

Loose-fill asbestos insulation guide

For real estate agency principals, their agents, property managers, strata managers and auctioneers

There are a number of obligations imposed on real estate agents by law in relation to asbestos located in the properties agents are engaged to sell or manage. These obligations include:

- a duty of care to the client and workers engaged to carry out work on the property
- a commitment to act honestly, fairly and professionally
- a responsibility to disclose certain matters to prospective buyers and tenants.

It is reasonable to assume that properties constructed before 1980 may contain loose-fill asbestos insulation.

Loose-fill asbestos insulation ('Mr Fluffy')

Throughout the 1960s and 1970s, pure loose-fill asbestos was sold as ceiling insulation for residential and commercial premises. A Canberra based company known as 'Mr Fluffy' installed insulation in around 1,000 houses in the Australian Capital Territory (ACT) and is also understood to have installed insulation into homes in New South Wales (NSW). This insulation is particularly problematic because it is raw asbestos which is easy to disturb and fibres can be inhaled.

The NSW Government response to loose-fill asbestos insulation

The NSW Government, under the guidance of the Heads of Asbestos Coordination Authorities, has taken a number of actions to address the issue of loose-fill asbestos in NSW. These include:

- Receiving updated advice from NSW Health.
- Announcing an independent investigation in August 2014 to establish the number of residential properties with ceiling insulation that may contain loose-fill asbestos material.

- A free ceiling insulation testing service available for homeowners with homes built before 1980 who are concerned they may have loose-fill asbestos in their homes. The service is only currently available in 26 local government areas, which have been identified through the analysis of archival government records*.
- Conducting free technical assessments on properties known to have loose-fill asbestos.
- The development of a Voluntary Purchase and Demolition Program for affected properties and the establishment of the Loose-Fill Asbestos Insulation Taskforce.

* To establish eligibility and request testing, owners can register online or contact Service NSW on 13 77 88.

What should real estate agents do?

Real estate agents should have processes in place for complying with their obligations under the *Work Health and Safety Act 2011* to, so far as is reasonably practicable, identify and manage the risks from loose-fill asbestos in relation to properties they lease and/or manage, or are engaged to sell.

The following steps are recommended:

1. Agents should inform their principals that properties constructed before 1980 may contain loose-fill asbestos insulation.
2. At the time of conducting their initial inspection, agents should ask their principal to complete a questionnaire which includes the following questions:
 - What date was the property originally constructed?
 - Has the property been renovated since it was originally built? If so, obtain details.
 - Is the principal aware of the presence of any loose-fill asbestos insulation in the property?

- If yes, the principal should specify all locations where they believe loose-fill asbestos insulation is present.
 - Has a Licensed Asbestos Assessor inspected the property for loose-fill asbestos insulation? If yes, is a copy of the report available?
3. If, based on the instructions received from the principal, the agent becomes aware of the presence of loose-fill asbestos or suspects that loose-fill asbestos may be present on the property built prior to 1980, the agent should consider practical measures to ensure the health and safety of their workers, clients and others. In this regard, the agent should take the following steps:
- Request the owner of the premises register for free testing (available until 1 August 2016 in specified local government areas).
 - Request the owner provide any test results to the agent.
 - Request the owner informs the residents of the test result.
 - If the likelihood of exposure to airborne asbestos fibres is high, the agent should exclude their workers and clients from approaching the site.
 - If the owner declines to cooperate, the agent should contact Service NSW on 13 77 88 and seek further advice.

Agents should also take the following precautions:

- Do not access or direct a person to access the ceiling space or sub floor areas.
 - Do not drill or direct a person to drill into walls.
 - Provide the owner with information about loose-fill asbestos insulation and recommendation for testing by a Licensed Asbestos Assessor.
1. NSW Fair Trading advises that agents should be aware that the potential existence of loose-fill asbestos is a 'material fact' that should be disclosed to any persons interested in the property. The law provides significant penalties for agents who fail to disclose information that could influence decisions on whether to buy, sell or rent a property.

Disclaimer

The information contained in this document is general only and is intended to provide guidance as to some of the issues which may arise in relation to the presence of loose-fill asbestos in properties being offered for sale or lease by real estate agents. It does not purport to be comprehensive. Accordingly, the NSW Government and Regulating Authorities expressly disclaim liability to any person relying on the contents of this document. Further and importantly, this document is not legal advice and should not be relied or acted upon as if it were. Agents and any other persons reading this document should obtain their own legal advice about their legal and other obligations. They should not rely on this document as a substitute for doing so.

Voluntary Purchase and Demolition Program

For properties containing loose-fill asbestos

In the 1960s and 1970s a company known as Mr Fluffy used raw amosite and crocidolite asbestos, known as loose-fill asbestos, as ceiling insulation in some ACT and NSW homes. In the 28 identified Local Government Areas (LGAs) where Mr Fluffy operated, the NSW Government is offering free sample testing for loose-fill asbestos to owners of pre-1980s residential properties.

The NSW Government has determined that demolition, comprehensive site remediation and disposal is the best way to ensure the health and safety of the NSW community. NSW Fair Trading recently established the Loose-fill Asbestos Implementation Taskforce. The Taskforce is responsible for overseeing and implementing the Voluntary Purchase and Demolition Program and its associated Assistance Package. The Program is designed to provide safety, certainty and support for NSW residents.

The Voluntary Purchase and Demolition Program is being delivered in four stages:

- Assistance and Identification - testing and technical assessments and support for affected owners and tenants as they progress through the Program
- Purchase - valuation and purchase of affected properties
- Demolition - demolition of affected properties and remediation of the land
- Sale - sale of remediated land

Free Testing Program

Free sample testing is the first step in the Program which was announced by the NSW Government on 29 June 2015, following the acceptance of the recommendations of a Taskforce Report into loose-fill asbestos.

You can register online for the free testing program or call Service NSW on 13 77 88.

To be eligible for the Program, **homeowners must be registered for testing by 1 August 2016.**

Owners of premises outside of the identified LGAs, while not eligible for free sample testing, can have their property privately tested by a Licensed Asbestos Assessor. If a positive test is confirmed by a Taskforce-supervised technical assessment, they will have the cost of the test refunded and be eligible for the Voluntary Purchase and Demolition Program.

What should I do if I am renting a property with loose-fill asbestos?

If it is confirmed that there is loose-fill asbestos in the property that you are renting, you should speak to your landlord or agent about what management steps are in place to ensure the property is habitable. For more information on renting a property with loose-fill asbestos, contact NSW Fair Trading on 13 32 20.

Valuations

The NSW Government's Loose-fill Asbestos Implementation Taskforce (Taskforce) has contracted the Australian Property Institute (API) to coordinate the valuation process. The API will engage two independent national companies to undertake the valuation process for each affected property. Each property will be valued as if it was free of loose-fill asbestos as at 29 June 2015.

More information is available on the Valuation process webpage on the Fair Trading website.

Options available to Voluntary Purchase and Demolition Program participants

Owners of any NSW residential premises confirmed to contain loose-fill asbestos insulation are eligible to participate in the Program. The Program includes both

free-standing homes and units and the Taskforce will work with each homeowner individually.

Program participants have 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 insulation.

The NSW Government will demolish the premises and remediate the land. The property will be sold in the property market.

Option 1 is the only one suitable for owners of multiple dwelling units or strata properties.

Option 2

The NSW Government will purchase the premises only and the property owner will retain ownership of the land. The premises will be valued as if it were free of loose-fill asbestos.

The NSW Government will then be responsible for demolishing the premises and remediating the block of land. Following demolition and remediation, the owner will be able to rebuild on the same block of land.

For rural properties this would be the only available option. Rural properties include land zoned R5 or RU1-4 (more than 2.5ha).

Demolition and remediation

The removal of loose-fill asbestos insulation from the affected property will be done by a Class A Licensed Asbestos Removalist (LAA).

More information is available on the Demolition and remediation process webpage on the Fair Trading website.