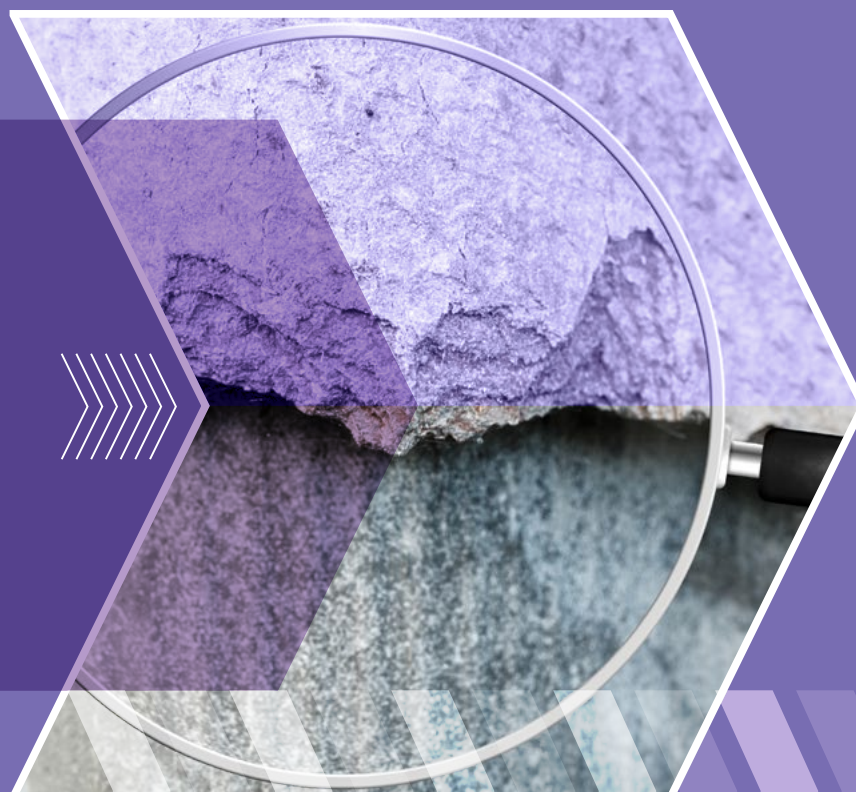


ASBESTOS MANAGEMENT AND DEVELOPMENT CONTROL QUICK REFERENCE GUIDE

BEST PRACTICE IN MANAGING ASBESTOS THROUGH
DEVELOPMENT CONTROL AND WASTE MANAGEMENT PROCESSES

PREPARED BY:

Riverina and Murray Joint Organisation
Riverina Eastern Regional Organisation of Councils
Far North West Joint Organisation
Dubbo Regional Council
Northern Rivers Contaminated Land Program



HOW TO READ THIS DOCUMENT

This quick reference guide provides guidance to Councils on the process and steps to manage and handle asbestos in their business processes. Rather than duplicate information, links to other relevant resources or external sources are provided where applicable.

The tab structure allows Council staff to quickly identify information about the process triggers, steps and key considerations, thereby enabling this guidance to be incorporated into Council business processes. Visual aids and checklists are also provided to assist Councils in navigating the process.

This resource has the following structure:

- Glossary and introduction
- Asbestos management
- Regulatory framework
- Asbestos investigations
- Illegal dumping of asbestos-containing material
- Supplementary information (appendices)¹

This quick reference guide should be read in conjunction with the corresponding ***Managing Offsite Transport of Soil*** quick reference guide.

ACKNOWLEDGEMENT AND REPORT LIMITATIONS

This quick reference guide is one of a series of resources developed for Councils regarding contaminated land. These resources were developed with funding under the NSW EPA Council CRCB program on contaminated land.

The process of developing these resources was a collaboration between the respective CRCB projects delivered by the Riverina and Murray Joint Organisation, Riverina Eastern Regional Organisation of Councils, Northern Rivers Contaminated Land Program, Far North West Joint Organisation and the Dubbo Regional Council.

The following limitations are to be noted in relation to this resource:

- The legislative framework is the framework as of 23 June 2023
 - *Contaminated Land Management Act 1997*
 - *Environmental Planning and Assessment Act 1979*
 - *Environmental Planning and Assessment Regulation 2021*
 - *Local Government Act 1993*
 - *Managing Land Contamination: Planning Guidelines: SEPP55 – Remediation of Land*
 - *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 (Resilience and Hazards) 2021*
 - *Work Health and Safety Act 2011*
 - *Work Health and Safety Regulation 2017.*
- Information on processes, steps and related information is as of 23 June 2023
 - *Construction and Demolition Waste: A Management Toolkit* (NSW EPA, 2020)
 - *Consultants Reporting on Contaminated Land: Contaminated Land Guidelines* (NSW EPA, 2020)
 - *Draft Protocol for Managing Asbestos during Resource Recovery of Construction and Demolition Waste* (NSW EPA, 2014)
 - *Environmental Guidelines: Solid Waste Landfills* (2nd edition, NSW EPA, 2016)
 - *Model Asbestos Policy* (Local Government NSW, 2015)
 - *Waste Classification Guidelines – Part 1: Classifying Waste* (NSW EPA, 2014).
- Checklists and other reference guidance material are provided as supplementary information (Tab 6).

¹Checklists and other reference guidance and instructional material provided as supplementary information were developed primarily by external sources. They are valid at the time of publication of this resource, but staff must check the reference source to ensure they are using the most up-to-date version.

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2 ASBESTOS MANAGEMENT

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6 SUPPLEMENTARY INFORMATION
(APPENDICES)

PURPOSE AND OBJECTIVES

This quick reference guide is one of a series of contaminated land resources developed for Councils under the NSW EPA Council Regional Capacity Building (CRCB) program on contaminated land. These resources are intended to guide and inform the Council business processes that are required to:

- ensure land is or can be made suitable for its proposed use
- minimise the risk of harm to human health and the environment
- apply best practice in Council business processes to ensure the above objectives are achieved.

The purpose of this guide is to outline a simplified process for Council staff on:

- how asbestos-containing material (ACM) should be handled and managed in Council business processes
- identifying who is the appropriate regulatory authority in handling and managing ACM under a variety of situations
- managing the risk of site contamination from asbestos.

COMMON QUESTIONS COUNCIL OFFICERS FACE REGARDING ASBESTOS

- What are Council responsibilities and liabilities in asbestos management? (See the reference to regulations in the 'Asbestos Management' tab and information in Appendix A)
- What are the requirements for the transport of ACM? (See the reference to regulations in the 'Asbestos Management' tab)
- How can Council manage asbestos risks in the event of a house fire? (See Appendix G)
- How should Council deal with a development application where ACM is onsite or is intended to be used as fill? (See the reference to regulations in the 'Asbestos Management' tab and Appendix C)

INTENDED AUDIENCE, AND ROLES AND RESPONSIBILITIES FOR COUNCIL OFFICERS

This resource has been developed for Council staff to use in business processes that involve the management and/or handling of ACM. It provides guidance and simple steps for Councils when:

- a development application is received by Council in which ACM is a consideration
- works under Part 5 of the *Environmental Planning and Assessment Act 1979* are assessed or undertaken
- ACM is taken offsite to a licensed or approved waste (landfill) facility
- emergency situations where friable asbestos is involved (for example, a house fire)
- illegally dumped asbestos is found.

It should be noted that measures taken during the land-use planning and development control stages, if followed, will streamline and reduce the compliance actions to be taken to ensure works meet legislative requirements

GLOSSARY

The terms used in this guide are defined below and are consistent with the definitions in the:

- *Contaminated Land Management Act 1997*
- *Environmental Planning and Assessment Act 1979 (EP&A Act)*
- *Protection of the Environment Operations Act 1997*
- *Work Health and Safety Act 2011 (NSW)*
- *Work Health and Safety Regulation 2017 (NSW)*
- Code of practice on how to manage and control asbestos in the workplace (catalogue no. WC03560), published by SafeWork NSW
- Code of practice on how to safely remove asbestos (catalogue no. WC03561), published by SafeWork NSW
- Emergency Pollution and Orphan Waste Clean-Up Program guidelines (2008)
- *Waste Classification Guidelines – Part 1: Classifying Waste* (2008).

Asbestos

means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock-forming minerals including the following:

- actinolite asbestos
- grunerite (or amosite) asbestos (brown)
- anthophyllite asbestos
- chrysotile asbestos (white)
- crocidolite asbestos (blue)
- tremolite asbestos
- a mixture that contains one or more of the minerals referred to in legislation (see Tab 3 Regulatory Framework).

Asbestos-containing material (ACM) means any material or thing that, as part of its design, contains asbestos.

Asbestos removal licence means a Class A asbestos removal licence or a Class B asbestos removal licence.

Asbestos removal work means either:

- work involving the removal of asbestos or ACM
- Class A asbestos removal work or Class B asbestos removal work.

Asbestos waste

means any waste that contains asbestos. This includes asbestos or ACM removed and disposable items used during asbestos removal work, including plastic sheeting and disposable tools.

Certifying authority

means a person who is authorised by or under section 85A of the *EP&A Act* to issue complying development certificates or is authorised by or under section 109D of the *EP&A Act* to issue Part 4A certificates.

Class A asbestos removal licence

means a licence that authorises the carrying out of Class A asbestos removal work and Class B asbestos removal work by or on behalf of the licence holder.

Class A asbestos removal work

means the removal of friable asbestos, which must be licensed under clause 485 of the *Work Health and Safety Regulation 2017*. This does not include the removal of ACM that is associated with the removal of non-friable asbestos or ACM that is not associated with the removal of friable or non-friable asbestos and is only a minor contamination.

GLOSSARY

Class B asbestos removal licence

means a licence that authorises the carrying out of Class B asbestos removal work by or on behalf of the licence holder.

Class B asbestos removal work

means the removal of more than 10 square metres of non-friable asbestos or ACM work that is required to be licensed under clause 487 but does not include Class A asbestos removal work.

Competent person

means a person who has acquired, through training or experience, the knowledge and skills of relevant asbestos removal industry practice and holds either:

- a certification in relation to the specified VET course for asbestos assessor work
- a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction or environmental health.

Complying development

is a fast-track, 10-day approval process where a building meets all of the predetermined standards established in either a state or local Council planning document. A complying development certificate can be issued by either a local Council or an accredited certifier.

Complying development certificate

is a certificate indicating approval for straightforward residential, commercial and industrial development, generally for building works larger than exempt development. Provided that the development proposal fully meets specific development standards prescribed by the Exempt and Complying Development Codes SEPP, it can be determined (that is, certified) by a Council or a Principal Certifying Authority without the need for a full development application.

Control measure

in relation to a risk to health and safety, means a measure to eliminate or minimise the risk.

Development

means:

- the use of land
- the subdivision of land
- the erection of a building
- the carrying out of a work
- the demolition of a building or work
- any other act, matter or thing referred to in section 26 of the *EP&A Act* that is controlled by an environmental planning instrument.

Development application

means an application for consent under Part 4 of the *EP&A Act* to carry out development but does not include an application for a complying development certificate.

Friable asbestos

means material that:

- is in a powder form or that can be crumbled, pulverised or reduced to a powder by hand pressure when dry, normally after fire or lengthy deterioration
- contains asbestos.

GLOSSARY

Health

means physical and psychological health.

Licence holder

means:

- in the case of an asbestos assessor licence, the person who is licensed:
 - o to carry out air monitoring during Class A asbestos removal work
 - o to carry out clearance inspections of Class A asbestos removal work
 - o to issue clearance certificates in relation to Class A asbestos removal work
- in the case of an asbestos removal licence, the person conducting the business or undertaking to whom the licence is granted
- in the case of a major hazard facility licence, the operator of the major hazard facility to whom the licence is granted or transferred.

Licensed asbestos assessor

means a person who holds an asbestos assessor licence.

Licensed asbestos removalist

means a person conducting a business or undertaking who is licensed under the *Work Health and Safety Regulation 2017* to carry out Class A asbestos removal work or Class B asbestos removal work.

Licensed asbestos removal work

means asbestos removal work for which a Class A asbestos removal licence or Class B asbestos removal licence is required.

NATA

means the National Association of Testing Authorities, Australia.

NATA-accredited laboratory

means a testing laboratory accredited by NATA or recognised by NATA either solely or with someone else.

Naturally occurring asbestos

means the natural geological occurrence of asbestos minerals found in association with geological deposits, including rock, sediment or soil.

Non-friable asbestos (bonded asbestos)

means material containing asbestos that is not friable asbestos, including material containing asbestos fibres reinforced with a bonding compound. Note: Non-friable asbestos may become friable asbestos through deterioration (see definition of friable asbestos).

Occupational hygienist

means a person with relevant qualifications and experience in asbestos management who is a full member of the Australian Institute of Occupational Hygienists.

Occupier

includes a tenant or other lawful occupant of premises, not being the owner.

Officer

means an officer as defined in the *NSW Work Health and Safety Act 2011*.

GLOSSARY

Orphan waste

means materials that have been placed or disposed of on a premises unlawfully that may have the potential to pose a risk to the environment or public health.

Person conducting a business or undertaking.

A 'person' is defined in laws dealing with the interpretation of legislation to include a body corporate (company), unincorporated body or association and a partnership.

Personal protective equipment (PPE)

means anything used or worn by a person to minimise risk to the person's health and safety, including air-supplied respiratory equipment.

Respirable asbestos fibre

means an asbestos fibre that:

- is less than 3 micrometres wide
- more than 5 micrometres long
- has a length-to-width ratio of more than 3:1.

Specified VET course

means:

- in relation to Class A asbestos removal work, the following VET courses:
 - o 'Remove non-friable asbestos'
 - o 'Remove friable asbestos'
- in relation to Class B asbestos removal work, the VET course 'Remove non-friable asbestos'
- in relation to the supervision of asbestos removal work, the VET course 'Supervise asbestos removal'
- in relation to asbestos assessor work, the VET course 'Conduct asbestos assessment associated with removal'.

Structure

means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes:

- buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels)
- any component of a structure
- part of a structure.

Volunteer

means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

GLOSSARY

Waste

includes any of the following:

- any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment
- any discarded, rejected, unwanted, surplus or abandoned substance
- any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance
- any process, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations
- any substance prescribed by the regulations made under the *Protection of the Environment Operations Act 1997* to be waste.

Waste facility

means any premises used for the storage, treatment, processing, sorting or disposal of waste (except as provided by the regulations).

- Licensed waste facility – clause 48 of the *Protection of the Environment Operations Act 1997* defines scheduled activities (premises-based). This section applies to scheduled activities where Schedule 1 indicates that a licence is required for premises at which the activity is carried on.
- Non-licensed waste facilities are not required to be licensed if they are outside the EPA regulated area, but only if:
 - o the site is owned by and operated by or on behalf of a local Council
 - o the site was in existence immediately before 28 April 2008 and was not required to be licensed before that date
 - o details required under clause 47 of the *Protection of the Environment Operations (Waste) Regulation 2005* were provided, in relation to the site, before 28 April 2008
 - o the site receives from offsite less than 5,000 tonnes per year of waste
 - o that waste has been generated outside the regulated area and consists only of general solid waste (putrescible), general solid waste (non-putrescible), clinical and related waste, asbestos waste, grease trap waste or waste tyres (or any combination of them)
- However, a non-licensed waste management facility that receives up to 5,000 tonnes per annum requires EPA approval but may not require a licence.

Worker

A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:

- an employee
- a contractor or subcontractor
- an employee of a contractor or subcontractor
- an employee of a labour-hire company who has been assigned to work in the person's business or undertaking
- an outworker
- an apprentice or trainee
- a student gaining work experience
- a volunteer
- a person of a prescribed class.

Workplace

is a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. Place includes a vehicle, vessel, aircraft or other mobile structure, and any waters and any installation on land, on the bed of any waters or floating on any waters.

INTRODUCTION

It is **illegal** to re-use or recycle asbestos-containing material (ACM) in any way, as it poses a major risk to human and environmental health. Similarly, disturbing or removing asbestos unsafely can create a health hazard. It is also **illegal** to dispose of ACM in domestic garbage bins or in general waste skip bins. Simply, it cannot legally be recycled, re-used or dumped.

Council staff often encounter ACM through illegal dumping or with burnt or demolished structures. Staff may also encounter ACM considerations in processes under Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979* in relation to development assessment. Guidance and instructional information on these processes is provided in the Contaminated Land and Land Use Planning and Development Control quick reference guide.

BACKGROUND

The use of asbestos as a building material was gradually phased out in the 1980s, and the supply and installation of ACM have been prohibited in Australia since 31 December 2003. Asbestos legacy material still exists in many homes, buildings and other assets.

Where the ACM is in a non-friable form (or bonded), undisturbed and painted or otherwise sealed, it may remain safely in place. However, where the ACM has been burnt, broken, damaged, cut through, drilled or mishandled, fibres can become loose and airborne, posing a risk to human health.

Asbestos that has been burnt is treated as friable asbestos. A simple guide to help identify friable asbestos is that it can be crumbled and reduced to powder by the use of hand pressure when dry.

Visual identification of asbestos can be difficult. Laboratory analysis is required to confirm whether a substance is actually asbestos. Samples should be collected during an asbestos inspection by a person competent in the identification and assessment of asbestos, such as an occupational hygienist.²

To minimise health risks, all material should be treated as if it is asbestos, with appropriate protective measures taken until receipt of laboratory results.

A licensed asbestos removalist is required to remove and dispose of more than 10 square metres of asbestos. Councils should encourage landowners to sight an asbestos contractor's licence and insurance before engaging them. Landowners can check with SafeWork NSW (phone 13 10 50) to confirm that the contractor has the appropriate class of licence for the asbestos removal job. Refer to Appendix E for more licensing information.

² Further information on what is an appropriately qualified person can be found in the Guide to Selecting a Consultant fact sheet.



WASTE MANAGEMENT AND ASBESTOS

All ACM **must** be disposed of lawfully at a waste management facility approved by the EPA to accept the ACM unless specific consent is obtained by the relevant appropriate regulatory authority (ARA; refer to Appendix A for clarification of who the ARA is) under the *Protection of the Environment Operations (Waste) Regulation 2014* for onsite disposal. These facilities (including Council waste facilities) have special asbestos controls in place to protect human health and the environment.

Councils should ensure staff are aware that waste received from any of the NSW regulated areas is required to be charged the relevant waste levy for the place of origin. This levy is then required to be paid to the EPA. See the section on regulations in the 'Regulatory Framework' tab for further details.

In the case of house fires where asbestos is suspected to have been used in the construction of the building, particular processes should be followed to safeguard workers, advise neighbours and prevent the material from entering the natural environment. In an emergency situation, the ARA can change multiple times in a relatively short period. To understand who the ARA is at any given stage, refer to Appendix A. Additional guidance is provided in Local Government NSW's *Managing Asbestos when Buildings Are Damaged by Small Scale Fires*, which is attached as Appendix G.

Where Council is the ARA, Council is responsible for issuing clean-up notices to address the illegal storage or disposal of ACM, or after an emergency or incident (under the *Protection of the Environment Operations Act 1997 (POEO Act)*). Councils can also issue prevention or clean-up notices where ACM has been handled (including where it has been stored, transported or disposed of) in an unsatisfactory manner (under the *POEO Act*). The SafeWork NSW 'Demolition and Asbestos Checklist' provides some guidance for Council staff in these instances and is attached as Appendix F.

A licensed asbestos removalist is required for handling 10 square metres (or 100 kilograms) or more of bonded asbestos or for handling any amount of friable asbestos. A licence is not required for the removal of less than 10 square metres (or 100 kilograms) of bonded asbestos; however, there are specific guidelines on how the material should be handled and transported. Councils can issue penalty infringement notices for the improper transport of asbestos (under the *POEO Act*) for amounts up to 10 square metres; however, the EPA is the ARA for larger amounts because strict licensing and tracking requirements apply.

Councils may apply planning controls in the form of conditions of consent, development approvals and also in relation to proposals to dispose of asbestos waste onsite. Councils may also seek advice from the EPA on this matter and make notations on planning certificates (that is, section 10.7 certificates) where onsite disposal is permitted. Councils also manage waste facilities that are subject to requirements in accordance with environmental protection legislation.



DEFINITIONS

The Protection of the Environment Operations Act 1997

In Part 3 of Schedule 1 of the *Protection of the Environment Operations Act 1997 (POEO Act)*, asbestos waste is classified as a 'special waste'. This is further detailed in the EPA's Environmental Guidelines: Solid Waste Landfills (see the 'Other Guidelines' section below).

Additionally, the Act defines asbestos waste as 'the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysolite (white asbestos), crocidolite (blue asbestos) and tremolite'.

Protection of the Environment Operations (Waste) Regulation 2014

The *Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation)* defines the following types of asbestos:

- bonded asbestos material – any material (other than friable asbestos material) that contains asbestos

- friable asbestos – 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.

The Work Health and Safety Regulation 2017

The *Work Health and Safety Regulation 2017 (WHS Regulation)* defines asbestos in very similar terms as the *POEO Act*; however, it extends the definition:

- asbestos-containing material (ACM) – any material or thing that, as part of its design, contains asbestos
- asbestos-contaminated dust or debris – dust or debris that has settled within a workplace and is, or is assumed to be, contaminated with asbestos
- asbestos-related work – the transport and disposal of asbestos or asbestos waste in accordance with the *POEO Act*.

REGULATIONS

Environmental Planning and Assessment Act 1979

This Act is the primary land-use planning statute in NSW. It governs matters such as planning administration, planning instruments, development assessments, building certification, infrastructure finance, appeals and enforcement. This Act prescribes the way development applications are to be assessed where ACM is a consideration.

Environmental Planning and Assessment Regulation 2000

Clause 136E of this Regulation deals with the conditions required to be stated on complying development certificates for development involving both bonded and friable asbestos:

- Work involving asbestos removal (of an area of more than 10 square metres) or friable asbestos removal must be undertaken by a licensed asbestos removalist.

- The principal certifier must be supplied with a copy of the signed contract with the licensed asbestos removalist that also specifies the landfill facility to which the asbestos waste is to be delivered.
- Copies of the receipts for the disposal of the asbestos waste must be provided to the principal certifier.

Protection of the Environment Operations Act 1997

This Act was introduced to protect, restore and enhance the environment in NSW and to promote public access to information and involvement in environment protection. The Act designates the EPA as the key regulatory authority.

Specific offence provisions were introduced into the *POEO Act* in 2019 in relation to asbestos waste:

- Section 144AAA makes it an offence to dispose of asbestos anywhere other than a lawful waste facility.
- Section 144AAB makes it an offence to use or re-use asbestos waste. The maximum penalty is \$2 million (and \$120,000 for each day the offence continues) for a corporation and \$500,000 (and \$60,000 for each day the offence continues) for an individual.

REGULATIONS (CONT.)

Schedule 1 of the *POEO Act* also describes the activities and thresholds in relation to asbestos waste that requires a licence from the NSW EPA. Specifically, these are:

- waste storage of more than 5 tonnes of asbestos waste on a site at any time
- waste disposal (application to land) – any amount, except Council-operated waste facilities that existed prior to 28 April 2008 and that receive less than 5,000 tonnes of waste per year (in total).

The Act also introduced the waste levy, which applies to all waste originating from the regulated area. Councils are required to charge the relevant levy, which is then to be paid to the EPA. There are severe penalties for noncompliance, including a maximum penalty:

- in the case of a corporation, \$1,000,000 and, in the case of a continuing offence, a further penalty of \$120,000 for each day the offence continues, or
- in the case of an individual, \$250,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues.

Protection of the Environment Operations (Waste) Regulation 2014

Clause 78 of the *Waste Regulation* details the requirements associated with the transport of asbestos waste:

- The part of the vehicle used for the transport must be covered and leak-proof.
- Bonded (non-friable) asbestos waste must be securely packaged during its transportation.
- Friable asbestos must be in a sealed container during its transportation.
- Other asbestos waste (such as soils contaminated with ACM) must be wetted down during its transportation.

Clause 79 of the *Waste Regulation* details the requirements associated with the reporting of the transport of more than 100 kilograms of asbestos waste within NSW that is:

- not already required to be tracked (for example, interstate transport)
- not required in an emergency to protect human health, the environment or property.

The use of the WasteLocate system provided by the EPA satisfies all the reporting requirements of this clause. This system requires landfill facilities to possess and display a QR2id plate so that the tracking and reporting of the asbestos can be completed.

Clause 80 of the *Waste Regulation* specifically deals with the disposal requirements of asbestos waste:

- The person delivering the asbestos waste to a landfill facility must inform the occupier of the landfill that the waste contains asbestos.
- The person unloading or disposing of the asbestos waste and the occupier of the landfill must ensure that no dust is generated from the unloading and disposal process.
- The asbestos waste must be covered, once disposed, with virgin excavated natural material:
 - o initially (at the time of disposal), to a depth of at least 0.15 metres
 - o at the end of each day's operation, to a depth of at least 0.5 metres
 - o finally, to a depth of at least one metre (in the case of bonded asbestos material or asbestos-containing soils) or 3 metres (in the case of friable asbestos) below the final land surface of the landfill.

It should be noted that the EPA now permits the use of general solid waste to cover asbestos waste with an approved licence variation or written approval. If approved, however, the EPA expects to see a commensurate reduction in asbestos disposal charges.

Clause 111 of the *Waste Regulation* provides a defence to the offence of land pollution (which includes the disposal of more than 10 tonnes of asbestos waste) at unlicensed landfills operated by a Council immediately prior to 28 April 2008. One of the key stipulations of this defence is that operational requirements are met. These include taking all reasonable steps to minimise or avoid pollution from the unlicensed landfill and ensuring that the asbestos waste is covered in compliance with clause 80.

REGULATIONS (CONT.)

Work Health and Safety Regulation 2017

Clause 419 of the *WHS Regulation* provides a general prohibition for a person conducting business or undertaking to carry out, or direct or allow a worker to carry out, work involving asbestos. This includes activities related to removing, handling, transporting, storing and disposing of any ACM. This is the legislation that gives effect to the ban on the use of asbestos-containing products and materials and is replicated in all other jurisdictions of Australia.

However, this prohibition does not apply to the demolition, removal or disposal of ACM in accordance with the *WHS Regulation* or to the transport and disposal of ACM in accordance with the *POEO Act*.

The prohibition also does not apply to soils that a 'competent person' has determined do not contain any visible ACM or friable asbestos, or, if friable asbestos is visible, do not contain trace levels of asbestos determined in accordance with AS 4964-2004 ('Method for the Qualitative Identification of Asbestos in Bulk Samples').

Clause 472 deals with the disposing of asbestos waste and contaminated personal protective equipment. Generally, asbestos waste must be disposed of as soon as practicable at a site authorised to accept it.

POLICY AND STRATEGY

National Strategic Plan 2019-2023

The Asbestos Safety and Eradication Agency (ASEA) is the federal government agency responsible for overseeing national actions to improve asbestos awareness, along with the effective and safe management, removal and disposal of asbestos. As part of its activities, ASEA administers the National Strategic Plan. This plan has 4 national priorities:

1. improve asbestos awareness to influence behavioural change
2. identification and effective legacy management
3. safe prioritised removal and effective waste management
4. international collaboration and leadership.

It should be noted that, of the 9 targets described in the plan, one specifically relates to the easier and cheaper disposal of asbestos waste.

Asbestos Blueprint (2017)

The *Asbestos Blueprint* was first published in 2011 by the NSW Government with the aim of assisting government agencies and organisations to better understand and coordinate their regulatory roles and responsibilities. The second edition, which was produced in 2017, provides an updated overview of the current legislative framework and the agencies responsible for regulating asbestos. The *Asbestos Blueprint* is an initiative of the Heads of Asbestos Coordination Authorities (HACA) and has been endorsed by HACA members and key stakeholders.

NSW State-Wide Asbestos Plan (2013)

The aim of the *NSW State-Wide Asbestos Plan* is the safe management of asbestos to reduce the incidence of asbestos-related diseases in NSW. This plan provides the framework for a whole-of-government approach to

the management of asbestos, including a coordinated and consistent approach to providing asbestos awareness information to the NSW community.

NSW Asbestos Waste Strategy 2019-21

The *NSW Asbestos Waste Strategy 2019-21*, which was prepared by the EPA, outlines a whole-of-system approach to promoting good behaviours and discouraging poor behaviours in relation to asbestos waste management. The strategy proposes measures to reduce illegal dumping and unsafe disposal and promotes the lawful and appropriate disposal of asbestos waste through 6 proposed approaches:

1. making lawful asbestos waste disposal easier
2. making lawful asbestos waste disposal cheaper
3. increasing awareness and changing behaviour
4. closing loopholes and increasing transparency
5. disrupting unlawful business models
6. ongoing monitoring and evaluation.

Local Government NSW's Model Asbestos Policy (2015)

This model asbestos policy was developed in partnership with HACA to assist NSW Councils in formulating an asbestos policy and to promote a consistent approach to asbestos management by local governments across NSW. The model policy has been issued as Departmental Chief Executive's guidelines under section 23A of the *Local Government Act 1993*. This means that Councils must take the guidelines into account when exercising their asbestos-related functions. Section 10 of the model policy details the responsibilities and requirements in relation to the management of asbestos waste. It also refers to the legislative requirements for asbestos waste management, which are referred to above in this tab.

OTHER GUIDELINES

Environmental Guidelines: Solid Waste Landfills

Environmental Guidelines: Solid Waste Landfills was developed by the NSW EPA. It is the principal reference document on how to manage landfills, specifying a series of 'minimum standards'. Some of the standards relate to the disposal of 'special waste', of which asbestos is a type, according to the *POEO Act*.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

Exempt development

Exempt development does not require any planning or construction approval if it meets the requirements of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

This means that there is no ability for Council or a private certifier to impose safeguards for the handling of asbestos through conditions of development consent for exempt development. However, Council advises that all asbestos removal work should be carried out in accordance with the SafeWork NSW code of practice on how to safely remove asbestos.

Complying development

Clause 136E of the *Environmental Planning and Assessment Regulation 2000* outlines conditions under which a complying development certificate can be issued for development that involves building or demolition work and friable or non-friable asbestos.

Applications for complying development certificates must include details of the estimated area (if any) in square metres of friable and/or non-friable asbestos material that will be disturbed, repaired or removed in carrying out the development (under Schedule 1 Part 2 of the *Environmental Planning and Assessment Regulation 2000*).

Where more than 10 square metres of non-friable asbestos is to be removed, a contract evidencing the engagement of a licensed asbestos removal contractor is to be provided to the principal certifying authority. The contract must specify the landfill site lawfully able to accept asbestos to which the removed 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 certifying authority a copy of a receipt from the operator of the landfill site stating that all the asbestos material referred to in the contract has been received by the operator.

If the work involves less than 10 square metres of non-friable asbestos and is not undertaken by a licensed contractor, it should still be undertaken in a manner that minimises risks as detailed in the code of practice on how to safely remove asbestos. In instances where asbestos removal is of less than 10 square metres of non-friable asbestos and not from a place of work, then SafeWork NSW would not be the agency responsible for regulating this activity.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* outlines the requirements for the applicant to notify their neighbours that works may include asbestos removal.

Code of Practice: How to Safely Remove Asbestos (2022)

This SafeWork NSW code of practice is primarily aimed at contractors undertaking asbestos removal works and also contains the requirements and recommendations for the containment, transport and disposal of asbestos. The code of practice includes:

- minimum specifications for polyethylene bags and sheeting used to contain asbestos wastes, along with correct labelling
- a recommendation for the contractor to develop disposal procedures that prevent the tearing of polyethylene lining with larger loads of asbestos waste, typically using bulk waste bins
- a requirement to dispose of asbestos waste 'as soon as practicable' at an approved disposal facility.

OTHER GUIDELINES (CONT.)

EPA Asbestos Waste Framework

The NSW EPA Asbestos Waste Framework is a guide for Council staff to easily find the regulatory references to some of the more common issues relating to asbestos. Local Government NSW has also developed an asbestos decision tree to assist local government in managing asbestos issues, and this is provided in Appendix A. A more detailed reference guide has also been developed and attached as Appendix B.

The asbestos waste framework

POEO Act			
POEO Offences	Waste Classification Guidelines	Recycling	Disposal & Storage
Section 142A Pollution of land	Disposal	Unlawful disposal of asbestos waste (section 144AAA)	Waste disposal (clause 39 to Schedule 1)
Section 143 Unlawful transport & deposit of waste	Classification Special Waste Asbestos	Reuse & recycling of asbestos waste prohibited (section 144AAB)	
Section 144 Use of land as an unlawful waste facility		Segregation programme	Waste storage (clause 41 to Schedule 1)
Section 115 Disposal of waste that can cause harm	Section 144AA False/misleading information		

Note: POEO Act = Protection of the Environment Operations Act 1997.

COMPLAINTS AND INVESTIGATIONS

There are different agencies responsible for complaints and inquiries about asbestos, which, unfortunately, often leads to confusion over whom to approach with which issue. However, the following guide may assist Councils and the public in directing their asbestos-related issues to the correct agency:

- Complaints about incidents in public places and on private properties may be directed to Council.
- Complaints and inquiries regarding asbestos concerns in a workplace should be directed to SafeWork NSW.
- Complaints about the way more than 100 kilograms (10 square metres) of asbestos-containing material (ACM) is transported should be directed to the EPA; under 100 kilograms, complaints should be directed to the Council.
- Complaints and inquiries regarding ACM and premises licensed under the *Protection of the Environment Operations Act 1997 (POEO Act)*, such as landfills, should be directed to the EPA.
- Complaints about the way a Council has acted in relation to an asbestos-related issue should be directed to the NSW Ombudsman.

Councils may be asked to respond to complaints and inquiries about ACM regarding:

- Council's requirements in relation to development, land management and waste management
- derelict properties
- general asbestos safety issues
- illegal dumping
- the safe removal and disposal of minor quantities of asbestos materials
- unsafe work at a residential property conducted by a homeowner or tenant.

Over recent years, there have been many incidents where Council staff were unclear on how to handle issues when asbestos has been involved. These ranged from proper disposal to containing asbestos onsite. As these processes are all regulated, with often severe penalties, a series of asbestos-related scenarios, along with advice on actions and associated penalties, is attached as Appendix C.

When staff are required to undertake site inspections (with the appropriate delegations), it is important to obtain as much information as possible in one visit. This saves time and costs, along with the gathering of records, which may be needed in the event that evidence is required to be provided at some time in the future (for example, in court proceedings). To assist staff, a record of site inspection details is provided in Appendix D to prompt staff to record important site information.

COMPLIANCE AND ENFORCEMENT

Council may take action in relation to any approved development for which Council has issued development consent, even if Council is not designated as the principal certifying authority. This action ensures that development complies with the conditions of development consent.

Where Council receives a complaint about a development for which Council is not the principal certifying authority, Council should consider whether it is the appropriate regulatory authority to investigate and resolve the matter. Complaints that warrant action by Council because of their greater enforcement powers when not the principal certifying authority include:

- urgent matters (for example, a danger to the public or a significant breach of the development consent or legislation)
- matters that are not preconditions to the issue of the occupation/subdivision certificate.

In relation to naturally occurring asbestos, Council is to verify compliance with environmental planning and assessment legislation and, together with the EPA and SafeWork NSW, is to coordinate compliance (or enforcement) where noncompliance is suspected.

Staff also need to understand what licensing, if any, is required to undertake the different types of demolition or remediation works where asbestos is involved. Details of licences relating to asbestos work are included in Appendix E.

A checklist developed by SafeWork NSW on the requirements relating to demolition works where asbestos is involved may assist Council staff and is attached as Appendix F.

COMPLIANCE STRATEGIES

During the course of normal business, Councils may come across illegal works relating to the use of asbestos. These often come about due to operator ignorance of their legal obligations or are deliberate actions by unscrupulous operators trying to avoid legal processes or associated costs. Illegal works include works that are undertaken:

- without the required development consent or complying development certificate
- that do not comply with the conditions of development consent or complying development certificate.

Councils can take particular actions depending on the nature of the asbestos-related issue. Some of these are as follows:

- The *Environmental Planning and Assessment Act 1979* empowers Council to issue orders to direct that specific work be undertaken to comply with development consent.
- Council may issue an order under the *Local Government Act 1993* (section 124) to direct a person 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'.

- Council may issue a clean-up notice or prevention notice under the *POEO Act* as outlined under Parts 4.2 and 4.3 of the Act.
- Council may audit asbestos-related demolition works that Council has approved, by using a legal notice under section 192 of the *POEO Act* to require developers to provide information and records regarding the disposal of their asbestos waste.

Where Council becomes aware of illegal work involving asbestos or ACM at a workplace, Council should immediately notify SafeWork NSW (refer to Appendix A for clarifying the ARA).

Contact information and links to further information about managing a range of other asbestos-related activities are provided in Appendix H.



ILLEGAL DUMPING OF ASBESTOS-CONTAINING MATERIAL

Illegal dumping is defined as the unlawful deposit of solid waste (including asbestos-containing material [ACM]) onto land, including waste materials dumped, tipped or otherwise deposited onto private or public land where no licence or approval exists to accept such waste.

Illegal landfilling, which is waste used as fill material, with or without the consent of the owner or occupier of the land and without the necessary Council or EPA approvals, is also considered to be illegal dumping and pollution of land.



ILLEGAL DUMPING OF ASBESTOS-CONTAINING MATERIAL

The responsibility for cleaning up illegally dumped waste (including ACM) lies with the person or company that deposited the waste. If they cannot be identified, the relevant occupier or landowner becomes the responsible party. Councils are the appropriate regulatory authority for illegal dumping unless one of the following circumstances apply:

- The activity was part of the carrying on of an activity listed in Schedule 1 of the *Protection of the Environment Operations Act 1997 (POEO Act)*.
- The activity was carried out by a public authority or state agency.
- The site is regulated by a different authority, such as the Minister for Planning.

When attending sites, Council staff should take particular notice of site features and signs of contamination or potential for contamination. The inspection checklist in Appendix D may be used to prompt staff to record important site information, including taking photos.

ILLEGAL DUMPING OF ASBESTOS-CONTAINING MATERIAL OFFSITE

Illegal dumping of ACM in public places such as parks, streets or nature strips can attract regulatory action including:

- [on-the-spot fines of up to \\$15,000](#)³
- prosecution for the pollution of land, with fines of up to \$2 million for a corporation and \$120,000 for each day the offence continues ([under section 142A\(1\)\(a\) of the POEO Act](#))⁴
- up to \$1 million or 7 years imprisonment, or both, for an individual ([under section 119\(b\) of the POEO Act](#)).⁵

³<https://www.epa.nsw.gov.au/your-environment/litter-and-illegal-dumping>

⁴<https://legislation.nsw.gov.au/view/html/inforce/current/act-1997-156#sec.142A>

⁵<https://legislation.nsw.gov.au/view/html/inforce/current/act-1997-156#sec.119>



SUPPLEMENTARY INFORMATION (APPENDICES)

This section provides important reference guidance and procedural information to assist staff in the handling and management of asbestos-containing material in Council business processes.

This reference material is also available in electronic format on the website for staff to access and use. Caution must be exercised in ensuring that the reference source is the most recent version; hence, the name and web address of the reference source are also provided.

Appendix	Resource	Description
A	Asbestos management decision tree for NSW Councils (Local Government NSW, 2021)	Steps through most scenarios that Council officers will face with asbestos, and explains who the ARA is at each stage
B	Quick reference guide for asbestos contamination	Quick reference guide for Council staff for many common asbestos situations
C	Asbestos-related scenarios with decisions and offences	Real examples with answers to better understand the management of waste and asbestos
D	Record of site inspection details	A useful, generic guide to prompt Council officers to observe and record details relevant to potential land contamination when undertaking a site inspection
E	Asbestos licences	Information to help determine what works require which type of licence, if any
F	SafeWork NSW asbestos and demolition checklist	A comprehensive checklist of work health and safety and SafeWork requirements
G	Managing asbestos in house fires	Steps through actions and the ARA when dealing with small-scale house fires containing asbestos
H	Contacts and further information on asbestos	Provides an extensive list of service providers in relation to asbestos issues

APPENDIX A – LOCAL GOVERNMENT NSW ASBESTOS DECISION TREE

This is intended as a general guide only. Each situation should be assessed and treated for its particular circumstances in accordance with the current legislation.



APPENDIX B – QUICK REFERENCE GUIDE FOR ASBESTOS CONTAMINATION

The following table provides a quick reference guide to some of the more common questions that Councils will need to address when asbestos is found.

QUESTION	RESPONSE
Who is responsible for the situation at hand?	<ul style="list-style-type: none"> The perpetrator The property owner (if the perpetrator cannot be determined)
What if the site/house is abandoned or the owner/perpetrator cannot be found?	Council can assume responsibility for the remediation and attempt to recover costs.
Who pays for the investigation, remediation and validation?	<ul style="list-style-type: none"> The perpetrator The property owner <p>If neither can be found, Council may assume responsibility.</p>
Can Council costs be recovered?	Yes, under section 104 of the <i>POEO Act</i> .
Who is the ARA at different stages?	It varies. Refer to Appendix A.
Does the ARA change depending on the stage of the process?	Yes. Refer to Appendix A.
Is the asbestos bonded or friable, and what are the different management processes?	For the simple friable test and processes, refer to the 'Asbestos Management' tab.
What if asbestos is involved in a house fire?	It is treated as friable asbestos. Refer to the 'Asbestos Management' tab and Appendix G.
Who can undertake investigations, remediation and validation?	<p>Council and EPA authorised officers with appropriate delegations can undertake investigations.</p> <p>Duly qualified consultants can prepare and manage remediation and prepare validation reports. Council staff can approve validation reports.</p>
How should the transport and disposal of contaminated material be handled, and who is the ARA?	<p>For less than 10 square metres of asbestos, Council is the ARA.</p> <p>For more than 10 square metres of asbestos, the EPA is the ARA (refer to Appendix C).</p>
What needs to be done with an 'unexpected find'?	The material should be tested by a NATA-accredited laboratory and, depending on the outcome, follow due processes for disposal.

Note: ARA = appropriate regulatory authority; POEO Act = *Protection of the Environment Operations Act 1997*; NATA = National Association of Testing Authorities.

APPENDIX C –

ASBESTOS-RELATED SCENARIOS WITH DECISIONS AND OFFENCES

The following scenarios are provided in order to assist Councils in understanding some of the more common situations, what can be expected as EPA advice on dealing with the matter, along with regulatory references and offences.

Scenario 1 - Movement of asbestos waste

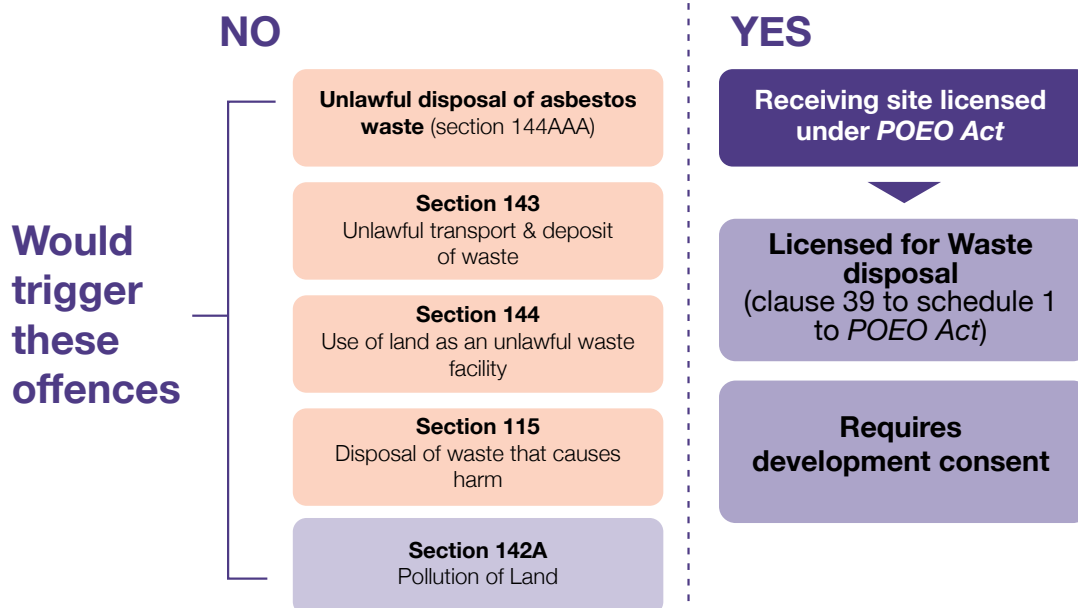
A client of yours has found asbestos in soil on their site.

They would like to excavate this soil and take it to an adjacent site which they own, and build a containment cell to 'cap and contain' the asbestos soil

Can they do this?



Scenario 1 - Answer



Answer: Unlawful to deposit asbestos waste offsite via containment cell.
But lawful if the receiving site has an environmental protection licence.

Scenario 2 - Disposal of asbestos waste

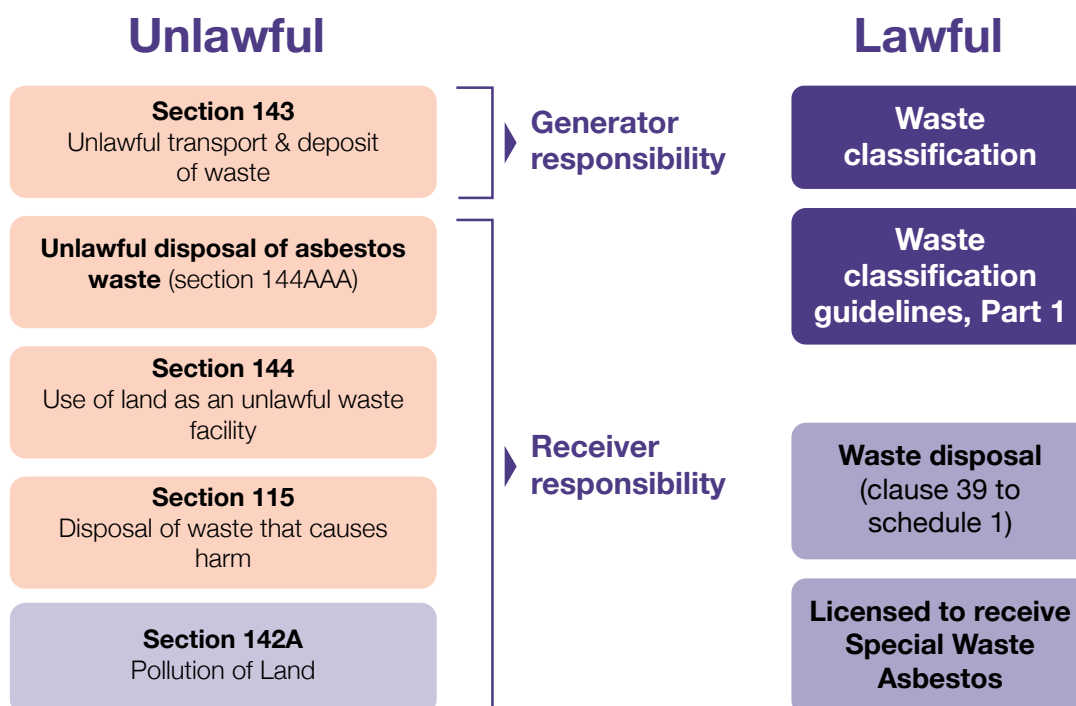
A client of yours is undertaking development works, and found soils contaminated by asbestos.

They would like to dispose of this material.

How do they do this lawfully?



Scenario 2 - Answer



Answer: Waste must be classified by waste generator, and disposed to a lawful facility able to receive Special Waste Asbestos.

Scenario 3 - Processing of asbestos waste for reuse/containment

A client of yours found asbestos onsite. They would like to 'pick/process out' bonded asbestos from soil, and either reuse the soil, or contain on site to meet the consite framework.

Can they do this lawfully?

No - Unlawful

Unlawful if processing and then reusing/recycling the soil

Section 144AAB

Asbestos waste must not be reused or recycled

Section 144AAB

False/misleading information about waste

Answer: Unlawful to pick/process asbestos waste for reuse/recycling. Lawful if picking/processing asbestos waste for containment onsite, but must not meet the definition of "reuse".

Yes - Lawful

Lawful if contained onsite only

CONTAMINATED LAND

NEPM

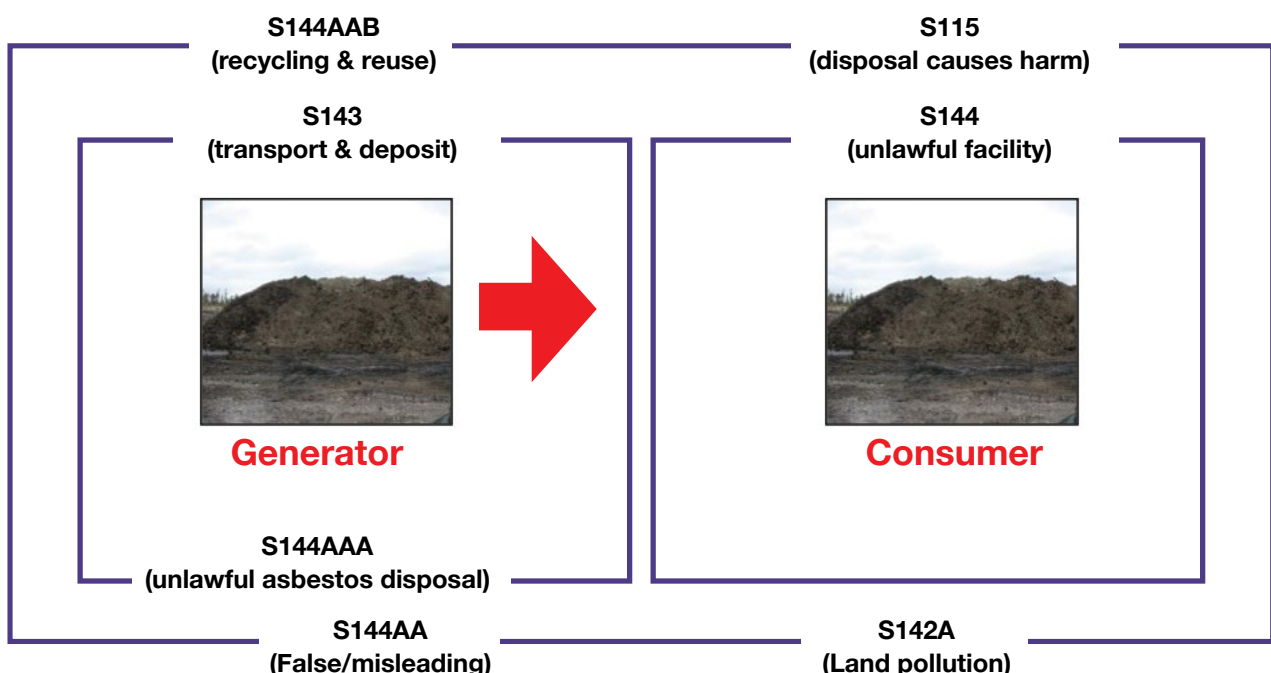
CLPGLs

s142A triggered if more than 10t.

Unless, approved by Voluntary Management Proposal in CLM Act, or Category 1 remediation

CLPGLs = Contaminated Land Planning Guidelines

Summary offences - asbestos waste



APPENDIX D – RECORD OF SITE INSPECTION DETAILS

This checklist is a prompt to guide Council officers to observe and record details relevant to potential land contamination when undertaking a site inspection. It is not exhaustive and is deliberately generic to enable use across a range of common scenarios.

Inspection conducted by: _____ Date: ____/____/____

Arrived on site: _____ am/pm Left site: _____ am/pm

SITE ID	DETAILS	
Site address Lot/DP		
Site owner/tenant		
Contact details (phone & email)		
Person spoken to onsite (if different to above)		
Onsite person contact details (phone & email)		
PURPOSE OF INSPECTION		
Response to complaint?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If Yes, record number:	
Response to spill/leak?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Call 000 if an emergency response is required	
Monitoring?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Works being undertaken during visit?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Development application?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Other		

SUPPLEMENTARY INFORMATION (APPENDICES)

SITE DESCRIPTION (INCLUDE PHOTOGRAPHS WHERE APPROPRIATE)	
Current land use and site infrastructure	
Is UPSS site operating at the time of inspection?	
Site topography (e.g., steep sloping, flat)	
Evidence or potential for soil erosion	
Direction of surface water flow across the site	
Distance and direction to nearest watercourse	
Surrounding property land uses	
VISUAL INDICATORS OF POTENTIAL CONTAMINATION	
Any areas of exposed, discoloured or stained soil?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
Any visibly polluted water observed leaving the site?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
Were samples taken?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
Any visibly affected vegetation, stressed vegetation or die back?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
Any significant odours (not from vent pipes or surface spills)?	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
Wind direction and distance to closest residential premises	

SUPPLEMENTARY INFORMATION (APPENDICES)

VISUAL ASSESSMENT	DETAILS	
Any signs of asbestos-containing material (take appropriate action to isolate and use appropriate PPE)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If Yes, describe and take photographs:	
IMPORTED MATERIAL / FILL		
Fill or stockpiles present (mark on map)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	Look for disturbed terrain, lumpy or raised areas, and disturbed vegetation	
Any evidence of disturbed ground?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If Yes, describe:	
Evidence of settlement/ subsidence?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If Yes, describe:	
Nature/distribution of fill/stockpile/s (e.g., what was imported, and where was it applied?)	e.g., Is there a section 143 notice?	
Is there documentation to support a resource recovery exemption?	e.g., a VENM certificate or consultant waste classification letter	
Has any material been removed from the site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If Yes, detail destination and waste classification documents:	
POTENTIAL USE AND STORAGE OF CHEMICALS		
Any presence of waste/chemical containers?		
Details and condition of chemical storage area	Concrete hardstand / bunded / isolated from rainfall / surface water flows?	

SUPPLEMENTARY INFORMATION (APPENDICES)

POTENTIAL USE AND STORAGE OF CHEMICALS (CONT.)		
Location and condition of all visible features, including foundations, tanks, pits, well and bores		
Is an appropriate spill recovery kit on site?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
POTENTIAL FOR REGULATORY RESPONSE		
Is the contamination contained within the site?		
Is there a potential for contamination to move offsite (soil, water or significant air)?		
Add any properties affected by actual or potential contamination to Council's contaminated land register		
Does it trigger the duty to notify the EPA (under section 60 of the <i>CLM Act</i>) or ARA (under Part 5.7 of the <i>POEO Act</i>)?		
Is Council aware of other pollution incidents at the site?		
OTHER COMMENTS		
RECOMMENDED ACTIONS		

APPENDIX E – ASBESTOS LICENCES

The following information should assist Councils in determining cases where asbestos licensing is required or not and under which circumstances.

This information was obtained from the [SafeWork NSW website](https://www.safework.nsw.gov.au/licences-and-registrations/licences/class-a-asbestos-removal-licence).⁷

TYPE OF LICENCE	WHAT ASBESTOS CAN BE REMOVED?
<u>CLASS A</u>	<p>Can remove any amount or quantity of asbestos or asbestos containing material, including:</p> <ul style="list-style-type: none"> any amount of non-friable asbestos or asbestos containing material any amount of friable asbestos or asbestos containing material any amount of asbestos containing dust any amount of non-friable asbestos or asbestos containing material.
<u>CLASS B</u>	<p>Can remove:</p> <ul style="list-style-type: none"> any amount of non-friable asbestos or asbestos containing material <p>Note: A Class B licence is required for removal of more than 10m² of non-friable asbestos or asbestos containing material but the licence holder can also remove up to 10m² of non-friable asbestos or asbestos containing material.</p> <ul style="list-style-type: none"> asbestos containing dust associated with the removal of non-friable asbestos or asbestos containing material. <p>Note: A Class B licence is required for removal of asbestos containing dust associated with the removal of more than 10m² of non-friable asbestos or asbestos containing material but the licence holder can also remove asbestos containing dust associated with removal of up to 10m² of non-friable asbestos or asbestos containing material.</p>
NO LICENCE REQUIRED	<p>Can remove:</p> <ul style="list-style-type: none"> up to 10m² of non-friable asbestos or asbestos containing material asbestos containing dust that is: <ul style="list-style-type: none"> associated with the removal of less than 10m² of non-friable asbestos or asbestos containing material not associated with the removal of friable or non-friable asbestos and is only a minor contamination.

⁷ <https://www.safework.nsw.gov.au/licences-and-registrations/licences/class-a-asbestos-removal-licence>;

⁷ <https://www.safework.nsw.gov.au/licences-and-registrations/licences/class-b-asbestos-removal-licence>

APPENDIX F – SAFework NSW ASBESTOS AND DEMOLITION CHECKLIST

This checklist is useful, as it lists a variety of considerations relating to demolitions and particularly where asbestos is involved. It lists references to the *Work Health and Safety Regulation 2017 (WHS Regulation)* and was obtained from [SafeWork NSW's website](https://www.safework.nsw.gov.au/).⁸

ASBESTOS REMOVAL CHECKLIST				
This checklist can be used as a tool to assist licensed asbestos removalists meet their regulatory obligations and includes key references to the relevant legislation.				
CHECKLIST				
Ask yourself these questions	WHS Regulation	Y	N	Notes/Comments
Is there an asbestos register?	450 and 463			
Has the structure been inspected to determine whether asbestos is present?	451–453			
Is the workplace secured from unauthorised access?	298			
Are barricades erected to delineate the asbestos removal area?	469			
Is there adequate signage for asbestos removal work?	469			
Are adequate facilities available for workers (toilets, meal area, drinking water, means to wash hands)?	41			
Is there an adequate first aid kit available?	42			
Is someone trained in first aid?	42			
Is there an emergency plan for the workplace?	43			
Is the designated asbestos supervisor present for friable work?	459 and 529			
Is the designated asbestos supervisor present for non-friable work (ie able to arrive at the workplace within 20 minutes)?	459 and 529			

⁸ https://www.safework.nsw.gov.au/_data/assets/pdf_file/0008/1036394/asbestos-removal-pcbu-checklist.pdf

SUPPLEMENTARY INFORMATION (APPENDICES)

CHECKLIST (CONT.)				
Ask yourself these questions	WHS Regulation	Y	N	Notes/Comments
Does the contractor hold the correct licence for the work being undertaken?	485 and 487			
Has licensed removal work been notified to SafeWork NSW?	142 and 466			
Are work surfaces and access ways clear of debris and trip hazards?	40			
Is there an asbestos removal control plan prepared?	464			
Is the Asbestos Removal Control Plan readily accessible?	465			
Are there arrangements (eg. health and safety representative, health and safety committee or other agreed arrangements) to consult with workers on safety matters?	Sections 47–49 of the WHS Act			
Have safe work method statements been prepared for high-risk construction work?	299			
Do all persons working with asbestos have correct training?	460			
Do all workers have construction induction cards?	316			
Is plant inspected on a regular basis?	213			
Do workers have high-risk work licences (if required)?	81			
Do I have correct personal protective and respiratory protective equipment?	44			
Is my respirator a comfortable size and fit and suitable for the condition of asbestos being removed?	44			

SUPPLEMENTARY INFORMATION (APPENDICES)

CHECKLIST (CONT.)				
Ask yourself these questions	WHS Regulation	Y	N	Notes/Comments
Have I been fit tested to my respirator and have a certificate of compliance?	44			
Am I clean shaven? If not clean shaven a loose fitting PAPR must be used, however this is only suitable for non-friable asbestos removal	44			
Have all services been disconnected (ie electrical, gas, water, fire)?	163			
Is dust generated by demolition activity being controlled?	35			
If air monitoring is undertaken, is it done by a competent person? (LAA for Class A work)	475 and 482			
Are workers prevented from falling through open penetrations and unprotected edges?	78			
Are exclusion zones or overhead protection in place to stop building debris from falling on workers below?	54			
Is a compliant scaffold provided?	225			
Has the handover certificate been provided for the scaffold?	225			
For a Class A Friable Asbestos Removal License holder, is there a current certified safety management system in place?	493			
Are arrangements in place for a clearance inspection to be carried out, after asbestos is removed, by an independent licensed assessor or competent person?	473			

SUPPLEMENTARY INFORMATION (APPENDICES)

CHECKLIST (CONT.)				
Ask yourself these questions	WHS Regulation	Y	N	Notes/Comments
Is asbestos waste and contaminated PPE planned to be disposed of as soon as practicable at a site authorised to accept asbestos waste?	472			
Has notification of asbestos removal been given to the neighbours?	467			
Are there facilities available to decontaminate the following: asbestos removal area, plant used in the asbestos removal area, workers carrying out asbestos removal work, other persons who have access to the asbestos removal area?	471			
Does the licence holder have systems in place for decontamination and annual maintenance of Class H asbestos vacuum cleaners?	35			
Has health monitoring for workers been undertaken by a licensed medical practitioner?	435–444			

APPENDIX G – MANAGING ASBESTOS IN HOUSE FIRES

The following guide will assist Councils in managing the process and understanding the different roles when asbestos is suspected of being involved in small house fires. It was developed by [Local Government NSW](https://lgnsw.org.au).⁹



lgnsw.org.au

MANAGING ASBESTOS WHEN BUILDINGS ARE DAMAGED BY SMALL SCALE FIRES GUIDANCE FOR NSW COUNCILS

This document provides an overview of the roles of various agencies in responding to small scale emergencies and incidents where asbestos risks must be managed following a fire. It applies to situations where asbestos has been identified or is assumed to be present.

It is intended as a brief and general guide only. Each situation should be assessed and treated for its particular circumstances in accordance with current legislation and more detailed guidance may be needed.

Background

- + If a house was built or renovated before 1990, it probably has asbestos-containing materials.
- + Asbestos fibres can present a health risk when they are airborne and inhaled.
- + Although asbestos does not burn, it may be easily damaged during a fire, becoming friable, and can disperse into nearby areas.
- + Asbestos fibres released during a fire are mainly released through spalling.
- + Spalling occurs when the heat of the fire turns water inside the ACM to steam, creating a build-up of pressure which results in flakes of the material forcefully popping off.
- + Spalling asbestos is Friable. This can result in asbestos fibres dispersing in the air and sometimes, fire fighting water runoff can carry fine asbestos material.
- + Asbestos fibres can also be disturbed when a building collapses, is vandalised or inappropriately accessed after a fire.
- + The risk of exposure to asbestos can be reduced greatly if appropriate precautions are taken.

Abbreviations

ACM	Asbestos Containing Material
EP&A Act	Environmental Planning and Assessment Act 1979 (NSW)
EPA	NSW Environment Protection Authority
FRNSW	Fire and Rescue NSW
LG Act	Local Government Act 1993 (NSW)
PCBU	Person conducting a business or undertaking
POEO Act	Protection of the Environment Operations Act 1997 (NSW)
PPE	Personal Protective Equipment
PVA	Polyvinyl Acetate

Scenario/ steps (may be concurrent)	Lead agency	Lead agency actions in managing asbestos may include
Extinguish fire	FRNSW is responsible for extinguishing the fire / responding at the sites impacted and taking precautions to minimise exposure to and the spread of any asbestos. Asbestos may have been spread to other locations and clean up may require assistance from different agencies as set out in this document.	<ul style="list-style-type: none"> + Isolate the area to prevent access. + Use appropriate PPE. + Minimise spread of asbestos. + Decontaminate equipment or dispose of as asbestos waste. + FRNSW may liaise with the council for example to request earth moving equipment or to locate an owner.

⁹https://lgnsw.org.au/common/Uploaded%20files/Asbestos/Managing_Asbestos_When_Buildings_Are_Damaged_By_Small_Scale_Fires_Nov_21.pdf

SUPPLEMENTARY INFORMATION (APPENDICES)

Scenario/ steps (may be concurrent)	Lead agency	Actions the lead agency make take in in managing asbestos may include
Treat asbestos risks	FRNSW	<ul style="list-style-type: none"> + Ensure the site is kept damp, especially while debris is being moved. + Encapsulate the asbestos: Spray with coloured PVA glue as a temporary measure (not a long term solution). + Warn the public of the asbestos risks at the site: e.g. barricade with barrier tape, warning signs, and other make safe arrangements.
Handover the site	<p>Handover of the site will depend on the nature of the site:</p> <ul style="list-style-type: none"> + FRNSW handover to owner, occupier or person indicating they have control of the site. + Handover may be to the council. + For a crime scene, handover will be to the NSW Police. + For a notifiable dangerous incident at a workplace, SafeWork NSW is the lead agency but would not receive handover of the site, this would be to either the NSW Police or the PCBU. + Aboriginal housing, community housing and public housing are managed by Department of Communities and Justice while other properties may be managed by local Aboriginal organisations. + For an emergency or significant incident, handover will be from the State Emergency Operations Controller (SEOCN) to the State Emergency Recovery Controller (SERCON) and Recovery Committee (formed by the SERCON). Council, EPA and SafeWork NSW will likely have a role. 	<ul style="list-style-type: none"> + Give a completed <i>FRNSW Site Handover Form</i>. + Advise of the asbestos risk.
Secure the site / affected areas	Individual, agency or authority that accepts the handover of the site.	<ul style="list-style-type: none"> + Warn the public of the asbestos risks at the site: Barricade with barrier tape, fencing, warning signs. (If signage is not sufficient to keep people out of the debris zone, consideration should be given to erecting a fence). + The temporary closure of roads and public land may be necessary where ACM has been spread or has not yet been encapsulated or removed. Priority traffic areas may need to be cleaned. Evacuation of adjacent buildings due to asbestos contamination is rarely required. + Other make safe arrangements as may be required at the time

SUPPLEMENTARY INFORMATION (APPENDICES)

Scenario/ steps (may be concurrent)	Lead agency	Actions in managing asbestos may include
Minimise risk from remaining structures	Council	<ul style="list-style-type: none"> + Council can issue an order to demolish or remove a building as outlined in section 6.4 of the <i>Model Asbestos Policy</i>. ACM must be removed prior to demolition. + Councils can also issue orders under s9.34 of the EP&A Act (e.g. to demolish or repair a building or to install a structure around a building). Councils should bear in mind that the order can be appealed which may add time to the process.
Ensure person or company responsible for the site arranges clean up and manages any off-site public health risks	<p>The consent authority or agency responsible for managing the site depends on the owner and occupiers of the land. The following agencies will have a regulatory role:</p> <ul style="list-style-type: none"> + Residential or non-worksite – Council. + Fire or notifiable dangerous incident at a workplace – SafeWork NSW. + Site licensed by the EPA or occupied by a public authority – EPA. + Site owned by public authority and not occupied – EPA and council. + Site owned by public authority and occupied by private residents – EPA and council. + A derelict property – a multi-agency response may be required. 	<ul style="list-style-type: none"> + Council can issue a clean up, prevention, cost compliance or penalty infringement notice or an order to demolish or remove a building as outlined in sections 3.3, 6.1 and 6.4 of the <i>Model Asbestos Policy</i>. ACM must be removed prior to demolition. + A clean-up notice can be issued by council or the EPA to the owner or occupier of a premises where the authority reasonably suspects that a pollution incident has occurred or is occurring (Note – only the EPA can issue a clean-up notice to a public authority). + The EPA can bring proceedings for any environmental offence against the POEO Act, whether or not the EPA is the appropriate regulatory authority in relation to the offence (section 217(1) of the POEO Act). + Councils can issue orders under s124 of the LG Act to protect public health and safety and the environment on both private and public land (e.g. fence land or cease conducting an activity). + Councils can also issue orders under s9.34 of the EP&A Act (e.g. to demolish or repair a building or to install a structure around a building). Councils should be aware that the order can be appealed – this may add time to the process. + If the services of a Licensed asbestos assessor is to be engaged, request licence number and check on the SafeWork NSW website. + Licenced asbestos assessor to assess the potential for off-site release of asbestos materials into the neighbourhood.

SUPPLEMENTARY INFORMATION (APPENDICES)

Scenario/ steps (may be concurrent)	Lead agency	Actions in managing asbestos may include
Ensure the licensed asbestos removalists are appropriately licensed and operating in accordance with the WHS legislation	SafeWork NSW For Federal land - Comcare is the regulator	<ul style="list-style-type: none"> + Special arrangements for large scale emergencies. + Require a clearance certificate following asbestos removal. + Air monitoring is required during clean-up and removal. + Class A removalist required.
Address public health risks from asbestos removal not requiring a licence	Council – for non-workers SafeWork NSW – for workers	
Regulate the transport and disposal of ACM	EPA or council – for transport from residential settings EPA and SafeWork NSW – for work sites	<ul style="list-style-type: none"> + Special arrangements for large scale emergencies. + Illegally dumped materials may be investigated.
Manage other possible hazards	All	<p>Manage any hazards such as:</p> <ul style="list-style-type: none"> + Damaged structures, sharp edges or protruding nails. + Electrical wiring - If electrical lines are down, do not enter the area, ensure electricity supply has been turned off by a licensed electrical contractor or energy supplier. + Illicit drugs and residue from such activity. Substances may have been absorbed into walls, floors, ceilings or fittings of a property or disposed of into yards or drains. + Residues of copper-chrome-arsenate (CCA) treated timber. + Lead hazards and risks to be considered.

SUPPLEMENTARY INFORMATION (APPENDICES)

Scenario/ steps (may be concurrent)	Lead agency	Actions in managing asbestos may include
Provide information to the community	<p>Multi-agency</p> <p>EPA – may provide advice in relation to transport and disposal.</p> <p>NSW Health – may provide advice on health issues when there is the potential for public exposure to asbestos.</p> <p>Resilience NSW – may provide information on recovery arrangements.</p> <p>NSW FACS – provides information to tenants. For damage to suspected asbestos, report it to the Housing Contact Centre on 1800 422 322 (24 hours a day, 7 days a week).</p> <p>SafeWork – asbestos removal and assessor licensing.</p>	<ul style="list-style-type: none"> + Community meetings. + Face-to-face. + Letters. + Media releases. + Newspapers. + Noticeboards. + Signage. + Social media. + Website. + Fact sheets. + Talks to groups (e.g. school community). <p>Information may include:</p> <ul style="list-style-type: none"> + Details of the emergency or incident. + An overview of the recovery. + How to avoid exposure to asbestos (for precautions for neighbours refer to section 7.2 of the <i>Model Asbestos Policy</i>). + How to remove and dispose of asbestos containing materials. + Any special arrangements. + Contact details for further information. <p>Some members of the community may perceive a greater risk from asbestos incidents than the actual risk and this needs to be considered in preparing communication.</p>

Further Information:

- + fire.nsw.gov.au
- + rfs.nsw.gov.au
- + asbestos.nsw.gov.au
- + epa.nsw.gov.au
- + safework.nsw.gov.au
- + facs.nsw.gov.au
- + lgnsw.org.au

APPENDIX H – CONTACTS AND FURTHER INFORMATION ON ASBESTOS

The following list of other contacts for the management of asbestos-related issues is provided to further assist Councils.

Aboriginal communities

Illegal Dumping Prevention and Clean-Up: Handbook for Aboriginal Communities (EPA, 2008).
www.epa.nsw.gov.au/illegaldumping/resources.htm

Asbestos contractors

Choosing an Asbestos Consultant [fact sheet], catalogue no. WC04547 (SafeWork NSW)
<https://www.safework.nsw.gov.au/search?query=asbestos+consultant>

For a listing of asbestos removal contractors in your area, refer to your local telephone directory or the Yellow Pages (www.yellowpages.com.au), or contact the Asbestos Removal Contractors Association (ARCA) NSW (www.arcansw.asn.au) or by emailing email@arcansw.asn.au. An asbestos removal contractor's licence can be verified by contacting SafeWork NSW's Certification Unit on 13 10 50.

Asbestos waste

Advice about safely disposing of household asbestos waste:
www.epa.nsw.gov.au/managewaste/house-asbestos.htm

Asbestos waste disposal facility search function on the Asbestos Safety and Eradication Agency website: www.asbestossafety.gov.au/search-disposal-facilities

Crackdown on Illegal Dumping: A Handbook for Local Government (EPA, 2007).
www.epa.nsw.gov.au/illegaldumping/resources.htm

Illegally Dumped Asbestos Clean-Up Program (IDACUP):

Council may become involved in clean-up activities of illegally dumped asbestos waste. Where the responsible party is unknown, unavailable, unwilling (despite a legal obligation to do so) or unable to pay for clean-up within the timeframe required to avoid or at least minimise harm to the environment or public health, Council may apply for funding under the IDACUP. Information about the IDACUP is available at www.environment.nsw.gov.au/grants/IDACUP.htm

Regional illegal dumping (RID) squads

are regionally based teams that specialise in dealing with illegal dumping. The squads are funded by the EPA and the member local Councils that opt to work together and pool resources to tackle illegal dumping.

RIDonline

is a statewide illegal dumping database and reporting tool to assist Councils and the EPA in developing a comprehensive picture of the extent of illegal dumping in NSW. Members of the community can assist by reporting illegal dumping online through the [RIDonline website](#).

For more information on illegal dumping and safely disposing of asbestos waste, visit the EPA website (www.epa.nsw.gov.au)

Management of Asbestos in Recycled Construction and Demolition Waste (SafeWork NSW, 2010).
<https://www.safework.nsw.gov.au/search?query=asbestos+in+recycled+construction+>

SUPPLEMENTARY INFORMATION (APPENDICES)

Contaminated land

Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997 (EPA, 2015). www.epa.nsw.gov.au/resources/clm/150164-report-land-contamination-guidelines.pdf

Managing Land Contamination: Planning Guidelines: SEPP (Resilience and Hazards) 2021 – Remediation of Land

<https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0730 - ch.4>

Emergency management

Guidance Material: Managing Asbestos When Buildings are Damaged By Small Scale Fires (LGNSW 2021)

<https://lgnsw.org.au/common/Uploaded files/Asbestos/Managing Asbestos When Buildings Are Damaged By Small Scale Fires Nov 21.pdf>

NSW Asbestos Emergency Plan:

The NSW asbestos emergency sub-plan details the specific arrangements for the coordinated funding and management of asbestos debris during and following a larger-scale emergency, being an event that requires a significant and coordinated response, where the presence of asbestos-containing material in the community poses a significant risk to public health and safety.

www.emergency.nsw.gov.au/publications/plans/sub-plans/asbestos.html

Environmental risk assessment

Environmental Health Risk Assessment: Guidelines for Assessing Human Health Risks from Environmental Hazards (Commonwealth of Australia, 2002).

Available via email by contacting the enHealth Secretariat (enHealth.Secretariat@health.gov.au).

Health

Asbestos and Health Risks [fact sheet] (NSW Health, 2007).

www.health.nsw.gov.au/environment/factsheets/Pages/asbestos-and-health-risks.aspx

Further advice concerning the health risks of asbestos can be obtained from your local public health unit.

Renovation and development

Asbestos Guide for Householders and the General Public (Environmental Health Standing Committee [enHealth], 2013). <https://www.health.gov.au/resources/publications/enhealth-guidance-asbestos-guide-for-householders-and-the-general-public?language=en>

Asbestos Awareness website (Asbestos Education Committee). www.asbestosawareness.com.au

Finding and Appointing a Certifier (NSWC Government Fair Trading).

<https://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/preparing-to-build-and-renovate/finding-and-appointing>

Practical guidance

Code of Practice: How to Manage and Control Asbestos in the Workplace, (SafeWork NSW 2022).

https://www.safework.nsw.gov.au/_data/assets/pdf_file/0014/50081/How-to-manage-and-control-asbestos-in-the-workplace-COP.pdf

Code of Practice: How to Safely Remove Asbestos, (SafeWork NSW 2022).

https://www.safework.nsw.gov.au/_data/assets/pdf_file/0015/50082/How-to-safely-remove-asbestos-COP.pdf

Tenants

Tenants Rights. Fact Sheet: Tenants Databases (Tenants Union NSW, 2023).

<https://www.tenants.org.au/factsheet-19-tenant-databases>

Tenants – Housing NSW tenants

Asbestos [fact sheet] (Housing NSW, 2010).

www.housing.nsw.gov.au/NR/rdonlyres/F4E1131F-2764-4CB1-BC07-98EB6C594085/0/Asbestos.pdf