

Asbestos and lead

As a tenant you have rights under the *Residential Tenancies Act 2010* and *Residential Tenancies Regulation 2019*. This factsheet discusses asbestos and lead in rented premises.

Deciding what to do if your home is affected

If your home is affected by asbestos or lead, you may want to stay and minimise your exposure (for example by asking for repairs), or you may want to end your tenancy and leave. The mere presence of asbestos/lead at the premises does not cause them to be in a **state of disrepair**. However there may be situations where it is not safe for you to remain in the premises. You should check with your GP (your local doctor) for advice on health risks. You can also request a copy of any air, dust, or soil reports from the landlord/agent. These reports provide readings on the level of asbestos or lead in the premises.

About asbestos and lead

Asbestos is a mineral that was commonly used in building materials from the 1940s until 1990. It was used in walls, drains, flues, roofing and guttering. It is usually safe if it is not disturbed or damaged. **If asbestos materials are damaged and fibres are freed, they pose a health risk.**

Lead is a metal sometimes found in old paint (before 1970), dust in the roof, and soil. Lead can be harmful, especially to small children and pregnant women, for example if inhaled or ingested in the form of contaminated dust, soil, or flaking paint. Home lead paint test kits are available from hardware stores. It may be possible to get soil and dust tested cheaply by a program such as **360 Dust Analysis** and VegeSafe, run by Natural Science staff at Macquarie University. If you think you may have been exposed to lead, you can ask your GP for a blood test to check.

The Loose-fill Asbestos Insulation (LFAI) register

NSW premises with loose-fill asbestos insulation are kept on a publicly available register called the **Loose-fill Asbestos Insulation Register** (LFAI Register). The LFAI Register is maintained by NSW Fair Trading under the *Home Building Act 1989*. It is free to check online to see if a home is listed on the LFAI Register.

The landlord/agent **must disclose to you** if the premises are listed on the LFAI Register. This requirement is **ongoing** – meaning the landlord/agent must let you know of this fact prior to signing the agreement with you, or if at any time during the tenancy when the premises become listed on the LFAI Register. If the landlord/agent fails to disclose that the premises are on the LFAI Register, or if during the tenancy the premises get listed on the LFAI Register, you can end the tenancy (see “If you want to leave” below).

Rights and obligations

You must:

- keep the premises ‘reasonably’ clean
- tell the landlord about any damage to the premises as soon as possible
- not damage or permit damage to the premises deliberately or negligently – you are responsible for damage by anyone who you have allowed onto the premises
- not add or remove any fixtures or do any renovations or alterations to the premises without the landlord’s written consent (unless permitted under the tenancy agreement)
- take all reasonable steps to **mitigate loss** (limit or avoid loss)

The landlord must:

- provide the premises ‘reasonably’ clean and fit to live in
- keep the premises in ‘reasonable’ repair –
 - even if they told you about any disrepair before you moved in
 - except where the disrepair is caused by the tenant breaching the tenancy agreement
- make any repairs referred to in the original condition report
- mitigate loss

Mitigation of loss examples could include:

- tenant stops use of a room where asbestos fibres have been exposed
- landlord promptly remediates affected areas to reduce risk

If you want to stay

Take steps to reduce your exposure to asbestos/lead as much as possible. If you believe work is needed to bring your home to a state of **reasonable repair and cleanliness**, start by writing to the landlord/agent and asking them to do repairs. Bear in mind that the mere presence of asbestos/lead at the premises does not cause the premises to be in a state of disrepair. For more on repairs, see [Factsheet 06: Repairs and maintenance](#). You may also try to **negotiate** – see [Tips: Negotiating with the landlord](#).

You have an obligation to report any **damage** to the premises as soon as possible after becoming aware of the damage. For example, if there was storm damage and you noticed part of the ceiling is coming apart, exposing asbestos, write to the landlord/agent and insist that they arrange for repairs. Write them a letter (attaching photos where possible) telling them what needs fixing and by when. Give a clear deadline. Keep a copy of the letter and a record of any conversations as evidence that you have notified them.

If the landlord agrees to carry out the necessary repairs while you temporarily move out of the home, make a clear agreement in writing about:

- rent reduction
- how long you will be away
- who will be responsible for goods at the premises or how your goods will be stored

If the landlord does not promptly arrange repairs, you can apply to the NSW Civil & Administrative Tribunal (NCAT) for orders – see below.

If you want to leave

The **standard form tenancy agreement** contains a clause regarding **loose-fill asbestos**. If, prior to signing the tenancy agreement, your landlord/agent failed to disclose that the premises are on the Loose-fill Asbestos (LFAI) Register (see above), or if during the tenancy you are notified that the premises are listed on the LFAI Register, you may **end the tenancy** before the end of the fixed term without compensation to the landlord by giving a 14-day termination notice. If you are in a periodic agreement and want to end the tenancy, you need to give a 21-day termination notice.

If your home is in a **state of disrepair** or becomes **unusable** due to asbestos/lead contamination, you may be able to end the tenancy. However the mere presence of asbestos/lead at the premises does not cause the premises to be in a state of disrepair or unusable. There are different rules for ending a tenancy, depending on if the landlord has **breached the agreement** (for example by failing to do repairs you have requested) or not. For more about ending tenancy, see [Factsheet 09: You want to leave](#) and [Factsheet 16: Ending fixed-term tenancy early](#).

Applying to the Tribunal

The NSW Civil and Administrative Tribunal (NCAT) is an independent body which deals with certain kinds of disputes between landlords and tenants. It is not a formal court, but its decisions are legally binding. If your premises are in disrepair or unusable due to asbestos/lead, you may decide to apply to the Tribunal – for example if the landlord has failed to do repairs you have requested. Below are some of the types of orders you can seek from the Tribunal, and what you will need to show. See also [Factsheet 11: NSW Civil and Administrative Tribunal](#), and contact your [local Tenants' Advice and Advocacy Service](#) for advice about applying.

Applying for an order for repairs

You must be able to show that:

- the premises are not in 'reasonable' repair
- it is not your fault
- the landlord/agent knew about the need for repairs
- you told them about it (e.g. you wrote them a letter), or
- they should reasonably have known about it (e.g. they inspected the premises)
- the landlord/agent did not get the repairs done in a reasonable time

See also [Factsheet 06: Repairs and maintenance](#).

Applying for a rent reduction

The Tribunal may make an order that the rent is or was excessive (up to a period of 12 months) due to a reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises (e.g. part of the premises becomes unusable due to the presence of asbestos fibres or lead).

See also [Factsheet 04: Rent increases](#) for how to prepare an excessive rent case.

Applying for compensation

You can apply to the Tribunal for order/s that the landlord compensate you for **economic loss** such as the destruction of or damage to your belongings. You must be able to show that your loss was caused by the landlord's failure to do repairs. The Tribunal may not order compensation if you have not taken action to mitigate your losses (i.e. limit or avoid losses).

Personal injury

If someone in your household has been made ill by asbestos/lead, seek medical advice. Consult a solicitor or your local [Community Legal Centre](#) about whether to take legal action.

The NSW Civil and Administrative Tribunal is **not** the best place to take a personal injury claim – the maximum compensation it can order is \$15,000.

Evidence

At the Tribunal, you must back up your claims with evidence. This may include expert reports on the presence of asbestos/lead in the premises (e.g. from a scientist, council building/health inspector, builder). Such reports can be costly, so you may need to rely on other evidence.

The condition report is important evidence of the state of the place at the start of the tenancy. Other evidence may include:

- your tenancy agreement
- correspondence with the landlord/agent
- photos and drawings of the premises
- receipts for expenses
- printed materials such as factsheets about asbestos/lead and its effects

Outcomes of Tribunal cases

The following decisions may be useful to look at if you are considering applying to the Tribunal.

In [Gannon v Department of Transport & Regional Services \(Tenancy\) \[2008\] NSWCTTT 793](#), the Tribunal found that the landlord breached the tenancy agreement but did not order compensation due to lack of independent evidence and a delayed application.

In [Symonds v Duncan \(Tenancy\) \[2004\] NSWCTTT 499](#), the Tribunal accepted evidence of lead levels from the local council, found that the premises were unliveable for a time and ordered the landlord to compensate the tenant for some of her claimed losses.

In [Al-Basry v Maharaj \[2022\] NSWCATCD 9](#), the Tribunal heard an application for termination by the tenants and orders for compensation for alleged asbestos contamination and failure to disclose. No breach was found and the landlord was partially successful in cross claim for a break lease fee and rental bond claim.

In [Charrouf v NSW Land and Housing Corporation \[2023\] NSWCATCD 109](#), the Tribunal ordered by consent the removal of all asbestos from the kitchen, toilet and bathroom of the residential premises and payment of compensation by the landlord for breach of the tenant's quiet enjoyment and loss of enjoyment including for distress, anxiety and disappointment.

Safe work practices

The landlord should use workers with the appropriate licence or training to do repairs. In any case, workers should follow safe work practices. Contact [SafeWork NSW](#) for advice about safe work practices. See also:

- [Asbestos \(SafeWork NSW\)](#)
- [Stay safe from lingering lead \(NSW Environment Protection Authority\)](#)

If the work practices used are unsafe, contact SafeWork NSW (when a business or worker is being paid to do the work), or an environmental health officer from the local council (when the work is unpaid).

See also

- [Factsheet 02: Starting a tenancy](#)
- [Factsheet 06: Repairs and maintenance](#)
- [Factsheet 09: You want to leave](#)
- [Factsheet 16: Ending fixed-term tenancy early](#)
- [Factsheet 11: NSW Civil & Administrative Tribunal](#)
- [Tips: Negotiating with the landlord](#)
- [Podcast episode: Cracks emerge](#)
- [Asbestos in NSW \(NSW Government\)](#)
- [Stay safe from lingering lead \(NSW Environment Protection Authority\)](#)

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For free advice, call your local Tenants Advice & Advocacy Service:

SYDNEY:

- Eastern 9386 9147
- Inner 9698 5975
- Inner West 9559 2899
- Northern 9559 2899
- Southern 9787 4679
- South West 4628 1678
- Western 8833 0933

REGIONAL:

- Blue Mountains 4704 0201
- Central Coast 4353 5515
- Hunter 4969 7666
- Illawarra Sth Coast 4274 3475
- Mid Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1300 483 786

ABORIGINAL:

- Sydney 9833 3314
- West NSW 6881 5700
- South NSW 1800 672 185
- North NSW 1800 248 913

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW

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