

BANNERMANS FACT SHEET:

Asbestos compliance under the Work Health and Safety Regulation 2011 for group title structures

On the 1 January 2012 provisions in the Work Health and Safety Regulation 2011 ("the WHSR") commenced which includes requirements relating to identification of asbestos, creation of an asbestos register and creation of an asbestos management plan.

The requirements dealing with asbestos under the WHSR do not apply to all group title structures. For instance, it will not apply if the building was constructed after 31 December 2003, no asbestos has been identified on the property and no asbestos is likely to be present from time to time.

There is also a specific exemption with respect to owners corporations of strata schemes where the common property is used only for residential purposes and the scheme has not engaged a worker as an employee. One could argue that this exemption does not apply to protect a managing agent, but a counterargument is that the managing agent is carrying out activities as delegate or agent of an exempt person (the owners corporation).

Without limitation the following types of group title structures may need to comply:

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| a) community title; | c) residential strata title, where the common property is not used only for residential purposes; |
| b) commercial and industrial strata title; | d) residential strata title where the scheme engages a worker as an employee; and |
| | e) company title. |
- A further exemption in respect of incorporated associations could in theory assist, but that is unlikely to apply to group title structures for reasons including the requirement that it involves volunteers carrying out activities for community purposes.
- For those group title structures that need to comply, the WHSR provides details amongst other things, on how to:
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| a) identify asbestos; |
| b) analyse samples; |
| c) create a register; |
| d) review the register; |
| e) creation of management plans; |
| f) review of management plans; |



- c) provisions dealing with refurbishment of structures or plant.

Asbestos registers and asbestos management plans created in compliance with the previous legislation may be treated as compliant with the new legislation for a 12 month period, but otherwise the regulation contains only very limited transitional provisions. In order to avoid substantial penalties you may need to obtain advice urgently as to the action required to comply with the new regulation.

Key takeaways

- The WHSR requires identification of asbestos and creation of an asbestos register and management plan for certain group title structures.
- Exemptions exist for buildings constructed after 31 December 2003 and for owners corporations not engaging workers.
- Compliance is critical to avoid substantial penalties, and urgent legal advice may be necessary.
- Asbestos registers from previous legislation may be treated as compliant for a 12-month period.

The document does not provide legal advice and encourages

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