

INFORMATION FOR INSURANCE COMPANIES

Managing asbestos after Cyclone Gabrielle

WorkSafe New Zealand is aware of some insurance companies making incorrect assumptions about the presence or absence of asbestos containing materials in buildings damaged as a result of the Auckland flooding and Cyclone Gabrielle. All persons conducting a business or undertaking (PCBUs) should not assume absence of asbestos, nor should they be instructing others to ignore the risk of asbestos (unless they have reasonable grounds to believe that asbestos is not present (outlined later in this document)).

All PCBUs, have responsibilities under the Health and Safety at Work Act 2015 (HSWA) to help keep kaimahi/workers and others safe, including homeowners and residents.

Asbestos was widely used as construction and insulation material in buildings until the mid-1980s. However, as it was still used until stockpiles of the product ran out. Asbestos should be assumed to be used in buildings constructed before 2000.

Asbestos products are not always obvious and are often hidden within the building structure.

PCBUs with management or control of a workplace are required to manage risks associated with asbestos exposure, including completing an [asbestos management plan](#) for all buildings and structures built before 1 January 2000. An asbestos management plan sets out where any identified asbestos or asbestos-containing material (ACM) is present, its condition and how it will be managed. If asbestos is not managed correctly, all kaimahi/workers completing work on buildings and structures that may contain asbestos containing material are potentially being exposed to the risk of airborne asbestos fibres, including tradespeople, service and maintenance workers are at risk, as well as residents of the property.

Insurers are reminded that they may have duties under HSWA, as well as the Health and Safety at Work (Asbestos) Regulations 2016 (Asbestos Regulations). The extent of an insurance company's duties under HSWA and the Asbestos Regulations depends on the particular circumstances. As a responsible PCBU, insurers should be doing their best to ensure the health and safety of workers and other persons.

The primary duty of care at s 36 of the HSWA requires a PCBU to ensure the health and safety of:

- workers who work for the PCBU
- workers whose activities in carrying out work is influenced or directed by the PCBU, and
- other persons who may be put at risk from work carried out as part of the PCBU's conduct.

PCBUs that have a duty in relation to the same matter as another PCBU, must consult, cooperate and coordinate activities with the other PCBU duty holders.

Regulation 7 of the Asbestos Regulations prohibits a PCBU from carrying out, directing, or allowing workers to carry out work involving asbestos unless it is allowed under the Regulations (for example, it is done by a licenced removalist).

PCBUs with 'management or control over a workplace' have duties to:

- ensure that exposure to airborne asbestos is eliminated or minimised (Regulation 9)
- ensure that asbestos is identified at a workplace (Regulation 10)
- analyse samples (Regulation 11)
- ensure presence and location of asbestos indicated (Regulation 12)
- prepare and review asbestos management plan (Regulations 13-14).

The duty to ensure that asbestos is identified at a workplace does not apply if the PCBU has reasonable grounds to believe that asbestos is not present. Having reasonable grounds to believe means possessing actual evidence, for example:

- recorded evidence, such as an asbestos management plan, confirming all asbestos was removed from the workplace
- a previous survey by a person suitably qualified and experienced in asbestos identification did not find any asbestos in each individual building (assuming that because other buildings of a similar age/style do not contain asbestos is not suitable).

Alternatively, if a PCBU cannot identify whether asbestos is present, but reasonably believes the material is asbestos or an ACM, it must assume the material is asbestos and comply with all relevant requirements in the Asbestos Regulations.

PCBUs should not assume absence of asbestos, nor should they be instructing others to ignore the risk of asbestos (unless they have reasonable grounds to believe that asbestos is not present, reasons outlined above).

If asbestos needs to be removed or assessed, find a current licenced asbestos removalist or assessor using the [Asbestos Licence Holder Register](#)

If you have a concern about an unsafe or unhealthy work situation, you can contact us and raise your concerns either by calling 0800 030 040 or completing our [online form](#)

Full information and guidance on [managing asbestos](#) can be found on the WorkSafe website.

WorkSafe has also developed [cyclone-specific](#) information and guidance.