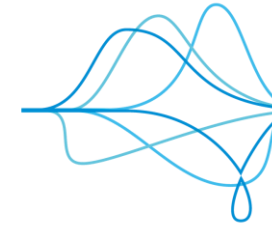




Australian Government

Asbestos Safety and Eradication Agency



**Asbestos National
Strategic Plan**

**Implementation
2019–23**

Asbestos Disclosure Requirements for Residential Properties



Executive Summary

This report examines the current disclosure requirements applying to residential properties that may contain asbestos at point of sale or lease and the effectiveness of various disclosure regimes. The report proposes a range of options to improve asbestos disclosure and presents a simple fact sheet that could serve as a disclosure tool in a contract of sale.

The Asbestos National Strategic Plan 2019-2023 includes an action to ensure the provision of information about asbestos at point of sale for all homes, buildings, infrastructure and land. In relation to residential properties, disclosure requirements arise at the point of sale and the point of renting a property to a tenant. Information disclosure for residential properties is regulated mainly by common law, consumer protection law and specific real estate legislation.

Knowledge of the presence of asbestos materials, their location and condition, is important to ensure that the right action is taken to prevent asbestos exposure, e.g. when renovating or carrying out maintenance. Owners of residential properties may not be aware that their property contains asbestos or if they are, may be reluctant to disclose this information when selling their home.

In contrast, properties that are workplaces are required to have asbestos registers under work health and safety (WHS) laws which must, so far as is reasonably practicable, be given to any new owner or manager of the workplace.

A survey commissioned by ASEA found that while the majority of real estate agents and property managers do the right thing in advising prospective buyers or tenants that a property may contain asbestos, there is a role for additional education normalising the fact that properties containing asbestos materials are being bought and sold almost everyday.

Research suggests that mandatory disclosure may not be effective unless consideration is given to the way the information is presented, its relevance and its priority amongst all other information about a property a buyer receives.

ASEA commissioned further research to determine the most effective way of disclosing the presence of asbestos at the point of sale, based on behavioural science principals. This research confirmed that while any form of disclosure is better than none, simple disclosures that communicate only what is necessary to avoid overwhelming homebuyers are the most effective.

Background

The [Asbestos National Strategic Plan 2019-2023](#) includes an action to ensure the provision of information about asbestos at point of sale for all homes, buildings, infrastructure and land.

The 2012 [Asbestos Management Review](#) recommended that an asbestos content report be undertaken by a competent assessor to determine and disclose the existence of asbestos in residential properties constructed prior to 1987 at the point of sale or lease, and prior to renovation, together with a property labelling system to alert workers and potential purchasers and tenants to the presence of asbestos.

A 2017 report by the [NSW Ombudsman](#) recommended mandatory disclosure for vendors to provide a report to purchasers and tenants of properties built before 1988 identifying the presence or otherwise of asbestos materials.

More recently, the 2020 Year One Recommendations of the [Latrobe Valley Asbestos Taskforce](#) proposed including in the Property Vendor statement (commonly referred to as the section 32 statement) the material fact of the presence of asbestos. It also recommended an asbestos status certificate/report be provided to a rental applicant 7 days prior to entering into a lease.

These proposals are based on traditional consumer protection policies that seek to impose disclosure obligations on sellers of complex goods, such as property, to ensure that consumers have sufficient information upon which to make a decision.

The information asymmetry regarding asbestos has been a concern for residential properties specifically, given that the identification of asbestos in workplaces is an established requirement under WHS laws in all jurisdictions. Asbestos registers are designed to ensure the protection of workers at the site, and must be transferred to any new owner or manager of the workplace.

The ACT government has mandated the provision of an asbestos assessment report or, if that is not available, generic asbestos advice (at [Appendix A](#) of this report) for residential properties being sold or leased since 2006. Prior to this, the ACT required homeowners to provide a written notice disclosing only what they knew about the location of asbestos on their property. The 2006 changes were designed to provide a more effective, yet economically viable asbestos protection regime for ACT residential properties.



Legal Framework



Vendor and agent disclosure is regulated by:

Common law

'Caveat emptor' meaning 'let the buyer beware' puts the onus on the purchaser (in the absence of fraud) to conduct their own enquiries when purchasing a property and to protect themselves through contract against matters which may impact the value of the property.

Consumer protection

Australian Consumer Law (ACL) prohibits misleading and deceptive conduct, including by silence, and false or misleading representations. The ACL applies to all industry sectors and in all Australian jurisdictions.

Real estate laws

Real estate laws govern the buying and selling of property and contain mandatory requirements on what is needed to form part of a contract for the sale of land.

The names of the Acts vary in the states and territories e.g. in NSW it is *Property, Stock and Business Agents Act 2002*, in Victoria it is *Estate Agents Act* and there can be more than one relevant Act.

Agent disclosure is also influenced by Codes of Conduct published by real estate institutes in each state and territory.

Common law

'Caveat emptor' meaning 'let the buyer beware' puts the onus on the purchaser (in the absence of fraud) to conduct their own enquiries when purchasing a property and to protect themselves through contract against matters which may impact the value of the property.

When it comes to the sale of real property, it reflects the old common law rule that the burden of discovering defects in a property rests with the purchaser, and the vendor is relieved from any duty to disclose facts simply because those facts might affect the purchaser's decision.

There are exceptions to the common law rule:

- > where the vendor or agent made express or implied statements which conveyed a false impression about certain characteristics of the property
- > where the vendor knowingly disguises or conceals a physical defect in the property in order to mislead potential purchasers
- > where a latent defect, flaw, fault, imperfection or irregularity in the property was not readily observable, such that the purchaser could not discover the defect through the exercise of ordinary care.

In these circumstances a purchaser may be entitled to rescind a contract of sale and receive a refund of the deposit.

Australian Consumer law

Under the Australian Consumer Law, which is contained in Schedule 1 to the Competition and Consumer Act 2010, it is unlawful for real estate agents to:

- > Intentionally mislead consumers
- > Lead consumers to a wrong conclusion or false impression
- > Leave out or hide important information
- > Make false or inaccurate claims.

Failure to disclose important information could result in rescission of a contract for sale and civil action against the agent.

Although case law in relation to 'stigmatised' properties and misleading or deceptive conduct in real estate scenarios appears to relate to where there has been a crime (usually a murder) at a property, there is no reason to assume that it is constrained to such scenarios. The 'stigma' level of asbestos risk would likely be relevant where there has been an incident involving significant exposure rather than low level or managed asbestos exposure risk.

For example, it can be argued that 'Mr Fluffy' (loose-fill asbestos insulation) houses in the ACT have what can be described as a stigma and that real estate agents when selling a property that once had a Mr Fluffy house on it (even where it has been demolished) have a duty to disclose this.

Similarly, if a particular suburb was known for asbestos issues or a property was in an area where there had been a significant case of asbestos contamination then it might be reasonable to expect that the real estate agent should disclose this.

Private vendors are unlikely to be covered by consumer laws.

Real Estate law

Real estate laws govern the buying and selling of property and contain mandatory requirements on what is needed to form part of a contract for the sale of land.

Over the years Australian jurisdictions have introduced statutory regimes for seller disclosure in residential property transactions. Disclosure requirements are not consistent across Australia and fall into four broad categories:

- > explicit obligation to disclose asbestos
- > obligation to provide information about the use of asbestos in residential properties
- > obligation to disclose a *material fact* – being ‘a fact that would be important to a reasonable person in deciding whether or not to proceed with a particular transaction’
- > obligation to disclose when specifically asked and can be silent as long as not false or misleading.

Pre-purchase inspection reports

[Australian Standard 4349.1-2007 Inspection of buildings – Pre-purchase inspections – Residential buildings](#) sets out the minimum requirements for carrying out pre-purchase inspections and preparing reports to provide advice to a prospective buyer.

The standard expressly states in Appendix D that ‘health hazards’ are matters that the inspector does not need to inspect or report on, and asbestos is included as an example. The exclusions in Appendix D do not appear to prohibit a building inspector from noting asbestos may be present based on a visual inspection. Some building inspection services include asbestos assessments for an additional fee.

Unless a building inspector is also a qualified asbestos assessor, it is unlikely that they would make a definitive statement about whether asbestos is present or not, but may assume it to be present. The scope of these inspections is limited in that they only cover accessible parts of the building and what the inspector can see at the time of the inspection.

Obtaining a pre-purchase building inspection report is not mandatory except in the ACT where the seller of a house or townhouse must provide building and pest inspection reports with the contract of sale. In other jurisdictions the onus is on the buyer to obtain one at their own expense.

Overview of disclosure requirements to prospective buyers

Explicit obligation to disclose asbestos

ACT: It is not compulsory to obtain an asbestos assessment report but if a current report exists for the property, then the vendor or agent must provide it with the contract of sale.

NSW: An agent must disclose if the property is listed on the loose-fill asbestos insulation register.

Obligation to provide general information about asbestos

ACT: If there is no asbestos assessment report or it cannot be obtained, the vendor must provide mandated generic asbestos advice for the property

NSW: If the property was built before 1985—issue a warning in the contract of sale advising prospective buyers to consider the potential presence of loose-fill asbestos insulation and to search the loose-fill asbestos insulation register.

SA: The vendor or their agent must make available a Buyers Information Notice (Form R 3) to assist prospective buyers in finding out whether there are features of the property that may adversely affect their enjoyment, safety or value of the property e.g. the presence of asbestos.

Obligation to disclose a material fact

NSW: An agent must disclose all material facts that the agent knows, or ought to know.

Vic: A person cannot knowingly conceal a material fact and must disclose if asbestos has been identified in prior tests or investigations or if the presence is otherwise known by the vendor or agent.

WA and QLD: Agents must take reasonable steps to ascertain or verify the facts which are material to the transaction and communicate those facts to any person affected by it.

Obligation to disclose when asked and can be silent as long as not false or misleading

In all states and territories there are obligations to not make false or misleading statements. These requirements are expressly made in real estate legislation or by reference to Australian Consumer Law.

Disclosure requirements for rental property

Under **common law**, landlords must ensure the safety of their rented property.

In addition to common law, landlords and property managers have specific obligations concerning the health and safety of tenants in **residential tenancy laws** and **work health and safety laws**.

Residential tenancy laws include general duties to ensure that the property is fit to live in, clean and in a state of good repair. For example, landlords are expected to treat potentially health-threatening issues such as rising damp and exposure to asbestos fibres.

The ACT has specific asbestos disclosure requirements where the lessor must provide the tenant with an asbestos assessment report for the premises, or provide the tenant with general asbestos advice if there is no asbestos assessment report or the lessor cannot obtain one after taking reasonable steps.

In Victoria, disclosure is required to tenants if the premises is known by the landlord to have friable or non-friable asbestos based on an inspection by a suitably qualified person.

In NSW, landlords must provide tenants with a copy of the 'New tenant checklist'. It states that, where relevant, tenants must receive notification if the property has been listed on the Loose-Fill Asbestos Insulation Register and notification of any other material fact relating to the premises, including relevantly significant health or safety risks (unless they are obvious when inspecting the property).

Most residential tenancy agreements require a Condition of Premises Report to be filled out whenever a tenancy begins, but the presence of asbestos is not something that is generally included in these.

Arguably it is more important that the landlord knows about the presence of asbestos as they will be responsible for maintenance and repairs and have a duty of care to the tenant and any contractors carrying out work on the property.



Research findings



General disclosure requirements

Research suggests that mandatory disclosure obligations should not be introduced without an understanding of consumer behaviour, information failures and market characteristics. It further indicates that consumers do not necessarily benefit from mandatory disclosure because they often do not pay attention to the disclosed information.

The Productivity Commission's Review of Australia's Consumer Policy Framework (2008) noted that 'mandatory disclosure requirements have not worked well –sometimes confusing rather than informing consumers'. Although there has been widespread adoption of information disclosure laws for residential property, they have generally been developed in a reactive and ad hoc way, without a proper analysis of their effectiveness or usefulness in terms of consumer behaviour.

In a study of mandatory information disclosure in Queensland residential property transactions (R Miller et al, 2006), property experts agreed with the need for disclosure of information to buyers but doubted whether the benefit to consumers outweighed the time and cost involved in preparing complex documentation. Disclosure laws were perceived to have an unfavourable impact by increasing the volume of information provided, with buyers not reading or understanding the information, or not finding the information useful (Christensen, Duncan & Stickle, 2009).

A 2017 report on seller disclosure by the Queensland University of Technology Commercial and Property Law Research Centre recommended as an alternative to mandatory disclosure a clear warning be given to buyers (in a seller's statement) that particular information (such as building integrity, flooding, or criminal activity) is not required to be disclosed by the seller. The buyer should be directed to make their own inquiries consistent with the 'buyer beware' principle. In the Centre's view this achieves the dual purpose of educating buyers about further inquiries they should make and alerting them to the fact that the seller is not responsible for disclosing this information to the buyer. This approach aligns with current requirements in SA.

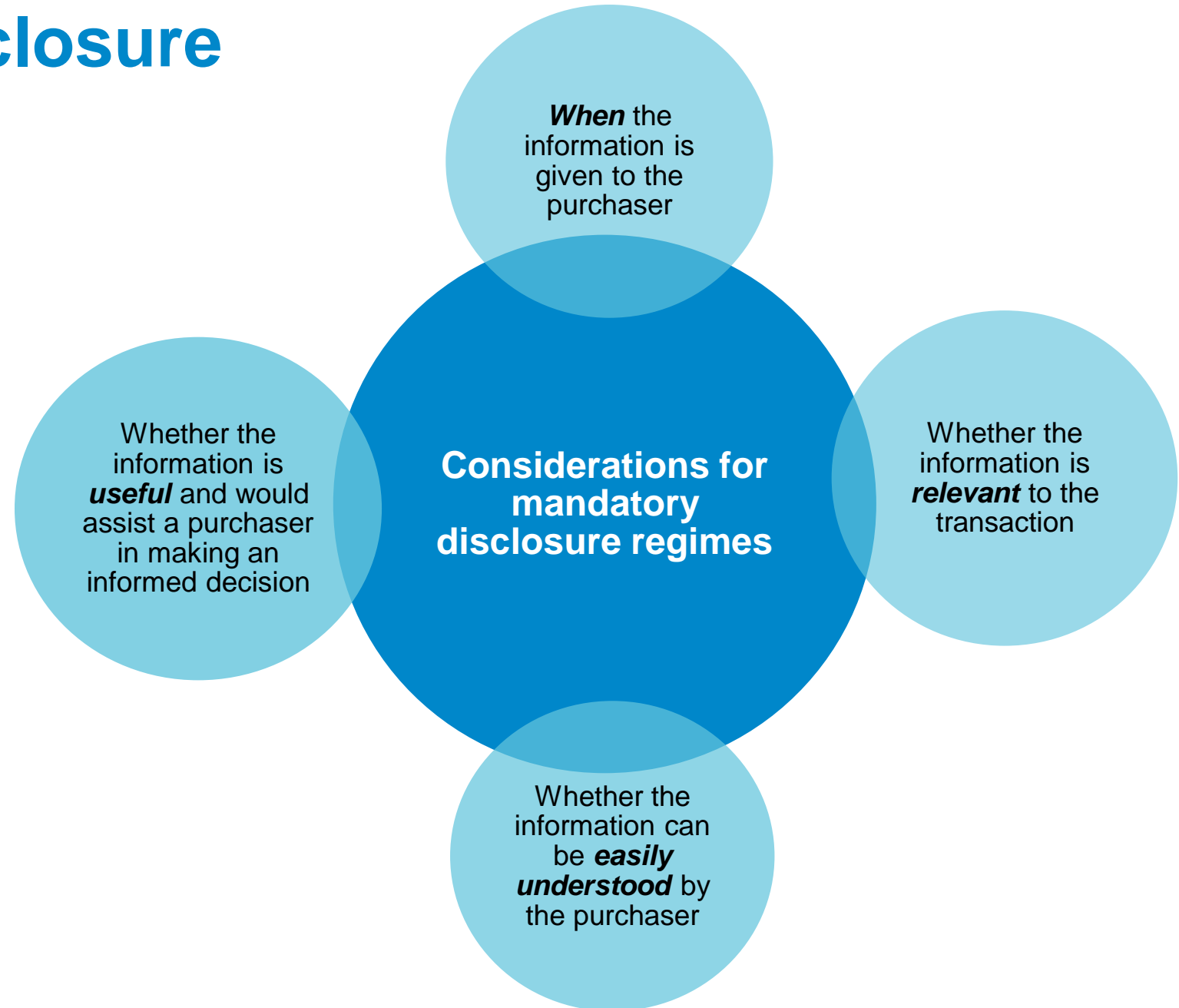
According to the Real Estate Institute of Western Australia (article in The West Australian, 25 January 2021) deciding on what constitutes a 'material fact' that must be disclosed is a grey area for agents, as they need to act in the best interest of both the buyer and seller, but that a material fact should include asbestos. On whether seller's disclosure statements should be made mandatory in WA, the Institute's Deputy President said it was only as good as the honesty of the person filling it out and would not solve the problem around what information should be shared with a buyer:

"Very often, the information you get from the seller is incorrect –they say what they think instead of know. Its up to the agent to do the research and find out what is relevant, and a prudent agent would make an appropriate enquiry."

Information disclosure principles

The research suggests that if disclosure about asbestos is to be effective consideration must be given to the way this information is presented and used, as well as its priority amongst all other pieces of information about a property that a buyer receives.

- ✓ Timing
- ✓ Relevance
- ✓ Usefulness
- ✓ Language
- ✓ Format



Survey of real estate agents and property managers

In 2020, ASEA conducted a survey to understand the knowledge and attitudes of real estate agents and property managers in managing asbestos risks, with a focus on how this influences their engagement with buyers, sellers and tenants.

331 real estate agents and 112 property managers completed a questionnaire. Interviews were held with CEO's of 4 real estate institutes.

Real estate agents and property managers

- > Most real estate agents and property managers feel they know either a 'great deal' or a 'fair bit' about the health impact of asbestos (77% and 83% respectively).
- > The majority of agents and property managers do the right thing – around one in five real estate agents (21%) report 'never' or 'rarely' advising prospective buyers or tenants that a property they are interested in contains asbestos.
- > However, a significant proportion of respondents believe (83% property managers and 69% real estate agents) a pre-sale property inspection covers the presence of asbestos, potentially relying on this assumption as opposed to making an overt and proactive disclosure to a purchaser or tenant themselves.
- > There was also some confusion around which buildings require an asbestos register with almost half thinking that a register was required for residential properties (which is only in the rare circumstance).

Real Estate Institute (REI) CEOs

- > Most REI CEO's felt the vast majority of agents would know of their disclosure obligations if asbestos is known to be present and are adhering to these. However, this is very different to knowing or suspecting where ACMs might be in a specific property, and any expectation that agents should acquire this knowledge was considered unreasonable. Instead, agents should be able to refer a vendor or purchaser to relevant information ideally produced by a government agency to ensure perceived independence, authority and legitimacy.
- > Proactive disclosure was considered far more advanced in the ACT given the 'Mr Fluffy' experience. While this jurisdiction had pre-sale disclosure obligations before the large buy-back and remediation program, a lot of training was done at the time (2014) to ensure agents understood their legal obligations.
- > It was noted that compliance with various disclosure obligations is not overtly visible and is something that would ultimately need to be tested in law.
- > There was a strong view that we need to normalise the fact that properties containing asbestos are being bought and sold almost everyday, and that there is usually no immediate risk to a prospective buyer. The goal is to ensure a buyer is aware certain activities (such as future renovations) could change this risk profile and would need to be managed appropriately.
- > Some REI CEO's noted that possibly the only way to ensure asbestos presence is always identified in a property sale process would be to make a formal asbestos assessment a legislative requirement in any sales process for properties built before 1990. Such a change would require consideration of benefits versus additional transaction costs this could impose.

Research to identify an optimal disclosure tool

In 2021 ASEA commissioned research to identify the most effective means to disclose the presence of asbestos at the point of sale. This included designing an asbestos fact sheet based on behavioural science principals to inform homebuyers where asbestos materials can be found, when they become dangerous and how to take action.

A survey was conducted with a sample of homebuyers who had either bought a home in the last 12 months (n=296) or were currently planning on buying a home (n=106). The survey tested the effectiveness of the asbestos fact sheet against two other types of disclosure – a full asbestos assessment report and a warning statement – provided with a contract of sale. The following four test conditions included a control group who only saw the contract of sale:

1

Contract of sale + asbestos assessment report

Contract of sale of real estate
Part 1 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

Property address:

The vendor agrees to sell and the purchaser agrees to buy the property at the price and on the terms set out in this contract.

The terms of this contract are contained in the:

- Particulars of sale; and
- Special conditions, if any; and
- General conditions

In that order of priority.

Important

Cooling-off period
Section 31, Sale of Land Act 1962

You may end this contract within 3 clear business days of the date of this contract if the exceptions listed below applies to you.


You must either give the vendor or the purchaser the notice at the address of the vendor or the purchaser with this cooling-off provision.

You are entitled to a refund of all the money you have paid (including any deposit) if you end the contract in this way.

Exceptions

The 3-day cooling-off period does not apply if:

- you bought the property at or within 3 clear business days of the date of this contract;
- the property is used primarily for industrial or commercial purposes;
- the property is more than 20 hectares in size and you are a business;
- you and the vendor have previously signed a contract of sale for the property on the same or similar terms; or
- you are an estate agent or a corporate body.




Asbestos Management Survey Report

at

268 Grovely Street, Enoggera, 4053

QLD

June 2022



2

Contract of sale + asbestos fact sheet

Contract of sale of real estate – Particulars of sale
Part 1 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

The vendor agrees to sell and the purchaser agrees to buy the property at the price and on the terms set out in this contract.

The terms of this contract are contained in the:

- Particulars of sale
- Special conditions
- General conditions

In that order of priority.

Cooling-off period
Section 31, Sale of Land Act 1962

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- you and the vendor have previously signed a contract of sale for the property on the same or similar terms; or
- you are an estate agent or a corporate body.


IF THE HOME YOU ARE BUYING WAS BUILT BEFORE 1990 IT CAN CONTAIN ASBESTOS

Damaged or disturbed asbestos materials can release invisible shards that lodge permanently in the body and cause cancer.

FIND OUT WHERE ASBESTOS MIGHT BE - 4 COMMON PLACES ARE:


1 EXTERIOR


roof sheeting, gutters, downpipes, ridge capping, eaves, cladding, electrical switchboards



2 BACKYARD


fences, sheds, garages, carports, buried or dumped waste






4 WET AREAS - BATHROOM, LAUNDRY AND KITCHEN

wall and ceiling panels, vinyl floor tiles, backing for wall tiles and splashbacks, hot water pipe insulation




3 INTERNAL AREAS


wall and ceiling panels, carpet underlay, insulation in domestic heaters




ASBESTOS MATERIALS BECOME DANGEROUS WHEN:



BROKEN OR IN POOR CONDITION



DAMAGED ACCIDENTALLY



DOING RENOVATIONS, REPAIRS AND MAINTENANCE

YOU CAN'T TELL IF A MATERIAL CONTAINS ASBESTOS JUST BY LOOKING AT IT.

FIND OUT HOW TO BE SAFE BY VISITING A GOVERNMENT WEBSITE

[asbestos safely](#)



Contract of sale + warning statement

Contract of sale of real estate – Particulars of sale
Part 1 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

Property address

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms:

The terms of this contract are contained in the following documents:

- Particulars of sale; and
- Special conditions, if any; and
- General conditions

in that order of priority:

WARNING – ASBESTOS CONTAINING MATERIALS IN HOMES

If the home you are buying was built before 1990 it can contain asbestos.

Asbestos materials become dangerous when they are deteriorating, damaged or disturbed, for example during renovations or maintenance work.

For further information about asbestos containing materials and their presence in the home, visit a government website or go to asbestossafety.gov.au

Cooling-off period
Section 31, Sale of Land Act 1962
 You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent written notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid **except** for \$100 or 0-2% of the purchase price (whichever is more) if you end the contract in this way.

Exceptions
 The 3-day cooling-off period does not apply if:

- you bought the property at or within 3 clear business days before or after a publicly advertised auction; or
- the property is used primarily for industrial or commercial purposes; or
- the property is more than 20 hectares in size and is used primarily for farming; or
- you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.



Contract of sale only (control group)

Contract of sale of real estate – Particulars of sale
Part 1 of the standard form of contract prescribed by the Estate Agents (Contracts) Regulations 2008

Property address

The vendor agrees to sell and the purchaser agrees to buy the property, being the land and the goods, for the price and on the terms set out in this contract.

The terms of this contract are contained in the following documents:

- Particulars of sale; and
- Special conditions, if any; and
- General conditions

in that order of priority:

Important notice to purchasers

Cooling-off period
Section 31, Sale of Land Act 1962
 You may end this contract within 3 clear business days of the day that you sign the contract if none of the exceptions listed below applies to you.

You must either give the vendor or the vendor's agent written notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent to end this contract within this time in accordance with this cooling-off provision.

You are entitled to a refund of all the money you paid **except** for \$100 or 0-2% of the purchase price (whichever is more) if you end the contract in this way.

Exceptions
 The 3-day cooling-off period does not apply if:

- you bought the property at or within 3 clear business days before or after a publicly advertised auction; or
- the property is used primarily for industrial or commercial purposes; or
- the property is more than 20 hectares in size and is used primarily for farming; or
- you and the vendor have previously signed a contract for the sale of the same land in substantially the same terms; or
- you are an estate agent or a corporate body.

The survey assessed asbestos awareness and risk perceptions of the homebuyers before disclosure and post disclosure, including information retention and whether the disclosures increased intention to take further action.

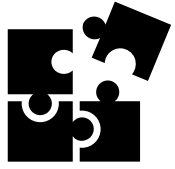
Key findings

- > It is better to have any form of disclosure than none - all interventions (asbestos assessment report, asbestos fact sheet and warning statement) have a positive impact on increasing awareness of the likely presence of asbestos.
- > Awareness of the health risks posed by asbestos is strong already, but knowledge of how common it is or where it can be found is poor.
- > Common misperceptions, particularly among younger homebuyers, is that pre-purchase inspections cover the presence of asbestos and that the responsibility for disclosure lies with the vendor or real estate agent, assuming they would be told if asbestos was posing a danger to them (3 in 4 respondents had these misperceptions). This finding is consistent with a survey of homebuyers conducted for ASEA's 2016 [Attitudes to Residential Asbestos Assessments](#) research.
- > When asbestos disclosure happens at point of sale rather than earlier in the process, homebuyers may be less likely to make the decision to withdraw from purchasing the home.
- > Simpler disclosures (warning statement and fact sheet) are as effective, and in some cases more effective, than a full asbestos assessment report. The volume of information in an asbestos assessment report can be overwhelming for homebuyers, likely leading to the messages about what to do being lost.
- > The 'built before 1990' heuristic in the fact sheet and the warning statement can be easily recalled in future.

The asbestos fact sheet was revised taking into account this research, so that it could serve as an effective disclosure tool (see [Appendix B](#))

Key features for effective disclosure

1. Make the risk of asbestos relevant for homebuyers
2. Communicate when to act and what to do in a simple and memorable way
3. Reinforce the danger posed by asbestos
4. Instil homebuyers with the confidence that they can mitigate the risk posed by asbestos



Asbestos disclosure options and conclusions



Options for improving asbestos disclosure

Advantages

Disadvantages

1. Rely on common law and consumer law, and raise awareness amongst real estate agents, property managers, buyers and tenants

- Does not require regulatory change
- Balances 'buyer beware' onus with obligations of real estate agents to not engage in misleading or deceptive conduct
- There is some real estate industry support for developing targeted education and awareness materials

- Reliance on voluntary disclosures when not specifically mandated
- Disclosure remains ad hoc and inconsistent

2. Include warning statements in contracts of sale and in tenancy agreements (e.g. new tenant checklist)

- Effective in alerting buyers/tenants to potential asbestos
- Does not impose additional cost on vendor/landlord

- Relies on buyers/tenants to make further enquiries

3. Clarify in legislation that the presence of asbestos is a 'material fact' (e.g. the approach in Victoria)

- Removes doubt that asbestos must be disclosed as a material fact
- Minimal burden or cost to vendor/landlord

- Applies only to known asbestos based on expert advice or an existing assessment report
- Requires legislative change

4. Require vendor/landlord to provide a notice on what they know about asbestos in their property

- Minimal burden or cost to vendor/landlord

- The vendor's or landlord's knowledge may be unreliable without a professional asbestos assessment

5. Require vendor/landlord to provide general information about asbestos materials or an asbestos assessment report if available (e.g. ACT approach)

- Alerts buyers/tenants to the actual presence of asbestos if an assessment report is available
- A well-designed fact sheet (see Appendix B) is effective for disclosing potential asbestos presence
- Does not impose additional cost on vendor/landlord

- A general information sheet will not identify actual location and condition of asbestos

6. Require pre-purchase building inspection reports (and 'Condition of Premises' reports for rental properties) to include the presence of asbestos

- Addresses common assumption that pre-purchase inspection reports include asbestos
- Currently offered by some building inspection services with qualified asbestos assessors

- Australian Standard on pre-purchase inspections would need to be amended
- Building inspector would need the required competencies to assess asbestos

7. Require vendor/landlord to provide an asbestos assessment report for properties built before 1990

- Provides independent and reliable information about asbestos presence and condition
- Lodgement with property transaction document could build local government knowledge of asbestos locations to support compliance with asbestos-related legislation.

- Imposes additional costs and regulatory burden
- May not be enough asbestos professionals and accredited laboratories to perform testing
- Complex reports may overwhelm buyers/tenants
- Reports must be up-to-date – a new report may be required for each transaction

Conclusions

Each of the asbestos disclosure options presented in this report has associated costs and benefits that would need to be considered by policy makers. The options are not mutually exclusive – short term interventions can be made to improve disclosure while longer term objectives are considered.

The timing of disclosure has a significant impact on both the nature of the information that is provided to the buyer and the value of that information to the decision to purchase. Different methods of disclosure can be used at different points in the purchasing journey. Earlier disclosure allows a buyer more time to assess risks and make further enquiries regarding specific properties. For example, simple awareness messages stating that *homes built before 1990 can contain asbestos* can be promoted on real estate platforms to capture people's attention when they start searching for properties. ASEA has produced two short videos which can be used by real estate agents, governments and other stakeholders to raise awareness of asbestos disclosure – one is aimed at buyers and sellers and the other at landlords and tenants of residential properties. Further along the journey, it is not unusual for contracts of sale to be available at property inspections, so it is worth including an asbestos disclosure with the contract. Research shows that disclosure at this point is less likely to impact the sale of the property as potential buyers are already significantly invested.

Some stakeholders strongly support requiring a vendor to provide a full asbestos assessment report for the property they are selling because potential buyers and any trades carrying out work on the property will benefit in knowing exactly where asbestos is located to prevent accidental exposure. While a new assessment may not be required each time a property is sold or let, mechanisms are needed to ensure the assessment report is current, particularly if renovation work or deterioration of asbestos materials has occurred. Asbestos assessment reports could also be lodged with property transaction documents to help build local government knowledge of asbestos locations and support compliance with asbestos-related legislation.

However, introducing this type of disclosure may create additional demand for asbestos assessors, with a risk of increasing costs and poor quality reports. A number of ASEA's stakeholders also raised concerns that the current WHS requirements for commercial buildings regarding asbestos identification are inadequately enforced and result in poor quality registers and that adding residential asbestos disclosure requirements may not improve this situation and could potentially make things worse.

Simple disclosures are as effective, and in some cases more effective, than a full asbestos assessment report in informing potential buyers and renters about the *possibility* that asbestos may be present in the residential property and its possible locations.

It is acknowledged that a generic disclosure tool as presented in Appendix B is not going to provide information on where asbestos is actually present in a home. Given that our research indicated that asbestos assessment reports can overwhelm buyers, an alternative approach is that assessors provide a single page summary (or map) of the asbestos materials and their location for inclusion in contracts of sale.

Ideally any mandatory requirement for disclosing asbestos should be part of a single coordinated seller disclosure regime that consolidates the disparate common law and statutory disclosure obligations.

✓ Timing

✓ Relevance

✓ Usefulness

✓ Language

✓ Format

Appendix A: ACT Government Asbestos Advice

A notifiable instrument made under the ACT *Dangerous Substance Act 2004*

Important Asbestos Advice for ACT homes built before 1985

Asbestos is hazardous but it can be managed safely.

Follow the three steps for managing materials containing asbestos (MCAs) in your home.

Step 1. Identify where MCAs may be in your home

When was your house built?

- If your house was built before 1985, the table below gives you an indication of where you are likely to find MCAs in your home. There is also a diagram on the back of this sheet showing where MCAs are commonly found.
- If your house was built after 1985, it is unlikely to contain MCAs.
- If in doubt, assume that materials DO contain asbestos.

Common locations of MCAs in ACT homes*

(Percentage (%) of properties sampled where asbestos was detected)

Location	Pre 1965	1965–1979	1980–1984	1985–now [†]
Eaves	86%	92%	40%	0%
Garage/shed	80%	70%	15%	0%
Bathroom	54%	75%	50%	0%
Laundry	75%	80%	50%	0%
Kitchen	52%	23%	15%	0%

*Results of 2005 Asbestos Survey of over 600 ACT Homes. [†]One MCA was found in a 1985 house supporting roof tiles on a gable end.

Step 2. Assess the risk

Visually check the condition of the MCA – is it cracked, broken, etc?

- If it's in good condition and left undisturbed, it does not pose a health risk.
- If you suspect it is not in good condition, arrange for appropriate maintenance or removal by a qualified person.

Step 3. Manage safely

Make sure you remember to:

- Keep an eye on MCAs to make sure they remain in good condition.
- Consider removal of the MCA by a qualified person, when renovating or doing home repairs.
- Inform tradespeople working on your home of the location of any possible MCAs.
- Engage a qualified person if you decide to obtain a professional asbestos report on MCAs in your home.

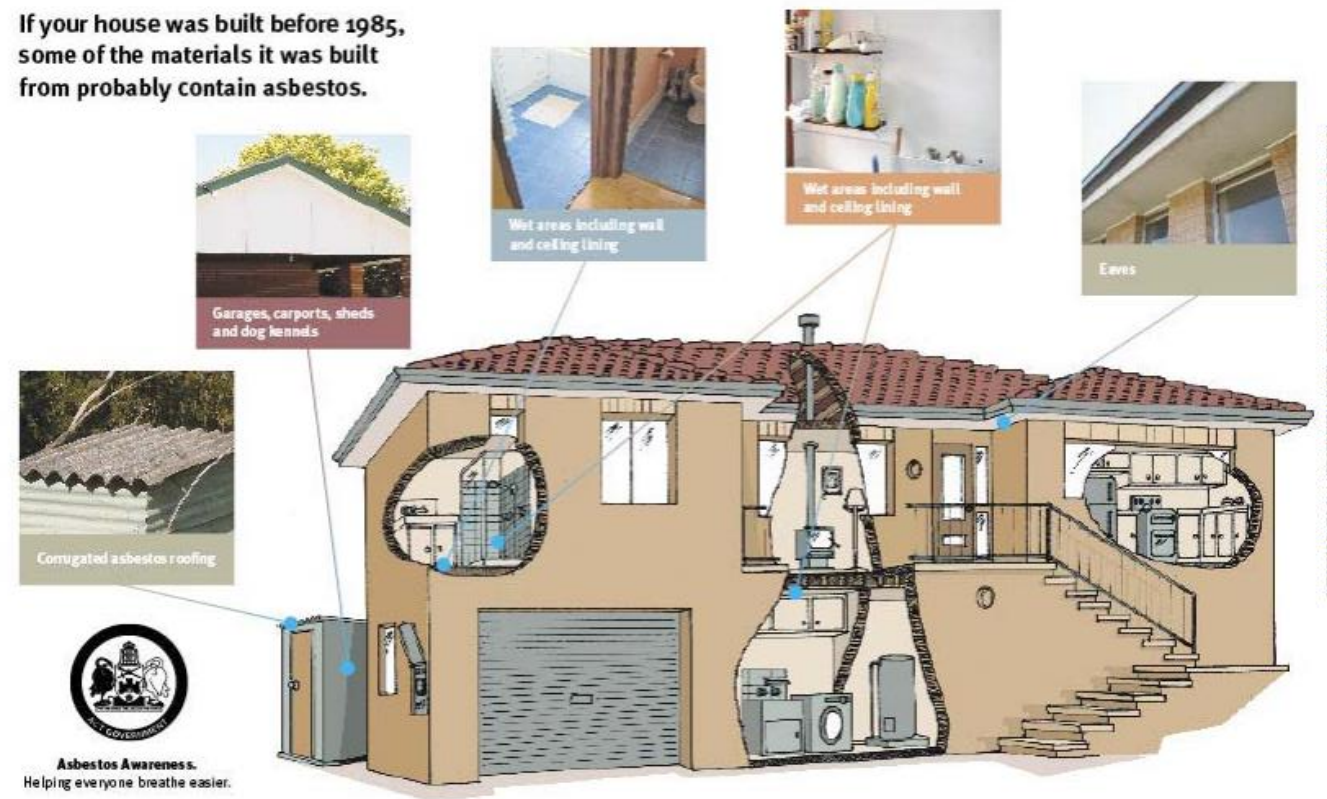
For further information or advice on managing asbestos or home renovations visit the asbestos website www.asbestos.act.gov.au or call **13 22 81**.



Asbestos Awareness.
Helping everyone breathe easier.

Common locations of materials containing asbestos in ACT homes

If your house was built before 1985, some of the materials it was built from probably contain asbestos.



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Appendix B: Ingredients for an optimal disclosure tool

1. Make the risk relevant

- > “built before 1990” heuristic
- > Simple table showing actual presence if known, or diagram of common locations

2. Communicate when to act and what to do

3. Reinforce the danger

- > Use descriptive language (“dangerous” asbestos) and warning colours/symbols

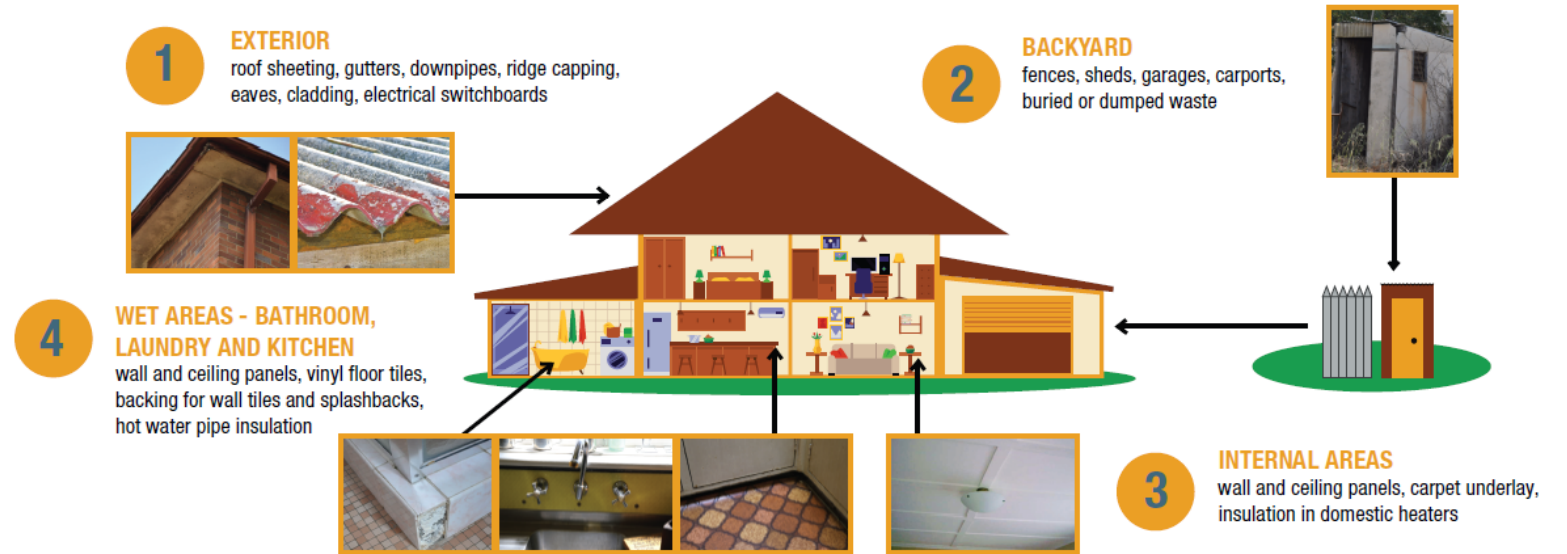
4. Keep it simple

- > Communicate only what is necessary to avoid overwhelming buyers



IF THE HOME YOU ARE BUYING WAS **BUILT BEFORE 1990**
IT CAN CONTAIN DANGEROUS **ASBESTOS**

FIND OUT WHERE ASBESTOS MIGHT BE - 4 COMMON PLACES ARE:



ASBESTOS MATERIALS BECOME DANGEROUS WHEN



BROKEN OR IN
POOR CONDITION



DAMAGED
ACCIDENTALLY



DISTURBED DURING
RENOVATION OR REPAIRS



1. CONTACT A PROFESSIONAL
- OR
2. VISIT A GOVERNMENT WEBSITE

asbestos safety



**Asbestos National
Strategic Plan**

Implementation
2019–23

**Asbestos Safety
and Eradication Agency**

Level 12, 280 Elizabeth Street
Sydney NSW 2000

enquiries@asbestossafety.gov.au

1300 326 148