

Managing Asbestos Concerns in the Community

Guide for NSW Councils



**ONE VOICE
FOR COUNCILS**

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Disclaimer: This Guideline should be read in conjunction with relevant legislation, statutory guidelines, and codes of practice. If discrepancies arise, the most recent legislation should prevail. The information in this Guideline does not constitute legal advice. Legal advice should be sought in relation to specific circumstances and liability will not be accepted for losses incurred because of reliance on this information. This Guideline does not constitute nor is in any way meant to be taken as a statutory guideline.

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Introduction

Structure of these guidelines

These guidelines focus on the available options for councils to respond to asbestos concerns in the community under the [Protection of the Environment Operations Act 1997](#), [Environmental Planning and Assessment Act 1979](#), and [Local Government Act 1993](#). Throughout the guide, reference will be made to more detailed information on the legislation and the guidance provided by the relevant state government agencies.

This guide has been prepared by LGNSW, supported by funding from the NSW EPA.

This guide has been reviewed and endorsed by the [NSW Asbestos Coordination Committee](#) Working Group. This is a guide only and it is incumbent on the reader/relevant Council officer to be fully aware of their role (legislatively and/or policy) as required of them for any matter referenced (or not) in this guide.

Background to the Guide

Local Government plays a critical role in reducing the risks posed by asbestos. Councils work together with the NSW Government and the public to address the legacy of asbestos in building materials and on land, as well as addressing naturally occurring asbestos.

Development of this guide supports Priority 2: Risk Control and Prioritised Removal Actions in the [Asbestos National Strategic Plan 2024-30](#):

- Facilitate a whole-of-government approach to compliance and enforcement by developing guidelines for regulatory agencies and local government to work together
- Support local government to administer devolved responsibilities.

This guide also supports the [NSW Asbestos Delivery Plan](#) and [Asbestos in NSW: Next Horizon](#) priorities:

1. Keeping People Safe – Asbestos training for workers
2. Keeping People Safe – Asbestos awareness in homes
3. Dealing with the legacy – Ageing asbestos materials.

Note: All references to legislation and associated regulations, codes, and policies are correct at the time of production.

This guide is drafted to support councils with the investigation and assessment of customer service requests, activities or incidents relating to asbestos at residential premises, primarily in accordance with the [Protection of the Environment Operations Act 1997](#), [Environmental Planning and Assessment Act 1979](#), and [Local Government Act 1993](#). Work Health and Safety Considerations will also be discussed in relation to council's regulatory actions.



Asbestos health hazards

Asbestos fibres can pose a risk to health if airborne and inhaled. The World Health Organisation has stated that concentrations of asbestos in drinking water from asbestos cement pipes do not present a hazard to human health.

Breathing in asbestos fibres can cause asbestosis, lung cancer and mesothelioma. Small respirable fibres are the most dangerous and are invisible to the naked eye. People who are at most risk are those who have been exposed to high levels of asbestos fibres for a long time. The symptoms of these diseases do not usually appear for some time (about 20 to 30 years) after the first exposure to asbestos.

Asbestosis is a chronic lung disease caused by scarring in the lungs after long-term exposure to asbestos. It can significantly affect breathing, daily activity and overall quality of life due to stiffened lung tissue (ADDRI).

Lung cancer may also be linked to asbestos, especially when combined with smoking. It occurs within the lung tissue itself and is distinct from mesothelioma, which affects the outer lining (ADDRI).

Mesothelioma is a cancer of the pleura (outer lung lining) or the peritoneum (the lining of the abdominal cavity). Mesothelioma rarely occurs less than 15 years from first exposure, and most cases occurs over 30 years after first exposure.

Asbestos containing materials (ACMs) are either friable or non-friable. Friable asbestos is high risk. Friable asbestos can be crumbled, pulverised or reduced to a powder by hand pressure. Non-friable asbestos is lower risk. It is usually mixed with cement or other hard bonding materials. Non-friable asbestos can become friable if damaged or old.

When someone has potentially been exposed to asbestos or receives or expects they may receive a diagnosis of an asbestos-related disease, they may experience psychological distress, including anxiety and may be in need of support. Their family and those around them may also be vulnerable to psychological distress.

For more information on asbestos health hazards and risks refer to the Asbestos and Dust Diseases Research Institute (<https://addri.org.au/>).

Why is asbestos still a risk to the community?

Although the supply and installation of asbestos containing goods has been prohibited since 31 December 2003, asbestos-related disease rates have not declined as expected since this time. The total banning of asbestos in Australia in 2003 does not apply to asbestos containing materials already in place (in situ), which means two decades on, significant amounts of legacy ACMs remain in public and commercial buildings, houses and infrastructure.

It's estimated that one in three Australian homes still contain asbestos with asbestos legacy materials also found in many buildings, assets and infrastructure. Asbestos products in Australian buildings are now between 30-100 years old and reaching their end-of-life, which is increasing the risk of the ACMs degrading and the risk of human exposure to asbestos fibres.

Climate change, the escalating frequency and intensity of extreme weather and other disaster events in Australia, is also increasing the risk of exposure to asbestos fibres. If ACMs become damaged and disturbed during these events the subsequent cleanup is dangerous, time-consuming, and costly.



Aboriginal community engagement

Councils may receive enquiries about asbestos at properties owned or managed by Aboriginal Housing Providers. Councils can limit the impacts of asbestos on communities by establishing relationships with providers of Aboriginal Housing and Aboriginal Lands Councils in their area to ensure that council interaction with the Aboriginal community is appropriate and culturally sensitive.

An example of this is the co-management of illegal dumping on Aboriginal land. Aboriginal lands are highly susceptible to illegal dumping, especially when they are located in remote areas.

The illegal dumping of waste has the potential to impact both Aboriginal and non-Aboriginal communities through:

- asbestos health risks and costs associated with asbestos clean up
- the destruction of bushland, contamination of soil and alteration or blocking of natural watercourses
- placing bushland at risk and preventing vegetation from regenerating and animals from returning
- harm to culturally significant or sacred sites
- harm to cultural or spiritual values of Aboriginal peoples
- potential health risks as a result of dangerous objects (e.g. sheet metals and nails) or by attracting vermin and mosquitoes.

The clean-up and disposal of illegally dumped waste is expensive. An integrated approach between local government, Aboriginal land managers and local Aboriginal communities should be established to tackle the identified illegal dumping problem.

Useful contacts:

- [Aboriginal Affairs NSW | NSW Government](#)
- [NSW Aboriginal Land Council \(NSWALC\) - Home](#)

What impact does asbestos in the community have on Councils?

Complaints and inquiries may be directed to council about incidents in public places and private properties. Complaints and inquiries regarding a workplace should be directed to SafeWork NSW but may also be received by councils in the first instance. Complaints and inquiries regarding licensed premises under the [Protection of the Environment Operations Act 1997](#) (POEO Act) may also be received by councils but should be directed to the NSW Environment Protection Authority (NSW EPA).





Councils' Regulatory Responsibilities

Councils have regulatory responsibilities under the following legislation, policies and standards:

- [Contaminated Land Management Act 1997](#)
- [Environmental Planning and Assessment Act 1979](#)
- [Environmental Planning and Assessment Regulation 2021](#)
- [Local Government Act 1993](#)
- [Protection of the Environment Operations Act 1997](#)
- [Protection of the Environment Operations \(General\) Regulation 2022](#)
- [Protection of the Environment Operations \(Waste\) Regulation 2014](#)
- [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#)
- [State Environmental Planning Policy \(Resilience and Hazards\) 2021](#)
- [Code of Practice: Demolition Work 2019 \(NSW\)](#)

Councils' responsibilities can arise in a wide range of circumstances as summarised in the following table.

Table 1: Situations in which council has a regulatory role in managing asbestos

Issue	Council's role in managing asbestos in the community
Contaminated land	<ul style="list-style-type: none"> Record known asbestos-contaminated land on section 10.7 planning certificates where practicable and for council workplaces, record on council's asbestos register. Notify stakeholders of land use planning policy requirements relating to contamination. Manage asbestos-contaminated land that is not regulated by the NSW EPA under the <i>Contaminated Land Management Act 1997</i> (excluding oversight of removal or remediation work which is the role of SafeWork NSW).
Development assessment	<ul style="list-style-type: none"> Assess development applications for approval under the <i>Environmental Planning and Assessment Act 1979</i>. Set conditions of consent for renovations, alterations, additions, demolitions or other developments requiring consent and which may involve disturbance of asbestos containing materials. Ensure compliance with development conditions. Apply conditions relating to development involving friable and non-friable asbestos material under the relevant legislation and planning codes.
Demolition	<ul style="list-style-type: none"> Approve demolition under the <i>Environmental Planning and Assessment Act 1979</i>. Council certifiers approve development as complying development under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.
Emergencies and incidents	<ul style="list-style-type: none"> Regulate the clean-up of asbestos waste following emergencies where sites are handed over to the council or a local resident by an emergency service organisation (excluding oversight of licensed asbestos removal or remediation work which is the role of SafeWork NSW). Council may consider the need to issue a clean-up notice, prevention notice or cost compliance notice under the <i>Protection of the Environment Operations Act 1997</i>.
Naturally occurring asbestos	<ul style="list-style-type: none"> Verify compliance with environmental planning and assessment legislation for development applications that could disturb naturally occurring asbestos. Prepare asbestos management plans for council workplaces or road works which occur on land containing naturally occurring asbestos.
Residential premises	<ul style="list-style-type: none"> Respond to any public health risks (risks to council workers and wider public) relating to the removal of asbestos containing materials or asbestos work at residential properties that does not involve a business or undertaking. Respond to complaints about unsafe work at a residential property that is undertaken by a resident (not a worker, which is the role of SafeWork NSW). Respond to public health risks posed by derelict or fire-damaged properties or asbestos materials in residential settings.
Waste	<ul style="list-style-type: none"> Manage council operated waste facilities in accordance with environmental protection legislation. Respond to illegal storage, illegal dumping and orphan waste. Regulate non-complying transport of asbestos-containing materials.

To support this councils can also adopt the [Model Asbestos Policy for NSW Councils](#), produced by LGNSW and the NSW Government and issued under section 23A of the [Local Government Act 1993](#) (NSW). Councils are encouraged to use the Model Asbestos Policy as the basis for their own asbestos policies.



Councils' responsibilities to workers

Councils have responsibilities to workers under the [NSW Work Health and Safety Act 2011](#) and [NSW Work Health and Safety Regulation 2025](#) for maintaining a safe work environment including:



general responsibilities including duty of care



education, training and information for workers



health monitoring for workers



procedures for identifying and managing asbestos containing materials in the council workplace



procedures to ensure council workers are safe when working in the community and at residential sites



ensuring that council's action or lack of action in relation to asbestos does not harm others in the council workplace.

This includes for council workers responding to asbestos incidents in the community, at residential premises, and at sites where building work and/or demolition work are taking place.



Regulatory options for councils

When councils plan how to respond to asbestos in the community the following options can be considered:



education campaigns (eg, asbestos awareness stall)



provision of information or advice on how to be compliant (eg: pre-development application advice regarding asbestos)



incentive programs to reward compliance (eg: subsidised asbestos waste disposal)



negotiating with the person to obtain voluntary undertakings or an agreement to address the issues of concern



issuing a letter requiring work to be done or activity to cease in lieu of more formal action



issuing a notice of intention to serve an order or notice under relevant legislation, and then serving an order or notice if appropriate



carrying out the works specified in an order at the cost of the person served with the order



issuing a penalty infringement notice



issuing a summons in the local court



seeking an injunction through the courts to prevent future or continuing unlawful or criminal activity taking prosecution action



issuing a warning or a formal caution

Councils are encouraged to use the options and the guidance provided by the NSW Ombudsman in the Enforcement guidelines for councils when responding to asbestos concerns in the community. This includes documenting decisions for use of the various regulatory options.

See <https://www.ombo.nsw.gov.au/guidance-for-organisations/improving-public-administration/enforcement-guidelines>



Asbestos - Assessment of the risks

When responding to asbestos concerns in the community it may be important to assess the risk of the asbestos or asbestos containing material. Generally speaking, friable asbestos is a higher risk to health than non-friable asbestos as the asbestos fibres are more likely to become airborne and inhaled. However, in the community the context and presentation of the asbestos may be complex requiring a more detailed analysis.

The [Asbestos and Silica Eradication Agency \(ASSEA\)](#) has produced a guide called the [National Guide for Asbestos Surveys](#) to assist in the identification and assessment of asbestos containing materials in buildings and structures. This survey guide contains a risk assessment framework that takes into account product risk level, condition of the material, disturbance potential, and building rating. Read in conjunction with the ASSEA [Asbestos Product Guide](#) council officers will be able to gain a better understanding of the risk involved.



The following is a summary of the risk factors identified by ASSEA:



Product risk level

how easily the product releases asbestos fibres in its original manufactured or installed form.



ACM condition

the state of an ACM with regard to its appearance, surface treatment (sealing or encapsulation) and extent of deterioration or damage.



ACM disturbance potential

how likely ACMs may be damaged or disturbed by the activities of building occupants, maintenance personnel or through exposure to physical or chemical forces.



Building rating

public access, frequency and duration of use, level of activity and presence of mobile plant.



Determining the appropriate course of action

In determining the appropriate course of action council officers should consider the most appropriate response under the applicable legislation. This may be done in consultation with SafeWork NSW and the NSW EPA to ensure the most appropriate response is implemented. The following sections are a consideration of councils' regulatory powers for responding to asbestos.

An example of a framework to assist council officers in determining the appropriate course of action is the [risk framework for burnt and derelict properties](#). Based on the assessment of properties following bushfires, this framework was developed by the NSW Government and Moree Plains Shire Council to assist in an assessment of burnt and derelict properties in the Moree Plains Shire Council local government area.

When determining the appropriate course of action councils may also find it useful to refer to the information in the appendix of this guide:

- Asbestos risk communication to the community
- Potentially hazardous activities in the community
- Handling asbestos waste for disposal at workplaces
- Asbestos licenses for removalists
- Working with other agencies to resolve asbestos issues in the community

These appendices provide more detailed information on these specific topics, and additional resources to assist councils.



Responding to asbestos incidents and complaints at residential premises

Councils' jurisdiction and powers to respond to asbestos incidents at residential premises fall under three different Acts:

- [Local Government Act 1993](#)
- [Environmental Planning and Assessment Act 1979](#)
- [Protection of the Environment Operations Act 1997](#)

How councils can do this, and the limitations are discussed in the following sections.



Local Government Act 1993

Orders requiring the preservation of healthy conditions

Section 124(21) of the *Local Government Act 1993* (LG Act) gives councils the powers to serve orders on the owner or occupier of land or premises to do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition (refer to table 2 below). This can be applicable to all circumstances where asbestos or ACM is being handled or disturbed or stored in an unsafe and unhealthy condition.

Table 2: Section 124 Local Government Act 1993 (LGA) Orders

Order	To do what?	In what circumstances?	To whom?
124(21)	To do or refrain from doing such things as are specified in the order to ensure that land is, or premises are, placed or kept in a safe or healthy condition	The land or premises are not in a safe or healthy condition	Owner or occupier of land or premises

Orders for asbestos should be specific in so far as requiring the identification, make safe, clean-up, removal, transport, and disposal of the asbestos by SafeWork NSW licensed professionals and in accordance with the [Protection of the Environment Operations Act 1997](#) and the [Work Health and Safety Act 2011](#). [The Code of Practice: How to Safely Remove Asbestos](#) can also be included as a standard that the work must satisfy.

Considerations before issuing LG Act orders

Natural Justice (procedural fairness): Before giving an order, a council must comply with the natural justice requirements in Division 2 of Chapter 7 of Part 2 of the LG Act, unless it is an emergency (ss129(2)(b)). This includes making representations in accordance with a timetable that is reasonable in the circumstances of the case.

Right of appeal: The recipient of an order under s.124 of the LG Act (other than an order under item 22A) can seek review of the order by the NSW Land and Environment Court (s180(1) LG Act).

Class of appeal: An appeal against the issuing of an order under section 124 of the LG Act is a class 2 proceeding (per s18(a) of the Land and Environment Court Act 1979 No 204).

Proceeding by council: A proceeding by the council to enforce a section 124 order is brought under s673 of the LGA and a class 4 proceeding (s20(1)(d) of the LEC Act).

Notice of right of appeal: s138(1) Local Government Act 1993 must state in the notice of an order that the person has an appeal right to the LEC.

Combination orders: A council may include two or more orders in the same instrument, but not a 124(22A) (per s143 of the LGA)

Entry to premises to investigate: An authorised officer can only enter a residential premises to inspect the property or to carry out the council's functions with the permission of the occupier of that part of the premises. However, if the property is not being used for residential purposes the council can enter to both inspect and carry out the work. Council will need to prove that the premises is not occupied as a residential premises to allow entry without a court order. If there is any doubt council may need a court order under s678 of the LG Act.

(*Notice of entry is still required (s193 LGA), unless: 3(a) if entry to the premises is made with the consent of the owner or occupier of the premises, or (b) if entry to the premises is required because of the existence or reasonable likelihood of a serious risk to health or safety, or (c) if entry is required urgently and the case is one in which the general manager has authorised in writing (either generally or in the particular case) entry without notice.)

Entry to premises to undertake the work itself: Same as for entry to investigate as it will be an entry to carry out a function of the council whereby, if the Order is not complied with, the Council may enter onto the property and may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order (s678 LGA).

Cost recovery of work done by council: s678 Local Government Act Failure to comply with order—carrying out of work by the council

(1) If a person fails to comply with the terms of an order given to the person under Part 2 of Chapter 7, the council may do all such things as are necessary or convenient to give effect to the terms of the order, including the carrying out of any work required by the order....

(6) Any expenses incurred by the council under this section (less the proceeds, if any, of any sale under this section) together with all its associated costs may be recovered by the council in any court of competent jurisdiction as a debt due to the council by the person concerned.

Period for compliance with order: An order must specify a reasonable period within which the terms of the order are to be complied with (s137(1) LGA). Order may require immediate compliance if serious risk to health, safety, or emergency (s137(2)).

Service of the order: An order is given by serving a copy of the order on the person to whom it is addressed and takes effect from the time of service, or a later time specified in the order (s144 LGA). If appropriate in the circumstances of the case, an order may direct two or more people to do the thing specified in the order jointly (s145 LGA).

Service is effected under s710 which provides for several methods, including personal service, delivering to premises where a person lives or carries on a business; prepaid letter to last known address of residence or business; fixing it to the premises; and in any case where the land, building or premises are unoccupied and the owner or the owner's address or place of residence is not known to the council, service by the council may be by advertisement in the approved form published in a newspaper or in a manner determined by council having regard to the object of bringing the notice to the attention of persons.

Offence: S628(2) (LGA) A person who fails to comply with an order given to the person under Part 2 of Chapter 7 that is an order in the terms of any of orders Nos 18–25 or 27–29 of the Table to section 124 is guilty of an offence. Maximum penalty—20 penalty units.

Local Policy for Asbestos

Councils can benefit by developing an approved local policy for orders where asbestos is concerned. Local policies can include for example the list of activities known to cause respirable asbestos fibres. Use of the Local Government Act 1993 by councils to issue orders for asbestos incidents should be guided by councils' internal policies and procedures, guidance provided by the NSW Office of Local Government, and councils expert legal advice. For more information on orders, see [Part 2 Orders of the Local Government Act 1993](#).

It is highly recommended that Councils also consult with SafeWork NSW and the NSW EPA to ensure adequate provisions for asbestos and other hazards are included in a s124(21) order.



Environmental Planning and Assessment Act 1979

Exempt Development and Asbestos – General Requirements

To be exempt development, the development must not involve the removal of non-friable asbestos from an area of more than 10m², or any friable asbestos, unless the asbestos removal is carried out by an appropriately licensed asbestos removalist. For more information see Part 1, Division 2 of the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).

Exempt development that breaches the general requirements (such as unlicensed removal of friable asbestos or over 10 m² of non-friable asbestos) is illegal building work and can be addressed by council accordingly under the *NSW Environmental Planning and Assessment Act 1979*. This includes issuing stop work, stop demolition and compliance orders.

The *NSW Local Government Act 1993* and *Protection of the Environment Operations Act 1997* also provide for orders and penalties for improper handling, transport and disposal of waste. If you are aware of illegal asbestos work being carried out in a workplace, contact SafeWork NSW.

Complying Development and Asbestos – Conditions of complying development certificates

For complying development that does or may involve asbestos, a complying development certificate for development that involves building work or demolition work must be issued subject to the following conditions as per s152 of the *Environmental Planning and Assessment Act 1979*:

- prescribed asbestos removal work must be undertaken by a person who conducts a business of asbestos removal work in accordance with the *Work Health and Safety Regulation 2025*, clause 458 (a licensed person). The effect is that the development will be a workplace to which the *Work Health and Safety Regulation 2025* applies while asbestos removal work is being undertaken.
- the person having the benefit of the complying development certificate must give the principal certifier a copy of a signed contract with a licensed person before development under the complying development certificate commences,

- the contract must indicate whether asbestos will be removed, and if so, must specify the landfill site, which may lawfully receive asbestos, to which the asbestos will be delivered,
- if the contract indicates that asbestos will be removed to a specified landfill site—the person having the benefit of the complying development certificate must give the principal certifier a copy of a receipt from the operator of the landfill site stating that all the asbestos referred to in the contract has been received by the operator.

Development undertaken as complying development, but which is in breach of the conditions (such as unlicensed removal of friable asbestos or over 10 m² of non-friable asbestos) is illegal building work and can be addressed by council accordingly under the *NSW Environmental Planning and Assessment Act 1979*. This includes issuing stop work, stop demolition and compliance orders.

The *NSW Local Government Act 1993* and *Protection of the Environment Operations Act 1997* also provide for orders and penalties for improper handling and disposal of waste. If you are aware of illegal asbestos work being carried out in a workplace, contact SafeWork NSW.

Development with Consent and Asbestos

Development with consent that involves handling or disturbance of asbestos must be undertaken in accordance with the *Work Health and Safety Regulation 2025*. The effect is that the development will be a workplace to which the *Work Health and Safety Regulation 2025* applies while asbestos removal work is being undertaken. Development that is in breach of the *Work Health and Safety Regulation*, (such as unlicensed removal of friable asbestos or over 10 m² of non-friable asbestos, is illegal building work and can be addressed by council accordingly under the *NSW Environmental Planning and Assessment Act 1979*. This includes issuing stop work, stop demolition and compliance orders. Certain types of development involving asbestos are also subject to standard conditions of consent. This includes residential development and demolition.

Standard Conditions – Residential Development and Asbestos

Residential development involving asbestos have three [standard conditions](#):

1. a waste management plan
2. soil management
3. proof of removal of asbestos waste upon completion

Table 3 below provides a high-level overview of these conditions.

Table 3: Standard Conditions – Residential Development and Asbestos (EP&A Act)

Condition	Condition reason	Stages
Waste Management Plan	To ensure waste management practices are undertaken, resource recovery is promoted for non ACM and local amenity is protected during construction site works.	Before the issue of a Construction Certificate During building work
Soil management	To ensure soil removed from the site is appropriately disposed of and soil imported to the site is not contaminated and is safe for future occupants.	During building work
Removal of waste upon completion	To ensure waste material is appropriately disposed or satisfactorily stored.	Before the issue of an Occupation Certificate



Standard Conditions – Demolition and Asbestos

Demolition involving asbestos has six standard conditions: asbestos removal signage, demolition management plan, hazardous materials survey before demolition, notice of commencement of demolition, handling of asbestos during demolition, and waste disposal verification. Table 4 below provides a high-level overview of these conditions as at October/November 2025.

Table 4: Standard Conditions – Demolition and Asbestos (EP&A Act)

Condition	Condition reason	Stages
Asbestos removal signage	To alert the public to any danger arising from the removal of asbestos	Before Building Work commences
Demolition management plan (including details of re-use and disposal of demolition waste material)	To provide details of measures for the safe and appropriate disposal of demolition waste and the protection of the public and surrounding environment during the carrying out of demolition works on the site	Before Building Work commences
Hazardous material survey before demolition	To require a plan for safely managing hazardous materials	Before Building Work commences
Notice of commencement for demolition (eg: licence type and licence number of any demolition waste removal contractor and, if applicable, asbestos removal contractor)	To advise neighbors about the commencement of demolition work and provide contact details for enquiries	Before Building Work commences
Handling of asbestos during demolition	To ensure that the removal of asbestos is undertaken safely and professionally	During Demolition Works
Waste disposal verification statement (including clearance certificate for asbestos)	To provide for the submission of a statement verifying that demolition waste management and recycling has been undertaken in accordance with the approved waste management plan	On-Completion of Demolition Work

Development that is in breach of its conditions of consent is also illegal building work and can be addressed by council accordingly under the *NSW Environmental Planning and Assessment Act 1979*. Where council becomes aware of illegal work involving asbestos or asbestos containing materials, councils can also notify SafeWork NSW if the site is a workplace.

Derelict Buildings and Asbestos

Concerns regarding potential health risks from derelict properties may be directed to council. Derelict properties include abandoned buildings, fire damaged buildings and otherwise dilapidated buildings. Where derelict properties contain friable asbestos and asbestos is exposed, either from human activities or weathering, this poses a potential risk to public health.

If the derelict building is on a site that is a workplace, then SafeWork NSW is the lead agency responsible for ensuring that asbestos is removed by appropriately licensed removalists. Councils can assist SafeWork in responding to workplace asbestos concerns.

Development Control Orders

Schedule 5, Part 1 General orders of the *Environmental Planning and Assessment Act 1979* makes provision for development control orders. These orders can be used for asbestos safety by councils to direct the owners of buildings or persons engaged in work to take the necessary action to ensure a building does not pose a danger to the occupants and the public. The key circumstances in which these orders may be used regarding asbestos are summarised below.

Table 5: Development Control Orders (EP&A Act)

Order (Sch 5)	To do what?	In what circumstances?	To whom?
2	Stop Work Order To stop building work or subdivision work carried out in contravention of this Act	Building work or subdivision work is carried out— <ul style="list-style-type: none"> in contravention of this Act, or in a manner that would affect the support of adjoining premises. 	<ul style="list-style-type: none"> Owner of the land Any person apparently engaged in the work
3	Demolish Works Order To demolish or remove a building	<ul style="list-style-type: none"> the building is or is likely to become a danger to the public; or the building is so dilapidated as to be prejudicial to its occupants or to persons or property in the neighbourhood. 	Owner of building
4	Stop Demolition Order To stop demolishing, or not to demolish, a building	Demolition requiring a planning approval is being carried out, or would be carried out, without approval or in contravention of an approval.	<ul style="list-style-type: none"> The owner of premises The person carrying out the demolition or likely to carry out the demolition
5	Repair Order repair or make structural alterations to the building	If the building is or is likely to become a danger to the public or is so dilapidated that it is prejudicial to the occupants, persons or property in the neighbourhood	Owner of building

Considerations before issuing EP&A orders

Natural Justice (procedural fairness): Unless it is an emergency, the council must comply with clauses 2, 8 and 9 and Part 7 of Schedule 5:

2. homelessness (not relevant)
8. notice has to be given of the intention to issue the order and other matters
9. notice has to be given to other bodies (not relevant)

Part 7 sets out the process for representations concerning proposed orders. This includes making representations in accordance with a timetable that is reasonable in the circumstances of the case.

Right of Appeal: A person who is given a development control order may, within 28 days, appeal to the Land and Environment Court against the order (s8.18).

Class of Appeal: An appeal against the issuing of an order under section 8.18 of the EP&A Act is a class 1 proceeding (per s17(d) of the Land and Environment Court Act 1979 (LEC Act))

Proceeding by Council: A proceeding by the council to enforce the order is brought under section 9.45 of the EP&A Act and it is a class 4 proceeding (per s20 of the LEC Act).

Notice of Right of Appeal: The copy of the development control order is to be accompanied by a notice stating— (a) that the person to whom the order is addressed may appeal to the Land and Environment Court against the order, and (b) the period within which an appeal may be made.

Combination Orders: May include 2 or more orders in the same instrument (cl.38)

Powers of investigation officers to enter premises

(section 9.16 EP&A Act): An investigation officer may enter—

- (a) any premises at which the officer reasonably suspects that any industrial, agricultural or commercial activities are being carried out—at any time during which those activities are being carried out there, and
- (b) any other premises—at any reasonable time.

An investigation officer may enter a part of premises used for residential purposes only—

- (a) with the consent of the occupier, or
- (b) under the authority of a search warrant issued under this Division, or
- (c) if it is necessary to do so to inspect work being carried out under a consent, approval or certificate under this Act, or
- (d) if a building certificate has been sought under this Act and it is necessary to do so to inspect the premises for the purpose of issuing the certificate.

The power to enter premises authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner. Reasonable force may be used to enter premises under this Division.

An investigation officer may enter premises under this Division with the aid of such investigation officers, police officers or other persons as the investigation officer considers necessary.

Entry to premises to undertake the work itself: If the premises are abandoned and derelict, Council can enter the land to undertake work pursuant to cl33 without an order of the Court.

Cost recovery of work done by council: A relevant enforcement authority that gives a development control order may do all such things as are necessary or convenient to give effect to the terms of the order (including the carrying out of any work required by the order) if the person to whom the order was given fails to comply with the terms of the order (cl.33 Sc 5 EP&A Act).

Any expenses incurred under clause 34 by a relevant enforcement authority that gave a development control order, together with all associated costs, may be recovered by the authority in any court of competent jurisdiction as a debt due to the authority by the person required to comply with the order (cl.34(7) Sc 5 EP&A Act).

Period for compliance with order (cl. 27 Sc 5 EP&A Act): A development control order must specify a reasonable period within which the terms of the order are to be complied with.

However, a development control order may require immediate compliance with its terms in circumstances which the person who gives the order believes constitute a serious risk to health or safety or an emergency.

Service of the order: Served on person subject of the order and takes effect from the time of service or a later time specified in the order (clause 4). In the case of an individual— 1(a)(i) by delivering it to him or her, or 1(a)(ii) by sending it by prepaid post addressed to him or her at the address, if any, specified by him or her for the giving of notices or service of documents under this Act, or, where no such address is specified, at his or her usual or last known place of abode or his or her last known place of business (s10.11 EP&A Act).

A notice or other document shall, in respect of a notice or other document sent by prepaid post in accordance with subsection (1)(a)(ii) or (b)(ii), be deemed to have been given or served at the time at which the notice or other document would be delivered in the ordinary course of post.

Offence: Per s9.37 EP&A Act (1) A person to whom a development control order is given or is taken to have been given must comply with the terms of the order. (2) It is a sufficient defence to a prosecution for an offence against this section if the defendant satisfies the court that the defendant was unaware of the fact that the matter in respect of which the offence arose was the subject of an order. Maximum penalty—Tier 1 monetary penalty (more likely to be a Tier 2).





Protection of the Environment Operations Act 1997

Asbestos waste (in any form) must only be disposed of at a landfill site that may lawfully receive asbestos waste. The handling and, where appropriate, temporary storage of asbestos waste at worksites is regulated by SafeWork NSW.

The NSW EPA regulates premises that have or require an environment protection licence in accordance with the *Protection of the Environment Operations Act 1997*. A licence is required where more than 5 tonnes of asbestos waste, brought from off-site, is stored at any time. All other sites where asbestos waste is stored, typically those that are non-work sites, are regulated by local councils.

Before considering actions under the POEO Act council officers are encouraged to refer to the Powers and Notices: Guideline for Authorised Officers and Enforcement Officers.

What is the definition of asbestos waste?

Asbestos waste is defined as any waste that contains asbestos. This includes asbestos or asbestos containing material removed and disposable items used during asbestos removal work including plastic sheeting and disposable tools.

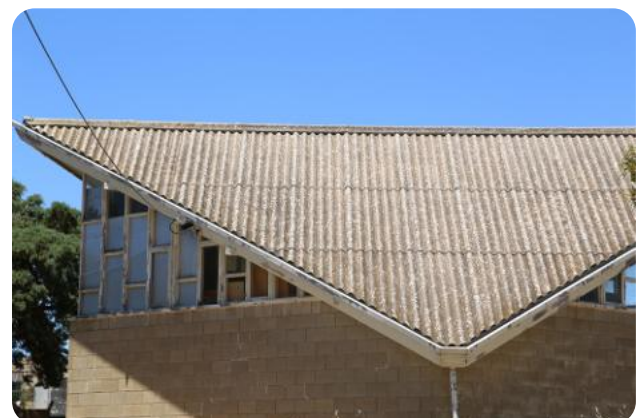
Transport of Asbestos Waste - Reporting

The transporter of a load of asbestos waste that is more than 100 kilograms of asbestos waste, or more than 10 square metres of waste asbestos sheeting, in any single load, must cause the following information to be given to the NSW EPA (in the prescribed form and manner) before the transportation of the load commences—

- the address of the site at which the asbestos waste has been generated (by its removal from the site), if known to the transporter,
- the name, address and contact details of the premises from which the load is proposed to be transported,
- the date on which it is proposed that the transportation commence,
- the name, address and contact details of the premises to which the waste is proposed to be transported,

- the approximate weight (in kilograms) of each class of asbestos waste in the load (rounded to the nearest kilogram and, if the amount to be rounded is 0.5 kilogram, rounded up),
- any other information specified in the NSW EPA's Asbestos and Waste Tyres Guidelines (as updated from time to time).

This information is reported to the NSW EPA via the Integrated Waste Tracking Solution. For more information see [Tracking asbestos waste using the Integrated Waste Tracking Solution](#).



Asbestos Waste Must be Transported to a Lawful Place

It is an offence under s143 of the POEO Act for a person to dispose of asbestos waste (off the site at which it is generated) at a place that cannot lawfully receive the asbestos waste.

Further, the owner and the transporter of waste, including asbestos waste, are each guilty of an offence when waste is transported to a place that cannot lawfully be used as a waste facility. The owner of the waste and the transporter can be ordered to clean up and pay for such waste to be taken to a lawful place.

Both the owner and the transporter of waste, including asbestos waste, are legally responsible for proving the waste is transported to a place that can lawfully be used as a waste facility.

Relying on advice from others, such as consultants, contractors, or managers of waste facilities, is no defence for transporting waste to a place that cannot lawfully be used as a waste facility.

Owners of waste can protect themselves from fines and hefty penalties if they can show they did not transport the waste and can prove that the offence was due to causes over which they had no control, and that they took reasonable precautions and exercised due diligence to prevent commission of the offence.

Disposal of Asbestos Waste at a Licensed Asbestos Disposal Facility

Throughout this section, landfill site means a landfill site that can lawfully receive asbestos waste. As mentioned above, it is an offence for a person to dispose of asbestos waste (off the site at which it is generated) at a place that cannot lawfully receive the asbestos waste.

When a person delivers asbestos waste to a landfill site, the person must inform the occupier of the landfill site that the waste contains asbestos. It is strongly suggested that waste owners or transporters contact the landfill site well in advance to schedule their asbestos waste delivery (see section 80 Protection of the Environment Operations (Waste) Regulation 2014). At a minimum, they should provide the landfill site with at least 24 hours' notice of their asbestos waste delivery.

When delivering asbestos waste to a landfill site there are several requirements as follows.

The following persons must ensure that when a person unloads or disposes of asbestos waste at a landfill site (regardless of whether the site is subject to an environment protection licence) no dust is generated from the waste—

- the person unloading or disposing of the asbestos waste,
- the occupier of the landfill site.

Subject to any alternative cover conditions provided in an environment protection licence held by the occupier or approved in writing by the NSW EPA, the occupier of a landfill site must ensure that asbestos waste disposed of at the site is covered with virgin excavated natural material—

- initially (at the time of disposal), to a depth of at least 0.15 metre, and
- at the end of each day's operation, to a depth of at least 0.5 metre, and
- finally, to a depth of at least 1 metre (in the case of bonded asbestos material or asbestos-contaminated soils) or 3 metres (in the case of friable asbestos material) beneath the final land surface of the landfill site.

Asbestos Waste Storage

It is an offence under section 144 of the [Protection of the Environment Operations Act 1997](#) for an owner or an occupier of a place to use the place as a waste facility without lawful authority. A "waste facility" is any premises used for the storage, treatment, processing, sorting, or disposal of waste.

Examples of permitting land to be used unlawfully as a waste facility are set out below:

- Example 1: Development consent is required to use the place as a waste facility but has not been obtained.
- Example 2: An environment protection licence is required to use the place as a waste facility but has not been obtained.

Note: All workplaces that store asbestos waste, including waste facilities, must have an asbestos register and an asbestos management plan. For details of asbestos register and asbestos management plan requirements see the [Code of Practice: How to manage and control asbestos in the workplace](#).



Environmental Protection Licensing Thresholds

It is an offence under s48 of the [Protection of the Environment Operations Act 1997](#) to carry on a scheduled activity, such as storage of more than 5 tonnes of asbestos brought from offsite at a premises, without an environment protection licence authorising the carrying out of that scheduled activity.

Storage of waste must only be done at a place that can lawfully store that waste. The [Protection of the Environment Operations Act 1997](#) and [Protection of the Environment Operations \(Waste\) Regulation 2014](#) impose requirements in relation to the storage, transportation and management of waste, including asbestos waste.

Schedule 1 clause 42 of the [Protection of the Environment Operations Act 1997](#) sets out the thresholds above which an environment protection licence will be needed to authorise waste storage. An environment protection licence must be obtained where more than 5 tonnes of asbestos waste, brought from offsite, is stored at a premises at any one time. Failing to do so may be an offence.

It is recommended that council regulatory officers consult the NSW EPA and the relevant functional areas within your Council when responding to complaints and incidents about storing asbestos waste.

Planning Considerations and Thresholds

In addition to any environment protection licence requirements, you may also need to consider if development consent is required to store the asbestos waste.

If development consent will be required, you must consider who would be the appropriate consent authority. The [Environmental Planning and Assessment Act 1979](#) outlines the planning approval pathways in NSW. The [Environmental Planning and Assessment Act 1979](#) and the [Environmental Planning and Assessment Regulation 2021](#) also outline requirements for environmental studies or reports to accompany development proposals and requirements for public participation if an environmental study is required.

A local council's planning instruments such as a Local Environmental Plan (LEP) and any particular development standards will also factor into whether a development proposal is approved. It is recommended that you consult the NSW EPA and the relevant functional areas at council when making any decisions about allowing storage of asbestos waste received from off-site.

For more detail on the development consent requirements that apply to waste facilities, please see Schedule 3 section 45 of the [Environmental Planning and Assessment Regulation 2021](#), and ensure you contact the consultant or duty planner at your council.

Illegal disposal of asbestos waste

It is illegal to dispose of asbestos waste in domestic garbage bins or to recycle, reuse, bury or illegally dump asbestos waste. Asbestos waste must not be placed in general waste skip bins, yet there have been instances where asbestos has been illegally placed in skip bins by third parties. Members of the public need to be aware of this hazard and may need to secure their skip bins to prevent a third party from illegally disposing of asbestos in the skip bin.

Asbestos waste - appropriate regulatory authority and the POEO Act

Who is the Appropriate Regulatory Authority (ARA) for asbestos waste?

The disposal of asbestos waste received from off-site by application to land is an activity that is required to be licensed unless one of the conditions in Schedule 1 clause 39(2) of the [Protection of the Environment Operations Act 1997](#) are met. Because disposal of asbestos waste is not listed in clause 39(2) as an exception to licensing, the NSW EPA is the appropriate regulatory authority (ARA) for regulating illegal disposal and dumping of asbestos waste.

Why is this important to councils?

Where council takes regulatory action for an activity or work and later realises it is not the ARA (e.g. finding asbestos on a site that is already under some regulatory action for illegal

dumping), then council is taken to be the ARA for that activity or work under s 212C. However, council must notify the NSW EPA as soon as it discovers that it is not the ARA and, under s 212C (3) council may continue to exercise ARA functions to regulate the activity or work until directed otherwise by the NSW EPA or an environment protection licence is granted by the NSW EPA in respect of the activity or work concerned.

How can councils become the ARA for asbestos waste?

On a case-by-case basis councils can request to be the ARA for asbestos waste incidents. This must be done by contacting the NSW EPA, see section 212C and 212D of the [Protection of the Environment Operations Act 1997](#).

Clean-up Notices (POEO Act)

An ARA may issue a clean-up notice when it reasonably suspects a pollution incident has occurred or is occurring (section 91(1) of the POEO Act). A clean-up notice may be issued when a leak, spill or other escape or deposit of a substance that results in pollution is likely to occur, has occurred or is occurring; that is, not just once it has occurred. Under section 144AG of the POEO Act, a clean-up notice can also be issued for littering or illegal dumping as if it was a pollution incident.

A clean-up direction can be provided in writing or orally. The power to issue clean-up directions orally means a direction can be given with immediate effect, which may be important in an emergency. A clean-up direction issued orally must be confirmed within 72 hours by a written clean-up notice or it no longer has effect (section 93 of the POEO Act).

A clean up notice in relation to a pollution incident will include clean-up action such as:

- action to prevent, minimise, remove, disperse, destroy or mitigate pollution resulting or likely to result from the pollution incident, and

- ascertaining the nature and extent of the pollution incident and the actual or likely resulting pollution, and
- preparing and carrying out a remedial plan of action to deal with the pollution incident, and
- actions required to restore the environment to a state that is as close as possible to the state the environment was in immediately before the pollution incident, and
- carrying out—
 - specified tests or environmental monitoring, and
 - action to facilitate testing by the appropriate regulatory authority, and
- giving the appropriate regulatory authority a specified test, monitoring or a report.

This also includes actions to remove or store the following—

- waste disposed of on land unlawfully,
- chemicals,
- products or articles containing chemicals.

Clean-up notices available to councils are summarised below.

Table 6: Clean-up notices available to councils (POEO Act)

Section	Issued to	When may the notice be issued	Purpose of the notice
91	Owner Occupier Person reasonably suspected of causing or contributing to a pollution incident	There is a reasonable suspicion that a pollution incident (as defined in the POEO Act Dictionary) has occurred or is occurring at or from the premises, or a person is causing or has caused a pollution incident, or has contributed to a pollution incident	To direct the person to take specified clean-up action in relation to a pollution incident
91A	Current director Former director Related body corporate	The ARA has given a clean-up notice to a corporation and the corporation has not complied with the clean-up notice within the period specified in the notice	To direct the person to carry out, or ensure the carrying out of, specified clean-up action. Notice may require the person to provide reports to the ARA about progress on the clean-up actions
91 (as applied by 144AG)	Owner Occupier Person reasonably suspected of causing or contributing to littering or illegal dumping	There is a reasonable suspicion that litter or waste has been or is being deposited on a premises	To direct the person to take specified clean-up action in relation to the littering or illegal dumping, as if it were a pollution incident

Prevention Notices (POEO Act)

An ARA may issue this type of notice in writing under section 96 of the POEO Act. A prevention notice is issued to ensure that an activity is carried on in future in an environmentally satisfactory manner. Failure to comply with the requirements of a prevention notice is an offence.

A prevention notice must specify the action to be taken and, if appropriate, the date for compliance. Some specified actions may be ongoing. A prevention notice may direct the person to take action (preventive action) to ensure that in future the activity is carried on in an environmentally satisfactory manner.

Table 7: Prevention Notices (POEO Act)

Section	Issued to	When may the notice be issued	Purpose of the notice
96	Occupier Person carrying on the activity	Where there is a reasonable suspicion that an activity has been or is being carried on in 'environmentally unsatisfactory manner' (within the meaning of section 95) at any premises or by any person (otherwise than at premises)	To direct the person to take specified action to ensure the activity is carried out in an environmentally satisfactory manner in future (including directing the person to carry on the activity in a particular manner or ceasing all or part of the activity)
96A	Current director Former director Related body corporate	The ARA has given a prevention notice to a corporation and the corporation has not complied with the prevention notice within the period specified in the notice	To direct the person to take specific action to ensure the activity is carried out in an environmentally satisfactory manner in future Notice may require the recipient to provide reports to the ARA about progress on the actions

Compliance Cost Notices (POEO Act)

Table 8: Compliance Cost Notices (POEO Act)

Section	Issued to	When may the notice be issued	Purpose of the notice
104 (1) For clean-up or prevention notices	Person issued the original notice	Reasonable costs and expenses were incurred by the ARA in connection with monitoring and ensuring compliance with a clean-up or prevention notice	To recover costs incurred by the ARA in connection with monitoring action under the clean-up or prevention, ensuring the notice is complied with, and any other associated matters
104 (4) For prevention notices	Person issued the original notice	Reasonable costs and expenses were incurred by the ARA in taking action under section 98 because a prevention or prohibition notice is not complied with	To recover costs incurred by the ARA in taking action because a prevention or prohibition notice is not complied with

Investigative Notices (POEO Act)

Table 9: Investigative Notices (POEO Act)

Instrument	Section	Issued to	When may the notice be issued	Purpose of the notice
Notice to provide information and records	191 193	Person	Information or records are required for matters relating to the authority's responsibilities or functions under the POEO Act. For regulatory authorities other than the NSW EPA, this is limited to matters for which it is the ARA	To gather evidence in an investigation
Require a person to attend at a specified place and time to answer questions	203 (5)	Person	You reasonably suspect a person has knowledge of matters in respect of which information is reasonably required for the purposes of the POEO Act and attendance at that place is reasonably required in order that the questions can be properly answered	To make sure a person attends an interview at a set time and place
Nominate a specified place and time to answer questions	203 (6)	Person	The person does not nominate a place and time to answer questions under section 203(6) or the place and time nominated by the person is not reasonable in the circumstances	To determine a time and place for an interview
Require a corporation to nominate a representative to answer questions	203 (2)	Corporation	You reasonably suspect a person has knowledge of matters in respect of which information is reasonably required for the purposes of the POEO Act	To get information about relevant matters from a company representative

Considerations before issuing notices under the POEO Act

Councils are encouraged to refer to the [Powers and Notices: Guideline for Authorised Officers and Enforcement Officers](#) published by the NSW EPA for detailed advice on the key powers given to authorised officers and enforcement officers under the POEO Act and guidance on how to use those powers lawfully and appropriately. These guidelines are regularly updated by the NSW EPA.





Council led clean-up of asbestos incidents at residential premises

Local Councils across NSW report that there are numerous derelict and abandoned residential buildings as well as asbestos contaminated land, many of which have become subject to vandalism and arson. Many of these buildings and sites contain asbestos, and as a result of vandalism and fire the structure of the buildings, the asbestos contained within, and the land immediately surrounding the structures has become a hazard to neighbours and the community.

These sites are usually accessible to the public (including children) and have been subsequently used as places of refuge, recreation and delinquent behaviour. When people enter these sites they risk exposure to asbestos fibres and contraction of asbestos related diseases, along with the safety risks associated with these dilapidated and unstable structures.

Councils have the authority to take action at these sites, and have done so successfully using the EP&A Act, POEO Act or LG Act (as appropriate). Moree Plains Shire Council have undertaken extensive compliance programs in this area and have shared to councils via LGNSW documentation that may assist.

Following is a summary of resources developed on this issue:

- [Background on why burnt and derelict properties that contain asbestos are an issue for councils and what LGNSW is doing about it](#)
- [Councils' Duty of care when responding to burnt and derelict houses](#)
- [Table comparing orders available to councils under the Local Government Act and Environmental Planning and Assessment Act](#)
- [Guidelines on the roles and responsibilities for managing buildings damaged by small scale fire](#)
- Moree Plains Shire Council [Procedures for Issuing Demolition Orders and Enforcement Action for Derelict and Fire Damaged Buildings](#)
- Moree Plains Shire Council [Risk Assessment Framework for burnt and damaged buildings](#)





Appendix: Asbestos Risk Communication to the Community

As the closest level of government to the community a councils' response to community concerns about asbestos can have a significant impact on safety outcomes. Effective asbestos risk communication along with a clear and concise understanding of councils jurisdiction for responding to asbestos, as well as collaboration with state agencies, can lead to better outcomes for asbestos safety.

Asbestos is a highly emotive issue that can quickly escalate and cause public concern. The federal Asbestos and Silica Safety and Eradication Agency (ASSEA) has developed [Guidelines for communicating asbestos risk to the public](#) and the [Communicating asbestos facts and figures guide](#), so that asbestos information communicated to the Australian public is clear, consistent and evidence based.

What are the types of asbestos?

The two types of asbestos are:

- **friable** – when dry it can be crumbled, pulverised or reduced to a powder in the hand
- **non-friable** – when dry it cannot be crumbled, pulverised or reduced to a powder by hand pressure. It is mixed with cement or other bonding materials and is also known as bonded asbestos.

Non-friable asbestos can become friable asbestos if the asbestos is damaged or old.

Find out more about [friable and non-friable asbestos](#).

How can asbestos affect your health?

Inhalation is the main way asbestos enters the body. Inhalation of asbestos fibres increases the risk of developing cancers of the lung, ovary and larynx as well as mesothelioma (cancer of the lining of the lung).

The widely accepted asbestos-related diseases are lung cancer, malignant pleural or peritoneal mesothelioma (cancer of the mesothelial cells which cover most internal organs), laryngeal cancer, ovarian cancer, and asbestosis (pneumoconiosis caused by asbestos). Asbestos-related diseases usually develop decades after exposure to asbestos.

Asbestos-related diseases are preventable, yet contribute to approximately 4,000 deaths in Australia each year (Global Burden of Disease Collaborative Network, 2016).

How does asbestos inhalation happen?

Asbestos inhalation exposure can occur [in the home](#) or [in the workplace](#). If asbestos-containing materials are disturbed, asbestos fibres may be released into the air and inhaled. There is no safe level of exposure that can protect you from developing an asbestos-related disease (World Health Organisation), as it is a genotoxic carcinogen with DNA interaction properties. Genotoxic carcinogens are regulated under the assumption they pose a cancer risk for humans, even at very low doses.

For any health concerns regarding asbestos seek medical advice.



Is it safe to cut or drill or high pressure clean or disturb asbestos?

Under work health and safety laws, preventing exposure is expressed as ensuring that exposure to airborne asbestos fibres at a workplace is eliminated so far as is reasonably practicable, and if not reasonably practicable, is minimised as far as is reasonably practicable.

When it comes to ACMs, there are two aspects to prevention:

1. preventing fibres from being released by preventing damage, disturbance or deterioration
2. if released, preventing fibres from being inhaled or ingested.

Do say 'ACMs are dangerous when they are damaged, disturbed or deteriorating'.

Do emphasise the preventive action for people to take, such as 'Find out if your house contains asbestos' or 'If you notice damage to asbestos containing materials, take these steps to be safe ...'

Do explain the legal responsibilities that people have, such as:

- the common law duty to take reasonable care not to cause harm to another person that could be reasonably foreseen
- statutory duties and offences that apply under a range of laws including work health and safety, public health and environment protection.

Who can remove asbestos?

Work that involves removing any amount of friable asbestos, or more than 10 m² of bonded non-friable asbestos, must be done by a suitably licensed person. Certain businesses are licensed to undertake asbestos removal work under the NSW Work Health and Safety Regulation 2025. Licenses are issued by SafeWork NSW. See Part 8.10 of the NSW Work Health and Safety Regulation 2025.

Removing less than 10 m² of non-friable asbestos can be performed by property owners or tradespeople. See [Asbestos removal – exempt and complying development Fact Sheet](#). However, SafeWork NSW strongly recommend using a licensed removalist as there is no safe level of exposure to asbestos.

Any asbestos removal work must comply with the [Code of Practice on How to Safely Remove Asbestos](#) published by SafeWork NSW. Anyone removing asbestos must be aware of these requirements.

What you can and can't do with asbestos waste

It is illegal to:

- dump asbestos waste – it must go to a landfill licensed to accept it
- put asbestos waste or asbestos containing material in your kerbside bin
- put asbestos waste or asbestos containing material in an uncovered skip bin, or a skip bin not approved to hold asbestos
- reuse or recycle asbestos waste, such as using it for building, fencing or fill material burn or incinerate asbestos waste.

You must:

- ensure any part of the vehicle used to transport asbestos waste is covered, and leak-proof during transportation
- ensure asbestos material is securely packaged during transportation
- ensure friable asbestos material is kept in a sealed container during transportation
- ensure asbestos contaminated soils are wetted down
- transport and dispose of asbestos at a waste facility that can lawfully receive it
- notify the landfill disposal site before arrival to ensure compliance with their requirements
- report the transport of more than 100kg or 10m² of asbestos waste, using the Integrated Waste Tracking Solution (IWTS), as required by the NSW EPA.

If you think you've observed illegally dumped asbestos, don't touch it. Report the asbestos to your local council or the NSW EPA Environment line on 131 555.

For more details see <https://www.asbestos.nsw.gov.au/>





Appendix: Potentially hazardous activities in the community

A number of activities could cause asbestos to be disturbed and consequently create a health risk. If asbestos is present, these activities may be illegal or certain precautions may be required, or an appropriately licensed person may be required to undertake the activity.

Members of the public could disturb asbestos through activities including:

- renovations, refurbishments or repairs particularly those involving power tools, boring, breaking, cutting, drilling, grinding, sanding or smashing asbestos containing materials
- demolitions of homes or other structures (dismantling or destruction)
- relocating a house, building or structure
- using compressed air on asbestos containing materials
- water blasting asbestos containing materials
- cleaning gutters on asbestos cement roofs
- handling asbestos cement conduits or boxes
- maintenance work such as plumbing and electrical work on or adjacent to asbestos containing materials such as working on electrical mounting boards
- maintenance or servicing of materials from vehicles, plant or equipment
- accepting asbestos-contaminated fill material for use on their property
- checking, removing or replacing ceiling insulation which contains asbestos.

Council could disturb asbestos through activities such as:

- abovementioned activities
- asset and building maintenance
- certifying
- inspections of sites and premises
- management of waste from disaster recovery
- transport and disposal of illegally dumped materials
- collection, transport and disposal of incorrectly disposed of materials.

Naturally occurring asbestos and contaminated sites could be disturbed during:

- road building
- site and construction work
- other excavation activities
- vehicle movements

Emergencies, incidents, and natural processes and asbestos

Emergencies or incidents can arise from natural hazards, or from accidental or deliberate human activities including criminal activity. This can create site contamination issues and potentially expose emergency service workers and the wider public to asbestos hazards including:

- bushfires causing extensive damage to asbestos cement roofs or building materials, resulting in friable asbestos
- cyclones, storms and flood damaging buildings containing asbestos
- extensive weathering and etching of unsealed asbestos cement roofs
- small scale building fires causing damage to asbestos cement roofs or building materials creating friable asbestos
- vehicle accidents damaging structures containing asbestos
- vandalism damaging structures containing asbestos
- fires, erosion or other damage to the capping layer at a waste facilities or legal landfill resulting in exposure to buried asbestos waste.



Situations where asbestos-contaminated sites may occur

Situations where asbestos may cause land contamination include:

- industrial land, eg, asbestos-cement manufacturing facilities, former power stations, and rail and ship yards, especially workshops and depots
- waste disposal or dumping sites, including sites of illegal dumping and landfilling eg, construction and demolition waste
- sites with infill or burial of asbestos waste from former asbestos mining or manufacture processes
- buildings or structures damaged by fire or storm (particularly likely for those with pre-1990s building materials but also possible for those with materials from prior to 2004)
- land with fill or foundation material of unknown composition
- sites where buildings or structures have been constructed from asbestos containing material or where asbestos may have been used as insulation material, eg, asbestos roofing, sheds, garages, reservoir roofs, water tanks, boilers, or demolition waste has been buried onsite
- sites where buildings or structures have been improperly demolished or renovated, or where relevant documentation is lacking (particularly likely for those with pre-1980s building materials but also those with materials from prior to 2004)
- disused services with asbestos containing piping such as water pipes (including sewage systems, water services and irrigation systems), underground electrical and telephone wires and telecommunications trenches or pits (usually within 1 metre of the surface).





Appendix: Handling & disposal of Asbestos Waste

The [Code of practice on how to safely remove asbestos](#) provides details on waste containment and disposal and controls applicable to all types of asbestos removal. For worksites the asbestos waste must be disposed of as soon as reasonably practicable, whether that is:

- at the end of each day if the asbestos waste cannot be secured at the removal site.
- if waste cannot be removed at the end of each day, then at the end of the removal job, provided that the stored waste is adequately secured from unauthorised access. (providing the asbestos waste is secured on site at the end of each day to prevent unauthorised access)

This requirement also extends to non-worksites where handling of asbestos waste for disposal must be done in accordance with the [Code of practice on how to safely remove asbestos](#).

Asbestos waste skips, vehicle trays and similar containers

The Code of practice on how to safely remove asbestos advises that if the volume or size of the asbestos waste cannot be contained in asbestos waste bags, drums or bins, sites should use a waste skip, vehicle tray or similar container that is in good condition. This requirement also extends to non-worksites where handling of asbestos waste for disposal must be done in accordance with the Code of practice on how to safely remove asbestos.

The asbestos should be sealed in double-lined, heavy duty polyethylene sheeting (minimum 200 µm thickness) or double bagged before it is placed in the skip, tray or similar container. However, non-friable asbestos waste may be placed

directly into a skip or vehicle tray that has been double-lined with polyethylene sheeting provided it is kept damp to minimise the generation of airborne asbestos.

Once the skip, tray or similar container is full, its contents should be completely sealed with the polythene sheeting. If the skip is emptied at a waste disposal site, waste disposal procedures which prevent the tearing of the polythene lining should be developed.

If asbestos waste cannot be disposed of immediately, the skip may be used for storing the asbestos waste on site the skip must be removed and disposed of as soon as reasonably practicable, provided that the contents are secured (for example using a lockable lid or locating the skip in a secure area) to prevent unauthorised access.



Appendix: Asbestos Licences for removalists

Council officers are often called to sites where asbestos removal work is being undertaken. To assist council officers to better understand the requirements of asbestos removal work, this content has been included.

To remove asbestos a SafeWork NSW licence is required in most cases, however no licence is required to remove:

- less than 10 square metres of non-friable asbestos (i.e. fibro material)
- asbestos containing dust that is associated with the removal of less than 10 square metres of non-friable asbestos
- minor asbestos contamination or debris not associated with the removal of friable or non-friable asbestos.

NOTE: all asbestos removal work must be carried out safely in accordance with the work health and safety legislation.

Class A licence

The class A licence allows a removalist to remove friable asbestos, non-friable asbestos and any asbestos contaminated dust or debris (ACD). Fire damaged asbestos materials can only be cleaned up by SafeWork NSW licensed asbestos removalist with a Class A (friable) asbestos removal licence.

Class B licence

The class B licence is more common and allows a removalist to remove 10 square metres or more of non-friable asbestos, like fibro sheets. Having a class B licence only allows a removalist to remove the asbestos contaminated dust or debris (ACD) that is directly associated with the removal of non-friable asbestos.

A list of approved SafeWork NSW licensed removalists (Class A and Class B) and a list of approved SafeWork NSW licensed assessors can be found at:

<https://verify.licence.nsw.gov.au/home>

Licensed asbestos assessors

An independent asbestos assessor licence is required to undertake air monitoring, clearance inspections or the issuing of clearance certificates for class A asbestos removal work.

A competent person who is not a licensed asbestos assessor can carry out a clearance inspection for non-friable asbestos removal work.

Notification of asbestos removal work

A removalist must notify SafeWork NSW five days before licensed asbestos removal work is commenced.

Asbestos assessment report

If an officer suspects asbestos fibres on a property, the officer may request an asbestos inspection /assessment to be undertaken by a suitably qualified person to advise of the type and amount of asbestos and the remedial action required e.g. a licensed asbestos assessor or an occupational hygienist.

Air monitoring

Air monitoring requirements vary depending on the type of asbestos being removed, the location and position of the asbestos, if an enclosure is used and whether the asbestos removal work is within a building or outside.

Friable asbestos removal – Air monitoring is mandatory for all friable asbestos removal. This includes prior to dismantling an enclosure and for the purposes of the clearance inspection. A removalist must immediately notify SafeWork NSW when the respirable asbestos fibre level exceeds 0.02 fibres /ml in the removal area.

More than 10 m2 of non-friable asbestos removal – Air monitoring is not required but may be considered to be carried out by an independent licensed asbestos assessor or competent person.

Public Location – Air monitoring should be considered where the asbestos removal work is being undertaken in or next to a public location and there is likelihood that debris/dust from materials containing asbestos may disperse onto adjoining land.

Exposure air monitoring – Air monitoring may be carried out at other times to determine a worker's exposure to airborne asbestos if, based on reasonable grounds, there is uncertainty as to whether the exposure standard may be exceeded and a risk assessment by a competent person indicates it is necessary. Since most uses of asbestos are prohibited, exposure monitoring should not be required frequently.

Air monitoring may be required when it is not clear whether new or existing control measures are effective there is evidence (for example, dust deposits are outside the enclosure) the control measures have deteriorated as a result of poor maintenance modifications or changes in safe work methods have occurred that may adversely affect worker exposure there has been an uncontrolled disturbance of asbestos at the workplace.

Air monitoring for work health and safety purposes is a matter for SafeWork NSW to determine/ investigate.

Asbestos Clearance certificates

A clearance inspection must be undertaken once the licensed asbestos removal work has been completed, and before the asbestos removal area at the workplace is re-occupied. A clearance inspection is carried out and a clearance certificate is issued by;

- An independent licensed asbestos assessor- for work that must be carried out by a Class A licensed asbestos removalist.
- An independent licensed asbestos assessor or independent competent person, in relation to asbestos work that is carried out by a Class B licensed asbestos removalist (for example, if removal work involved more than 10 m² of non-friable asbestos).
- A competent person for this purpose means a person who has acquired through training, qualification or experience, the knowledge and skills to carry out the asbestos task.

To be independent, the licensed asbestos assessor or competent person must not be involved in the removal of asbestos for that specific job and is not involved in a business or undertaking involved in the removal of the asbestos for that specific job.

The clearance certificate must be issued prior to reoccupying the asbestos removal area.

Storage & Disposal of Asbestos

- Asbestos waste from a residential premises or construction site should be removed as soon as practicable after removal works have begun.
- Asbestos waste must be stored on a premises in an environmentally safe manner, this must include wetting down and sealing in heavy-duty plastic prior to transportation.
- Non-friable asbestos material must be securely packaged at all times. (Non-friable asbestos material means any material [other than friable asbestos material] that contains asbestos.)
- Friable asbestos material must be kept in a sealed container. (Friable asbestos material means any material that contains asbestos and is in the form of a powder or can be crumbled, pulverised or reduced to powder by hand pressure when dry.)
- Asbestos-contaminated soils must be wetted down.
- All asbestos waste must be transported in a covered, leak-proof vehicle.
- Asbestos waste must be disposed of at a landfill site that can lawfully receive this waste.
- It is illegal to dispose of asbestos waste in domestic garbage bins.
- The owner of the waste/ licensed removalist must ensure that asbestos is disposed of at a lawful disposal facility. To ensure this, the officer can request a copy of the disposal receipt.

Appendix: Working with other agencies to resolve asbestos issues in the community.

In NSW asbestos is regulated by many state agencies and councils. To be effective, state agencies and councils should work together to ensure the best safety outcomes for the community. This can be as simple as contacting the relevant state agency to seek information or assistance, or for the referral of issues better suited to the capability and responsibilities of the state agency. In many circumstances responses to asbestos issues in the community will involve multiple agencies. The following scenarios are examples and a guide only.

Emergency Management

Emergencies and incidents such as major collapses, cyclones, explosions, fires, storms, or vandalism can cause damage to buildings or land that contain asbestos. This may include working with state agencies in accordance with the NSW Asbestos Emergency Plan and the Disaster Assistance Guidelines. This can create site contamination issues and potentially expose emergency service workers and the wider public to asbestos. Emergencies or incidents can arise from natural hazards, or from accidental or deliberate human activities including criminal activity. Common scenarios are summarised in the following table.

Table 10: Emergency management scenarios

Scenario	Lead organisation	Other regulators
Emergency response	Emergency services	Fire and Rescue NSW (Hazmat) SafeWork NSW
Handover to local council, owner of property or NSW Police – crime scene following a minor incident	Local council NSW Police	
Handover to State Emergency Recovery Controller	State Emergency Recovery Controller	Recovery Committee Local council NSW EPA SafeWork NSW
Handover to Recovery Committee following a significant incident	Recovery Committee (formed by State Emergency Recovery Controller)	Local council NSW EPA SafeWork NSW
Remediation not requiring a licensed removalist	Local council	Principal Certifying Authority SafeWork NSW (workers)
Remediation requiring licensed removal work	SafeWork NSW	Local council Principal Certifying Authority
Clearance Certificate issued by a licensed asbestos assessor or competent person	SafeWork NSW	Principal Certifying Authority

Naturally Occurring Asbestos

For naturally occurring asbestos that will remain undisturbed by any work practice, council is the lead regulator.

Where development applications propose activities that may disturb areas of naturally occurring asbestos (such as excavation), council has a role in assessing proposals and making determinations. Council can work together with the NSW EPA and SafeWork NSW to coordinate enforcement where non-compliance is suspected.

Where naturally occurring asbestos will be disturbed due to a work process, including roadwork, excavation and remediation work, SafeWork NSW is the lead regulator. Where naturally occurring asbestos is part of a mineral extraction process, the NSW Department of Primary Industries and Regional Development is the lead regulator. Common scenarios for naturally occurring asbestos are summarised in the following table.

For more information on managing naturally occurring asbestos, see the NSW EPA webpage [Managing asbestos in and on land](#).

Table 11: Naturally occurring asbestos scenarios

Scenario	Lead organisation	Other regulators
Naturally occurring asbestos but will be disturbed due to a work process including remediation work	SafeWork NSW (workers)	Local council NSW EPA where it is the ARA for the activity under the POEO Act
Naturally occurring asbestos part of a mineral extraction process	Department of Planning, Housing and Infrastructure	Local council NSW EPA where it is the ARA for the activity under the POEO Act
Naturally occurring asbestos but will remain undisturbed by any work practice	Local council	SafeWork NSW (workers)
Potential for exposure to naturally occurring asbestos on public land	Local council	SafeWork NSW (workers) NSW EPA where ARA for activity under the POEO Act
Waste contaminated with naturally occurring asbestos from a mine site	Department of Planning, Housing and Infrastructure	Local council NSW EPA where it is the ARA for the activity under the POEO Act



Residential Settings

Councils play a lead role in managing asbestos in residential settings. Councils can work with SafeWork NSW where any work involving asbestos is present at residential settings. Councils can also work with the NSW EPA where asbestos waste concerns are present. Common scenarios for asbestos at residential settings are summarised in the following table.

Table 12: Residential settings scenarios

Scenario	Lead organisation	Other regulators
Safe Management of asbestos including: <ul style="list-style-type: none"> • identification • in situ management • removal requirements • disposal requirements 	Local council Private Certifiers	SafeWork NSW NSW EPA
Site contaminated due to past uses	Local council	SafeWork NSW NSW EPA if regulated under the CLM Act
Licensed removal work required	SafeWork NSW	Local council Private Certifiers
Removal does not require a licensed removalist	Local council Private Certifiers	SafeWork NSW (workers)
Transport or waste disposal issues	Local council	NSW EPA
Derelict property with fibro debris	Local council or multi-agency	Multi-agency



Asbestos Waste Scenarios

The handling and, where appropriate, temporary storage of asbestos waste at worksites is regulated by SafeWork NSW. The NSW EPA regulates premises and activities that have or require an environment protection licence in accordance with the Protection of the Environment Operations Act 1997. The NSW EPA also regulates the transport of asbestos waste.

An environment protection licence is required where more than 5 tonnes of asbestos waste, brought from off-site, is stored at any time. All other sites where asbestos waste is stored, typically those that are non-work sites, are regulated by local councils. Common asbestos waste scenarios are summarised in the table below.

Table 13: Asbestos waste management scenarios

Scenario	Lead organisation	Other regulators
Asbestos waste temporarily stored on-site	SafeWork NSW (work sites) EPA or local council (non-work sites) depending on who is ARA	
Asbestos waste transported by vehicle	NSW EPA	SafeWork NSW
Asbestos waste disposed on-site that was generated on-site	Local council	NSW EPA where it is the ARA under the POEO Act NSW EPA if the site is regulated under the Contaminated Land Management Act 1997
Asbestos waste disposal at a landfill site	NSW EPA	Local council (if managing licensed landfill)
Asbestos waste transport interstate	NSW EPA	
Asbestos waste for export	Department of Home Affairs (federal)	SafeWork NSW Department of Employment and Workplace Relations (federal)



Workplace Scenarios

SafeWork NSW is the lead regulator of asbestos in the workplace. Where that asbestos work involves transport and disposal of asbestos waste then EPA is also the lead regulator. Councils generally provide a support role for managing asbestos in the workplace where permitted land use and consents are concerned. Common workplace scenarios are summarised in the table below.

Table 14: Workplaces Scenarios

Scenario	Lead organisation	Other regulators
Asbestos installed/supplied after 2003 (illegally)	SafeWork NSW	Australian Border Force, ACCC
Risks to the health of workers	SafeWork NSW	
Asbestos management and asbestos going to be removed	SafeWork NSW Department of Planning, Housing and Infrastructure (mine sites)	
Risks to the health of the public from worksites	SafeWork NSW	Local council (Risks to the wider public) Department of Planning, Housing and Infrastructure (part 3A approvals) NSW EPA where it is the ARA under the POEO Act
Waste stored temporarily on-site at worksites	SafeWork NSW	Local Council (If PCBU cannot be identified)
Transport or disposal issues	SafeWork NSW	NSW EPA Local council
Asbestos contaminated clothing going to a laundry	SafeWork NSW	Local council
Management of asbestos -contaminated land not regulated by the EPA under the Contaminated Land Management Act 1997	SafeWork NSW Local council	Department of Planning, Housing and Infrastructure (NSW)
Contaminated land regulated under the Contaminated Land Management Act 1997	SafeWork NSW NSW EPA	Local council



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