



# ASBESTOS BLUEPRINT

A GUIDE TO THE ROLES AND RESPONSIBILITIES  
OF GOVERNMENT AGENCIES IN NSW  
SAFework NSW

DECEMBER 2017

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# ACRONYMS AND ABBREVIATIONS

<b>ACD</b>	Asbestos Containing Dust (an acronym used in the legislation)
<b>ACM</b>	Asbestos Containing Material (an acronym used in the legislation)
<b>ARA</b>	Appropriate Regulatory Authority (an acronym used in the legislation)
<b>Code</b>	Australian Dangerous Goods Code
<b>CLM Act</b>	<i>Contaminated Land Management Act 1997</i>
<b>DA</b>	Development Application
<b>icare Dust Diseases Care</b>	The Workers Compensation (Dust Diseases) Authority
<b>DIBP</b>	Commonwealth Department of Immigration and Border Protection
<b>DPE</b>	Department of Planning and Environment
<b>EPA</b>	Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	<i>Environmental Planning and Assessment Regulation 2000</i>
<b>ESO</b>	Emergency Services Organisation
<b>JRPP</b>	Joint Regional Planning Panel
<b>LFAI</b>	Loose-Fill Asbestos Insulation
<b>LGA</b>	Local Government Area
<b>LGNSW</b>	Local Government NSW
<b>NATA</b>	National Association of Testing Authorities
<b>NOA</b>	Naturally occurring asbestos
<b>PCBU</b>	Person conducting a business or undertaking
<b>PIFAC</b>	Public Information Functional Area Coordinator
<b>POEO Act</b>	<i>Protection of the Environment Operations Act 1997</i>
<b>SEPP</b>	<i>State Environmental Planning Policy</i>
<b>SECON</b>	State Emergency Operations Controller
<b>SERCON</b>	State Emergency Recovery Controller
<b>Waste Regulation</b>	<i>Protection of the Environment Operations (Waste) Regulation 2014</i>
<b>WHS</b>	Work health and safety
<b>WHS Act</b>	<i>Work Health and Safety Act 2011</i>
<b>WHS Regulation</b>	<i>Work Health and Safety Regulation 2017</i>
<b>VET</b>	Vocational Education and Training

# INTRODUCTION

While the use and importation of asbestos into Australia was banned in 2003, unfortunately asbestos and asbestos containing materials (ACM) will continue to pose significant health risks if not safely managed. The widespread use of asbestos in the past has left a legacy of asbestos containing materials in the built environment and land across NSW and Australia. Asbestos containing products also continue to be illegally imported into Australia on occasion, so it is still important to manage all aspects of the lifecycle of asbestos.

## What is the Heads of Asbestos Coordination Authorities?

The Heads of Asbestos Coordination Authorities (HACA) was established in 2011 to ensure that government agencies and councils effectively coordinate the safe management of asbestos to help reduce the incidence of asbestos related diseases in NSW. The HACA is chaired by SafeWork NSW, with senior officials representing NSW government organisations responsible for workplace health and safety, public health, environment protection, emergency services and local government policy areas. The HACA was tasked with implementing the first state-wide Asbestos Plan 2013–2016, which concluded on 20 June 2017. A new state-wide Asbestos Plan is in development to continue the successful work of the initial plan and help to improve health and safety outcomes in the NSW community.

Further information about HACA and its members can be found at: [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)

## What is the Asbestos Blueprint?

The Asbestos Blueprint was first published in 2011 and has assisted government agencies and organisations to better understand and coordinate their regulatory roles and responsibilities. The Blueprint also provides the public with a clear description of the regulatory landscape. This has enabled: improved delivery of asbestos regulatory services; improved compliance with legislation; and the safer management of asbestos in NSW. The second edition of the Asbestos Blueprint provides an updated overview of the current legislative framework and the agencies responsible for regulating asbestos. The Asbestos Blueprint is an initiative of the HACA and has been endorsed by HACA members and key stakeholders.

## HIGH LEVEL OVERVIEW

The Asbestos Blueprint is designed to provide clarity and improved coordination of asbestos regulation in NSW, leading to better protection of

the health and wellbeing of the community and workers. Improved coordination of regulatory services also leads to better services for the public.

**Diagram 1: Regulatory responsibilities based on asbestos mineral life cycle**

In the ground	Naturally occurring asbestos	DPE/Councils
	Mineral extraction, abandoned mines	DPE
	Declared contaminated land	EPA
	Non-declared contaminated public land	EPA/Councils
	Non-declared contaminated non-workplace land	EPA/Councils
	Non-declared workplace - contaminated land	SafeWork NSW
	Asbestos remediation work	SafeWork NSW
	Illegal dumping	EPA
Supply	Illegal import/export	SafeWork NSW through DIBP
	Illegal supply	SafeWork NSW
Buildings and vehicles	Licensed asbestos assessors	SafeWork NSW
	At workplaces	SafeWork NSW
	At non-workplaces	Councils
Removal	Licensed removal work and asbestos assessors	SafeWork NSW
	At workplace not requiring a licensed removalist	SafeWork NSW
	At all locations by a PCBU or worker	SafeWork NSW
	At non-workplaces — all other cases	Councils
Emergencies	Response to emergency incidents	Fire & Rescue NSW (HAZMAT)
	Major recovery operations	Fire & Rescue NSW (HAZMAT)
	Routine recovery operations	Councils
	Waste export	EPA through DIBP
Transport and disposal	Transport by vehicle	EPA
	Landfill facilities	EPA
	Scheduled waste storage and disposal facilities	EPA
	Waste transport — interstate	EPA
	Temporary on-site waste storage — workplaces	SafeWork NSW
	Laundering facilities	SafeWork NSW



The complex inter-governmental agency interaction has been mapped out for readers, including scenario maps and case studies. The roles and regulatory responsibilities of government organisations can be further summarised according to the location of asbestos (see Diagram 1, previous page).

Asbestos is regulated in NSW by SafeWork NSW, the Environmental Protection Authority (EPA), councils, emergency service organisations and the NSW Department of Planning and Environment (DPE). The Department of Immigration and Border Protection (DIBP) also contributes to regulation through the control of imports and exports of asbestos. The roles and responsibilities of the NSW organisations are briefly summarised below with more in-depth explanation later in the Blueprint.

# SUMMARY OF ASBESTOS REGULATION ROLES AND RESPONSIBILITIES IN NSW

## SafeWork NSW

- Asbestos removal by a person conducting a business at a place of work (PCBU) whether for gain or profit under *Work Health and Safety Act 2011* (WHS Act) and the *Work Health and Safety Regulation 2017* (WHS Regulation).
- Asbestos management by a PCBU at a place of work whether for gain or profit (excluding mine sites) under WHS Act and the WHS Regulation.
- Licensed asbestos removal work under WHS Act and the WHS Regulation.
- Asbestos site remediation work (excluding mine and petroleum sites).
- Illegal supply of asbestos materials.
- Liaison with NSW Fair Trading and Australian Competition and Consumer Commission (ACCC) regarding asbestos product recalls.
- Liaison with the Department of Immigration and Border Protection (DIBP) on import and export of asbestos materials.
- Contaminated land at a workplace not declared under the *Contaminated Land Management Act 1997* (CLM Act).

For further information see [page 13](#).

## Environment Protection Authority

- Regulates transport and tracking of asbestos waste within NSW.
- Regulates the tracking of waste from NSW interstate.
- Regulates the storage of asbestos waste (received from off-site).
- Regulates the disposal of asbestos waste.
- Regulates declared asbestos contaminated sites under the CLM Act.
- Maintains records of scheduled waste disposal facilities and declared asbestos contamination sites.

For further information see [page 15](#).

## Councils

- Regulates asbestos in non-workplaces.
- Regulates the removal or disturbance of asbestos in non-workplaces.

- Communicates confirmed asbestos contaminated sites and properties confirmed to contain loose-fill asbestos insulation on s.149 certificates through the planning process.
- Assisting with local recovery operations following an emergency situation if the site is handed over to the council by an emergency service organisation.

For further information see [page 20](#).

## Fire & Rescue NSW (HAZMAT)

- Responds to emergency incidents where asbestos may be present.
- Activation and control of the Asbestos Emergency Sub Plan.
- Determines the extent of asbestos contamination arising from the emergency.
- Communicates asbestos contamination information to other organisations attending the site.
- Provides asbestos contamination information to organisation, recovery committee, and council or property owner at time of handover.
- Advises other agencies where asbestos is identified in responding to an incident.
- Clean-up and make safe of sites contaminated by asbestos following an emergency.

For further information see [page 26](#).

## NSW Department of Planning and Environment

- Asbestos management by a PCBU at mines and petroleum sites.
- Asbestos site remediation work at a mine or petroleum site or abandoned mine or petroleum site.
- Regulation of mine sites through the Resources Regulator.
- Mapping of naturally occurring asbestos (NOA) by the Geological Survey of NSW within the Division of Resources & Geoscience

For further information see [page 33](#).

# LEGISLATIVE FRAMEWORK FOR ASBESTOS IN NSW

Asbestos in NSW is subject to laws about work health and safety, planning and development, environmental protection, local government, consumer safety, import/export controls and compensation for asbestos-related diseases. The complex legislative framework for asbestos is illustrated in Table 1 below. These are the primary

laws that relate to the safe management of asbestos, although there are considerable cross-agency responsibilities under these legislative instruments. One of HACA's most important roles is to ensure effective coordination between the government agencies and organisations involved.

Table 1: Asbestos legislation and regulations in NSW

Topic	Legislation
Work health and safety	<i>Work Health and Safety Act 2011</i> <i>Work Health and Safety Regulation 2017</i> <i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i> <i>Work Health and Safety (Mines and Petroleum Sites) Regulation 2014</i>
Environmental protection	<i>Protection of the Environment Operations Act 1997</i> <i>Protection of the Environment Operations (General) Regulation 2009</i> <i>Protection of the Environment Operations (Waste) Regulation 2014</i> <i>Contaminated Land Management Act 1997</i> <i>Environmental Trust Act 1998</i> <i>Dangerous Goods (Road and Rail Transport) Regulation 2009</i>
Planning	<i>Environmental Planning and Assessment Act 1979</i> <i>Environmental Planning and Assessment Regulation 2000</i> <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> <i>State Environmental Planning Policy (Infrastructure) 2007</i> <i>State Environmental Planning Policy (State and Regional Development) 2011</i> <i>State Environmental Planning Policy No 55 - Remediation of Land</i>
Local government	<i>Local Government Act 1993</i>
Consumer safety	<i>Fair Trading Act 1987</i> <i>Property, Stock and Business Agents Act 2002</i> <i>Home Building Act 1989 (For LFAI)</i> <i>Conveyancing (Sale of Land) Regulation 2017 (for LFAI)</i> <i>Residential Tenancies Regulation 2010 (for LFAI)</i>
International trade	<i>Customs Act 1901</i> <i>Customs (Prohibited Imports) Regulations 1956</i> <i>Customs (Prohibited Exports) Regulations 1958</i> <i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i> <i>Industrial Chemicals (Notification and Assessment) Act 1989</i> <i>Industrial Chemicals (Notification and Assessment) Regulations 1990</i>
Emergency response	<i>State Emergency and Rescue Management Act 1989</i> <i>Fire Brigade Act 1989</i>

Topic	Legislation
Compensation	<i>Workers' Compensation (Dust Diseases) Act 1942</i> <i>Dust Diseases Tribunal Act 1989</i> <i>Dust Diseases Tribunal Regulation 2007</i> <i>Dust Diseases Regulations 2006</i> <i>Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order 2007</i> <i>James Hardie (Civil Penalty Compensation Release) Act 2005</i> <i>James Hardie Former Subsidiaries (Winding up and Administration) Act 2005</i> <i>James Hardie Former Subsidiaries (Winding up and Administration) Amendment Act 2009</i> <i>James Hardie Former Subsidiaries (Winding up and Administration) Regulation 2007</i> <i>James Hardie (Civil Liability) Act 2006</i>

# GOVERNMENT ORGANISATIONS RESPONSIBLE FOR ASBESTOS MANAGEMENT IN NSW

## SAFework NSW

SafeWork NSW regulates work health and safety laws to prevent harm, manage risk and improve the safety culture in NSW workplaces. SafeWork NSW also administers and provides advice on both the WHS Act and the WHS Regulation.

In relation to asbestos, SafeWork NSW is responsible for working with employers and the community to achieve safer and more productive workplaces by:

- Investigating workplace incidents and enforcing work health and safety laws in NSW
- Issue and renewal of all asbestos removal licences, including conducting audits to ensure compliance with licenses
- Approval and audits of Registered Training Organisations regarding asbestos training
- Raising awareness within the NSW community on both the dangers of asbestos and how to safely manage it.

### Asbestos in the workplace

Historically, the workers most at risk from exposure to asbestos were those workers involved in asbestos mining operations, asbestos manufacturing processes and installers of asbestos materials. Asbestos was gradually phased out of building materials in the 1980s and the supply and installation of asbestos containing goods has been prohibited in Australia since 31 December 2003.

Many asbestos containing materials still remain in place today and the workers now most at risk are those involved in asbestos removal and remediation work, or renovation and maintenance work that may disturb asbestos.

There are many occupations and trades that may come into contact with or work near or with asbestos: for example, demolition, roofing and construction contractors, engineers, electricians, painters and decorators, plumbers and automotive repair workers

For further information refer to the Fact Sheets at [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au).

### Workplaces

The control of asbestos in the workplace is regulated under the WHS Act and the WHS Regulation. SafeWork NSW administers the legislation for all workplaces with the exception of mine and petroleum sites which are administered by the Department of Industry. Table 2 provides a summary of the clauses relating to Asbestos in the WHS Regulation.

**CASE STUDY 1: OVERLAPPING RESPONSIBILITIES REGARDING REMOVAL AND DISPOSAL OF ASBESTOS**

A licensed asbestos removalist was undertaking asbestos removal work at a residential property. There was more than 10 square metres of asbestos to be removed (SafeWork NSW jurisdiction).

The asbestos waste was wrapped in plastic and labelled at the workplace in accordance with the *Code of Practice – How to Safely Remove Asbestos* (SafeWork NSW jurisdiction).

Prior to removing the asbestos waste, the licensed asbestos removalist registered the removal of the asbestos waste with the EPA by generating a Consignment ID through the EPA's 'Waste Locate' system (EPA jurisdiction).

The licensed asbestos removalist then loaded the asbestos waste into the transport vehicle ready for disposal at a waste facility authorised to accept asbestos waste (SafeWork NSW jurisdiction).

The asbestos waste was transported from the workplace to the waste facility (EPA jurisdiction) where it was accepted and confirmed on the 'Waste Locate' system (EPA jurisdiction).

Table 2: Summary of *Work Health and Safety Regulation 2017*, Chapter 8, Asbestos

Clause(s)	PCBU/ Licence holder obligations
422 Asbestos to be identified or assumed at a workplace	All asbestos or ACM at the workplace must be identified by a competent person. If the material cannot be identified, it must be assumed that the material is asbestos.
425-430 Asbestos Register and Asbestos Management Plan	If asbestos is identified at the workplace, the person with management or control of a workplace must ensure that asbestos register and asbestos management plan is prepared.
435-444 Health Monitoring	A PCBU must ensure that health monitoring is provided to a worker carrying out licensed asbestos removal work, or other ongoing asbestos removal work.
445 Duty to train workers about asbestos (other than licensed asbestos removal work)	A PCBU must ensure workers whom the person reasonably believes may be involved in asbestos removal work or in the carrying out of asbestos-related work are trained in the identification, safe handling and suitable control measures for asbestos and ACM.
458 Duty to ensure asbestos removalist is licensed	A PCBU that commissions the removal of asbestos must ensure that asbestos removal work is carried out by a licensed asbestos removalist.
459 Asbestos removal supervisor must be present or readily available	A licensed asbestos removalist performing Class A work must ensure that the supervisor is present at the asbestos removal area whenever the asbestos removal work is being carried out. A licensed asbestos removalist performing Class B work must ensure that the supervisor is readily available to a worker carrying out asbestos removal work whenever the work is being carried out.
460 Asbestos removal worker must be trained	A licensed asbestos removalist must not direct or allow a worker to carry out licensed asbestos removal work unless the worker holds certification in the specified vocational education and training (VET) course.
464-465 Asbestos removal control plan	A licensed asbestos removalist must prepare an asbestos removal control plan for licensed asbestos removal work and it must be kept and available for inspection.
466 SafeWork NSW must be notified of asbestos removal	A licensed asbestos removalist must give written notice to SafeWork NSW at least five days before the removalist commences licensed asbestos removal work.
467 Licensed asbestos removalist must inform certain persons about intended asbestos removal work	The licensed asbestos removalist must, before commencing the licensed asbestos removal work, inform certain persons that licensed asbestos removal work is to be carried out at the workplace, and when the work is to commence, for example: a. person who commissioned the asbestos removal work, b. a person conducting a business or undertaking at the workplace, c. the occupier of the residential premises, d. the owner of the residential premises, e. anyone occupying premises in the immediate vicinity of the workplace.
469-470 Signage, barricades, limiting access	An asbestos removalist must ensure asbestos warning signs and barricades are erected to delineate the asbestos removal area, and ensure no unauthorised person has access to the asbestos removal area.
473-474 Clearance inspection, clearance certificate	The licensed asbestos removalist must ensure that when the licensed asbestos removal work is completed, a clearance inspection of the asbestos removal area is carried out by a competent person or licensed asbestos assessor, and the person must issue a clearance certificate before the asbestos removal area at the workplace is re-occupied.
484 Disposing of asbestos waste and contaminated personal protective equipment	A PCBU/licensed asbestos removalist must ensure that asbestos waste is contained and labelled before the waste is removed from an asbestos work area, and disposed of as soon as practicable at a site authorised to accept asbestos waste.

# ENVIRONMENT PROTECTION AUTHORITY

The EPA plays a role in regulating:

- the transport, storage and disposal of asbestos waste
- illegally dumped asbestos waste
- land contaminated with asbestos.

## Transport and disposal

The transport and disposal of asbestos waste is an important link in securing the safe management of asbestos throughout its life cycle. Asbestos waste is primarily generated as a result of construction and demolition activities, but may also be generated from other sources, including asbestos brake linings and laboratory or laundry waste.

The transport and disposal of asbestos waste is regulated under the Protection of the *Environment Operations Act 1997* (the POEO Act) and the *Protection of the Environment Operations (Waste) Regulation 2014* (the Waste Regulation), which are administered by the EPA.

The following requirements apply for the transport of asbestos waste:

- a. non-friable asbestos material must be securely packaged at all times
- b. friable asbestos material must be kept in a sealed container
- c. asbestos contaminated soils must be wetted down
- d. all asbestos waste must be transported in a part of the vehicle which is covered and leak-proof.

## Dangerous Goods Regulation

The *Dangerous Goods (Road and Rail Transport) Regulation 2014* adopts uniform national requirements for the transport of dangerous goods including the requirements of the Australian Dangerous Goods Code ('the Code'). Asbestos is categorised by the Code as a Class 9 dangerous good; however most asbestos waste is subject to special provision 168.

Placarding and specific packaging is required for the transport of asbestos where it falls outside of provision 168. For example, special provision 168 does not apply to loose fill asbestos, and as such, all dangerous goods transport requirements must be complied with.

### DEFINITIONS:

'Waste' includes any substance that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or any discarded, rejected, unwanted, surplus or abandoned substance.

'Asbestos waste' means any waste that contains asbestos.

### SPECIAL PROVISION 168 – EXEMPTIONS FROM THE DANGEROUS GOODS CODE:

Asbestos which is immersed or fixed in a natural or artificial binder (such as cement, plastics, asphalt, resins or mineral ore) in such a way that no escape of hazardous quantities of respirable asbestos fibres can occur during transport is not subject to this Code. Manufactured articles containing asbestos and not meeting this provision are nevertheless not subject to this Code when packed so that no escape of hazardous quantities of respirable asbestos fibres can occur during transport.



## Tracking of asbestos waste

Within NSW, the transport of more than 100 kilograms of asbestos waste or more than 10 square metres of asbestos sheeting must be tracked. The EPA has developed the online tracking program, WasteLocate, to facilitate compliance with the requirement for transporting waste in NSW.

Asbestos waste that is transported interstate must be tracked in accordance with the Waste Regulation, and an environment protection licence is required to transport asbestos waste interstate where any load contains more than 200 kilograms of asbestos waste.

## Asbestos waste storage and disposal

The EPA regulates all activities that require an environment protection licence under Schedule 1 of the POEO Act. In most circumstances, the storage and disposal of asbestos waste requires an environment protection licence.

Before a licence can be issued by the EPA, the site must have all relevant statutory approvals, including a development consent issued by council or the Department of Planning, depending on the scale of the proposed activity. Where a licence has been issued for premises, it can be viewed online on the POEO Public Register at [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au).

A licence is required where more than 5 tonnes of asbestos waste is received from off-site and stored. The storage of asbestos waste at worksites is regulated solely by SafeWork NSW under the current provisions of the WHS Regulation. All other sites where asbestos waste is stored are regulated by councils.

Ultimately, asbestos waste should be disposed of as soon as practicable. The re-use and recycling of asbestos waste is prohibited under the Waste Regulation and the long-term storage of asbestos waste is not encouraged.

Waste disposal facilities that require a licence under Schedule 1 of the POEO Act are regulated by the EPA and may be operated by the council, the State Government or private enterprise. Clause 80 of the Waste Regulation stipulates the controls required for disposal of asbestos waste is available at [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). A list of facilities that receive asbestos waste is available

on the EPA website at [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). The fees charged by the facility operators for waste received are determined by the facility.

## Illegally dumped asbestos waste

Illegally dumped waste refers to materials that have been disposed of illegally, including materials that have been dumped accidentally or intentionally, on private or public land. Illegally dumped waste is regulated by the EPA and councils under the POEO Act (see [Scenario Map 3 on page 39](#)).

Offences of illegal dumping attract strong penalties, including:

- on-the-spot fines of up to \$7,500 for individuals and \$15,000 for corporations
- fines of up to \$250,000 for individuals and \$1 million for corporations in court for unlawful waste facility offences or illegal waste disposal (sections 143 and 144 of the POEO Act)
- fines of up to \$1 million for individuals and/or seven years imprisonment, and \$5 million for corporations, in relation to illegal waste disposal that causes environmental harm (section 115 of the POEO Act).

In addition to issuing penalty notices for offences involving asbestos waste, clean-up and preventative action can also be required.

The polluter pays principle applies for illegally dumped waste. This means that the responsibility for cleaning up illegally dumped waste lies with the person or company that deposited the waste. If they cannot be identified the relevant landowner becomes the responsible party in most circumstances.

Under the POEO Act, clean-up notices can be issued by the appropriate regulatory authority where there is a pollution incident. This can include situations where asbestos waste is illegally stored or disposed of, or in an emergency. Prevention notices can also be issued by the appropriate regulatory authority where asbestos waste has been managed in an environmentally unsatisfactory manner.



#### APPROPRIATE REGULATORY AUTHORITY

Councils are the appropriate regulatory authority for illegal dumping unless:

- the activity was part of the carrying on of an activity listed in Schedule 1 of the POEO Act
- the activity was carried out by a public authority or the state, or
- the site is regulated by a different authority such as the Minister for Planning.

In the first two situations, the EPA is the appropriate regulatory authority.

### Clean-up in an emergency

To avoid delays in taking emergency clean-up action where the responsible parties/owners cannot be identified or located, the Environmental Trust administers the Emergency Pollution and Illegally Dumped Asbestos Clean-Up Programs.

Funds granted under the program are intended as limited assistance for those who have obligations to participate in the management of emergency pollution and illegally dumped asbestos situations (for example, emergency service organisations, councils and government agencies) when the responsible party is unknown or is unlikely to pay for clean-up within the timeframe required. Prior approval from the EPA is required before these funds can be accessed.

### Contaminated land

The NSW Government has implemented measures to provide a comprehensive, consistent and whole-of-government approach to the management and remediation of contaminated land, including land that is subject to, or undergoing, development: The CLM Act and *State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land* represent complementary parts of that package.

The Managing Land Contamination: Planning Guidelines (the Guidelines), jointly prepared by the DPE and the EPA, are designed to assist planning and consent authorities to undertake their responsibilities under the EP&A Act.

The purpose of the Guidelines is to establish 'best practice' for managing land contamination through the planning and development control process. The Guidelines explain what needs to be done to show that planning functions have been carried out in good faith.

Though written primarily for planning authorities, in particular councils, the guidelines are also relevant to developers, lenders, property insurers, property owners, consultants such as site auditors, valuers and remediators, as well as interested members of the community.

If land is contaminated but not determined to be 'significantly contaminated land' (that is in considering the current or approved use of the land, the contamination is not significant enough to warrant regulation as it does not pose an unacceptable risk to human health or the environment) then the CLM Act does not apply. However, general requirements of SEPP 55 and the Guidelines still apply when the land is being developed. Contamination with asbestos containing materials should be considered by planning authorities in the same way as other forms of contamination.

The EPA has used the CLM Act to regulate the clean-up of former asbestos manufacturing facilities where large quantities of friable asbestos waste were buried onsite. Intervention under the CLM Act as 'significantly contaminated land' would only be generally required where the scale and nature of the contamination was giving rise to elevated levels of asbestos fibres in air, and the responsible party was not addressing the source of the risk (see section 2.3.4 of the EPA's Guidelines on the Duty to Report Contamination under the *Contaminated*

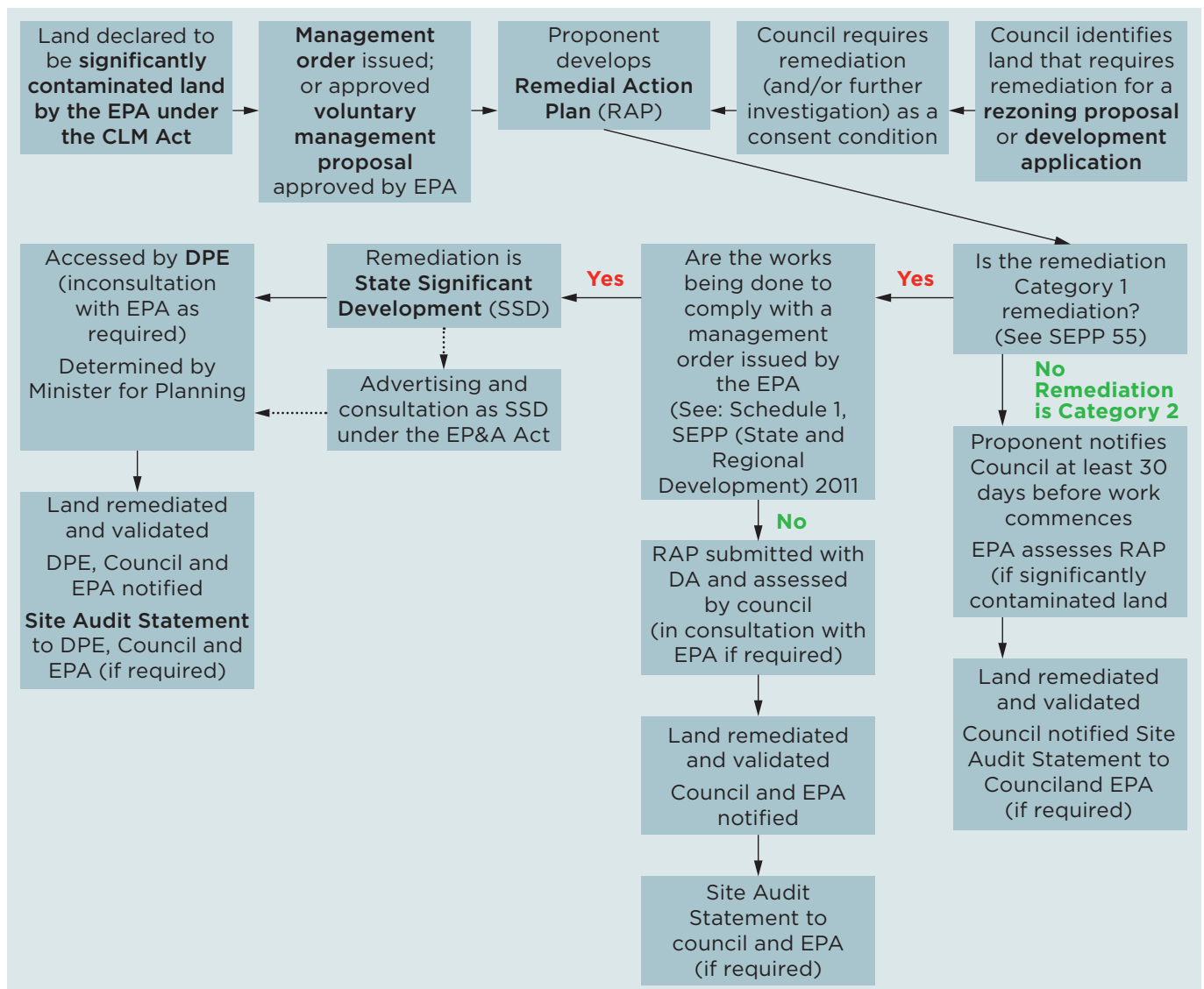
*Land Management Act 1997* (2015)). Figure 1 below provides an explanation of the relationship between the planning system and the CLM Act.

Under section 149 of the EP&A Act a person may request from council a planning certificate containing advice on matters about land that are prescribed in the Regulation. One such prescribed matter is the existence of a council policy to restrict the use of land. This is taken to include restrictions on land use due to risks from contamination. These certificates are issued under section 149(2).

Additionally, section 59 of the CLM Act requires that a section 149 Certificate specify matters such as significantly contaminated land, or if the land is subject to a management order, ongoing maintenance order, or approved voluntary management proposal.

Councils should maintain efficient property information systems on which factual information regarding contamination is recorded. They must ensure their records are accurate, up-to-date and enable community access to information about the status of the subject land and the planning policy requirements relating to contamination.

Figure 1: Relationship between Planning System and *Contaminated Land Management Act*



Factual information relating to past land use and other matters relevant to contamination may also be provided, even when land use is not restricted. Provision of information under section 149(5) is a useful means of recording details of land history, assessment, testing and remediation.

When council receives a request for a certificate under section 149(2), it would be good practice to inform applicants of any further information available under section 149(5).

SafeWork NSW regulates asbestos ground contamination issues at a place of work under the general duties of the WHS Act and through the asbestos removal licensing requirements of the WHS Regulation. Guidance is also provided in the publication *Working with asbestos guide*.

The control framework for asbestos in soils is administered principally by the EPA, councils, SafeWork NSW and the Department of Planning and Environment as mapped in Scenario Map 4 on page 39. The control framework for the management of site contamination including illegally dumped asbestos is mapped in Scenario Map 2 on page 36.

For a map of locations where naturally occurring asbestos is known, and areas where there is potential for it to occur, see [www.safework@nsw.gov.au](http://www.safework@nsw.gov.au).

# COUNCILS

Councils are responsible for managing asbestos in the community through educating residents, regulating land use and development, and managing waste disposal. Table 3 below summarises the issues councils are commonly

involved in and the regulatory role they take in managing them. These include contaminated land, development assessment, demolition, emergencies and incidents, naturally occurring asbestos, non-workplaces and waste.

**Table 3: Situations in which councils have a regulatory role in managing asbestos**

Issue	Council's role
Contaminated land	<ul style="list-style-type: none"> <li>Record known asbestos site contamination on section 149 certificates where practicable and for council workplaces, record on council's asbestos register.</li> <li>Regulate asbestos contaminated land that is not declared 'significantly contaminated' under the CLMA Act 1997 (excluding oversight of removal or remediation work which is the role of SafeWork NSW).</li> </ul>
Development assessment	<ul style="list-style-type: none"> <li>Assess development applications for approval under the EP&amp;A Act.</li> <li>Set conditions of consent for renovations, alterations, additions, demolitions or other developments requiring consent and which may involve disturbance of asbestos containing materials.</li> <li>Ensure compliance with development conditions where council has a certifying role or is principal certifying authority.</li> <li>Apply conditions relating to development involving friable and non-friable asbestos material under the relevant legislation and planning codes.</li> </ul>
Demolition	<ul style="list-style-type: none"> <li>Approve demolition under the EP&amp;A Act.</li> <li>Council certifiers may approve development as complying development under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>.</li> </ul>
Emergencies and incidents	<ul style="list-style-type: none"> <li>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 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 POEO Act.</li> </ul>
Naturally occurring asbestos	<ul style="list-style-type: none"> <li>Verify compliance with environmental planning and assessment legislation for development applications that could disturb naturally occurring asbestos.</li> <li>Prepare an asbestos management plan for council workplaces or road works which occur on land containing naturally occurring asbestos.</li> </ul>
Residential premises	<ul style="list-style-type: none"> <li>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.</li> <li>Respond to complaints about unsafe development activities at a residential property.</li> <li>Respond to public health risks posed by derelict properties or asbestos materials in residential settings.</li> <li>Include properties listed on the Loose-fill Asbestos Insulation Register on section 149 (2) planning certificates.</li> <li>In areas where loose-fill asbestos insulation has been identified, include a notation on all section 149(5) planning certificates regarding the potential for loose-fill asbestos insulation in properties that are not listed on the Register.</li> </ul>
Waste	<ul style="list-style-type: none"> <li>Manage waste facilities in accordance with environmental protection legislation.</li> <li>Respond to illegal storage, illegal dumping and orphan waste.</li> <li>Regulate transport and disposal of asbestos containing materials</li> </ul>

## Contaminated land

Responsibility for cleaning up contaminated land lies with the person responsible for contaminating the land or the relevant landowner. Councils may issue a clean-up notice to the occupier of premises at or from which council reasonably suspects that a pollution incident has occurred, or is occurring, requiring asbestos waste to be removed (under part 4.2 of the POEO Act).

Councils may also issue prevention notices (under part 4.3 of the POEO Act) to ensure good environmental practice. If a person does not comply with a prevention notice given to the person, council employees, agents or contractors may take action to ensure compliance with the notice. Any reasonable costs incurred by council in monitoring or enforcing clean-up and prevention notices may be recovered through a compliance cost notice (under part 4.5 of the POEO Act).

During site redevelopment councils consider site contamination with asbestos containing materials in the same way as other forms of contamination as stipulated by the EP&A Act. Councils apply the general requirements of *State Environmental Planning Policy (SEPP) No. 55 – Remediation of Land* and the *Managing Land Contamination: Planning Guidelines SEPP 55 – Remediation of Land*.

Councils also provide information about land contamination on planning certificates (issued under section 149 of the EP&A Act). For sites that are 'significantly contaminated' and require a major remediation program independent of any rezoning or development applications, the EPA and SafeWork NSW are the lead regulatory authorities.

## Development assessment

Councils are the consent authority for the majority of development applications in local government areas. The Joint Regional Planning Panel (JRPP) is also consent authority for certain local or regional development, and councils may have representation on the JRPP. Councils or the JRPP may impose conditions of consent and a waste disposal policy to development consent, to ensure the safe removal of asbestos, where asbestos has been identified or may be reasonably assumed to be present.

## 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. However, councils advise that all asbestos removal work should be carried out in accordance with the *Code of practice on how to safely remove asbestos* (catalogue no. WC03561).

## Complying development

The *Environmental Planning and Assessment Regulation 2000* (clause 136E) outlines conditions under which a complying development certificate can be issued for development that involves building work 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* (EP&A Regulation)).

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* (catalogue no. WC03561). In instances where asbestos removal is 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.

## Development applications

If a proposed building does not meet the requirements of exempt or complying development then the alternative planning approval pathway is a development application (DA). A DA can only be approved by a council, the JRPP or, for very large state-significant development proposals, the state government. A DA needs to be prepared and it will be assessed in accordance with the requirements of relevant environmental planning instruments and the development standards established by council. Details about the past use of the site and whether the present or any previous use is a potentially asbestos contaminating activity must be included in the statement of environmental effects for all DAs, except for designated development. Councils may also undertake a site inspection as part of the DA assessment.

## Compliance and enforcement

Compliance and enforcement controls rely on information being provided and checked by the principal certifying authority which may be either the council or a private certifier. A private certifier has powers under the EP&A Act to issue construction certificates, compliance certificates, complying development certificates, occupation certificates and to carry out mandatory inspections. Councils will not always be the principal certifying authority. When a council is not nominated as the principal certifying authority for a complying development certificate or development application, the council may not have any knowledge of asbestos matters. Accordingly, coordination of compliance and/or enforcement actions between the council and the private certifier is required.

Councils may take action on any development for which council has issued the development consent, even when not appointed as the principal certifying authority, to ensure enforcement. Where council receives a complaint about a development for which council is not the principal certifying authority, councils will consider whether they are the appropriate authority to resolve

the matter. Complaints that warrant action by councils because of their greater enforcement powers include urgent matters: for example, a danger to the public or a significant breach of the development consent or legislation; and matters that are not preconditions to the issue of the occupation/subdivision certificates.

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 enforcement where non-compliance is suspected. Where council becomes aware of illegal work involving asbestos or asbestos containing materials, council must notify SafeWork NSW if the site is a workplace. The *Environmental Planning and Assessment Act 1979* empowers councils to issue orders to direct specific work be undertaken to comply with a development consent.

Councils may need to 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.' Councils may also issue clean-up notices or prevention notices under the POEO Act.

## Demolition

In most circumstances demolition of a structure requires development consent or a complying development certificate. Applicants need to enquire to council as to whether and what type of approval is required. Where a development application is required the applicant must declare to council the amount of asbestos to be removed, disturbed or disposed of and how this will be safely managed.

A wide range of development, including residential, industrial and commercial development, can be approved for demolition as complying development under the Demolition Code of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, and the EP&A Regulation provides mandatory conditions for complying development certificate applications.

Demolition of development that would be exempt development under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* is also



exempt development and does not require consent. This includes minor structures such as carports, fences, sheds and the like.

Council may audit asbestos-related demolition works which council has recently approved by using a legal notice under section 192 of the POEO Act to require developers to provide information and records regarding disposal of their asbestos waste.

## Emergencies and incidents

Councils play a role in ensuring that asbestos containing materials are cleaned up after an emergency or incident. Council may issue a clean-up, prevention, cost compliance or penalty infringement notice to properties or land contaminated by asbestos following an emergency or incident. Alternatively, council may take action under the *Environmental Planning and Assessment Act 1979* to ensure asbestos waste is managed safely. Councils will determine an appropriate response depending on the nature of the situation. If the emergency or incident occurs at a workplace, SafeWork NSW is the lead agency.

Following an emergency or incident where asbestos is likely to remain, councils seek advice from licensed asbestos assessors on the likely level of risk and appropriate controls required. Councils must inform emergency personnel of any hazards known to council as soon as practicable. Councils will assist in excluding the public from emergency sites. Councils also inform the public of the potential sources of exposure to asbestos, health risks and emergency management response.

Councils also 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 removal or remediation work which is the role of SafeWork NSW). Councils may consider the need to issue a clean-up, prevention or cost compliance notice under the POEO Act when asbestos is not removed within a reasonable time.

Where sites have become contaminated by asbestos following an emergency or incident councils are to ensure that the site is kept damp at all times or sprayed with PVA glue, particularly where friable asbestos is present, if considered appropriate (note: in some instances this may not be appropriate, for example if

there are live electrical conductors or major electrical equipment that could be permanently damaged or made dangerous by contact with water). Councils are also to ensure that asbestos containing materials are disposed of at a facility licensed to accept asbestos waste, and sight proof of appropriate disposal through weighbridge dockets or similar documentation.

## 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), any consent or approval should contain conditions requiring testing to determine if asbestos is present, and the development of an asbestos management plan if the testing reveals naturally occurring asbestos is present. Councils are to verify compliance with environmental planning and assessment legislation and together with the EPA and SafeWork NSW 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 Resources Regulator in the DPE is the lead regulator.

## Waste management

It is illegal to dispose of asbestos waste in domestic garbage bins or to recycle, reuse, bury or illegally dump asbestos waste. Asbestos must not be placed in general waste skip bins either. 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 (in any form) must only be disposed of at a landfill site that may lawfully receive asbestos waste.

Where council is the appropriate regulatory authority, council is responsible for issuing clean-up notices to address illegal storage or disposal of asbestos waste or after an emergency or incident (under the POEO Act). Councils can also issue prevention or clean-up notices where asbestos waste has been handled (including

stored, transported or disposed of) in an unsatisfactory manner (under the POEO Act).

Councils can issue penalty infringement notices for improper transport of asbestos (under the POEO Act). Councils apply planning controls to proposals to dispose of asbestos waste on-site, seeking advice from the EPA on this matter and making notation on planning certificates (section 149 certificates) where on-site disposal is permitted. Councils also manage waste facilities in accordance with environmental protection legislation. Councils will also respond to illegal storage, illegal dumping and orphan waste. Councils also regulate non-complying transport of asbestos containing materials.

## Illegal dumping of asbestos waste

Illegal dumping is the unlawful deposit of waste onto land. That is, 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.

The responsibility for cleaning up illegally dumped waste 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 the following circumstances apply: the activity was part of the carrying on of an activity listed in Schedule 1 of the POEO Act; the activity was carried out by a public authority or the state; or the site is regulated by a different authority such as the Minister for Planning.

## Asbestos disposal on-site

The disposal of asbestos on-site is not encouraged as it requires an effective ongoing system of long-term management to ensure the material does not pose unacceptable risks to future site activities and occupants. For on-site burial of asbestos waste, council will seek advice from the EPA and SafeWork NSW as to whether this is legal and permissible. Council will also confirm if on-site disposal is permitted under planning controls and whether or not consent is required and will

require recording of on-site disposal on the zoning certificate (section 149 certificates).

## Case study: Council asbestos collection and education programs

### Background

The former Holroyd City Council (now Cumberland) is situated in the colloquially known “fibro belt” of Sydney, a group of Western Sydney suburbs built in the 1950s and 1960s, containing whole streets of houses built from fibro cement.

Council estimated that in the Holroyd area, most houses built prior to 1990 have asbestos products used in their construction. With many residents undertaking renovations to their properties, asbestos removal and disposal is a major issue within the community. Council viewed the expansion of an asbestos collection service as the best way to continue to offer a lawful, convenient disposal solution for these small quantities of bonded asbestos. Council also held three asbestos information nights where participants received an asbestos removal kit to prepare them with the necessary knowledge and equipment, should they choose to remove small quantities of non-friable asbestos themselves.

The main objectives of Council's asbestos collection and education program were to:

- raise awareness about asbestos removal and disposal requirements;
- achieve a reduction in the amount of non-friable asbestos within the community; and
- achieve a reduction in the amount of asbestos being illegally dumped in waste bins and public places.

### Implementation

Prior to the initial trial in June 2013, Council staff liaised with relevant stakeholders in the asbestos industry including representatives of the Asbestos Diseases Foundation of Australia, SafeWork NSW (formally Workcover NSW) and Local Government NSW. The collection model, preferenced over a drop-off model, proved highly effective in the relatively compact metropolitan environment, with the added benefit of minimising residents' contact with asbestos.



The following conditions were imposed for residents wishing to participate in the collection program:

- the service was for non-friable asbestos only;
- only material that was already previously removed from a structure and was lying dormant on the property would be collected;
- Nine square metres of material would be collected as a maximum; and
- the material would only be removed if it was able to be easily accessed by the contractor.

In the week following each collection, all participating households were sent an evaluation form, providing Council with valuable feedback to help guide the future direction of the initiative. Based on the evaluation forms returned, the cost of disposal and not knowing how to properly dispose of the asbestos material were cited as the major barriers to lawful disposal for participating households.

## Outcomes

The program has resulted in the removal of 11.42 tonnes of non-friable asbestos containing products from 180 properties in the Cumberland (Holroyd) Council area. That is 180 families that are free of the burden of having pieces of non-friable asbestos stored on their properties. Illegal dumping of asbestos within the community also dropped from 8.9 tonnes (from 1 July 2013–31 December 2013) to 5.14 tonnes (from 1 January 2014–30 June 2014).

Council considers that this downward trend, in part, can be attributed to the introduction of the collection service as the community becomes more aware of the program. The success of the program resulted in funding being extended to six other western Sydney councils (as part of the NSW EPA's Householders' Asbestos Disposal Scheme) to conduct similar collections within their communities, extending the benefits to a regional audience.

# FIRE & RESCUE NSW (HAZMAT)

An emergency such as fire, flood, storm, explosion or accident can cause damage to buildings or land that contains asbestos, creating site contamination issues and potential exposure to emergency service workers and the general public.

## Emergencies and natural disasters

The Emergency Services Combat Agency or the State, Region or Local Emergency Operations Controller administers the framework for the emergency response, with secondary assistance from the EPA, SafeWork NSW and councils as mapped in [Scenario Map 6 on page 41](#).

The *State Emergency and Rescue Management Act 1989* provides the legislative basis for coordination of emergency prevention, response and recovery operations.

The Act provides for the:

- Establishment of the State Disasters Council to advise the Government on all matters relating to the prevention and preparation for, response to, and recovery from emergencies

- Establishment of an Emergency Management Committee at State, Region and Local Government levels
- Preparation of subordinate and supporting plans to ensure a coordinated response and recovery from emergency management operations
- Control of emergency operations including specific provisions relating to emergency powers and liability of emergency services personnel.

## Emergency management plans

In order to safely manage emergencies and incidents involving asbestos a range of response plans have been developed to guide the agencies involved. These include the Asbestos Emergency Sub Plan, Hazardous Materials/ Chemical, Biological, Radiological and Nuclear (Hazmat/ CBRN) Sub Plan, Local and Regional Emergency Management Plans and the NSW State Emergency Management Plan (EMPLAN). Table 4 below provides a brief summary of these plans to be used as a guide only. In all cases the latest approved plan should be used when needed.

Table 4: Emergency management plans

Plan	Summary
Asbestos Emergency Sub Plan	Details the specific arrangements for the coordinated funding and management of asbestos debris during and following a larger scale emergency. Augments and is complementary to the current arrangements for the management of hazardous materials as detailed in the Hazmat/CBRN Emergency Plan.
Hazardous Materials/ Chemical, Biological, Radiological and Nuclear (Hazmat/ CBRN) Sub Plan	Details the arrangements relating to an imminent or actual, accidental or deliberate release of a hazardous material in NSW. Activation of this Plan may be recommended by: <ul style="list-style-type: none"><li>• Commissioner of Fire &amp; Rescue NSW (FRNSW)</li><li>• District Emergency Operations Controller</li><li>• Environmental Services Functional Area Coordinator</li><li>• Health Services Functional Area Coordinator</li><li>• Marine Pollution Controller – for maritime pollution incidents</li></ul>
Local and Regional Emergency Management Plans	Local and Regional Emergency Management Plans recognise: <ul style="list-style-type: none"><li>• The Combat Agencies designated in the EMPLAN</li><li>• The Functional Areas designated in the EMPLAN</li><li>• The roles and responsibilities of both participating and supporting organisations detailed in the EMPLAN</li><li>• The response and recovery arrangements.</li></ul>

Plan	Summary
NSW State Emergency Management Plan (EMPLAN)	Identifies the combat agency primarily responsible for responding to the emergency and specifies the tasks to be performed by agencies in the event of an emergency. Provides for the coordination of the activities of other agencies in support of the combat agencies. Specifies the responsibilities of the Minister and the State, Regional, or Local Emergency Operations Controller.

## Roles and responsibilities for emergency response

Fire & Rescue NSW (FRNSW) is the state government agency responsible for the provision of fire, rescue and Hazmat services in cities and towns across NSW in accordance with the *Fire Brigades Act 1989*. FRNSW is one of the agencies involved in the response phase of most emergency events throughout NSW. Table 4 above provides an explanation of the different emergency plans, and Table 5 below lists the

agency roles and responsibilities including controllers of emergency operations who may be deployed during an emergency response.

Other agencies such as SafeWork NSW, the Environment Protection Authority, and Councils provide a secondary role in providing information and guidance to assist the Emergency Services in controlling the emergency and rendering the site safe. This is particularly relevant in the case of combat agencies who are routinely working in areas which are prone to asbestos contamination throughout initial response operations.

Table 5: Roles and responsibilities during emergency response involving asbestos

Organisation	Responsibility
Asbestos Advisory Committee	Consult with the combat agency, the Local Emergency Operations Controller (LEOCON), the Public Information Functional Area Coordinator (PIFAC), Public Works, the council, the SERCON and the Local Recovery Committee as appropriate. Use a risk-based approach to assess available information and determine whether there is a significant risk to public health and safety. Make recommendations on whether emergency asbestos funding may be authorised. Provide personnel who may speak authoritatively on risks to public health and safety.
Environment Protection Authority	In consensus with other committee members consider recommending the activation of Hazmat/CBRN Plan and/or the emergency asbestos funding arrangements. Provide advice regarding the classification, transport and disposal of waste containing asbestos. Liaise with other agencies on the protection of the environment and take regulatory action as appropriate. Participate in the Asbestos Advisory Committee.
FRNSW	In consensus with other committee members consider recommending the activation of Hazmat/CBRN Plan and/or the emergency asbestos funding arrangements. Complete initial on-scene assessments of asbestos contaminated material following an emergency event. Render safe, as is reasonably practicable, the asbestos containing materials pending final clean up and removal. Provide assistance as appropriate and where resources are available during the recovery phase.
Land and Property Information	Coordinate the collection, storage and use of spatial information in a multi-agency event when requested. Provide relevant geospatial information and perform mapping and spatial analysis to support the agencies involved with the response and recovery effort. Undertake approved capture of aerial imagery over a declared emergency event

Organisation	Responsibility
Councils	<p>Provide assistance with information related to the site and/or facility.</p> <p>Provide engineering resources and equipment for response and recovery operations.</p> <p>Provide property information including past land use and known contamination.</p> <p>Record information about any on-site waste disposal on relevant planning certificates.</p> <p>Issue clean-up or prevention notices under the POEO Act as required. Alternatively councils may act under the <i>Environmental Planning and Assessment Act 1979</i> section 121b.</p>
Local Recovery Committee	<p>Coordinate development of the recovery action plan.</p> <p>Make strategic decisions on recovery objectives.</p>
Office of Emergency Management (OEM)	<p>Support the establishment of the Local Recovery Committee.</p> <p>Establish and lead the recovery coordination team to implement the recovery action plan.</p> <p>Work with NSW Public Works in monitoring any approved financial assistance package related to asbestos management and clean-up.</p> <p>Release funds to NSW Public Works when appropriate authorisation has been made in accordance with the Disaster Assistance Guideline.</p> <p>Consult with NSW Public Works, the relevant combat agency and the AAC in cases when funding is required beyond the first \$200,000 and rapidly release those funds subject to receipt of risk-based justification and costings.</p> <p>Coordinate approval of any financial assistance package through Cabinet.</p>
NSW Health	<p>In consensus with other committee members consider recommending the activation of Hazmat/CBRN Plan and/or the emergency asbestos funding arrangements.</p> <p>Provide clear public messages about risks to public health from asbestos via the PIFAC.</p> <p>Participate in the Asbestos Advisory Committee.</p>
NSW Police Force	<p>Provide support as requested in accordance with the emergency management arrangements in an asbestos emergency.</p>
NSW Public Works	<p>Where disaster assistance funding has been approved:</p> <ul style="list-style-type: none"> <li>• estimate costs for initial clean-up of asbestos contaminated material</li> <li>• oversee on-site recovery operations regarding asbestos contaminated materials</li> <li>• engage an occupational hygienist to advise on asbestos management risks;</li> <li>• engage asbestos removalists/contractors;</li> <li>• ensure that each site has reached clean-up certification.</li> </ul> <p>Consult with the Asbestos Advisory Committee when carrying out the above.</p>
Rural Fire Service	<p>On suspecting the presence of asbestos, immediately notify FRNSW.</p> <p>Use specialist personnel to undertake rapid building impact assessments and provide reports and data to relevant agencies.</p> <p>Provide support by maintaining scene safety pending the arrival of FRNSW Hazmat resources, initiating fire-fighting operations and providing bulk water supplies for decontamination purposes.</p>
SafeWork NSW	<p>Provide specialist technical advice on asbestos and other WHS issues.</p> <p>Provide clear public messages about risks to workers from asbestos and other WHS risks via the PIFAC.</p> <p>Participate in relevant committees such as the Asbestos Advisory Committee and the Local Recovery Committee.</p>
NSW Fair Trading	<p>Maintain the register of residential properties that contain loose-fill asbestos insulation to enable emergency services, tradespeople, Councils and the broader community to know whether a particular property is affected. This assists members of the wider community to be informed about any risks associated with a specific property and to take any appropriate safety measures.</p>

Organisation	Responsibility
State Emergency Operations Controller (SEOCN)	Authorisation of emergency asbestos funding under the Disaster Assistance. Guideline during the response phase and notification of relevant agencies. Handover of all relevant information on the management of asbestos to the SERCON when the response phase is complete.
State Emergency Recovery Controller (SERCON)	Authorisation of emergency asbestos funding under the Disaster Assistance. Guideline during the recovery phase and notification of relevant agencies. Handover of all relevant information on the management of asbestos to Council when the asbestos management component of the recovery phase is complete.
State Emergency Service	On suspecting the presence of asbestos, immediately notify FRNSW. Provide support to emergency services by maintaining scene safety and isolating the scene pending the arrival of FRNSW.

## Recovery phase arrangements

Following the declaration of an emergency or incident involving asbestos there are a number of arrangements that are followed in order to safely manage the asbestos as detailed in Table 6 below. After the response phase the site may be handed over by the combat agency to another party to manage the recovery phase. Before handing over, the combat agency of the response phase should:

- ensure the asbestos contaminated zone is clearly secured, marked and communicated to persons at the site; and

- where practical give the owner/occupier the Handover of Site Response Form;
- advise the owner/occupier to contact the EPA and/or council for advice on removing any asbestos contaminated waste; and
- advise owner/occupier to contact SafeWork NSW, for information on locating a licensed asbestos removalist.

The handover may be to the SERCON, council, the property owner or an emergency service organisation: for example, a handover to the NSW Police Force if they are investigating a crime scene.

Table 6: Recovery phase arrangements

Phase	Actions
Render safe	FRNSW is the combat agency responsible for asbestos and will prevent access to asbestos contaminated sites and control dust. FRNSW will take all necessary steps to ensure asbestos contaminated sites are rendered safe before handover to the responsible land owner or land manager once the site has been rendered safe.
Clean-up	The responsible land owner or manager is responsible for clean-up. This is monitored and regulated by the EPA and councils.
Asbestos management funding	The responsible person or their insurer is responsible for funding the clean-up. Where no responsible person can be found there may be assistance available under the <i>Environmental Trust Act 1998</i> . Where there is an immediate danger to residential areas there may also be assistance under the Disaster Assistance Guidelines
Emergency funding	Where approved, emergency funding under the Environmental Trust may be available to councils to clean up asbestos contaminated sites where a responsible party or insurer cannot be found.
Disaster Assistance Guidelines	Under the Natural Disaster Relief and Recovery Arrangements there is immediate financial assistance available in specific circumstances to clean up asbestos contamination from residential properties that are a threat to public health and safety.
Activation of disaster guideline funding	Disaster assistance funding for asbestos is governed through the Disaster Assistance Guidelines. This involves a multi-agency assessment before funding can be approved. Once funding is approved Public Works NSW is responsible for managing the clean-up.

# NSW FAIR TRADING – LOOSE-FILL ASBESTOS IMPLEMENTATION TASKFORCE

In 2015, the NSW Government established the Voluntary Purchase and Demolition Program (the Program) and an associated assistance package to provide safety, certainty and support for NSW residents affected by loose-fill asbestos insulation (LFAI). The Loose-Fill Asbestos Implementation Taskforce (the Taskforce) was formed under NSW Fair Trading to oversee and implement the Program.

## Hazards of loose-fill asbestos

Loose-fill asbestos is raw crushed asbestos, which in the 1960s and 70s was installed as ceiling insulation in an unknown number of NSW homes. If disturbed, LFAI fibres can move from the ceiling to other areas of the home, such as walls and sub-floor areas. The fibres can become airborne and breathed in or ingested which may cause health risks. However, ensuring asbestos remains undisturbed and sealed off can minimise the risk of exposure.

Earlier attempts to eradicate LFAI in both NSW and the ACT demonstrated that removing asbestos from ceiling cavities does not remove the enduring hazard from the affected property. On this basis, the NSW Government, with input from a range of experts, determined that demolition, comprehensive site remediation and disposal are the best ways to ensure the health and safety of the community.

## Voluntary Purchase and Demolition Program

The Program offers eligible homeowners a choice of two options:

**Option 1:** The NSW Government will purchase the premises and land at market value as if the property was free of loose-fill asbestos. The NSW Government will demolish the premises, remediate the land and consider whether to sell the land.

**Option 2:** The NSW Government offers to purchase the premises only and the property owner will retain ownership of the land. The NSW Government will demolish the affected premises and return the remediated land to the owner. Owners are able to rebuild on the same block of land.

Under the Program, financial assistance is also available to eligible owners and tenants of affected properties. This can include legal and counselling assistance, funding to support relocation, replacement of soft furnishings, assistance for investors and stamp duty concessions.

## Identification of LFAI affected properties

The first phase of the Program was focused on increasing homeowner awareness of LFAI and the ability to register for free sample testing in eligible local Government areas. A comprehensive advertising campaign was undertaken, complemented by targeted communications and local community engagement to increase awareness and inform communities about the Program.

Sample testing inspections are continuing through 2017 and are being prioritised to focus on identified local government areas where the likelihood of properties containing loose-fill asbestos insulation is highest. Testing is carried out by licensed asbestos assessors who are experienced in the identification and assessment of friable loose-fill asbestos insulation.

## Remediation of LFAI affected properties

The acquisition, demolition and remediation of properties is also continuing through 2017-2018. The Taskforce is working closely with Property NSW to manage the process of acquiring and disposing of properties under the Program. Details on progress of the program are available on-line at [www.loosefillasbestos.nsw.gov.au](http://www.loosefillasbestos.nsw.gov.au).

Demolition of affected properties commenced in December 2016. The Taskforce has engaged Public Works Advisory to manage the demolition phase of the Program, which is progressing in a number of batches.



## Raising Awareness

Engagement with stakeholders, community and homeowners remain a priority for the Program. Extensive education and communication efforts were implemented to manage expectations of stakeholders and communities involved in the Program. Working with partners such as SafeWork NSW, Public Works Advisory, Property NSW and the NSW Environmental Protection Authority, to ensure that rigorous work, health and safety standards are followed throughout the Program particularly in asbestos identification, removal, demolition and waste disposal activities.

The Taskforce contributes to the management, monitoring and response to asbestos issues in NSW by providing monthly updates to HACA on the progress of the Program, including critical issues and lessons learned.

## Legislative Changes

In the past two years, several legislative amendments have been introduced to identify and monitor properties affected by LFAI and protect residents, workers and communities.

In 2015, the *Home Building Act 1989* (the Act) was amended to establish the LFAI Register (the Register) which allows the NSW Government to record the address of properties identified to contain LFAI. The NSW Government can also publish the details of properties on the Register where there is substantial evidence to support the presence of LFAI at the premises. Maintaining an up to date Register allows emergency services, tradespeople, Councils and the broader community to search if a property contains LFAI.

The Act also requires homeowners of LFAI affected properties to display hazard labelling (or 'tagging') to reduce health and safety risks for tradespeople, maintenance workers, service providers and emergency service workers.

Changes to the EP&A Regulation now require homeowners of LFAI properties to disclose on a Section 149 (2) planning certificate. Councils may include information regarding LFAI affected property when issuing a certificate. Alternatively, they may also choose to include a generic statement on the possibility that a property may

contain LFAI in pre-1980s homes on all Section 149(5) planning certificates that it issues.

In October 2017, the NSW Government introduced an amendment to the *Conveyancing (Sale of Land) Regulation 2017* to warn potential purchasers about LFAI. Under the amendment, Contracts of Sale must include a standard warning that a premises may contain LFAI. Potential buyers are also recommended to contact their Council for records on whether the property contains LFAI.

NSW Fair Trading has also amended the Misrepresentation Guidelines to note LFAI as a material fact for the purposes of section 52 of the *Property, Stock and Business Agents Act 2002* to ensure disclosure of LFAI in affected properties by real estate agents to prospective buyers.

The *Residential Tenancies Regulation 2010* has also been amended to ensure that tenants are fully informed about properties containing LFAI, including:

- amendment of the new tenant checklist to specifically include a property being listed on the LFAI Register
- amendment of clause 7 of the *Residential Tenancies Regulation 2010* to add a property being listed on the LFAI Register as a material fact that must be disclosed to potential tenants
- the standard Residential Tenancy Agreement (*Residential Tenancies Regulation 2010*) requires disclosure during a tenancy if the property is listed on the Register.

## Further Information

Contact information and further details on the progress of the Program can be found at [www.loosefillasbestos.nsw.gov.au](http://www.loosefillasbestos.nsw.gov.au).



# NSW DEPARTMENT OF PLANNING AND ENVIRONMENT

## Department of Planning and Environment

The Department of Planning and Environment's (DPE) primary role in the management of asbestos relates to administration of State Environmental Planning Policies, and the EP&A Act (and associated Regulation).

While the DPE does not have an operational role in the management of asbestos, it has a regulatory function and provides policy support relating to asbestos and development. In assessing proposals for development under the EP&A Act, consent authorities are required to consider the suitability of the subject land for the proposed development. This includes consideration of the presence of asbestos and its environmental impact.

Where asbestos represents contamination of the land (i.e. it is present in excess of naturally occurring levels), *State Environmental Planning Policy No. 55 – Remediation of Land* imposes obligations on developers and consent authorities in relation to remediation of the land and the assessment and monitoring of its effectiveness.

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* enables exempt and complying development across the state. While this includes demolition and the removal of asbestos, the EP&A Regulation specifies particular conditions that must be contained in a complying development certificate in relation to the handling and lawful disposal of both friable and non-friable asbestos material under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

## Resources Regulator: Co-regulation of mines and petroleum sites

The Resources Regulator within the DPE administers the WHS Act and the associated mine safety legislation under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* in relation to mines and petroleum sites.

SafeWork NSW administers and provides advice on the WHS Act and the WHS Regulation. Employers, businesses and any PCBU must comply with the work health and safety legislation.

SafeWork NSW and DPE inspectors have enforcement powers to issue improvement notices, prohibition notices, penalty notices (on-the-spot fines) or to take prosecution action. The maximum Work Health and Safety penalties are listed in Division 5 of the WHS Act.

## Geological Survey of NSW within the Division of Resources & Geoscience: Mapping of Naturally Occurring Asbestos

Asbestos in the ground includes both naturally occurring asbestos and soils that have become contaminated with asbestos containing materials. Chrysotile and tremolite asbestos naturally occur in a number of areas of regional NSW. A number of former mine sites extracted asbestos deposits at Baryulgil (chrysotile), Woodsreef (chrysotile), Orange district (tremolite asbestos), Gundagai district (chrysotile, tremolite, actinolite asbestos) and Broken Hill district (chrysotile) between 1880 and 1976.

Some councils have identified naturally occurring asbestos in their local government area. Some road construction and other civil works have also uncovered naturally occurring asbestos. Road construction and other civil work sites may also encounter asbestos waste from illegal dumping in the past. Further information about NOA can be found at [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au).

Within the Division of Resources & Geoscience in the Department of Planning & Environment, the Geological Survey of NSW teams of field geologists, geophysicists, mineral geoscientists and palaeontologists and geospatial specialists produce a range of maps. Geological mapping records the distribution of rock types and location of structures at or near the Earth's surface. The maps have applications to land use assessment, engineering construction, environmental management and natural hazard risk assessment. The Geological Survey of NSW prepared the state-wide mapping of NOA in NSW for the HACA.

# DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION — ILLEGAL IMPORTATION OF ASBESTOS

## Imported goods containing asbestos or asbestos containing material

Importation of asbestos or ACM to Australia without permission is prohibited pursuant to Regulation 4C of the *Customs (Prohibited Imports) Regulations 1956*. Exportation of asbestos or ACM from Australia without permission is prohibited pursuant to Regulation 4 of the *Customs (Prohibited Exports) Regulations 1958*, other than where lawful exceptions apply.

The DIBP administers the import and export prohibitions at the border. The ACCC and state and territory WHS regulators have a role in enforcement of the asbestos prohibition domestically.

# SCENARIOS ILLUSTRATING WHICH AGENCIES LEAD A RESPONSE IN NSW

## Scenario 1: Workplaces

**Issue:** Asbestos identified and/or safety issue in the workplace.

**Outcome:** Asbestos safely managed in accordance with regulatory requirements.

Scenario	Compliance actions	Lead organisation	Other regulators
a. Asbestos installed/supplied after 2003 (illegally)	Undertake a risk assessment and where appropriate, notify the DIBP and ACCC as per the HWSA Rapid Response Protocol.	SafeWork NSW	ACCC (Imported Goods) Department of Immigration and Border Protection
b. Risks to the health of workers and others at the workplace	Verify asbestos management plans/controls are in place under WHS legislation.	SafeWork NSW	
c. Asbestos management and asbestos going to be removed	Verify work is carried out in accordance with licensing requirements for Class A (friable) or Class B (non-friable) asbestos work under WHS legislation.	SafeWork NSW NSW Department of Planning and Environment (mine sites)	
d. Risks to the health of the public from worksites	Coordinate inter-agency response. Verify work is in accordance with planning, environmental or WHS legislation.	SafeWork NSW	Council Department of Planning and Infrastructure (part 3A approvals) EPA (POEO Act licensed sites)
e. Waste stored temporarily on-site at worksites	Verify storage on-site is in accordance with environmental and WHS legislation.	SafeWork NSW	
f. Transport or waste disposal issues	Verify work is in accordance with environmental protection legislation and WHS legislation.	EPA	SafeWork NSW Council
g. Asbestos contaminated clothing going to a laundry	Verify work is in accordance with environmental protection legislation and WHS legislation.	SafeWork NSW	EPA Council

## Scenario 2: Site contamination

Scenario	Compliance actions	Lead organisation	Other regulators
a. Asbestos illegally dumped on public land	Investigate to identify polluter. Where polluter can be identified: require clean up by polluter (clean-up or prevention notice) and consider enforcement action (fine or prosecution) under the POEO Act. Where polluter cannot be identified: public landowner to arrange safe removal by licensed removalist.	Council EPA	SafeWork NSW
b. Asbestos illegally dumped on private land	Investigate to identify polluter. Where polluter can be identified: require clean up by polluter (clean-up notice or prevention notice) and consider enforcement action (fine or prosecution) under the POEO Act. Where polluter cannot be identified: require clean-up by landowner/occupier (clean-up or prevention notice).	Council EPA	SafeWork NSW
c. Contaminated land not declared under the <i>Contaminated Land Management Act 1997</i>	Verify that contaminated land is not declared under the Contaminated Land Management Act. Verify whether the land is included on the EPAs list of notified sites under section 60 of the CLM Act. Update section 149 certificate to include site contamination from asbestos.	Council	EPA
d. 'Significantly contaminated' land declared under the CLM Act	The land will be regulated by a voluntary management proposal, management order or ongoing maintenance order to ensure any potential risks to human health or the environment are suitably managed or mitigated. Council to ensure suitable annotation is made on section 149 certificates in relation to declared significantly contaminated land, as per section 59 of the CLM Act. Councils may be required to determine whether remedial works are Category 1 or Category 2 remediation, in accordance with SEPP 55.	EPA	Council
e. Soils in workplaces contaminated with asbestos waste where soils are going to be disturbed by a work practice	Verify compliance under WHS Act and POEO Act. Update section 149 certificate to include site contamination from asbestos where asbestos is to remain in soils on-site. Work practices which disturb soil may sometimes be for remedial purposes (e.g. on land declared as significantly contaminated under the CLM Act). All such works must also comply with the requirements of the WHS and POEO Act.	SafeWork NSW	EPA

Scenario	Compliance actions	Lead organisation	Other regulators
f. Soils in workplaces contaminated with asbestos waste but where asbestos will remain undisturbed by any work practice	Councils to verify compliance with EP&A Legislation. Councils, EPA and SafeWork NSW to coordinate enforcement of asbestos controls. Update section 149 certificate to include site contamination from asbestos.	Council	EPA SafeWork NSW (workers on-site)
g. Soil contaminated with asbestos waste but at a mine site	Verify compliance under EP&A, POEO and SEPP 55 for redevelopment or rezoning only and WHS legislation. Department of Industry, EPA and councils to consult on compliance approach. Update section 149 certificate to include site contamination from asbestos.	NSW Department of Industry EPA	Council

### Scenario 3: Waste disposal and transport

**Issue:** Asbestos waste requiring transport and/or disposal.

**Outcome:** Asbestos transported or safely disposed of in accordance with regulatory requirements

Scenario	Compliance actions	Lead organisation	Other regulators
a. Waste temporarily stored on-site	Verify storage on-site is in accordance with environmental and WHS legislation.	SafeWork NSW (worksites) EPA and council (non-worksites)	
b. Waste transported by vehicle	Verify transport is carried out according to waste transport requirements under POEO (Waste) Regulation 2014 and <i>Dangerous Goods (Road &amp; Rail Transport) Regulation 2009</i> . Verify use of Waste Locate for over 10 square metres of asbestos sheeting, or 100 kilograms of asbestos waste	EPA	SafeWork NSW
c. Waste disposed of on-site	Councils to confirm if permitted under Planning Controls and require recording of on-site disposal on section 149 property certificate.	Council	Council (consent required to dispose onsite) (section 149 property certificate and development assessment process)
d. Waste going to landfill site	EPA regulates scheduled waste disposal facilities. There is a list of landfills that receive asbestos waste on the EPA website. Councils and private businesses operate landfill facilities.	EPA	Council (if managing licensed landfill)
e. Waste to be transported interstate	Verify waste is tracked according to POEO (Waste) Regulation 2014.	EPA	
f. Waste for export	DIBP to verify export controls in compliance with Commonwealth Hazardous Waste Legislation. Exemptions may be granted by the Federal Minister for Workplace Relations following endorsement of jurisdictional through Workplace Relations Ministers. Customs, SafeWork NSW and EPA to consult and ensure a coordinated approach to any export arrangements.	Department of Immigration and Border Protection	SafeWork NSW Department of Employment

## Scenario 4: Naturally occurring asbestos

**Issue:** Asbestos identified in the ground.

**Outcome:** Asbestos safely managed in accordance with regulatory requirements.

Scenario	Compliance actions	Lead organisation	Other regulators
a. Naturally occurring but will be disturbed due to a work process including remediation work	Verify compliance under EP&A, POEO and WHS legislation. Some civil construction sites may require consideration of Asbestos Removal Licence exemption but with conditions requiring equivalent safety controls. SafeWork NSW, EPA and councils to coordinate enforcement of remediation plans.	SafeWork NSW	Council EPA (POEO Act Scheduled Activities Public Authorities)
b. Naturally occurring asbestos part of a mineral extraction process	Verify compliance under WHS legislation and POEO Act. Some civil construction sites may require consideration of licence exemption but with conditions requiring equivalent safety controls. DPE to liaise with SafeWork NSW on asbestos controls.	NSW Department of Planning and Environment	SafeWork NSW EPA (POEO Act Scheduled Activities Public Authorities)
c. Naturally occurring but will remain undisturbed by any work practice	Councils to verify compliance with EP&A Legislation. Councils, EPA and SafeWork NSW to coordinate enforcement of asbestos management plans.	Council	EPA (POEO Act Scheduled Activities Public Authorities) SafeWork NSW (workers)
d. Potential for exposure on public land	Councils or EPA to verify compliance with EP&A Legislation. Councils, EPA and SafeWork NSW to coordinate enforcement of asbestos controls.	EPA (POEO Act Scheduled Activities Public Authorities)	SafeWork NSW (workers on-site)

## Scenario 5: Non-workplace settings

**Issue:** Asbestos identified and/or safety issue presents at a non-workplace.

**Outcome:** Asbestos safely managed in accordance with regulatory requirements.

Scenario	Compliance actions	Lead organisation	Other regulators
a. Safe management of less than 10 square metres of non-friable asbestos including: identification; in situ management; removal requirements; disposal requirements.	Determine whether exempt or complying development under EP&A Act. Identify principal certifying authority.	Council Private certifiers	SafeWork NSW EPA
b. Site contaminated due to past uses	Verify that contaminated land is not declared under the CLM Act. Verify whether the land is included on the EPA's list of notified sites under section 60 of the CLM Act. Update section 149 certificate to include site contamination from asbestos.	Council	SafeWork NSW EPA
c. Licensed removal work required or performed by a worker	See Workplace scenario above	SafeWork NSW	Council Private certifiers
d. Removal that does not require a licensed removalist and is not performed by a worker	Identify principal certifying authority. Verify work is in accordance with planning and environmental legislation.	Council Private certifiers	SafeWork NSW
e. Transport or waste disposal issues	See Waste Disposal and Transport scenario above	Council	EPA
f. Derelict property with asbestos fibro debris that is not a workplace	Verify management is appropriate. Issue a clean-up notice, prevention notice or demolition order, and compliance cost notice. If a person fails to comply with the terms of an order, council may act under the EP&A Act to give effect to the terms of the order, including the carrying out of any work required by the order.	Council	



## Scenario 6: Emergency management

**Issue:** Emergency incident or natural disaster which potentially releases asbestos fibres.

**Outcome:** Asbestos safely managed in accordance with regulatory requirements.

Scenario	Compliance actions	Lead	Support
a. Emergency response (no designated combat agency)	Emergency Services Organisation (ESO)/ Emergency Operations Controller assume control and determine the possible presence of asbestos at the incident site. ESO to communicate possible presence of asbestos areas to FRNSW and all other agencies attending the site. ESO Incident Controller to establish Asbestos Contamination Zone and enforce PPE specific to the risk. SafeWork NSW to provide advice on risk controls and personal protection if required. FRNSW as asbestos combat agency to manage asbestos contaminated site.	FRNSW	Emergency Services Organisation (ESO)/ Emergency Operations Controller SafeWork NSW
b. Emergency response (combat agency managed)	Combat agency assumes control and determines extent of Asbestos Contamination Zone. Combat agency to communicate possible presence of asbestos areas to FRNSW and all other agencies attending the site. Combat agency to establish Asbestos Contamination Zone and enforce PPE specific to the risk. SafeWork NSW to provide advice on risk controls and personal protection if required. FRNSW as asbestos combat agency to manage asbestos contaminated site.	FRNSW	Combat Agency SafeWork NSW
c. Handover to council, owner of property or NSW Police – crime scene following a minor incident	ESO/Combat agency to inform the person in control of the property and the relevant council(s) of Asbestos Contamination Zone. Council to monitor clean-up and consider need for issue of clean-up notice or cost compliance notice under POEO Act. SafeWork NSW to provide advice on risk controls and personal protection if required. EPA to provide advice on waste disposal.	Council NSW Police	SafeWork NSW EPA
d. Handover to SERCON	The responsibility for the overall coordination of recovery operations at state level rests with the SERCON, or as otherwise prescribed in hazard specific plans.	SERCON	Recovery Committee Council EPA SafeWork NSW
e. Handover to Recovery Committee following a significant incident	Recovery Committee formed by <a href="#">LEMC</a> in consultation with SERCON. Recovery Committee determines overall recovery objective and strategies and exit criteria, including asbestos remediation arrangements.	Recovery Committee (formed by Local Emergency Recovery Committee)	Council EPA SafeWork NSW

Scenario	Compliance actions	Lead	Support
f. Remediation/clean-up not requiring a licensed removalist or performed by a worker	Identify principal certifying authority. Verify work is in accordance with planning and council requirements.	Council	Principal certifying authority SafeWork NSW
g. Remediation/clean-up requiring licensed removal work	Verify work is carried out in accordance with licensing requirements for friable and non-friable asbestos work.	SafeWork NSW	Council Principal certifying authority
h. Clearance Certificate issued by an asbestos assessor	Verify work is in accordance with WHS legislation.	SafeWork NSW	Principal certifying authority

# APPENDIX 1: OTHER KEY ORGANISATIONS

## Asbestos Safety and Eradication Agency

The Asbestos Safety and Eradication Agency was established in 2013 to provide a national focus on asbestos issues which go beyond workplace safety to encompass environmental and public health issues. The agency's objective is to eliminate asbestos related disease in Australia.

The agency has broad functions under its legislation, including:

- reporting on the implementation of the National Strategic Plan on Asbestos Awareness and Management (NSP);
- reviewing and amending the NSP as required and promoting the NSP;
- providing advice to the Minister about asbestos safety;
- liaising with all levels of government, agencies or bodies about the implementation of the NSP as well as asbestos safety in general; and
- commissioning, monitoring and promoting research about asbestos safety.

The agency administers the National Asbestos Exposure Register which was created to record the details of members of the community who may have been exposed to asbestos. Registration forms are available online.

The agency also maintains a national database for asbestos disposal facilities, which members of the public can search to identify their nearest facility that accepts asbestos waste.

Further information is available at [www.asbestossafety.gov.au](http://www.asbestossafety.gov.au).

## icare Dust Diseases Care

The Workers Compensation (Dust Diseases) Authority established by the *Workers Compensation (Dust Diseases) Act 1942* (icare Dust Diseases Care) provides a system of no fault compensation to people who have developed a dust disease from occupational exposure to dust as a worker in New South Wales and to their dependants. icare Dust Diseases Care's services include: payment of compensation benefits to eligible workers and dependants; co-ordination and payment of medical and related health

care expenses of affected; medical examination of workers exposed to dust in the workplace; information and education.

Further information can be found at [www.icare.nsw.gov.au](http://www.icare.nsw.gov.au)

## Local Government NSW

Local Government NSW (LGNSW) is the peak body for councils in NSW. LGNSW represents all NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

LGNSW is a credible, professional organisation facilitating the development of an effective community-based system of local government in NSW. LGNSW represents the views of councils to NSW and Australian governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

In 2012, LGNSW commenced a project funded by SafeWork NSW to assist councils to adopt and implement a model asbestos policy. The project is outlined at [www.lgnsw.org.au](http://www.lgnsw.org.au).

## National Association of Testing Authorities

This body has the role of providing accreditation to firms licensed to remove asbestos.

Further information can be found: [www.nata.asn.au](http://www.nata.asn.au).

## NSW Ministry of Health

The NSW Ministry of Health does not have express statutory responsibilities for managing asbestos-related risks and incidents in NSW. The Ministry provides an expert advisory service to other governmental agencies on public health issues. This service may include technical information or assistance to prepare public health information bulletins.

Further information can be found at [www.health.nsw.gov.au](http://www.health.nsw.gov.au).

## NSW Ombudsman

The NSW Ombudsman is an independent and impartial watchdog body. It is responsible for ensuring that public and private sector agencies and employees within its jurisdiction fulfil their functions appropriately. The NSW Ombudsman assists those agencies and their employees to be aware of their responsibilities to the public, to act reasonably and to comply with the law and best administrative practice. Further information can be found at [www.ombo.nsw.gov.au](http://www.ombo.nsw.gov.au).

## NSW Fair Trading and the Building Professionals Board

NSW Fair Trading safeguards the rights of all consumers and advises business and traders on fair and ethical practice. It provides services directly to individuals and businesses to create a fair, safe and equitable marketplace.

The Building Professionals Board (BPB), part of Fair Trading, oversees building and subdivision certification. The Board accredits and regulates certifiers in NSW, to ensure the integrity of the certification system and compliance of the built environment with legislative requirements.

Further information about the BPB may be found at [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au).

## Office of Local Government

The Office of Local Government is responsible for local government across NSW. The Office's organisational purpose is to 'Strengthen Local Government' and its organisational outcome is 'Fit for the future councils leading strong communities'.

The Office has a policy, legislative, investigative and program focus in matters ranging from local government finance, infrastructure, and governance, performance, collaboration and community engagement. It strives to work collaboratively with the local government sector and is the key adviser to the NSW Government on local government matters. Further information can be found at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au).

## Environmental Health Standing Committee

The Environmental Health Standing Committee (enHealth) is a subcommittee of the Australian Health Protection Committee (AHPC). enHealth provides health policy advice, implementation of the National Environmental Health Strategy 2007–2012, consultation with key players, and the development and coordination of research, information and practical resources on environmental health matters at a national level. Further information can be found at [www.health.gov.au](http://www.health.gov.au).

## Safe Work Australia

Safe Work Australia is an Australian Government statutory agency established in 2009, with the primary responsibility of improving work health and safety and workers' compensation arrangements across Australia.

Further information can be found at [www.safeworkaustralia.gov.au](http://www.safeworkaustralia.gov.au).

## APPENDIX 2: OTHER RESOURCES

### Asbestos Awareness

The National Asbestos Awareness Month Campaign has been developed with the aim of increasing awareness about the dangers of asbestos among homeowners, renovators and tradespersons during home renovations and maintenance.

Further information about how to manage asbestos safely in and around the home can be found at:

- [www.asbestosawareness.com.au](http://www.asbestosawareness.com.au)
- [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)
- [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au)
- [www.adri.org.au](http://www.adri.org.au)
- [www.loosefillasbestos.nsw.gov.au](http://www.loosefillasbestos.nsw.gov.au)

## APPENDIX 3: DEFINITIONS

The terms used in the document are defined as below, consistent with the definitions in the:

- *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
- *Contaminated Land Management Act 1997*
- *Environmental Planning and Assessment Act 1979*
- *Emergency Pollution and Orphan Waste Clean-Up Program Guidelines 2008*
- *Protection of the Environment Operations Act 1997*
- *Waste classification guidelines. Part 1: Classifying waste 2008*
- *NSW Work Health and Safety Act 2011*
- *NSW Work Health and Safety Regulation 2017.*

**accredited certifier** in relation to matters of a particular kind, means the holder of a certificate of accreditation as an accredited certifier under the *Building Professionals Act 2005* in relation to those matters.

**airborne asbestos** means any fibres of asbestos small enough to be made airborne. For the purposes of monitoring airborne asbestos fibres, only respirable fibres are counted.

**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 1 or more of the minerals referred to in paragraphs (a) to (f).

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

**asbestos contaminated dust or debris (ACD)**

means dust or debris that has settled within a workplace and is, or is assumed to be, contaminated with asbestos.

**asbestos related work** means work involving asbestos that is permitted under the WHS Regulation, other than asbestos removal work.

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

**asbestos removal work** means:

- work involving the removal of asbestos or asbestos containing material, or
- Class A asbestos removal work or Class B asbestos removal work.

**asbestos removalist** means a person conducting a business or undertaking who carries out asbestos removal work.

**asbestos waste** means 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.

**certifying authority** means a person who is authorised by or under section 85A of the EPA Act to issue complying development certificates, or is authorised by or under section 109D of the EPA 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 WHS Regulation. This does not include: the removal of ACD that is associated with the removal of non-friable asbestos, or ACD that is not associated with the removal of friable or non-friable asbestos and is only a minor contamination.

**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 asbestos containing material 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:

- a certification in relation to the specified VET course for asbestos assessor work, or
- 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 council planning document. A complying development certificate can be issued by either a council or an accredited certifier.

#### **complying development certificate**

**contaminant** means any substance that may be harmful to health or safety.

**contamination of land** means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment

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

**demolition work** means work to demolish or dismantle a structure, or part of a structure that is loadbearing or otherwise related to the physical integrity of the structure, but does not include:

- the dismantling of formwork, falsework, or other structures designed or used to provide support, access or containment during construction work, or
- the removal of power, light or telecommunication poles.

**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 *Environmental Planning and Assessment Act 1979* that is controlled by an environmental planning instrument.

**development application** means an application for consent under part 4 of the *Environmental Planning and Assessment Act 1979* to carry out development but does not include an application for a complying development certificate.

**emergency service organisation** includes any of the following:

- the Ambulance Service of NSW
- Fire & Rescue NSW
- the NSW Rural Fire Service
- the NSW Police Force
- the State Emergency Service
- the NSW Volunteer Rescue Association Inc
- the NSW Mines Rescue Brigade established under the *Coal Industry Act 2001*
- an accredited rescue unit within the meaning of the *State Emergency and Rescue Management Act 1989*.

**exempt development** means minor development that does not require any planning or construction approval because it is exempt from planning approval.

**exposure standard for asbestos** is a respirable fibre level of 0.1 fibres/ml of air measured in a person's breathing zone and expressed as a time weighted average fibre concentration calculated over an eight-hour working day and measured over a minimum period of four hours in accordance with the Membrane Filter Method or a method determined by the relevant regulator.

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
- contains asbestos.



**health** means physical and psychological health.

**health monitoring**, of a person, means monitoring the person to identify changes in the person's health status because of exposure to certain substances.

**independent**, in relation to clearance inspections and air monitoring means:

- not involved in the removal of the asbestos
- not involved in a business or undertaking involved in the removal of the asbestos, in relation to which the inspection or monitoring is conducted.

**in situ asbestos** means asbestos or asbestos containing material fixed or installed in a structure, equipment or plant, but does not include naturally occurring asbestos.

**licence holder** means: in the case of an asbestos assessor licence — the person who is licensed:

- to carry out air monitoring during Class A asbestos removal work
- to carry out clearance inspections of Class A asbestos removal work
- to issue clearance certificates in relation to Class A asbestos removal work, or
  - in the case of an asbestos removal licence — the person conducting the business or undertaking to whom the licence is granted, or
  - 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 WHS Regulation 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.

**Loose-Fill Asbestos Insulation** means loose-fill asbestos used as ceiling insulation.

**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** 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 and preferably 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 WHS Act.

**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 interpretation of legislation to include a body corporate (company), unincorporated body or association and a partnership.

**personal protective equipment** 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 three micrometres wide
- more than five 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:
  - remove non-friable asbestos
  - remove friable asbestos, or
- in relation to Class B asbestos removal work — the VET course *Remove non-friable asbestos*, or
- in relation to the supervision of asbestos removal work — the VET course *Supervise asbestos removal*, or
- 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).

**waste** includes:

- 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, or
- any discarded, rejected, unwanted, surplus or abandoned substance, or
- 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, or
- 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, or
- any substance prescribed by the regulations made under the POEO Act 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).

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

**workplace** means 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.





