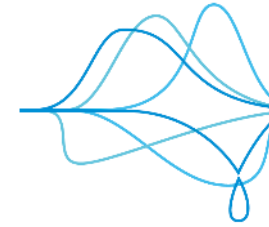




Australian Government

Asbestos Safety and Eradication Agency



Asbestos National
Strategic Plan

Implementation
2019–23

Unlicensed Asbestos Removal

Options to address concerns about allowing unlicensed persons to remove limited amounts of asbestos

Executive Summary

Asbestos removal occurs in residential, commercial and public buildings and is carried out by workers in a workplace context, as well as by non-workers, for example homeowners when undertaking DIY renovations.

Asbestos removal is primarily regulated through work health and safety (WHS) laws, although public health and environmental laws also apply. In most circumstances, WHS laws require asbestos to be removed from workplaces by a licensed asbestos removalist. Apart from the ACT, jurisdictional WHS laws do not require licensing for the removal of 10m² or less of non-friable asbestos or associated asbestos-contaminated dust – also known as 10m² exception or 10m² rule. Victoria's laws have an extra element of timed restrictions for removal.

There are ongoing calls to prohibit unlicensed asbestos removal due to concerns about misuse of the 10m² exception leading to asbestos exposure risks. The exception allows a tradesperson doing other work to remove incidental asbestos in a timely, efficient and cost-effective manner. Without the exception, their option is either to stop work and engage a licensed removalist or to leave in situ and work around it.

This report examines the advantages and disadvantages of completely removing the 10m² exception, noting that this would not address situations where WHS laws do not apply, for example when a home owner decides to remove asbestos themselves.

The removal of the 10m² exception may also have unintended consequences, potentially increasing rather than decreasing asbestos exposure risks. This was confirmed in a survey of trades persons and builders, with 60% of respondents saying 10m² is a manageable amount to remove safely without a license provided workers have been trained and follow required safety practices.

The report identifies a range of policy options to enhance WHS, public health and environment protection laws to address concerns associated with unlicensed asbestos removal. This includes explicitly clarifying that public health laws do apply to asbestos as it can cause harm to public health and to include more specific control measures like Queensland's *Public Health Regulation 2005*.

Background

The history behind unlicensed non-friable asbestos removal under WHS laws shows that each jurisdiction has taken a similar path to control the risks of airborne asbestos exposure through licensing provisions.

The objective of licensing asbestos removal is to reduce health risks by requiring persons removing asbestos in workplaces to have a higher degree of competency and to be subject to a higher degree of regulatory oversight. However, most jurisdictions have found a need to allow the removal of a limited amount of non-friable asbestos without holding an asbestos removal licence. This allows a tradesperson doing other work to remove incidental asbestos in a timely, efficient and cost-effective manner. Importantly, WHS regulations prescribe control measures for both licensed and unlicensed asbestos removal to prevent exposure to airborne asbestos fibres (see Appendix A).

Various stakeholders have raised concerns about perceptions that removing relatively small amounts of asbestos is safer than the quantities that require licensing and that the misuse of the 10m² exception is leading to asbestos exposure risks.

Calls to prohibit unlicensed asbestos removal reflect the World Health Organisation's conclusion that there is no safe level for asbestos fibre exposure and that any exposure to asbestos has the potential to cause cancer, whereas the 10m² exception is more consistent with the view that the higher the frequency, dose and duration of the exposure the greater the likelihood of developing an asbestos-related disease.

In contrast to the detailed requirements for asbestos removal under WHS laws, it may seem that this activity in non-workplaces is largely unregulated. This is an increasing concern, as a 2020 survey commissioned by ASEA found that:

- 57% of Australians carry out home renovations by themselves
- 40% have worked on a property likely to contain asbestos
- Asbestos was low on the list of potential risks considered by renovators and only half sought professional help after encountering asbestos



Legal Framework



Laws that apply to asbestos removal

Common law

Everyone has a duty to take reasonable care not to cause harm to another person that could be reasonably foreseen – based on the ‘good neighbour’ principle that in order to live in a healthy and functioning community, we all have a responsibility not to harm those around us.



Work health and safety

WHS laws have specific regulations to prevent asbestos exposure in ‘workplaces’ – being a place where work is carried out for a business or undertaking and includes residential premises that become a ‘workplace’ when a contractor is working there to remove asbestos.



Public health

Public health laws apply to anything that puts at risk or damages public health. By definition this includes asbestos, although only Queensland and Western Australian public health laws contain specific provisions relating to asbestos. These laws operate in addition to the jurisdiction’s WHS legislation.



Environment protection and planning

Everyone has a duty not to pollute the environment or to unlawfully dispose of asbestos waste.

Asbestos waste must be disposed of at a licensed facility.

Transport of asbestos must comply with the Australian Dangerous Goods Code.



Local councils are generally authorised to enforce aspects of public health, environment protection and planning laws and manage asbestos in non-workplaces by educating residents, regulating land use and development, and managing waste disposal.

Work Health and Safety (WHS) laws

In most circumstances, WHS laws require asbestos to be removed from workplaces by a licensed asbestos removalist. Class A licenses allow removal of both friable and non-friable asbestos and Class B licenses allow removal of only non-friable asbestos.

Apart from the ACT, WHS laws do not require licensing for the removal of:

- 10m² or less of non-friable asbestos or associated asbestos-contaminated dust; or
- asbestos-contaminated dust or debris that is only a minor contamination.

Victoria's laws have an extra element of timed restrictions for removal.

The 10m² exception enables a tradesperson, such as an electrician or plumber, to remove an incidental amount of asbestos. This facilitates basic renovation or repair, for example removing:

- a single asbestos cement sheet of 2m² to enable installation of an air conditioner.
- a 1.6m² asbestos cement eave to enable access for pipes.

Control measures are required for both licensed and unlicensed asbestos removal (see Appendix A).

In most cases of unlicensed asbestos removal, the work would be classified as **high risk construction work** for which a Safe Work Method Statement must be prepared. High risk construction work includes work that involves, or is likely to involve, disturbing asbestos.

History of asbestos removal licensing

Jurisdictions began introducing licensing schemes under WHS laws for the removal of asbestos before the asbestos ban was implemented on 31 December 2003 (Appendix B).

Each licensing scheme had exceptions for unlicensed non-friable asbestos removal although the quantities varied with some states allowing unlicensed removal of less than 200m².

Victoria was the first jurisdiction to introduce the 10m² exception coinciding with the asbestos ban on 31 December 2003. This supplemented the time limit requirements for removal. At that time, Victoria considered removing the exception but decided it should remain because:

“requiring all non-friable asbestos removal to be undertaken would place an unreasonable burden on the majority of employers and self-employed persons in the maintenance and refurbishment trades. Moreover, the administrative burden imposed on WorkSafe, by the requirement to process large numbers of licence applications, would result in the diversion of resources away from enforcement activities”.

By 2012, all states and territories had a similar version of the 10m² exception. The exact reason for selecting 10m² as the allowable amount is not documented, but it equates to the size of a small bathroom.

Public health laws

Public health laws apply to everyone, including homeowners undertaking DIY renovations.

- > The NSW and Tasmanian public health laws include powers for authorised officers and councils to deal with various public health risks.
- > The South Australian *Public Health Act 2011* has a general duty requiring a person to take all reasonable steps to prevent or minimise harm to public health.
- > The Victorian and Northern Territory public health laws create offences if a person causes a ‘nuisance’ – being anything that is, or could be, dangerous to health.

Asbestos is not specifically mentioned, except in the Queensland and Western Australian public health laws.



Queensland's Public Health Regulation 2018

A person must not remove:

- > *friable ACM* located in a non-workplace area unless the person holds a class A asbestos removal licence.
- > *more than 10m2 of bonded ACM* unless they have a certificate showing they have completed a training course.

The regulations also:

- > prohibit use of power tools, high pressure water processes and compressed air
- > prescribe requirements to seal non-friable ACM if broken and not removed
- > require a person to take reasonable measures to minimise the risk of asbestos fibres being released
- > prescribe requirements for packaging and disposal of asbestos waste, and
- > prohibit selling or giving away ACM removed from a non-workplace area.



Western Australia's Health (Asbestos) Regulations 1992

A person who stores, breaks, damages, cuts, maintains, repairs, removes, moves, or disposes of, or uses any material containing asbestos without taking reasonable measures to prevent asbestos fibres entering the atmosphere commits an offence.

‘Reasonable measures’ include:

- > using water or other practical measures to suppress the release of airborne fibres
- > ensuring, so far as is reasonably practicable, that material containing asbestos is not broken or abraded
- > ensuring that asbestos waste is disposed of in accordance with the Environmental Protection (Controlled Waste) Regulations 2004.

The regulations also prohibit anyone from using, selling or supplying asbestos cement products.

The regulations were amended in January 2017 to significantly increase fines. Individuals can be fined up to \$10,000.

Environment protection laws



Environment protection laws are the main law for ensuring the safe transport, storage and disposal of asbestos waste. In relation to these activities, the environment protection requirements in most jurisdictions differentiate between ‘domestic’ and ‘commercial’ quantities of asbestos waste.

These thresholds are usually defined by weight, but in some cases the 10m² limit has been adopted to align with the exception under WHS laws. Under the NSW *Protection of the Environment Operations (Waste) Regulation* asbestos waste transporters (including members of the public disposing asbestos materials themselves) and facilities receiving asbestos waste are required to track loads of non-friable asbestos greater than 100 kgs or 10m² using Waste Locate.

In Queensland an environmental authority is required for anyone transporting more than 175 kg of asbestos waste. Asbestos waste being transported on a non-commercial basis requires waste tracking documentation if there is 250kg or more of asbestos in the vehicle.

Environment protection policies aim to incentivise legal and safe disposal of asbestos waste, particularly for smaller quantities, by making it easier and cheaper. Most jurisdictions have removed waste disposal levies for separated and wrapped asbestos waste, although waste facility gate fees may still apply. The ACT offers its residents free disposal of wrapped, separated domestic asbestos waste of less than 250kg.

Other relevant laws



ACT asbestos removal laws

Dangerous Substances Regulations 2004 prohibit the removal of asbestos from both workplaces and non-workplaces unless it is undertaken by an appropriately licensed asbestos removalist.

An exception is if the removal is incidental to minor routine maintenance work, or other minor work.

These provisions are supported with mandatory asbestos training requirements under the *Work Health and Safety Regulations 2011*:

- > any workers who may need to work with asbestos must complete a prescribed VET *Course in Asbestos Awareness*.
- > workers engaged in a prescribed occupation must undertake the *Course in Working Safely with Asbestos Containing Materials*.

Mandatory training was justified on the basis that a gap had been identified in training for workers who were not licenced asbestos removalists but may be required to disturb asbestos as part of 'minor or routine maintenance work'. The occupations include electricians, plumbers, gasfitters and air-conditioning and telecommunications workers.



New Zealand (NZ) adopted Australia's model WHS laws in 2016 including risk management of asbestos removal, licensing and 10m² exception. NZ laws clarify that the quantity of 10m² is a cumulative amount across the whole work project.

Australian and NZ laws are unique internationally by allowing the 10m² exception to licensed removal work.

United Kingdom workplace safety laws allow 'non-licensable work' – short duration work where the risk assessment shows the work will only produce sporadic and low-intensity exposure and will not exceed the control limit.

- > 'Short duration' means the total time spent by all workers does not exceed 2 hours in a 7 day period – and no one person works for more than an hour in a seven day period.
- > 'Sporadic and low intensity' means exposure that does not exceed 0.6 fibres per cubic centimetre in the air measured over a 10 minute period.

Notification requirements apply for non-licensable work where it involves ACM in a friable condition.



Impact and use of the 10m² exception



Survey results: unlicensed removal



In 2020 the Master Builders Association (MBA) assisted ASEA by distributing a survey to MBA members on the operation of the 10m² exception.

A total of 135 responses were received from builders and various trades across Australia, including carpenters, electricians, plumbers, painters, tilers and plasterers. 87% of respondents did not have an asbestos removal license.

When asked how often they had removed up to 10m² of bonded asbestos in the last 12 months, 47% stated they only did it once or twice a year and 37% said never, indicating that the 10m² exception is not extensively used.

Is up to 10m² an appropriate amount to remove without a license?

The majority of respondents (60%) said 10m² or less was an appropriate amount that should be allowed to be removed without a license. Many respondents mentioned the importance of training and that if the right precautions and safety practices are used, 10m² is a reasonable and manageable amount to remove safely.

'Generally, most trades understand that asbestos is hazardous, and they do take safety precautions and apply PPE. Removing the hazard is of greater importance than waiting to get a licensed contractor in and risk greater exposure.'

'No amount is safe to remove if you don't know what you are doing'

'If people are doing the right thing, the amount should not matter'

'Small amounts are easy enough to wet down and remove carefully, wrap and dispose of at the appropriate site'

Of those that said it was not appropriate, 37% wanted to allow more than 10m², 24% said less and 39% said that no amount should be removed without a license.

Of those who support removing the 10m² exception, the reasons included that contractors were carrying out the work unsafely, which indicates a lack of enforcement of the requirements around the 10m² exception:

'Current unlicensed contractors remove up to 10m² a day with no requirements to comply to WHS acts/codes, air monitoring and asbestos waste disposal requirements'

'I have seen cowboy contractors getting labourers to remove asbestos without knowing the dangers'

One respondent noted that as ACMs age, the likelihood of friability increases and therefore 'the 10m² rule has to go'. Another mentioned that a greater concern is when DIY home renovators remove asbestos themselves [where the 10m² rule does not apply] and dispose of it in household bins.

Impact of removing the 10m² exception

When asked what the impact of removing the 10m² exception would be, most respondents stated that this would have negative impacts related to cost blowouts, unnecessary time delays and an increase in illegal removal and dumping.

Others noted it would create incentives to leave asbestos in situ.

'It probably would be painted to bond the asbestos and left in place'

Increased safety was mentioned by those who support removing the 10m² exception.

'All asbestos removal would require regulator notification to ensure all asbestos removal works are monitored, and asbestos control plans and safe systems of removal are implemented prior to removal, to minimise possible asbestos exposure from untrained and non-licenced personnel'

'Decreased risk of exposure to asbestos fibres for both tradespeople and home owners/public'



Infrastructure to support safe removal practices

It is encouraging that when workers do need to use asbestos professionals, just over 80% stated that it is easy to find licensed asbestos removalists and assessors. 84% said it is also easy to access asbestos-related training.

However, 26% of respondents reported that it is not easy to find and access licensed asbestos waste disposal facilities. Improving the accessibility and availability of waste disposal facilities for ACMs is one of the strategic actions under the Asbestos National Strategic Plan.

Suggestions to address concerns about unlicensed removal

- > Have a 'multi-tier license' that allows small builders to remove the incidental asbestos they come across on sites under a license
- > Make asbestos removal licenses more affordable and insurances cheaper so that trades can be licensed for removal work
- > Implement mandatory asbestos awareness training
- > Make asbestos disposal cheaper (or free), establish a price guide for disposal at licenced facilities, as costs vary widely

Impacts of maintaining the 10m² exception

Advantages

- > Allows a tradesperson doing other work to remove incidental asbestos in a timely, efficient and cost-effective manner. Without the exception, their option is either to stop work and engage a removalist or to leave in situ and work around it.
- > Facilitates the removal of small amounts of unanticipated non-friable asbestos, e.g. insulation behind boilers, switchboards, ovens and in fireplaces that are only visible once the equipment has been removed.
- > Permanently removes the asbestos hazard from the built environment.

Disadvantages

Misuse

- > Potential removal of several lots of 10m² from one workplace or from several workplaces over a short period of time. The Victorian *Occupational Health and Safety Regulations 2017* attempt to address this issue by using a combination of the quantity, threshold and time limits for the removal of 10m² and associated dust. Time limits may be difficult to regulate. However, this is also the case with the 10m² limit because wherever asbestos work is not notifiable, it is difficult to regulate. Time limits may also result in workers not properly following safety procedures in order to complete the removal job in the allotted time.

Confusion and risk perception

- > Perception that removing this quantity of ACM is safer than the quantities that require licensing can result in insufficient precautions being taken during removal and disposal.
- > Confusion as to when the exception applies in a residential setting, which also risks non-compliant removal and disposal practices.

No reason for less prescriptive legislative controls

- > The 10m² maximum amount for unlicensed removal can be regarded as arbitrary because there is no practical difference between the exposure risks and the control measures required for the removal of 9m² of non-friable asbestos versus a quantity of 11m².

Lack of regulatory oversight

- > As there is no requirement to notify WHS regulators of incidental asbestos removal work, there is less visibility of the extent of removal work being carried out and it is more difficult to conduct targeted inspections.

Impacts of removing the 10m² exception

Advantages

- > All asbestos removal work, including removal of asbestos debris and dust, would need to meet the more stringent standards required by licensed removal.
- > The ACT's additional exception for minor work and minor routine maintenance work would also need to be adopted to ensure the removal of the exception remains practical.

Disadvantages

Removing the exception from WHS laws would not address situations where the workplace laws do not apply, for example when a homeowner decides to remove asbestos in their home themselves.

Financial burden for homeowners and businesses

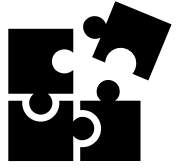
- > Engaging licensed asbestos removalists for relatively small removal jobs increases costs for homeowners and causes delays if tradespersons discover unanticipated ACM and need to stop work.
- > An increase in demand for licensed asbestos removalists may, initially, increase fees charged by removalists.
- > The time and financial costs relative to the risks of removing a relatively small amount of ACM are impractical in many circumstances, particularly in rural or regional areas where there is limited access to licensed asbestos removalists.

Increased costs may increase non-compliant and unsafe behaviour

- > Removing the exception may encourage homeowners to undertake the removal themselves to save costs.
- > There is a risk that illegal removal by businesses may lead to improper or illegal disposal of waste to avoid attracting the attention of authorities.
- > Asbestos that should be removed may be left in-situ instead to avoid costs.

Impact on regulators

- > WHS laws require licensed asbestos removalists to notify asbestos removal work to the regulator. Removing the exception would significantly increase the volume of asbestos removal notifications to regulators.
- > An increase in demand for licensed asbestos removal may encourage new businesses to enter the asbestos removal profession. Regulators will require additional resources to assess new applications and oversight licence-holders.



Unlicensed removal options and conclusions



Policy options

Policy options under WHS, public health and environment protection laws range from raising awareness and clarifying existing rules to introducing more specific regulatory controls. A key question for policy makers seeking to address unlicensed asbestos removal concerns is to identify whether the exposure risks relate to workplaces, non-workplaces or both.



Workplaces – WHS laws

- Guidance and awareness campaigns targeted at PCBU's and workers
- Include time limited approach (Victorian regulations) or NZ clarification that 10m² is cumulative over the whole project.
- Mandate prescribed asbestos safety training
- Require asbestos removal control plans to be prepared
- Reduce to lower, more incidental amount e.g. 5m²
- Require notification to WHS regulator of unlicensed asbestos removal
- Prohibit unlicensed asbestos removal except if removal is incidental to minor routine maintenance work, or other minor work.

Raise awareness

Clarify current laws

Training

Prescribe controls

Reduce removal amount

Issue permits Notification

Prohibit unlicensed removal



Non-workplaces – Public health, environment protection laws

- Guidance and awareness campaigns targeted at homeowners
- Clarify the general duty to minimise risks to public health in relation to asbestos exposure
- Require persons removing more than 10m² or any amount to complete training
- Prescribe control measures e.g. prohibit use of power tools (WA & Qld)
- Require persons to apply for a permit to remove and dispose asbestos
- Notification to local council
- Prohibit unlicensed asbestos removal.

Conclusions

Workplaces

Although each jurisdiction uses licensing to control asbestos exposure risks when removing ACM in workplaces, policy makers have identified a need to allow a tradesperson to remove small amounts of incidental asbestos in a timely, efficient and cost-effective manner. This is also the case in the ACT where the 10m² exception has been removed. An important distinction is that the ACT requires mandatory asbestos safety training for all workers who are likely to encounter asbestos materials as part of 'minor or routine maintenance work'.

Many stakeholders support mandatory asbestos awareness training for all trades to address concerns about unlicensed asbestos removal in workplaces. The importance of training and the use of safe handling and disposal procedures was acknowledged in the MBA survey with respondents noting that 10m² is a reasonable and manageable amount to remove safely if the right equipment and procedures are used.

There has been some confusion about whether the 10m² applies in non-workplace settings. Removing the 10m² exception under WHS laws will not address concerns about homeowners removing asbestos themselves. Measures under public health and/or environment protection laws could be used for these situations, to supplement WHS requirements. For example, there is scope to clarify that public health laws do apply to asbestos as it can cause harm to public health and to include more specific control measures like Queensland's *Public Health Regulation 2005*.

Enforcing safe removal of asbestos by homeowners may be difficult if the regulator is not alerted of the activity before it occurs. An option is to prohibit homeowners removing any amount of asbestos themselves unless they apply for a permit. A condition of the application could be the submission of a safe removal and disposal plan. Asbestos control measures could also be part of planning laws that require building approvals for residential demolition and renovation work.

ASEA's guidance and awareness materials for tradespersons, as well as homeowners, consistently recommends engaging licensed professionals for all removal work because they are fully trained, insured and better equipped to prevent or minimise asbestos exposure to asbestos. However, there are circumstances where it may be difficult to find licensed asbestos removalists, such as in regional and remote areas.

The options presented in this report are not mutually exclusive and could be used in combination as more than one approach may be necessary to achieve the policy objective.

Non-
workplaces

Appendix A: Licensed versus unlicensed removal requirements under WHS laws

A person conducting a business or undertaking must ensure:	Licensed removal:	Unlicensed removal:
1 notification to the regulator at least 5 days before undertaking asbestos removal work (only required for friable asbestos removal in WA)	✓	✗
2 supervisors have suitable relevant experience	✓	✗
3 completion of specified Vocational Education and Training (VET) courses	✓	✗
4 a clearance certificate is issued by a licensed asbestos assessor after friable removal in all jurisdictions and non-friable removal in SA and ACT;	✓	✗
5 a clearance certificate is issued by an independent competent person after non-friable removal	✓	✗
6 the development, training in and implementation of an Asbestos Removal Control Plan (ARCP)	✓	✗
7 risks are controlled to prevent exposure of asbestos fibres to workers and that the exposure standard is not exceeded	Through the ARCP	✓
8 all persons who may be involved in asbestos removal work are competent to undertake the work, and have been specifically trained in asbestos identification, safe handling of asbestos, and suitable control measures for minimising exposure to asbestos fibres	✓	✓
9 provision of health information to workers that may undertake asbestos-related work	✓	✓
10 provision of health monitoring to workers carrying out ongoing asbestos removal work or asbestos-related work that may expose them to asbestos fibres	✓	✓
11 compliance with general duties of care requiring training, instruction, supervision and risk management of all work	✓	✓
12 records of training are kept for inspection and then for 5 years afterwards.	✓	✓

WHS Regulations also prescribe control measures for **asbestos-related work** – which is any work involving asbestos other than asbestos removal work.

Appendix B: History of asbestos removal licensing

