my view, the significant health risks posed by asbestos, along with the fact that people may not necessarily think to search for asbestos-related information within a government website or know which agency website to search, make it important that the single portal website be well known.

Investigators also considered the content of the single portal website. It was suggested that government should work with industry to find out what the key queries about asbestos are and put the answers to these on the website. One stakeholder recommended that the website be made more user-friendly for tradespersons in particular, with summaries of legislation as well as information sheets and checklists that can be used by tradespersons.

At the very least the single portal website could contain a complete list of all asbestos legislation, regulations and codes, preferably with an easy-to-understand explanation of the provisions and regulatory framework and a link to any asbestos registers held by various agencies. Given the public and asbestos industry workers may be involved with each of the separate frameworks for the removal, transport and disposal of asbestos, they should have access to a resource that allows them to understand the entire regulatory framework relating to all aspects of asbestos in Queensland and determine which legislation applies to them.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to DJAG to address this issue.

**DJAG response:**

The Director-General of DJAG stated that while the website reference group (consisting of representatives from DJAG, QH, DHPW, DEHP and the LGAQ) agreed that each agency would link back to the single portal website as the main entry point to information about asbestos, neither DJAG nor any other agency can force this action to be carried out unless nominated as the lead agency for asbestos regulation in Queensland (see recommendation 35).

The Director-General agreed with the remainder of the proposed recommendation, and noted in particular that a consultative approach had been taken in the past to the development of the single portal website.

***In light of the Director-General's statements, I have amended the recommendation to refer to the lead agency.***

**Recommendation 30**

The Director-General of the lead agency (see recommendation 35):

(a) ensure that all government websites that mention asbestos have a link to the single portal website

(b) ensure that the single portal website contains a comprehensive list of all asbestos legislation with clear explanations

(c) ensure that the single portal website links to the register of asbestos industry workers (see recommendation 10)

(d) consult with industry stakeholders to determine what information may be missing from the single portal website, in particular in relation to commonly asked questions and key areas of confusion, and provide this information on the single portal website.

**Provision of asbestos information via the 13 QGOV hotline**

Another new initiative intended to work in conjunction with the single portal website is the single point of contact for asbestos-related matters run through the Smart Services Queensland 13 QGOV number (hotline). This hotline already provides information on a wide range of government services to members of the public, and it is intended that this service now provide a single point of contact for the public on asbestos issues. Most agencies and stakeholders interviewed in the investigation supported the use of a single point of contact.

I agree that such a service may be useful to provide a timely and efficient service to the public and may remedy some of the confusion and frustration arising from dealing with a complex government framework for asbestos.

However, for this approach to be successful there needs to be seamless coordination behind the scenes between agencies. As this report identifies, this seamless coordination is not yet in place.

The integration of the hotline with the information provided by councils is also not clear.

One stakeholder noted:

> 'It's too early to tell the effectiveness … people will still ring councils [with asbestos queries] … and councils will not tell them to ring 13 QGOV.'

Given the lack of information on some council websites, close linkages between information provided by councils and that provided by agencies may assist to present a clear picture of asbestos regulation to members of the public.

Investigators were told that there will be a 'phase two' for the further development of

asbestos scripts for the hotline, which will seek to identify improvements to the information provided. However, no timeline has been provided for when this will occur.

A significant proportion of agency officers and stakeholders interviewed by investigators were unaware of the use of the 13 QGOV hotline for asbestos issues, despite it being several months since the hotline was introduced.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**QH response:**

The Director-General of QH advised that this matter should be referred to the lead agency, consistent with responsibility for the single portal website.

***In light of the Director-General's statements, I have amended the recommendation to refer responsibility to the lead agency.***

**Recommendation 31**

The Director-General of the lead agency (see recommendation 35):

(a) develop a strategy for advising relevant agencies, stakeholders and the public about the use of the single hotline in relation to asbestos

(b) work with other agencies and councils to ensure the hotline is advertised on all agency and council websites relating to asbestos.

### *Public awareness*

As well as making information available to the public, there is a role for government agencies in actively advising the public of asbestos-related matters in certain situations. These may include emergency situations as well as other situations where the public is likely to come into contact with asbestos (such as during domestic renovations).

Investigators were told of a lack of public awareness about the dangers of asbestos, safe methods of removal or proper safety measures.

The investigation was unable to locate a whole-of-government strategy or policy on communication with the general public about asbestos. The closest thing is the WHSQ Action Plan which outlines what actions WHSQ will take to reduce asbestos exposure in work-related activities over a five-year period.[68] The plan details 25 targets which WHSQ is aiming to achieve during the period 2011-2016. Eight of these targets relate to communication and education and include:

- updating government internet resources
- utilising various organisations' newsletters and websites to target messages regarding asbestos safety
- providing information seminars on asbestos safety
- educating property owners regarding asbestos risk management.

Timelines for these activities vary and obviously will be affected by the availability of resources.

While the WHSQ Action Plan is focused on workplaces, there is also a focus on educating homeowners about asbestos risk management so they can potentially influence the work practices of contractors working on the property.

The WHSQ Action Plan currently contains strategies aimed at identifying opportunities for the use of government communication mediums and social media in the provision

68 Workplace Health and Safety, *Asbestos Work Health and Safety Action Plan 2011-2016*, http://www.deir.qld.gov.au/workplace/resources/pdfs/asbestos-action-plan.pdf viewed 29 October 2012.

of information and advice about asbestos. Other agencies are also taking some steps to communicate about asbestos with their clients.

While positive, I am not satisfied that the steps taken by WHSQ and other agencies are sufficient to satisfy the government's obligation to communicate about the significant health risk posed by asbestos. In particular, there is no overall strategy for communication to ensure agencies are complementing each other's activities, making best use of resources or giving consistent messages. This lack of coordination may leave people exposed to unnecessary risk through lack of knowledge or confusion if contradictory messages are received from different agencies and councils.

One approach which could be adopted in a whole-of-government communication strategy is to use identifiable 'trigger points' to communicate messages about asbestos at a time when people are open to receiving them. I note that the 2005 report *Asbestos Management in the ACT* by the ACT Asbestos Task Force[69] recommended targeted awareness, aimed at ensuring that advice and warnings about asbestos use reach their target before any asbestos-related activity begins. I support such an approach.

Some obvious trigger points may include when:

- property title transfers
- rate notices are first sent out by a council
- tenants sign leases for public or private housing
- natural disasters occur
- tradespersons begin and end apprenticeships
- owner-builder courses are offered
- renovation occurs, such as through the use of retail hardware stores to distribute relevant information along with renovation materials and tools.

Such communications could also include advice about the single portal website and 13 QGOV number for asbestos information.

The nature of information provided would of course depend on the particular trigger. In addition, different methods of communication may need to be adopted for each target group. An example of good communication tailored to the particular risk and target audience is the recent actions by WHSQ in placing warning notices on water blasters available for public hire to warn that they should not be used with asbestos.

In addition, comprehensive awareness campaigns may be required for key high risk groups, such as tradespersons and renovators, rental property managers and owner-builders.

Taking such an approach would allow agencies to be proactive about community awareness. An integrated approach would also ensure consistency across agencies in public awareness campaigns.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

69 At page 10.

**DJAG response:**

The Director-General of DJAG noted the previous awareness work carried out by WHSQ, and proposed that any new whole-of-government strategy developed by a lead agency could draw on elements of previous asbestos awareness campaigns. He noted the significant work that WHSQ has previously carried out in relation to public awareness, which has included the use of trigger points for providing asbestos information (such as point of sale for home renovation tools and equipment), Asbestos Awareness Week, a new film and information booklet on asbestos, and flood recovery information on its website.

The Director-General noted that a whole-of-government communications strategy, coordinated by a lead agency and using certain trigger points, would provide more effective, consistent messages in:

- the delivery of public awareness efforts, events and information seminars
- the delivery of information during emergency situations
- educating property owners and tradespersons in the dangers of exposure to asbestos fibres
- government internet resources.

***I acknowledge the work that has previously been carried out by WHSQ in relation to raising awareness of asbestos. This work provides a sound platform for the lead agency to build on with involvement and assistance from all other relevant agencies.***

**Recommendation 32**

The Director-General of the lead agency (see recommendation 35), in consultation with other relevant agencies, develop a whole-of-government communication strategy that:

(a) uses identifiable 'trigger points' to communicate information about asbestos before exposure to asbestos occurs

(b) tailors information and communication methods to the target group or trigger point

(c) includes a component of broader community awareness

(d) addresses key areas of confusion that are identified in this report or through further discussions with agencies and industry stakeholders

(e) ensures a consistent message is provided by all government agencies.

# Chapter 9 – Whole-of-government solutions

The issues raised in this report, together with the nature of the current asbestos framework in Queensland, clearly highlight the need for greater coordination and integration between different government agencies. I have therefore identified below some key steps that I believe would make a significant difference to the management and regulation of asbestos in Queensland.

## An integrated strategy on asbestos

The investigation identified the lack of a whole-of-government strategy on asbestos management and regulation.[70] The absence of such a strategy has caused coordination difficulties and meant that some aspects of asbestos response have received more attention and resources than others. For example, one stakeholder noted that asbestos in schools has received significant attention and proactive remediation, while the issue of asbestos in health care facilities or employee housing has not received the same attention, even though the risk may be the same.

In my view, an integrated, whole-of-government strategy is needed to provide a cohesive, comprehensive and coordinated response to asbestos matters in Queensland. This strategy should be presented in a public document that I will refer to as the 'integrated strategic plan'.

The integrated strategic plan should prioritise and coordinate asbestos regulation, including by addressing matters such as risk management, reporting, licensing, education and community awareness, coordination and information sharing between regulatory agencies, first response issues, and any other matters relevant to an effective response to asbestos in Queensland. Such a plan would allow the government to take a planned and proactive approach to asbestos management and regulation.

The goals of an integrated strategic plan could include:

- strong and coordinated regulation of the life cycle of asbestos, from identification, through to removal, transport and disposal
- effective communication between the agencies managing each part of the asbestos cycle and clarity about each agency's responsibilities
- effective frameworks for dealing with complex incidents and natural disasters which may demand the attention and resources of a number of agencies
- well-trained and resourced agency officers who have confidence dealing with asbestos issues
- the provision of education and awareness so that asbestos industry workers are confident and skilled in dealing with asbestos
- ensuring adequate incentives for asbestos industry workers to comply with asbestos laws
- ensuring adequate regulatory tools are available to enforce compliance with asbestos laws and penalise non-compliance as necessary
- producing a strategy for clear, consistent communication from government about the risks posed by asbestos, with this information being easily accessible by the public and particularly high risk groups such as home renovators
- the development of strategies to address the issue of asbestos in discrete Indigenous communities.

70 Although WHSQ has prepared a five-year Action Plan for WHSQ with broad goals, this has not been adopted by other agencies.

The need for a Queensland strategy for asbestos should not be confused with the Fary Report's recommendation that a national strategic plan for asbestos awareness and management (national strategic plan) be developed.[71] The Fary Report recommended that this national strategic plan should set out the goals and priorities for the states and territories, and be supported by a three-year implementation program which includes provisions to track and report progress annually. Some of the priority areas addressed broadly by the Fary Report are the same as those identified in this report. However, while an integrated Queensland strategic plan may address how both Queensland and national goals will be achieved, it would focus on regulatory and asbestos management issues and priorities for Queensland. Having said this, it would no doubt be desirable for the Queensland strategy to align, as far as practicable, with any national strategy.

In the proposed report provided to the relevant agencies for comment, I proposed an opinion and recommendation that a strategic plan be developed for the management and regulation of asbestos in Queensland.

***While no formal response was received about this opinion or recommendation from any of the Directors-General consulted about my proposed report, subsequent advice received from a senior officer of DJAG in January 2013 informed me that the IAG has begun coordinating work on a strategic plan in accordance with this recommendation. This is encouraging and will greatly improve the current response to asbestos regulation in Queensland.***

***As the draft strategic plan has not yet been finalised, I consider it important to proceed to make this recommendation and form this opinion.***

**Opinion 2**

It is essential that the government provide strategic direction and coordination for an integrated approach to asbestos management and regulation in Queensland.

**Recommendation 33**

The Director-General of the lead agency (see recommendation 35) consult with all relevant agencies and develop an integrated strategic plan for the management and regulation of asbestos in Queensland, including by addressing such areas as:

(a) risk management

(b) enforcement and response

(c) licensing

(d) reporting and coordination between agencies

(e) education and community awareness

(f) linkages to any national asbestos strategy.

This plan should be signed by all relevant agencies and agreements reached to implement the plan in accordance with agreed timeframes.

***Absence of an agreed position on risk in Queensland***

The approach to asbestos management and regulation set out in the integrated strategic plan must be driven by an agreed position on the risk posed by asbestos. The investigation identified confusion among both agency officers and industry stakeholders about various agencies' positions on the risk of asbestos exposure.

I note that a variety of views have been expressed in the media about the risks posed by

71 Fary, G, *Asbestos Management Review Report*, 2012, page 7, http://www.deewr.gov.au/WorkplaceRelations/ Policies/AMR/Pages/AMRReport.aspx viewed 29 October 2012.

asbestos exposure.

The investigation identified that Queensland stakeholders were generally unaware of the expert position on asbestos risk. Stakeholders also informed investigators of confusion among the public about the risk presented by asbestos, which sometimes had concerning effects. For example, one stakeholder reported receiving telephone calls from people who had disturbed a small amount of asbestos in their home and were worried that their children would become sick and die. Another stakeholder noted the hysteria presently in the community generated by the 'one fibre can kill myth', and commented that the increase in hysteria may lead to a decrease in compliance by encouraging contractors to do asbestos removal work without advising homeowners about the presence of asbestos. Another stakeholder commented that the current 'let sleeping dogs lie' message in Queensland seems inconsistent with a 'one fibre can kill' approach communicated nationally.

It was also noted that while the public may know asbestos is a risk, they do not understand the nature and extent of the risk. An agency officer noted that this may explain the disparity between the regulators and the community about perceptions of risk. For example, complaints are regularly received about dilapidated asbestos fences, which do not constitute a breach of the PH Act as they are not a proven public health risk.

There is also some disagreement about the current position on low density board and whether it is friable or not. Low density board can have up to 70% asbestos fibres, and is considered loosely bound when compared to fibro sheeting. The national position is that low density board is not friable; however, in 2011 WHSQ issued a fact sheet (now withdrawn) suggesting that low density board is friable. This issue requires resolution to ensure that a consistent message on risk is communicated, as well as to ensure that the regulation of low density board is lawful and consistent.

It is not my place to form a view about the appropriate assessment of risk or how this should be communicated, nor how this assessment will inform the new integrated strategic plan. This should be done by experts. However, there is clearly a need for all relevant Queensland agencies to agree on the level of risk posed by asbestos and how this should be communicated to obtain consistency in messages given to the public.

Determining an agreed position on risk may include consultation with stakeholder groups to gain their views on areas of confusion and how an agreed position can be best communicated to the public.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DJAG response:**

The Director-General of DJAG advised that:

> Asbestos is widespread in the environment, with fibre release from natural sources and extensive industrial and commercial use of asbestos in the past. In Australia, asbestos was frequently used as a strengthening agent in asbestos cement products used in housing construction.
>
> Asbestos-related diseases evident today are largely a result of past high occupational exposures to people employed in the asbestos mining or production industries or in the building trade in previous decades. Exposure in the occupational setting, particularly in the early history of asbestos mining and processing, involved much higher fibre concentrations and diverse range of fibre sizes and shapes than are likely to be encountered in the non-occupational environment.
>
> Exposure in the non-occupational environment is generally related to asbestos cement products where the asbestos fibres are strongly bound in the cement mixture. These materials release very few fibres if they are in good condition and left undisturbed, and pose only a negligible health risk.
>
> Asbestos can pose a health risk when fibres of a respirable size become airborne, are inhaled and reach deep into the lungs in sufficient quantities. Although asbestos is

widely found in the environment, an increased risk of mesothelioma as a consequence of general environmental exposure has not been demonstrated in studies examining environmental exposures. The risk of developing an asbestos-related disease increases in proportion to the number of asbestos fibres breathed in over a lifetime. Occasional exposures to low concentrations of asbestos fibres, for example from house fires or renovation work on a neighbouring property, are likely to be associated with very low health risks.

The belief that 'one fibre can kill' is not supported by scientific evidence as everyone, to some extent, has been exposed to asbestos fibres. The burden of asbestos fibres in the lungs, resulting from typical background exposure, appears to be tolerated, which is contrary to the belief that one asbestos fibre kills. In studies of lungs from people aged 60 to 79 years who had not died from asbestos-related diseases, up to one million fibres per gram of dry lung tissue were measured.

The belief that one fibre can kill underpins people's fear and anxiety about asbestos exposure. Except in cases of high occupational or para-occupational exposure, the incidence of asbestos-related disease is very low.

It should be noted the department has published on its website a safe work procedure on safely drilling into asbestos containing materials. The department is also developing a range of other safe work procedures for common tasks involving asbestos containing material, such as working on electrical switchboards containing asbestos, cleaning up dust after minor disturbance of [asbestos], preparing [asbestos] surfaces prior to painting and removing less than 10m$^2$ of non-friable asbestos containing material.

**QH response:**

The Director-General of QH provided the following clarification of its position on the risk posed by asbestos fibres.

> While theoretically there is no safe exposure level for carcinogens such as asbestos (an understanding which generates a slogan such as 'one fibre can kill'), the evidence is clear that the risk of developing cancer increases with exposure. The risk of developing an asbestos-related disease increases in proportion to the number of asbestos fibres breathed in over a lifetime. Occasional exposures to low concentrations of asbestos fibres, for example from house fires or renovation work on a neighbouring property, are likely to be associated with extremely low to negligible health risks.

The Director-General advised that QH's perspective on risk 'is not in conflict with the practical understanding of risk held by [WHSQ]'.

***I acknowledge the positions of both QH and DJAG on this issue. While the positions do not appear inconsistent when explained in detail, the challenge for both agencies will be to present the information to agency officers and the public in ways that can be easily understood and so that the two agencies' positions continue to be perceived as consistent throughout the agencies' ongoing responses to asbestos. The communication of this consistent position through all publicly available information will be critical to ensuring that the public has an adequate and realistic understanding of the risks posed by asbestos.***

**Recommendation 34**

The Director-General of the lead agency (see recommendation 35) work with all relevant agencies to prepare an agreed position on risk, including the risk posed by low density board. This risk information should be adopted in all agency publications and inform the integrated strategic plan.

### *An asbestos lead agency*

To facilitate the need for a coordinated, strategic response, in my view the framework for the coordination of asbestos in Queensland requires urgent attention.

There is no single agency with the ability to take an overview of asbestos management and regulation in Queensland and quickly make decisions about coordination and strategy. While it appears that the IAG was intended to take this strategic oversight role to coordinate different agencies' responses to asbestos, the significant problems identified by the investigation suggest that the IAG has not been entirely successful in resolving issues.

In addition, the investigation identified significant criticisms of the current IAG model from both stakeholders and agencies. While the IAG has achieved some positive outcomes over the past three years, the overarching issue with the IAG appears to be the lack of a unified, cohesive approach driven by a single person or agency. The multiagency, collaborative approach means that decisions are unlikely to be made quickly, and consultation appears to take significant time to conclude some issues.

As one stakeholder explained to investigators:

> 'the notion of IAG and MOUs doesn't work because no-one has the capacity to come over the top and fix things if there's a problem'.

The investigation also established that the complexity of the current regulatory framework and the absence of coordination is a source of confusion for stakeholders, the public and tradespersons, as well as councils and the agencies themselves. This is especially apparent because the distinctions between workplace and non-workplace removals, the amount of asbestos removed and the amount of asbestos transported all invoke different regulations and different agencies' involvement.

The significant problems with asbestos regulation identified by the investigation suggest that an alternative approach should be considered. An integrated and strategic response to asbestos issues requires a strong strategic and policy-making body. In my view, the length of time that the IAG has been operating and the concerns raised in this report justify consideration of a different approach by the Queensland Government.

The approach of having multiple agencies responsible for asbestos-related issues is adopted in other Australian jurisdictions, with some also having a multi-agency committee to determine strategic matters.[72] However, most agencies and stakeholders interviewed in the investigation supported the approach of having a single body to coordinate asbestos issues in Queensland. In my view, the approach of having multiple agencies responsible for asbestos-related issues diffuses responsibility among different agencies and Ministers, while the lack of strategic oversight beyond that provided by the current IAG makes it difficult for the government to take a coordinated, planned and proactive approach to asbestos issues.

While I consider that the responsibility for regulating various aspects of asbestos issues should remain with the various agencies, in my view there is a role for one agency to take the lead in providing strategic oversight, developing an integrated strategic plan for the management and regulation of asbestos in Queensland and ensuring interagency coordination on operational issues. The Director-General of this agency would be responsible for reporting on asbestos issues to a single Minister and, through the Minister, to Cabinet.

The key function of the lead agency would be to develop and oversee the implementation of an integrated strategic plan. I have discussed above what I see as the key requirements of such a plan. In addition to developing the integrated strategic plan in consultation with all relevant agencies and stakeholders, the lead agency would have oversight and accountability to ensure legislative and policy support for this strategy.

The lead agency would also coordinate community awareness strategies and risk

72 For example, in NSW the asbestos response roles are spread among five main agencies as well as a Heads of Asbestos Coordination Authority, which is developing a state-wide asbestos plan.

information across different agencies to ensure consistency and targeting of messages and adequate communication of risk. It could play a role in coordinating reviews of the regulatory framework, including licensing issues, rationalisation of the legislation, disposal matters, and communication with the public. The lead agency could also oversee the further development and improvement of the 13 QGOV hotline (in relation to asbestos information) and the single portal website.

In this approach, the agencies would still be responsible for delivering policy and undertaking their individual functions. The lead agency would effectively act as a coordination body, but would differ from the IAG in that it would have a single decision-maker who could take responsibility for coordination and strategic oversight, as well as ensuring that actions are taken in a timely manner.

It may well be the case that in a few years, once coordination and strategy issues are resolved and asbestos regulation is proceeding effectively, the lead agency approach would no longer be required and a revised interagency committee model could then be adopted without difficulty.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation that the Director-General of the DPC nominate a lead agency for asbestos coordination in Queensland.

**Agency Response:**

***The Director-General of the DPC advised that he was considering the recommendation and did not intend on making specific comments in relation to the recommendation at this time.***

***However, I was advised by a senior DJAG officer on 17 January 2013 that DJAG had been nominated as the lead agency for the coordination of asbestos regulation and, where necessary, incident response.***

***This is a very encouraging development and will enable the Queensland Government to take an integrated, whole-of-government approach to the complex, cross-agency issues inherent in asbestos regulation.***

***However, I have not been formally advised of the appointment of the lead agency, and I am not aware of whether the appointment has yet been properly made or how it will work in relation to the machinery of government generally, and particularly regarding reporting arrangements. Therefore, I have proceeded with the recommendation to ensure that all necessary formal steps are taken quickly to appoint the lead agency and provide it with the necessary powers or responsibilities to coordinate asbestos response across multiple government agencies.***

***I am also encouraged by the following comment from the Director-General of DEHP***:

> The Department of Environment and Heritage Protection (EHP) agrees that asbestos is a significant public health risk that would benefit from improved coordination across government agencies, both state and local. I am firmly of the view that we are 'one government' and that we get the best results for the people of Queensland when we break down silos and work collaboratively. In developing a whole-of-government response to asbestos management, it is important that the roles assigned to agencies reflect their remit, their legislative powers and their ability to add the most value to solving the many challenges that asbestos management brings.

***The purpose of this public report is to ensure that all agencies involved in asbestos regulation in Queensland hold a similar view about the need for greater coordination, and to take steps to ensure that this necessary coordination occurs.***

**Recommendation 35**

The Director-General of the DPC formally designate a lead agency for the coordination of issues relevant to the management and regulation of asbestos in Queensland.

### *Data on complaints and trends*

Finally, although the investigation considered the complaints received by each relevant agency about how it handles its asbestos responsibilities, it was apparent that few agencies adequately and regularly capture and code complaints about asbestos issues so that trends can be monitored and proactively addressed. In addition, differences in how each agency defines and records complaints or issues relating to asbestos mean that the resulting data is of limited use for a cross-agency analysis or to produce an overall picture of asbestos regulation. Such information, if it was available, could be consolidated into a clear picture of asbestos issues in Queensland and used to inform the integrated strategic plan.

In my view, there should be a whole-of-government approach to the capture of complaint and trend data about asbestos issues in Queensland. It would seem appropriate for the lead agency to drive the collection and reporting of this data from all agencies involved in the management and regulation of asbestos.

In the proposed report provided to the relevant agencies for comment, I proposed a recommendation to address this issue.

**DEHP response:**

The Director-General of the DEHP noted that this recommendation, although not directed at the DEHP, is relevant to the department. He advised that the DEHP's database in which complaints and compliance incidents are recorded is not configured to be able to easily record and then search for asbestos-related matters, and some changes to the database would be required to implement the recommendation. He noted that these changes can be undertaken following consultation with the lead agency to determine its exact requirements.

The Director-General also noted that DEHP has recently conducted an analysis of the data that it does hold on asbestos transport and disposal, and is using this information to target its compliance activities.

***No responses were received from other Directors-General about this recommendation. Therefore, I am proceeding on the basis that all agencies agree with the need to record, manage and track asbestos complaints and other key issues, so that this information can inform the integrated strategic plan and the actions of various agencies.***

**Recommendation 36**

The Director-General of the lead agency (see recommendation 35):

(a) ensure that all government agencies that deal with asbestos track trends on asbestos complaints, compliance and relevant asbestos issues and provide this information to the lead agency

(b) use this information to inform the integrated strategic plan.

QUEENSLAND
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