

# Information for tenants affected by asbestos



When you rent a place to live in Queensland, your tenancy agreement is covered by the *Residential Tenancies and Rooming Accommodation Act 2008*. This fact sheet is for residential tenancies, however most of this information also applies to rooming accommodation such as boarding houses.

## About asbestos

Asbestos refers to a variety of naturally occurring mineral fibres that were used as building materials and fire-retardant materials. Asbestos can be found in many building materials in homes such as insulation, roofing shingles, vinyl floor tiles and linoleum products, electrical switchboards, electrical meters and the lining of some stoves and heaters. The use, import, and manufacture of asbestos was banned in Australia in 2003 due to its serious health risk when disturbed fibres are inhaled.

To view common locations of asbestos-containing materials in homes, visit the Queensland Government Asbestos website at [www.asbestos.qld.gov.au](http://www.asbestos.qld.gov.au).

If sealed or undisturbed, asbestos is not considered dangerous. It is legal for a lessor, agent or provider to rent out premises to tenants or residents if it contains asbestos materials as long as it remains unexposed and undamaged.

### Friable and non-friable asbestos

Asbestos can be friable or non-friable. Friable asbestos refers to any asbestos-containing materials (ACM) which can be crumbled by hand when dry. Friable asbestos poses a high risk of releasing fibres into the air due to its soft structure.

Non-friable asbestos is usually mixed with cement or resin to make it stronger and cannot be crushed by hand. Non-friable asbestos poses a lesser risk than friable asbestos due to its solid structure, however it can release fibres if burned, if deteriorating due to weather impact, or if damaged by cutting or breaking.

## What to look for

Some friable asbestos materials may appear white or grey and have a crumbly or powdery appearance. It can also look frayed, and it may break with little effort.

Non-friable asbestos is found in more rigid materials and cannot be easily identified by sight. Instead, if the premises were built before 1990, there is a chance that they may have asbestos-containing materials. There may also be an asbestos warning sticker in certain areas accessible by tradespeople such as:

- Switchboards
- Meter boxes
- Manhole covers
- Linen cupboard doors
- Cupboard doors beneath the laundry sink

Friable and non-friable asbestos are also both odourless. As such, the presence of asbestos is best confirmed by an expert assessment.

If you suspect there is potential exposure to asbestos building materials, it is best to let the lessor, agent or provider know so that they can contact a business that holds the correct licence for asbestos assessment and removal as they will have access to specific personal protective equipment (PPE) that must be worn before interacting with any suspected asbestos-containing materials.

For WorkSafe's lists of businesses licensed to remove asbestos in Queensland visit [worksafe.qld.gov.au](http://worksafe.qld.gov.au). Friable asbestos requires a Class A removal licence, and non-friable requires at least Class B removal licence.

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### Who's who?

A **lessor** is the person who gives a tenant the 'right to occupy' a residential premises. Lessors often employ real estate agents to manage premises on their behalf.

A **provider** is a person who provides rooming accommodation to residents.

**Tenants Queensland (TQ)** is a specialist community and legal service which has been providing services to and representing the interests of residential renters in Queensland since 1986.

**QSTARS** is a program providing specialist advice and support to renters, funded by the Qld Government, delivered by TQ

The **RTA** is the government authority that manages rental bonds, provides forms and information, conducts dispute resolution and investigates complaints of unlawful conduct under tenancy laws.

The Tribunal or **QCAT**, hears and makes binding decisions about residential tenancy disputes.



# Information for tenants affected by asbestos

## Who is responsible for addressing asbestos

Potential asbestos exposure may be identified when tradespeople attend the premises to do repairs, for example, after a natural disaster.

They may find an asbestos warning sticker or other indicators of concern warranting further investigations.

Because asbestos is part of the building structure, it is the lessor's responsibility to address it, even if the lessor purchased the premises with no prior knowledge of the presence of asbestos.

However, anywhere asbestos is potentially exposed at the premises, like a room in the house or the exterior of the premises, are areas the tenants will be unable to safely use, resulting in loss of amenity and a potential breach of the lessor's obligation to maintain the premises so they remain fit for the tenant to live in.

Therefore, it is the lessor's responsibility to organise removal and disposal of asbestos at a [disposal facility](#) or otherwise make the premises safe again for tenants.

Asbestos disposal information can be found at [www.asbestos.qld.gov.au](http://www.asbestos.qld.gov.au).

## Addressing asbestos after a storm or flood

It is the lessor's responsibility to address damage to the property due to flood or storm. Tenants are responsible for notifying the lessor or agent of any repair or maintenance issues. While tenants may choose to assist in cleaning the property they should be aware of the risks and assume that for homes built before 1990 any storm damage debris may include asbestos.

To read more information about cleaning asbestos after floods, storms and fires, visit [www.asbestos.qld.gov.au](http://www.asbestos.qld.gov.au).

## Staying in the tenancy

### Rent reduction

Where the tenant has suffered a loss of amenity or the premises are partially or completely unfit to live in because of the presence of asbestos, but wants to continue the tenancy, they can reach out to the lessor or agent to try and negotiate an appropriate reduction of the rent.

It is up to the tenant to decide how they will calculate the rent reduction and may consider a calculation based on the area the tenant is unable to use compared to the usable area of the house. Where the asbestos is found in one or more bedrooms in the home, you may like to request a rent reduction that corresponds to the median market rent of other premises in your postcode with a similar number of bedrooms to those usable in the home. The Residential Tenancies Authority (RTA) [Median](#)

[rents quick finder](#) may be a useful tool.

If an agreement about the rent reduction is reached with the lessor or agent, you must make sure to have this in writing in case of a dispute.

If an agreement cannot be reached, you can lodge a non-urgent application by applying to the RTA for dispute resolution first. If no agreement is reached during dispute resolution, the RTA will issue a Notice of Unresolved Dispute which can be used to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order about the rent decrease. If asbestos remediation is also needed to restore the full amenity of the premises, you may wish to include your rent reduction claim in an emergency repair order application at QCAT, which is a direct urgent application at QCAT.

You should not stop paying rent because the repairs have not been carried out. Withholding rent will put you in breach of your agreement and may put the tenancy at risk of termination for rent arrears.

### Repairs

Sometimes the damage from a disaster or storm will expose asbestos and if a tenant has any concerns, they should notify the emergency contact provided in Item 18 of their tenancy agreement. At the same time, tenants may need to take any precautions to protect their own health whilst the issue is being assessed. Sometimes concerns about the presence of asbestos arise while other repairs are being addressed following a disaster. Sometimes a tradesperson identifying the presence of asbestos is the first time the tenant and/or lessor becomes aware of the presence of asbestos.

To request repairs, talk to the lessor, agent or provider or make a written request. You can use an [RTA Notice to Remedy Breach \(RTA Form 11\)](#) to request repairs. Keep a copy of any repair request or breach notices as evidence. If repairs are not done in a reasonable time you may wish to apply to the RTA Dispute Resolution Service using an [RTA Dispute Resolution Request \(RTA Form 16\)](#) to see if the issue can be resolved before applying for a repair order at QCAT.

### Applying for a repair order

If the repairs are not carried out within a reasonable timeframe a tenant can seek a routine repair order or an emergency repair order from QCAT, using an [Application for Minor Civil Dispute – Residential Tenancy Dispute \(QCAT Form 2\)](#).

An application for a repair order can include a variety of orders not limited to:

- When the repairs must be completed
- That a qualified person must complete the repairs, for example, a business certified to remove asbestos
- Rent reduction until the repairs are completed
- Compensation due to loss of amenity
- Who will pay for the repairs
- That the tenancy be terminated if the repairs are not completed within the agreed timeframe

The two types of repairs, Emergency Repairs and Routine Repairs are defined by the Act. Emergency repairs are defined in [section 214](#) of the Residential Tenancies and Rooming Accommodation Act 2008.

Emergency repairs are urgent applications at QCAT, and a tenant can lodge an application directly with QCAT without needing to go through dispute resolution. Urgent applications can also be listed for hearings sooner than routine repairs.

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Any repairs that do not fall into the definition of emergency repairs will be routine repairs. These require RTA dispute resolution before a QCAT application can be made. Hearings for routine repairs may take months to be scheduled.

As such, if the asbestos is of immediate concern, the tenant may wish to argue that the asbestos is an emergency repair.

Emergency repairs include:

- Flooding or serious flood damage
- Serious storm, fire or impact damage
- A fault or damage that makes the premises unsafe or insecure
- A fault or damage likely to injure a person, damage property or unduly inconvenience a tenant of the premises

Determining whether asbestos is an emergency repair will depend on a few factors such as:

- Whether it is found inside or outside the premises
- If found inside, where it has been found, for example a room that is often used by the tenant
- The area it covers
- Whether there is a risk of contamination to the tenant's belongings or to the tenant themselves

For example, if asbestos is disturbed in the tenant's bedroom after a serious flood, fire or storm, the tenant can apply for an emergency repair order.

However, if a tenant finds undisturbed fibres in the garage wall, it may be difficult to argue that the asbestos meets the standard of an emergency repair, and the tenant may instead have to apply for a routine repair order.

To find out more about applying for repair orders, check out the [Repairs and Maintenance factsheet](#).

## Fixtures

A tenant is required to seek written approval from the property manager/owner to attach a fixture or make a structural change to the premises. This can be done by completing the approved form, a [Request for approval to attach fixtures or make structural changes \(RTA Form 23\)](#), stating the description, location and reason for the fixture or structural change to the premises for consideration.

A tenant should be aware of the risks when interacting with asbestos and make sure that they have followed all precautions for working with asbestos. Tenants should take particular care that they will not release any fibres into the air for example by using power drills. The Queensland Government Asbestos website provides some [Safe Work Procedures](#) when carrying out asbestos related work.

## Leaving

### Lessor wants you to leave

If an event has caused asbestos exposure the lessor or agent can give you a [Notice to Leave \(RTA Form 12\)](#) if the premises are destroyed or made completely or partly unfit to live. They must issue the notice within one month of the event, and it can require you to leave immediately. You can dispute this notice if you disagree that the property is unliveable.

### You want to leave

#### Non-liveability

Where the premises have been destroyed or made completely or partially unfit to live in because of asbestos exposure, you can issue a [Notice of Intention to Leave \(RTA Form 13\)](#). You can give this notice anytime within one month of the event and leave on the same day or provide more notice. The grounds for the notice are 'non-liveability' and this must be given within one month of the event.

#### Notice to remedy breach

A tenant may miss their opportunity to end the agreement for non-liveability within one month of the asbestos exposure.

If the tenant issues a Notice to Remedy Breach to the agent or lessor and no action is taken within the remedy period, a tenant may decide to issue a [Notice of Intention to Leave \(RTA Form 13\)](#) for unremedied breach, making sure to give a minimum notice period of 7 days.

It is a good idea to take photos, acquire an asbestos report or other evidence relating to the asbestos exposure, in case the agent or lessor disputes a tenant's notice of intention to leave for non-liveability or unremedied breach.

## Bond

You should apply for the bond on the day you return possession to the lessor or agent. The fastest way to make an online bond claim is [online](#) using a Queensland Digital Identity account.

Another way of claiming the bond is to complete a [Refund of Rental Bond \(RTA Form 4\)](#) and post it to the RTA.

The RTA will process whichever claim is lodged first, so tenants need to be mindful that posting the form could delay its arrival at the RTA.

If the agent is first to lodge their claim for the bond, tenants can dispute the refund request if they do not agree with the claim.

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## Bond cleaning

If you are concerned about cleaning the premises for fear of exposure to asbestos, it is a good idea to have a discussion with your real estate agent/lessor and get any agreement about the responsibilities for cleaning in writing.

## Compensation

You may be able to claim compensation if you suffered a loss because there was a breach of your tenancy agreement arising from the lessor's failure to address asbestos exposure in a reasonable time.

The lessor has obligations to maintain the premises in way that keeps the premises fit to live in, in good repair, comply with laws dealing with health and safety and comply with minimum housing standards. If the lessor does not comply with these obligations this is a breach of agreement.

A claim for the breach of your tenancy agreement is a non-urgent application so you must first lodge a [Dispute Resolution Request \(RTA Form 16\)](#) with the RTA. If there is no agreement, the RTA will issue a notice of unresolved dispute that you must attach with your application at QCAT.

There is six-month time limitation from when you become aware of a breach of the agreement to make a claim at QCAT. Lodging the Dispute Resolution Request stops the clock on the six-month time limit.

## Personal injury

If someone in your household suffers illness from asbestos, the first person to consult is your local doctor. You may be considering taking legal action, and you can discuss this with a [solicitor](#) or your local [Community Legal Centre](#).

## Tenancy Facts

Tenancy facts information for renters are available at [www.tenantsqld.org.au](http://www.tenantsqld.org.au)

### Tenancy Facts include:

- Renting in Queensland
- Starting a tenancy
- Rental bonds
- Rent and other charges
- Entry and privacy
- Repairs and maintenance
- You want to leave
- Lessor ends the tenancy
- Resolving tenancy disputes
- Tenancy databases
- Pets in rental properties

## Further help

### Tenants Queensland

Tenants Queensland (TQ) is a specialist community and legal service which has been providing services to and representing the interests of residential renters in Queensland since 1986. QSTARS is managed by TQ and delivered in collaboration with partner organisations.

For administration issues contact TQ on 07 3832 9447 or visit [www.tenantsqld.org.au](http://www.tenantsqld.org.au)

### Queensland Statewide Tenant Advice and Referral Services (QSTARS)

QSTARS provides specialist tenancy advice, advocacy support and referral for Queensland renters.

Contact QSTARS for tenancy advice on: **1300 744 263**

Open Mon – Friday 9am – 5pm  
(extended hours to 7pm on Tuesdays and Wednesdays)

Visit [www.qstars.org.au](http://www.qstars.org.au) for more information and to access tenancy fact sheets and videos.

### Residential Tenancies Authority (RTA)

The RTA is the government authority. RTA tenancy forms are available online at [www.rta.qld.gov.au](http://www.rta.qld.gov.au) or call 1300 366 311

### The Queensland Civil and Administrative Tribunal (QCAT or the Tribunal)

To find your local Tribunal (except for Brisbane QCAT sits in the local Magistrates Court) or get QCAT forms visit [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au) or call QCAT on 1300 753 228

### Translating and Interpreting Service (TIS)

If you need an interpreter let us know when you call, or call the TIS translating and interpreting service on 131 450 so they can help you contact our service.

Disclaimer: This factsheet provides information only and is not intended to provide legal advice.