

Regulatory Impact Statement

Prohibiting the Importation of Asbestos Containing Products

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment. It provides an analysis of options to prohibit the importations of asbestos containing products (ACPs) and recommends introducing a prohibition, with the allowance for exemptions through issuing permits under a specified set of conditions.

Exposure to asbestos can result in a range of respiratory illnesses and is a leading cause of work-related deaths. While the use of asbestos in products has declined in recent decades, a significant quantity remains in New Zealand, presenting a health risk to those who may come into contact with it.

The scope of the proposal considered in this paper is limited to measures available to manage the importation of new ACPs. It does not consider broader options around reducing risk of exposure from existing asbestos. Limiting importation of new products would mean that the existing level of risk posed by ACPs would not be increased.

Non-regulatory approaches, such as awareness-raising about the risks of asbestos, were considered but deemed to be insufficient to have any real impact on the problem identified, as current imports are either provided by suppliers with no real choice for importers, or unknowingly contain asbestos.

There are uncertainties in this analysis around the volume of ACPs currently being imported. Consultation indicates that this is likely to be small, but as there is no requirement or means to accurately record ACP imports, there is a degree of uncertainty about the exact scale of the problem. It is also not possible to precisely quantify the impacts of exposure, as it is often difficult to identify causation of health impacts, particularly when there is a long latency period between asbestos exposure and the onset of disease. However, a precautionary approach is appropriate, due to the significant impact of asbestos related illness and death.

Costs on businesses that may still be importing ACPs are also difficult to accurately quantify. However, consultation responses have indicated that the cost is not likely to be significant in the majority of cases. Using a permitting system would allow for disproportionately large costs to be mitigated against.

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Background and Status Quo

1. Exposure to asbestos is a well-documented health risk. While asbestos is generally safe when it is contained within a product and remains undisturbed, harm can occur when asbestos containing products (ACPs) are disturbed or broken up, releasing fibres into the air that are subsequently inhaled. Inhalation of asbestos leads to a range of respiratory diseases, including:
 - a. Pleural plaques (thickening of membranes around the lungs)
 - b. Asbestosis (scarring of lung tissue that can inhibit breathing)
 - c. Mesothelioma (an aggressive form of cancer that develops on the outer surface of the chest and abdominal cavities)
 - d. Lung cancer.
2. Asbestos was widely used in New Zealand between the 1930s and 1980s in a range of products, particularly building materials, insulation materials and friction products such as brake pads. The majority of asbestos related disease is linked to historic workplace exposure, particularly in the construction and building maintenance industries where these products were widely used.
3. It has been estimated that approximately 170 of 600-900 deaths from workplace disease in 2010 were caused by asbestos, making it the single biggest cause of work-related mortality.¹
4. Asbestos related diseases have a long latency period between exposure and the onset of disease symptoms, typically between 20 and 50 years. The current toll from disease is therefore primarily the result of historic exposure, before more stringent regulations were put in place on work involving asbestos, and is likely to decline in the future.

International context

5. Global production and consumption of ACPs has steadily declined since the 1980s, due to increasing awareness and concern about the adverse health effects from asbestos exposure. While there is still ongoing production in some countries, ACPs are no longer widely used and non-ACP alternative products are used in their place.
6. Reflecting this awareness of the health risks, at least 54 countries have introduced partial or total bans on asbestos. This includes the European Union, which prohibits supply, sale and use, with various exemptions,

¹ Estimates are taken from: Ministry of Business, Innovation and Employment, 2013, *Work-Related Disease in New Zealand*.

and Australia, which introduced a comprehensive ban on asbestos and ACPs in 2003.

Current use of ACPs in New Zealand

7. New Zealand's use of ACPs reflects the global trend away from asbestos. The volume of ACPs entering New Zealand has steadily declined and there is currently only a small amount believed to be entering the country.²
8. The Ministry for the Environment commissioned research in 2014 titled *Inventory of New Zealand Imports and Exports of Asbestos-Containing Products* (the Inventory). The Inventory found that most historic uses of asbestos have been discontinued and the use of asbestos-free alternative products has become the norm. A few residual uses of ACPs were identified, but most users that were contacted during this research saw no problem in having to switch to alternatives. A potential need for ongoing use of ACPs was identified only in the marine and aviation industries.
9. The findings of the Inventory were supported by a targeted consultation process carried out in 2015, focusing on those industries (primarily aviation and marine) identified as being likely to still be importing ACPs. This consultation also found that most respondents no longer used ACPs and felt there would be very little or no impact from a potential prohibition on importing ACPs. Some concerns were raised however about the implications of a prohibition on their business. A summary of the main concerns raised is included in the consultation section below.

Current regulatory settings

10. Current regulation does not prohibit the importation of ACPs and they can legally be bought into New Zealand.
11. Asbestos is considered a hazardous substance under the Hazardous Substances and New Organisms (HSNO) Act 1996, due to its toxic properties. In its raw form, it is not approved under the Act for manufacture or importation into New Zealand, but manufactured products that contain asbestos are not covered by the Act.

² Some information can be gathered from Customs' data, based on codes which specify the presence of asbestos in a product. An indicative analysis found approximately \$5.8 million worth of ACP imports for 2013. However, this was at odds with concurrent survey responses suggesting a far smaller amount of imports. This may be the result of products not being coded correctly, particularly where Customs brokers or clearance agents who enter the data are not aware of product composition.

12. The adverse effects of asbestos in places of work are regulated by the Health and Safety in Employment (Asbestos) Regulations 1998. These regulations only deal with existing asbestos and do not address importation.

Problem Definition

13. Under current regulatory settings, ACPs can be legally imported into New Zealand. The scope of the HSNO Act does not extend to manufactured products (with a few specific exceptions such as persistent organic pollutants and explosives) and ACPs are therefore not subject to the prohibition on importation placed on raw asbestos under HSNO.
14. The existing stock of ACPs in New Zealand presents a risk of exposure to asbestos, which leads to significant health impacts. The absence of a prohibition on ACPs means that this stock can be increased by future imports and an increased risk of exposure as a result.
15. The absence of regulation also means that there is no way to be certain of what ACPs are entering New Zealand, where they are being used and whether or not they are being managed safely.

Objectives

16. The primary objective of the policy is to reduce the risk of exposure to asbestos and the adverse health implications this can result in, by limiting additional ACPs entering New Zealand.
17. In achieving this objective, it is also desirable to:
 - a. Avoid placing a disproportionate cost, relative to the risk of exposure, on businesses that have a demonstrable need to import ACPs.
 - b. Minimise the administrative burden and cost to government from any intervention.

Options and Impact Analysis

18. The options analysis has considered the impacts of retaining the status quo and not implementing any prohibition. It has also considered two primary options for introducing a prohibition – an absolute prohibition with no possibility of exemption, or a conditional prohibition, where

importation would be allowed, subject to meeting a set of required conditions and being granted a permit to import.

19. Other settings for implementing a prohibition have been considered (for example the legislative vehicle to use or the agency that might issue importation permits) but these have been considered within the broader options of absolute or conditional prohibition.

Criteria for assessment

20. The following criteria have been used to assess each option against the policy objectives:
 1. The ability of the option to minimise the risk of future asbestos exposure, and subsequent health impacts, from new ACPs
 2. The cost that the option would place on businesses that would stand to be affected by a prohibition on ACPs
 3. The cost that would be placed on government from implementing the option.
21. Criteria 1 is the primary criteria, as meeting this criteria is required to achieve the policy objectives. The other criteria are secondary considerations and have accordingly been given lesser weighting.
22. A summary of the options and assessment against criteria is set out in the table below:

Option	Description	Criteria 1: Health impacts	Criteria 2: Cost to business	Criteria 3: Cost to government
Status Quo	ACPs still able to be imported	X Does not address the potential health risk of imported ACPs	✓ Imposes no additional cost on business	✓ Imposes no additional cost or administrative burden on government
Absolute prohibition	Complete prohibition with no exemptions	✓ Provides the most complete means to minimise health risks	X Has the potential to have significant cost implications for a minority of businesses, even where the risk of asbestos exposure is relatively small	✓ Minimal cost, only relating to any enforcement action required to be taken

Conditional prohibition	Prohibition imposed, but importation allowed in selected circumstances through a permitting system	✓ Would minimise health risks by prohibiting the majority of ACPs. Those that could be imported would be subject to requirements on managing risk	✓ Permitting system mitigates the potential for disproportionate cost being imposed	✓ Administering a permitting scheme would place some cost placed on government. This could be largely recovered from permit applicants.
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Option 1 – Status quo

23. Retaining the status quo would mean that ACPs would still be able to be legally imported into New Zealand. There would be no requirement to determine whether a product being imported contains asbestos or not and there would be no way of reliably determining how much would be entering the country and where ACPs are being used.
24. The current volume of ACPs being imported is small and therefore the existing level of risk of exposure is not considered to be increasing significantly. In general, international awareness of the risks of asbestos and the development of viable, cost-effective alternatives over the past few decades have served to minimise the likelihood of exposure from new products.
25. It is not possible to accurately quantify the impacts of exposure, due to uncertainties around causation of many health impacts and also due to the long latency period between exposure and the onset of disease. However, while the level of risk is directly related to the cumulative exposure experienced over time, even small amounts of exposure can lead to negative health impacts.
26. The cost of even a small number of asbestos-related disease cases would still be significant. For example, the Ministry of Health estimated in 2011 that a single case of cancer costed the public health system an average of just over \$20,000. Estimates of the social costs of fatalities are also high – the Ministry of Transport’s ‘value of statistical life’, or VOSL, puts the cost of a fatality at \$4.06 million in June 2015 prices.³

³ The VOSL uses willingness-to-pay techniques to express pain and suffering from loss of life or life quality in dollar terms.

27. The status quo would also mean that there would remain a potential for future increases in imports, from countries where ACPs are more widely produced and used, such as Russia, China and India. In the absence of any regulation, it would be difficult to respond rapidly and effectively (for example, by preventing imports crossing the border or by enabling a recall of products) if there was a sudden large influx of ACPs.
28. The status quo would achieve both of the secondary objectives, by not imposing any additional cost on either businesses or government. However it fails to meet the primary objective as it would have no impact on the identified health risk posed by ACPs.

Option 2 – Absolute prohibition on importing ACPs

29. An absolute prohibition could be placed on ACPs, preventing importation of any product containing asbestos, regardless of the quantity or nature of the asbestos in the product, the use to which it would be put or the impacts this would have on existing businesses.
30. This option would have the most significant impact on the primary objective of minimising health risks posed by ACPs. It would effectively provide a date from which no new asbestos would be entering New Zealand in any form. While the existing stock of asbestos present in older buildings and other products would remain, the risk posed by this stock would not increase. Rather, as it was removed and disposed of over time, New Zealand would gradually become entirely asbestos-free.
31. An absolute prohibition would be relatively simple to establish through regulation and would have no on-going administrative cost, with the exception of any enforcement action that might be required. It would therefore meet the objective of minimising administrative burden and cost.
32. While an absolute prohibition would have no negative impact on the majority of New Zealand businesses who have no need for ACPs or who have already phased them out, it would have implications for a small minority of businesses.
33. Imposing a prohibition would mean that those who are still importing ACPs would need to source an alternative product that they could use to fulfil the same function as the existing ACP. In some cases this could present a significant additional cost, or there could be no viable alternatives available.
34. The targeted consultation carried out in 2015 questioned respondents on these potential costs. A range of impacts were identified and are summarised in the consultation section of this paper.

35. While the cost implications of the identified impacts are generally easily quantifiable, it seems likely that an absolute prohibition would create the potential for imposing a significant cost that would be disproportionate to the risk posed by the ACP in question. It should be noted that for the uses identified, the asbestos is generally contained within a product and would not easily be disturbed, and would therefore present only a minimal risk of exposure.
36. It is possible that not all uses and importation of ACPs have been identified. While it is unlikely that there is any major unidentified use, some additional uses may well be identified over time, which may also be subject to the types of cost implications identified above.
37. As a result, imposing an absolute prohibition would not be likely to meet the objective of avoiding disproportionate costs on businesses in some cases.

Option 3 – Conditional prohibition on importing ACPs

38. Option 3 would involve introducing a prohibition on importing ACPs, but allowing for exemptions from prohibition in specific circumstances.
39. Prohibition would be implemented by making an Order in Council under the Imports and Exports (Restrictions) Act 1988 (IERA). This is the preferred legislative vehicle for the following reasons:
 - a. the purpose of the IERA is to regulate imports and exports and its provisions are well suited to prohibiting ACPs
 - b. a prohibition under the IERA could apply to all types and uses of ACPs
 - c. under the IERA, restrictions of importation of goods into New Zealand are made in the public interest. Preventing the health risks arising from asbestos exposure would meet this public interest test
 - d. the IERA allows for conditional prohibition, which provides for exemptions to be allowed under specific circumstances.
40. Other options considered were found to be less suitable, as they would either not effectively manage importation or would be an inefficient or overly complicated solution to the problem. For example:
 - The Waste Minimisation Act 2008 allows for regulations to control or prohibit the manufacture, sale, or disposal of products that contain specific materials. However it would not stop importation of ACPs directly for use.

- The HSNO Act could be amended to apply to manufactured articles, but this would be complex, costly and time-consuming and would have major flow-on impacts on other substances and products.
 - Specific imports can be prohibited under the Customs and Excise Act 1996, but these bans are only intended to be temporary and would require constant renewal.
41. The IERA allows for prohibitions on importation to be made on a conditional basis. A conditional prohibition would allow for goods to be imported, subject to the granting of a license or permit or to prescribed conditions set out in the Order.
 42. A conditional prohibition would ensure that businesses are not faced with costs that are grossly disproportionate to the level of risk posed by ACPs. This would be achieved by granting a permit to import if:
 - a. the importer can demonstrate that there is no alternative product available for importation that would fulfil the same function and that does not contain asbestos; or
 - b. that importing an alternative product would impose a cost that would be grossly disproportionate to the risk of asbestos exposure; and
 - c. the importer can demonstrate that they are able to appropriately manage any risk of asbestos exposure.
 43. Using this approach would provide the flexibility to allow for ACP imports on a case-by-case basis, depending on the individual merits of an application. It would ensure that exemptions would only be granted in a specific, limited set of circumstances, where there is clearly a justifiable reason for importation. It would also ensure that any risks of exposure would be actively controlled and minimised.
 44. A permitting scheme would act as a disincentive to those who may wish to import ACPs. Having to make a case that could be justified under the conditions above would entail a degree of effort and cost for applicants (both in terms of making the application itself and paying a fee to the administering agency for the permit).
 45. It may also be the case that a number of importers may find it preferable to simply shift to a non-ACP alternative and absorb any additional cost, rather than go through the permitting process, which would eliminate some of the more marginal applications.
 46. Issuing of permits would allow for the administering agency to be aware of where and how any new ACPs are being used. The IERA requires a

register to be kept, including details of the person who was granted the permit, the types and quantities of goods imported and any terms and conditions required to be met. The permitting agency may also impose additional conditions, for example, on providing information about the movement and location of the goods, or conditions on labelling, packaging, handling, or disposal of the goods.

47. Under the status quo there are no similar requirements, and as such there is no clear picture of where ACPs currently are in New Zealand and how they are being managed. This poses a risk of people inadvertently coming into contact with asbestos. A permitting system would minimise this risk in regard to any new ACP imports.
48. This option would enable the primary objective to be adequately met. Most ACPs would no longer be able to be imported, minimising the risk of future exposure. Those that were able to be imported, would be subject to the conditions of the permit and would therefore pose only a minimal risk.
49. A conditional prohibition would also meet the secondary objective of avoiding disproportionate costs on businesses. Those who would genuinely be faced with significant costs would be able to import under the conditions of a permit, while those who might only experience a minimal, or no impact would not be able to.
50. This option would however create the largest administrative and cost burden on government. Administering a permitting scheme would entail ongoing operating costs for the responsible agency.
51. The administering agency is proposed to be the Environmental Protection Authority (EPA). The EPA already administers permits under the IERA to allow for the exportation of banned or severely restricted hazardous chemicals and hazardous waste, and under the Ozone Layer Protection Act 1996 for the importation of goods containing ozone depleting substances. The EPA also has the technical expertise to assess health risks arising from hazardous substances.
52. Based on the EPA's cost of administering exemptions under the Ozone Layer Protection Act, the direct cost of considering and granting an average application is estimated at \$650 (excluding GST) per application. This is an average figure and a significantly more complicated application could entail a greater cost.
53. The IERA allows for applicants to be charged for the purposes of considering and granting permits. The cost to the EPA would be largely offset by using this provision to charge a fee for permits, with the

potential to charge an additional hourly fee, estimated at \$116 (excluding GST), for the additional time and resource required.

54. There would also be some cost that would not be recoverable under the IERA, such as costs for publicity, education and assisting enforcement activity. The EPA has estimated this cost to be approximately \$100,000 and notes that additional funding would be required to carry out the new functions, as this cannot be met from within existing baselines.

Consultation

55. Cabinet authorised a targeted consultation process in August 2015. A small number of industries were selected for consultation having been identified as currently importing ACPs in the Inventory. Consultation was carried out through email and phone interviews with a representative sample of aviation, marine, electricity generation and supply and water utility companies, and with the Council of Trade Unions. In total, 29 businesses and organisations were consulted with, including nine in the aviation industry, 12 in marine, four in electricity generation and supply, three in water supply and one worker representative organisation. The NZDF was also contact in regard to their operational needs for ACPs.
56. Those consulted were asked to identify whether or not they imported any ACPs and what the impact on their business would be if ACPs were to be prohibited. These responses were used to make a more robust assessment of the costs and benefits of a prohibition and whether or not any exemptions might be justified.
57. The following impacts were reported:
 - a. *Brake pads and engine gaskets used in aviation and engine gaskets in the marine industry.* Costs were not able to be quantified as the respondents were unsure about where they would be able to source alternatives from. It was noted that in many cases they were not able to be sure about the presence of asbestos or not, and that they were largely dependent on what was provided by large overseas suppliers.
 - b. *Use of ACPs for historic restoration purposes in the marine industry.* Original parts still sometimes contain asbestos and genuine alternatives are not available.
 - c. *ACPs in large-scale machinery used for electricity generation.* While alternatives are available, replacing failed parts in large pieces of machinery with long service lives would be uneconomic unless it was part of a major refurbishment or replacement project.

- d. *Gaskets in large LPG storage tanks.* Changing to an alternative tank design to avoid the use of this gasket would be a complex and expensive process, costing between \$5,000 and \$7,000 per tank.
 - e. *ACP use in New Zealand Defence Force aircraft.* The NZDF identified ACPs in two types of aircraft and due to the nature of these aircraft and their age, there are no viable alternatives. Not being able to utilise these parts would have a significant impact on the NZDF's operational commitments.
58. In order to ensure the consistency of the proposed prohibition with New Zealand's international trade obligations, The World Trade Organisation's (WTO) Committee on Technical Barriers to Trade was formally notified. No comments or concerns about a proposed prohibition were received from WTO members.
59. The following government agencies were involved in the development of or consulted on these proposals: The Ministry of Business, Innovation and Employment, the Ministry of Health, the Ministry of Foreign Affairs and Trade, the Environmental Protection Authority, WorkSafe New Zealand, the New Zealand Customs Service, the New Zealand Defence Force, and Treasury.
60. Given the targeted nature of the previous round of consultation, broader public consultation will be carried out through the release of an exposure draft of the Order in Council, prior to final Cabinet approval and submission to the Executive Council.

Conclusion and Recommendations

61. Although the volume of ACPs being imported into New Zealand is small, as international trends have led to a significant reduction in asbestos use over the past few decades, the absence of a prohibition presents a public health risk. Government intervention through prohibition can be justified as a means to mitigate this risk.
62. An absolute prohibition would, in some cases, be a disproportionate response to the problem identified. There are some limited cases where continued ACP importation can be justified, provided the potential health risks are appropriately managed.
63. The Ministry therefore recommends introducing a conditional prohibition as outlined in option three. This option fulfils the primary objective of minimising the public health risk associated with asbestos exposure and strikes an appropriate balance between health benefits and avoidance of disproportionate cost to business.

Implementation

64. A prohibition would be put in place by making an Order in Council under the IERA. This would establish the restriction on importing ACPs and set out the conditions under which the EPA could grant permits for importation.
65. Implementing the permitting scheme would be led by the EPA, as the administering agency. Publicity of the prohibition would be required, specifically targeting the industries which are most likely to make permit applications.
66. Guidance on how the permitting process works, what the conditions are and how these can be met would need to be developed and made available before a prohibition came into force.

Compliance and Enforcement

67. Enforcing a prohibition on importing ACPs would be largely carried out by Customs stopping goods at the border and ensuring that the importer has a permit before uplifting the goods. Under the IERA, Customs is also responsible for initiating any prosecutions under the Act.
68. It is likely however, that not all goods would be recognised and stopped at the border. It is not always clear when products do contain asbestos, if they are not labelled as such, and a definitive assessment would require laboratory testing. It is also likely that ACPs would be imported unknowingly, as importers are not always aware of the composition of the goods they are importing. Even in countries where prohibition is in place, such as Australia, there are cases reported of ACPs still being imported.
69. Having a prohibition in place would allow for action to be taken if ACPs were found to have been illegally imported. This could take the form of a prosecution under the IERA, or it could provide grounds for initiating a product recall under the Fair Trading Act 1986.⁴
70. The EPA would not have any direct enforcement powers or responsibilities. However it would, to the extent that it would be able to, support Customs in its enforcement at the border and other agencies that may enforce other legislation where this related to illegal imports of asbestos products.

⁴ By way of example, in 2012 cars containing ACPs were imported into New Zealand, but no recall was made once the presence of asbestos was detected. In Australia, where a prohibition is already in place, the same cars were recalled.

Monitoring, Evaluation and Review

71. The EPA will monitor the number of applications made, the assessment process and the permits that are issued on an on-going basis. This will ensure that any issues around the appropriateness of the conditions can be identified, for example if they appear to be too stringent or too lenient to achieve the policy goals.
72. Once the permitting system has been implemented, the EPA will also be in a position to review the charging provisions to ensure that there is not an undue cost being borne by the EPA, or that fees are not set at a level that undermines the objectives of the policy.