



## Health and Safety at Work (Asbestos) Regulations 2016

Jerry Mateparae, Governor-General

### Order in Council

At Wellington this 15th day of February 2016

Present:

His Excellency the Governor-General in Council

These regulations are made under sections 24(1)(m), 211, and 218 of the Health and Safety at Work Act 2015—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety after complying with sections 217 and 219 of that Act.

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## Regulations

### 1 Title

These regulations are the Health and Safety at Work (Asbestos) Regulations 2016.

### 2 Commencement

These regulations come into force on 4 April 2016.

## Part 1

### Preliminary provisions and declaration of notifiable incident

#### Subpart 1—Preliminary provisions

### 3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

**accredited laboratory** means a laboratory that is—

- (a) accredited by International Accreditation New Zealand (IANZ); or
  - (b) accredited under another accreditation regime recognised by WorkSafe;
- or

- (c) approved by WorkSafe to test samples under these regulations for up to 12 months while the laboratory is in the process of obtaining accreditation under paragraph (a) or (b)

**Act** means the Health and Safety at Work Act 2015

**airborne contamination standard for asbestos** means the standard specified in regulation 4

**approved code of practice** means a code of practice approved under section 222 of the Act

**asbestos** means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock-forming minerals, including the following:

- (a) actinolite asbestos:
- (b) grunerite (or amosite) asbestos (brown):
- (c) anthophyllite asbestos:
- (d) chrysotile asbestos (white):
- (e) crocidolite asbestos (blue):
- (f) tremolite asbestos:
- (g) a mixture that contains 1 or more of the minerals referred to in paragraphs (a) to (f)

**asbestos-containing material** or **ACM** means any material or thing that, as part of its design, contains asbestos

**asbestos-contaminated dust or debris** or **ACD** means dust or debris that has settled within a workplace and is, or is assumed to be, contaminated with asbestos

**asbestos-contaminated soil** means soil that is contaminated with asbestos or ACM

**asbestos management plan** has the meaning given in regulation 13

**asbestos-related work** means work involving asbestos (other than asbestos removal work to which Part 3 applies) that is permitted under the exceptions set out in regulation 7(2), (3), and (4)

**asbestos removal area**—

- (a) means an area in which asbestos removal work is carried out; and
- (b) includes—
  - (i) any of the following related to the work:
    - (A) a decontamination facility:
    - (B) an enclosure:
    - (C) an area through which asbestos, asbestos-contaminated soil, or ACM is transported:

- (ii) any area defined in an asbestos removal control plan as part of the asbestos removal area

**asbestos removal licence** means a Class A or Class B asbestos removal licence

**asbestos removal work** means,—

- (a) except in Part 6, work involving the removal of asbestos or asbestos-contaminated soil or asbestos-containing material; or
- (b) in Part 6, Class A or Class B asbestos removal work

**asbestos removalist** means a PCBU who carries out asbestos removal work

**asbestos waste** means asbestos or asbestos-contaminated soil or asbestos-containing material removed, and disposable items used, during asbestos removal work, including plastic sheeting and disposable tools

**certificate**, in relation to a relevant course, means a statement of attainment issued by the course provider that states that the person to whom it is issued has successfully completed the relevant course

**certified safety management system** means a safety management system that—

- (a) an auditor accredited by JAS-ANZ or NATA has certified as being compliant with—
  - (i) Australia/New Zealand Standard AS/NZS 4801:2001 (Occupational Health and Safety Management Systems); or
  - (ii) another international standard recognised by WorkSafe; and
- (b) meets any requirements prescribed in a safe work instrument

**Class A asbestos removal licence** means a licence granted under regulation 64 authorising the holder to carry out Class A asbestos removal work

**Class A asbestos removal work** means work specified in regulation 54(1) and (2) for which a Class A asbestos removal licence is required

**Class B asbestos removal licence** means a licence granted under regulation 64 authorising the holder to carry out Class B asbestos removal work

**Class B asbestos removal work** means work specified in regulation 56(1) and (2) for which a Class B asbestos removal licence is required

**competent person** means a person who has the knowledge, experience, skills, and qualifications to carry out a particular task under these regulations, including any knowledge, experience, skills, and qualifications prescribed in a safe work instrument

**construct** includes assemble, erect, reconstruct, reassemble, and re-erect

**corresponding jurisdiction** means an Australian State or territory

**corresponding law** means a law of a corresponding jurisdiction that regulates work involving asbestos

**corresponding regulator** means a regulator under a corresponding law

**demolition**—

- (a) means work to demolish or dismantle a structure, or part of a structure that is loadbearing or otherwise related to the physical integrity of the structure; but
- (b) does not include—
  - (i) the dismantling of formwork, falsework, or other structures designed or used to provide support, access, or containment during construction work; or
  - (ii) the removal of power, light, or telecommunication poles

**emergency** has the meaning given in regulation 23

**former Act** means the Health and Safety in Employment Act 1992 and any regulations made under that Act

**friable**, in relation to asbestos or ACM, means in a powder form or able to be crumbled, pulverised, or reduced to a powder by hand pressure when dry

**high-pressure water spray** means water pressurised by positive displacement pumps that have an output capability of more than 350 kPa

**licensed asbestos removal work** means asbestos removal work for which a Class A asbestos removal licence or a Class B asbestos removal licence is required

**licensed asbestos removalist** means a PCBU who is licensed under these regulations to carry out Class A asbestos removal work or Class B asbestos removal work

**naturally occurring asbestos** means the natural geological occurrence of asbestos minerals found in association with geological deposits such as rock, sediment, or soil

**non-friable**, in relation to asbestos or ACM, means not friable (and for the purposes of this definition, asbestos and ACM include material containing asbestos fibres reinforced with a bonding compound)

**readily accessible**, in relation to a duty to provide a document, means that the document is capable of being accessed without difficulty in hard copy, electronic form, or any other form

**relevant course**, in relation to a particular type of asbestos removal work or asbestos-related work, means a course prescribed as a relevant course for that type of work under a safe work instrument

**respirable asbestos fibre** means an asbestos fibre that—

- (a) is less than 3 micrometres wide; and
- (b) is more than 5 micrometres long; and
- (c) has a length-to-width ratio of more than 3:1



**trace level** means, in air, an average concentration over any 8-hour period of less than 0.01 respirable asbestos fibres per millilitre of air

**training record** means a written record of the training undertaken by the worker that is relevant to asbestos removal, including details of the training provider and the dates on which the training took place.

- (2) Terms or expressions used and not defined in these regulations but defined in the Act have, in these regulations, the same meaning as in the Act.

#### **4 Airborne contamination standard for asbestos**

For the purposes of these regulations, the **airborne contamination standard for asbestos** is an average concentration over any 8-hour period of 0.1 respirable asbestos fibres per millilitre of air.

#### **5 Transitional, savings, and related provisions**

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

### Subpart 2—Declaration of notifiable incident

#### **6 Declaration of notifiable incident**

The following incidents are declared to be notifiable incidents under section 24(1)(m) of the Act:

- (a) events (relating to the emergency demolition of a structure or plant containing asbestos) that trigger the application of regulation 23 or 24 (*see* regulations 23(1) and 24(1));
- (b) recorded respirable asbestos fibre levels at an asbestos removal area being at or above 0.02 fibres/ml (*see* regulation 45).

## **Part 2**

### **Work involving asbestos**

#### Subpart 1—Conduct and general duties

#### **7 Prohibition on carrying out, directing, or allowing work involving asbestos or ACM**

- (1) A PCBU must not carry out, or direct or allow a worker to carry out, work involving asbestos.
- (2) Subclause (1) does not apply if the work involving asbestos is any of the following:
  - (a) genuine research and analysis;
  - (b) sampling and identification in accordance with these regulations;

- (c) removal or disposal of asbestos or ACM, including demolition work, in accordance with these regulations:
  - (d) the transport and disposal of asbestos or asbestos waste in accordance with these regulations:
  - (e) demonstrations, education, or practical training in relation to asbestos or ACM:
  - (f) fire-fighting:
  - (g) a response to an emergency:
  - (h) maintenance and servicing work involving ACM in accordance with these regulations:
  - (i) rectifying work to ACM undertaken in accordance with these regulations:
  - (j) display, or preparation or maintenance for display, of an artefact or thing that is, or includes, asbestos or ACM:
  - (k) work that disturbs asbestos during mining operations that involve the extraction of, or exploration for, a mineral other than asbestos:
  - (l) laundering asbestos-contaminated clothing in accordance with these regulations.
- (3) Subclause (1) does not apply if the work is carried out in accordance with a method approved by WorkSafe under regulation 8.
- (4) Subclause (1) does not apply to work involving—
- (a) soil that a competent person has determined does not contain ACM or friable asbestos in a quantity that is likely to lead to airborne contamination at a level that exceeds trace level; or
  - (b) naturally occurring asbestos managed in accordance with an asbestos management plan prepared under regulation 13.
- (5) For the purposes of this regulation, work **involves** asbestos if the work involves manufacturing, supplying, transporting, storing, removing, using, installing, handling, treating, disposing of, or disturbing asbestos or ACM.
- (6) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000:
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 419

## **8 WorkSafe may approve method for managing risk associated with asbestos**

- (1) WorkSafe may, on application by a PCBU or on its own initiative, approve a method for managing the risk associated with asbestos at the workplace.

- (2) WorkSafe may approve a method under subclause (1) only if it is satisfied on reasonable grounds that the method will be effective.
- (3) A decision on an application must be made by WorkSafe within 120 days of receipt of the application.
- (4) WorkSafe must, if it regards an application as incomplete, give the applicant a reasonable opportunity to provide the additional information required.
- (5) WorkSafe must, if it proposes to refuse an application, give the applicant a reasonable opportunity to comment on the proposed refusal.
- (6) WorkSafe must notify the applicant in writing of the reasons for a decision to refuse to approve a method.
- (7) WorkSafe may—
  - (a) withdraw its approval of a method for managing the risk associated with asbestos at the workplace; or
  - (b) make changes to an approved method.
- (8) Before taking any action under subclause (7), WorkSafe must give the original applicant (if any) written notice of the proposed action and a reasonable opportunity to respond.

## **9 Duty relating to exposure to airborne asbestos at workplace**

- (1) A PCBU with management or control of a workplace must ensure that—
  - (a) exposure of a person at the workplace to airborne asbestos is eliminated so far as is reasonably practicable; and
  - (b) if it is not reasonably practicable to eliminate exposure to airborne asbestos, exposure is minimised so far as is reasonably practicable.
- (2) A PCBU with management or control of a workplace must ensure that the airborne contamination standard for asbestos is not exceeded at the workplace.
- (3) Subclauses (1)(a) and (2) do not apply in relation to an asbestos removal area—
  - (a) that is enclosed to prevent the release of respirable asbestos fibres in accordance with regulation 46; and
  - (b) in which negative pressure is used in accordance with that regulation.
- (4) A PCBU who contravenes subclause (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 420

## Subpart 2—Management of asbestos risks

### 10 Duty to ensure asbestos identified at workplace

- (1) A PCBU with management or control of a workplace who knows or ought reasonably to know that there is a risk of exposure to respirable asbestos fibres in the workplace must ensure, so far as is reasonably practicable, that all asbestos or ACM giving rise to the risk at the workplace is identified.
- (2) A PCBU with management or control of a workplace must,—
  - (a) if material at the workplace cannot be identified but the PCBU reasonably believes that the material is asbestos or ACM, assume that the material is asbestos; and
  - (b) if part of the workplace is inaccessible to workers and likely to contain asbestos or ACM, assume that asbestos is present in that part of the workplace.
- (3) Subclause (1) does not apply if the PCBU—
  - (a) assumes that asbestos or ACM is present; or
  - (b) has reasonable grounds to believe that asbestos or ACM is not present.
- (4) Subclause (1) does not apply in relation to soil at the workplace unless there is reasonable cause for the PCBU to suspect that asbestos-contaminated soil is present.
- (5) If asbestos or ACM is assumed to be present at a workplace, it is taken to be identified at the workplace.
- (6) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 422

### 11 Duty to analyse samples

- (1) A PCBU with management or control of a workplace may identify asbestos or ACM by arranging for a sample of material at the workplace to be analysed for the presence of asbestos or ACM.
- (2) If a PCBU with management or control of a workplace arranges for an analysis, the PCBU must ensure that the sample is analysed by an accredited laboratory.
- (3) A PCBU who contravenes subclause (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000;
  - (b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 423

**12 Duty to ensure presence and location of asbestos indicated**

- (1) A PCBU with management or control of a workplace must ensure that the presence and location of asbestos or ACM identified at the workplace under regulation 10 are clearly indicated (and in a way that complies with the requirements of any applicable safe work instrument).
- (2) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 424

**13 Duty to prepare asbestos management plan**

- (1) This regulation applies if asbestos or ACM is—
  - (a) identified at a workplace under regulation 10; or
  - (b) likely to be present at a workplace from time to time.
- (2) A PCBU with management or control of the workplace must ensure that a written plan (an **asbestos management plan**) for the workplace is prepared.
- (3) A PCBU with management or control of the workplace must ensure that the information in the asbestos management plan is kept up to date.
- (4) An asbestos management plan must include information about the following:
  - (a) the identification of asbestos or ACM;
  - (b) decisions, and reasons for decisions, about the management of the risk arising from asbestos at the workplace;
  - (c) procedures for detailing incidents or emergencies involving asbestos or ACM at the workplace;
  - (d) the workers who carry out work involving asbestos, including—
    - (i) information and training that has been and will be provided to the workers;
    - (ii) roles and responsibilities of the workers;
    - (iii) any health monitoring of the workers that has been or will be undertaken.
- (5) A PCBU with management or control of a workplace must ensure that a copy of the asbestos management plan for the workplace is readily accessible to—
  - (a) a worker who has carried out, carries out, or intends to carry out work at the workplace; and
  - (b) a representative of a worker referred to in paragraph (a); and
  - (c) a PCBU who has carried out, carries out, or intends to carry out work at the workplace; and

- (d) a PCBU who has required, requires, or intends to require work to be carried out at the workplace.
- (6) A PCBU who contravenes subclause (2) or (3) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.
- (7) A PCBU who contravenes subclause (5) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 429

#### **14 Duty to review asbestos management plan**

- (1) A PCBU with management or control of a workplace that has an asbestos management plan must ensure that the plan is reviewed and, if necessary, revised if—
  - (a) there is a review of a control measure;
  - (b) asbestos is removed from, or disturbed, sealed, or enclosed at, the workplace;
  - (c) the plan is no longer adequate for managing the risk arising from asbestos or ACM at the workplace;
  - (d) a representative requests a review under subclause (2);
  - (e) 5 years have passed since the plan was last reviewed.
- (2) A representative for workers at a workplace may request a review of an asbestos management plan if the representative reasonably believes that—
  - (a) a circumstance referred to in subclause (1)(a), (b), or (c) affects or may affect the health and safety of a member of the work group represented by the representative; and
  - (b) the PCBU with management and control of the workplace has not adequately reviewed the asbestos management plan in response to the circumstance.
- (3) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 430

### Subpart 3—Health monitoring, training, and use of equipment

#### 15 Duty to provide health monitoring

- (1) A PCBU must ensure that health monitoring is provided in accordance with regulation 16, and with Part 3 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, to a worker carrying out work for the business or undertaking if the worker is—
  - (a) carrying out licensed asbestos removal work at a workplace and is at risk of exposure to asbestos when carrying out the work; or
  - (b) carrying out other ongoing asbestos removal work or asbestos-related work and is at risk of exposure to asbestos when carrying out the work.
- (2) For the purposes of subclause (1)(a), the PCBU must ensure that the health monitoring of the worker commences within 4 weeks of the worker starting to carry out licensed asbestos removal work.
- (3) Subclauses (1) and (2) do not apply to a PCBU in respect of a worker engaged by 1 or more holders of a Class B asbestos removal licence to engage in Class B asbestos removal work for a total of not more than 4 weeks in any 12-month period.
- (4) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 435(1), (2)

#### 16 Duty to ensure that appropriate health monitoring is provided

- (1) A PCBU must ensure that (unless another type of health monitoring is recommended by a medical practitioner) the health monitoring of a worker referred to in regulation 15 includes—
  - (a) consideration of—
    - (i) the worker's demographic, medical, and occupational history; and
    - (ii) records of the worker's personal exposure to asbestos; and
  - (b) a physical examination of the worker.
- (2) In subclause (1), **medical practitioner** has the same meaning as in section 5(1) of the Health Practitioners Competence Assurance Act 2003.
- (3) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 436

**17 Duty to train workers about asbestos**

- (1) In addition to the training required by regulation 9 of the Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, a PCBU must ensure that workers who are engaged by the PCBU and who the PCBU reasonably believes may be involved in asbestos removal work or in the carrying out of asbestos-related work are trained in the identification and safe handling of, and suitable control measures for, asbestos and ACM.
- (2) This regulation does not apply in relation to a worker referred to in regulation 29.
- (3) The PCBU must ensure that a record is kept of the training undertaken by the worker—
  - (a) while the worker is carrying out the work; and
  - (b) for 5 years after the day on which the worker ceases working for that PCBU.
- (4) The PCBU must keep the record available for inspection under the Act.
- (5) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.
- (6) A PCBU who contravenes subclause (3) or (4) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000;
  - (b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 445

**18 Duty to limit use of equipment on asbestos or ACM**

- (1) A PCBU must not use, or direct or allow a worker to use, either of the following on asbestos or ACM:
  - (a) a high-pressure water spray;
  - (b) compressed air.
- (2) Subclause (1)(a) does not apply to the following:
  - (a) the use of a high-pressure water spray for fire-fighting or fire prevention purposes;
  - (b) water jetting to clear or prevent blockages in waste water or water pipe networks;
  - (c) specific instances of the use of a relevant method for managing risk associated with asbestos that is approved under regulation 8.
- (3) A PCBU must not use, or direct or allow a worker to use, any of the following equipment on asbestos or ACM unless the use of the equipment is controlled:



- (a) a power tool;
  - (b) a broom;
  - (c) any other implement that causes the release of airborne asbestos into the atmosphere.
- (4) For the purposes of subclause (3), the use of equipment is **controlled** if—
- (a) the equipment is enclosed while being used; or
  - (b) the equipment is designed to capture or suppress airborne asbestos and is used in accordance with its design; or
  - (c) the equipment is used in a way that is designed to capture or suppress airborne asbestos safely; or
  - (d) any combination of paragraphs (a), (b), and (c) applies.
- (5) A PCBU who contravenes subclause (1) or (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 446

#### Subpart 4—Demolition and refurbishment of structures and plant

##### 19 Application of this subpart

- (1) This subpart applies to the demolition or refurbishment of a structure or plant—
- (a) that was constructed or installed before 1 January 2000; or
  - (b) in which asbestos has been identified; or
  - (c) in which asbestos is likely to be present from time to time.

- (2) For the purposes of this subpart, **demolition or refurbishment** does not include minor or routine maintenance work, or other minor work.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 447

##### 20 Determining presence of asbestos or ACM

- (1) This regulation applies if demolition or refurbishment of a structure or plant is to be carried out at a workplace.
- (2) The PCBU who intends to carry out the demolition or refurbishment must not carry out the demolition or refurbishment until the structure or plant has been inspected to determine whether asbestos or ACM is fixed to or installed in the structure or plant.
- (3) The PCBU who intends to carry out the demolition or refurbishment must ensure that the determination is undertaken by a competent person.

- (4) The PCBU who is to carry out the demolition or refurbishment must assume that asbestos or ACM is fixed to or installed in the structure or plant if—
  - (a) the competent person is, on reasonable grounds, uncertain whether asbestos is fixed to or installed in the structure or plant; or
  - (b) part of the structure or plant is inaccessible and likely to be disturbed.
- (5) If asbestos or ACM is determined or assumed to be fixed to or installed in the structure or plant, the PCBU who intends to carry out the demolition or refurbishment must inform,—
  - (a) if the workplace is a home,—
    - (i) the occupier of the home; and
    - (ii) the owner of the home; and
  - (b) in any other case, the PCBU with management or control of the workplace.
- (6) A PCBU who contravenes subclause (2) or (3) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.
- (7) A PCBU who contravenes subclause (5) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 451

## **21 Duty to identify and remove asbestos before demolition of structure or plant**

- (1) This regulation applies if a structure or plant at a workplace is to be demolished.
- (2) This regulation does not apply—
  - (a) in an emergency to which regulation 23 applies; or
  - (b) to a home.
- (3) The PCBU with management or control of the workplace, or of the structure or plant, must ensure—
  - (a) that all asbestos that is likely to be disturbed by the demolition is identified; and
  - (b) so far as is reasonably practicable, that the asbestos is removed before the demolition is commenced.
- (4) Subclause (3)(b) does not apply if the purpose of the demolition is to gain access to the asbestos.

- (5) A PCBU who contravenes subclause (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 452

## **22 Duty to identify and remove asbestos before demolition of home**

- (1) A PCBU that is to carry out the demolition of a home must ensure—
- (a) that all asbestos that is likely to be disturbed by the demolition is identified; and
  - (b) so far as is reasonably practicable, that the asbestos is removed before the demolition is commenced.
- (2) This regulation does not apply in an emergency to which regulation 24 applies.
- (3) Subclause (1)(b) does not apply if the purpose of the demolition is to gain access to the asbestos.
- (4) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 453

## **23 Emergency procedure: workplace**

- (1) This regulation applies if—
- (a) an emergency occurs at a workplace other than a home; and
  - (b) a structure or plant at the workplace must be demolished; and
  - (c) asbestos is fixed to or installed in the structure or plant before the emergency occurs.
- (2) The PCBU with management or control of the workplace must ensure, so far as is reasonably practicable, that, before the demolition is commenced, a procedure is developed that will, so far as is reasonably practicable, reduce the risk of workers and persons in the vicinity of the demolition site being exposed to asbestos that is in concentrations that exceed the airborne contamination standard for asbestos.
- (3) The PCBU must not commence demolition until after the PCBU has notified WorkSafe about the emergency in accordance with section 56 of the Act.
- (4) A PCBU who contravenes subclause (2) or (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

- (5) For the purposes of subclause (1)(a) and regulation 24(1)(a), an **emergency** occurs if—
- (a) a structure or plant is structurally unsound; and
  - (b) the collapse of a structure or plant is imminent.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 454

## **24 Emergency procedure: homes**

- (1) This regulation applies if—
- (a) an emergency occurs at a home; and
  - (b) a structure or plant at the home must be demolished; and
  - (c) asbestos is fixed to or installed in the structure or plant before the emergency occurs.
- (2) A PCBU who is to carry out the demolition at the home must ensure, so far as is reasonably practicable, that, before the demolition is commenced, a procedure is developed that will, so far as is reasonably practicable, reduce the risk of workers and persons in the vicinity of the demolition site being exposed to asbestos that is in concentrations that exceed the airborne contamination standard for asbestos.
- (3) The PCBU must not commence demolition until after the PCBU has notified WorkSafe about the emergency in accordance with section 56 of the Act.
- (4) A PCBU who contravenes subclause (2) or (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 455

## **25 Duty to identify and remove asbestos before refurbishment of structure or plant**

- (1) This regulation applies if a structure or plant at a workplace is to be refurbished.
- (2) This regulation does not apply to homes.
- (3) The PCBU with management or control of the workplace, or of the structure or plant, must ensure—
- (a) that all asbestos that is likely to be disturbed by the refurbishment is identified; and
  - (b) so far as is reasonably practicable, that the asbestos is removed before the refurbishment is commenced.
- (4) A PCBU who contravenes subclause (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000:

(b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 456

## **26 Duty to identify and remove asbestos before refurbishment of home**

- (1) A PCBU who is to carry out refurbishment of a home must ensure—
- (a) that all asbestos that is likely to be disturbed by the refurbishment is identified; and
  - (b) so far as is reasonably practicable, that the asbestos is removed before the refurbishment is commenced.
- (2) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 457

## **Part 3**

### **Asbestos removal**

## **27 Duty to ensure asbestos removalist is licensed**

- (1) A PCBU who commissions the removal of asbestos must ensure that the asbestos removal work is carried out by a licensed asbestos removalist who is licensed to carry out the work.
- (2) Subclause (1) does not apply if the asbestos to be removed is,—
- (a) cumulatively over the whole course of the removal project for the site, 10 m<sup>2</sup> or less of non-friable asbestos or ACD associated with the removal of that amount of non-friable asbestos; or
  - (b) ACD that is not associated with the removal of friable or non-friable asbestos and is only a minor contamination.
- (3) If subclause (2) applies, the PCBU that commissions the asbestos removal work must ensure that the work is carried out by a competent person who has been trained in accordance with regulation 17.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 458

## **28 Duty to ensure nominated asbestos removal supervisor is present or readily available**

- (1) A person who holds an asbestos removal licence must ensure that asbestos removal work authorised by the licence is supervised by a supervisor who has been nominated to WorkSafe by the licence holder.
- (2) For the purposes of subclause (1), **supervised** includes,—

- (a) for Class A asbestos removal work, that the supervisor is present at the asbestos removal area whenever the asbestos removal work is being carried out; and
  - (b) for Class B asbestos removal work, that the supervisor is in the vicinity and is readily available to a worker carrying out asbestos removal work whenever the work is being carried out.
- (3) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) rr 459, 529

## **29 Duty to ensure asbestos removal worker is trained and receives appropriate instruction**

- (1) A licensed asbestos removalist must not direct or allow a worker to carry out licensed asbestos removal work unless the removalist is satisfied that the worker holds a certificate in relation to a relevant course for the class of licensed asbestos removal work to be carried out by the worker.
- (2) Subclause (1) does not apply in respect of a worker engaged by 1 or more holders of a Class B asbestos removal licence to engage in Class B asbestos removal work for a total of not more than 4 weeks in any 12-month period.
- (3) A licensed asbestos removalist must provide appropriate instruction to a worker who carries out licensed asbestos removal work at a workplace to ensure that the work is carried out in accordance with the asbestos removal control plan for the workplace.
- (4) In this regulation, **appropriate instruction** means instruction provided specifically—
- (a) for the type of workplace where the licensed asbestos removal work is carried out; and
  - (b) for the work to be carried out at the workplace.
- (5) A person who contravenes subclause (1) or (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 460

## **30 Duty of licensed asbestos removalist to keep training record**

- (1) A licensed asbestos removalist must, in relation to each worker engaged by the removalist to carry out licensed asbestos removal work, keep a training record—
- (a) while the worker is carrying out licensed asbestos removal work; and

- (b) for 5 years after the day on which the worker ceases carrying out licensed asbestos removal work for the removalist.
- (2) The licensed asbestos removalist must ensure that the training record is readily accessible at the asbestos removal area and available for inspection under the Act.
- (3) A person who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000;
  - (b) for any other person, to a fine not exceeding \$10,000:Compare: Model Work Health and Safety Regulations 2011 (Aust) r 461

### **31 Duty to give information about health risks of licensed asbestos removal work**

- (1) A licensed asbestos removalist must give the following information to a person likely to be engaged to carry out licensed asbestos removal work before the person is engaged to carry out the work:
  - (a) the health risks and health effects associated with exposure to asbestos;
  - (b) the need for, and details of, health monitoring of a worker carrying out licensed asbestos removal work.
- (2) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.Compare: Model Work Health and Safety Regulations 2011 (Aust) r 462

### **32 Duty to prepare asbestos removal control plan**

- (1) A licensed asbestos removalist must prepare an asbestos removal control plan for any licensed asbestos removal work the removalist is commissioned to undertake.
- (2) An asbestos removal control plan must include the following:
  - (a) details of how the asbestos removal will be carried out, including the method to be used and the tools, equipment, and personal protective equipment to be used;
  - (b) details of the asbestos to be removed, including the location, type, and condition of the asbestos;
  - (c) a detailed description of the asbestos removal area for the work and any air monitoring points;
  - (d) details of the means of transport and disposal of the asbestos waste.
- (3) The licensed asbestos removalist must give a copy of the asbestos removal control plan to the person who commissioned the licensed asbestos removal work.

- (4) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.
- (5) A person who contravenes subclause (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 464

### **33 Asbestos removal control plan to be kept and available**

- (1) Subject to subclause (2), a licensed asbestos removalist must ensure that a copy of the asbestos removal control plan prepared under regulation 32 is kept for 2 years after the asbestos removal work to which it relates is completed.
- (2) If a notifiable incident occurs in connection with the asbestos removal work to which the asbestos removal control plan relates, the licensed asbestos removalist must keep the asbestos removal control plan for at least 5 years after the incident occurs.
- (3) The licensed asbestos removalist must ensure that, for the period for which the asbestos removal control plan must be kept under this regulation, a copy is—
- (a) readily accessible to—
    - (i) a PCBU at the workplace; and
    - (ii) the workers at the workplace, or a representative of the workers; and
    - (iii) if the asbestos removal work is to be carried out in a home, the occupants of the home; and
  - (b) available for inspection under the Act.
- (4) A person who contravenes subclause (1), (2), or (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$6,000;
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 465

### **34 Duty to notify WorkSafe of asbestos removal**

- (1) A licensed asbestos removalist must give written notice to WorkSafe at least 5 days before the removalist commences licensed asbestos removal work.
- (2) Despite subclause (1), licensed asbestos removal work may be commenced immediately if there is—



- (a) a sudden and unexpected event, including a failure of equipment, that may cause persons to be exposed to respirable asbestos fibres; or
  - (b) an unexpected breakdown of an essential service that requires immediate rectification to enable the service to continue.
- (3) If the asbestos must be removed immediately, the licensed asbestos removalist must give notice to WorkSafe—
- (a) immediately by telephone; and
  - (b) in writing within 24 hours after notice is given under paragraph (a).
- (4) A notice under subclause (1) or (3)(b) must include—
- (a) the following in relation to the licensed asbestos removalist:
    - (i) name:
    - (ii) licence number:
    - (iii) business contact details:
  - (b) the name and business contact details of the supervisor of the licensed asbestos removal work:
  - (c) the name of the competent person or licensed asbestos assessor engaged to carry out a clearance inspection and issue a clearance certificate for the work:
  - (d) the name and contact details of the person for whom the work is to be carried out:
  - (e) the following in relation to the workplace where the asbestos is to be removed:
    - (i) the name, including the registered business or company name, of the PCBU with management or control of the workplace:
    - (ii) the address and, if the workplace is large, the specific location of the asbestos removal:
    - (iii) the kind of workplace:
  - (f) the date of the notice:
  - (g) the date on which the asbestos removal work is to commence and the estimated duration of the work:
  - (h) whether the asbestos to be removed is friable or non-friable:
  - (i) if the asbestos to be removed is friable, how the area of removal will be enclosed:
  - (j) the estimated quantity of asbestos to be removed and the means of transport and disposal of the asbestos waste:
  - (k) the number of workers who are to carry out the asbestos removal work:
  - (l) for each worker who is to carry out asbestos removal work, a summary of the training record for that worker.

- (5) A person who contravenes subclause (1) or (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$6,000:
  - (b) for any other person, to a fine not exceeding \$30,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 466

### **35 Duty of licensed asbestos removalist to inform certain persons about intended asbestos removal work**

- (1) This regulation applies if a licensed asbestos removalist is to carry out licensed asbestos removal work at a workplace.
- (2) The licensed asbestos removalist must, before commencing the licensed asbestos removal work, inform the PCBU with management or control of the workplace—
- (a) that licensed asbestos removal work is to be carried out at the workplace; and
  - (b) when the work is to commence.
- (3) If the workplace is a home, the licensed asbestos removalist must, before commencing the licensed asbestos removal work and so far as is reasonably practicable, inform the following persons that asbestos removal work is to be carried out at the workplace and when the work is to commence:
- (a) the person who commissioned the asbestos removal work:
  - (b) a PCBU at the workplace:
  - (c) the occupier of the home:
  - (d) the owner of the home:
  - (e) anyone occupying premises in the immediate vicinity of the workplace.
- (4) A person who contravenes subclause (2) or (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000:
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 467

### **36 Duty of PCBU to inform certain persons about intended asbestos removal work**

- (1) This regulation applies if the PCBU with management or control of a workplace is informed that asbestos removal work is to be carried out at the workplace.
- (2) The PCBU must ensure that the following persons are informed that asbestos removal work is to be carried out at the workplace and when the work is to commence, before the work commences:
- (a) the PCBU's workers and any other persons at the workplace:

- (b) the person who commissioned the asbestos removal work.
- (3) The PCBU must take all reasonable steps to ensure that the following persons are informed that asbestos removal work is to be carried out at the workplace and when the work is to commence, before the work commences:
  - (a) any PCBU at, or in the immediate vicinity of, the workplace:
  - (b) anyone occupying premises in the immediate vicinity of the workplace.
- (4) A PCBU who contravenes subclause (2) or (3) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000:
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 468

### **37 Signage and barriers for asbestos removal work**

- (1) An asbestos removalist must ensure that—
  - (a) signs are posted or erected at the asbestos removal area clearly indicating the presence and location of asbestos and the fact that asbestos removal work is being carried out; and
  - (b) the signs comply with any applicable safe work instrument; and
  - (c) barriers delineate the asbestos removal area.
- (2) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000:
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 469

### **38 Duty to limit access to asbestos removal area**

- (1) This regulation applies to—
  - (a) a PCBU at a workplace who commissions a person to carry out licensed asbestos removal work at the workplace; and
  - (b) a PCBU with management or control of a workplace who is aware that licensed asbestos removal work is being carried out at the workplace.
- (2) Subject to subclause (4), the PCBU must ensure, so far as is reasonably practicable, that no one other than the following has access to an asbestos removal area:
  - (a) workers engaged in the asbestos removal work:
  - (b) other persons associated with the asbestos removal work:
  - (c) anyone allowed under these regulations or another enactment to be in the asbestos removal area.

- (3) The PCBU may refuse to allow access to an asbestos removal area at the workplace to anyone who does not comply with—
  - (a) a control measure implemented for the workplace in relation to asbestos; or
  - (b) a direction of the licensed asbestos removalist.
- (4) A person referred to in subclause (2)(a), (b), or (c) has access to an asbestos removal area subject to any direction of the licensed asbestos removalist.
- (5) If a person referred to in subclause (2)(a), (b), or (c) has access to an asbestos removal area, the person must comply with any direction of the licensed asbestos removalist.
- (6) A person who contravenes subclause (2) or (5) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 470

### **39 Duty to make decontamination facilities available**

- (1) An asbestos removalist must ensure that facilities are available to decontaminate the following:
  - (a) the asbestos removal area;
  - (b) any plant used in the asbestos removal area;
  - (c) workers carrying out asbestos removal work;
  - (d) other persons who have access to the asbestos removal area under regulation 38(2)(b) and (c).
- (2) An asbestos removalist must ensure that nothing that is likely to be contaminated with asbestos is removed from the asbestos removal area unless the thing—
  - (a) is decontaminated before being removed; or
  - (b) is sealed in a container, and the exterior of the container is, before the container is removed,—
    - (i) decontaminated; and
    - (ii) marked clearly (and in a way that complies with the requirements of any applicable safe work instrument) to indicate the possible presence of asbestos.
- (3) A person who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 471

**40 Duties relating to disposal of asbestos waste and contaminated personal protective equipment**

- (1) Subject to subclauses (2), (3), and (4), an asbestos removalist must ensure that asbestos waste—
  - (a) is placed in a sealed container and marked clearly (and in a way that complies with the requirements of any applicable safe work instrument) to indicate the presence of asbestos before the waste is removed from an asbestos removal area; and
  - (b) is disposed of as soon as is reasonably practicable by depositing it in a place approved for the purpose by a territorial authority under section 73 of the Resource Management Act 1991.
- (2) An asbestos removalist must ensure that any equipment (including personal protective equipment) used in asbestos removal work and contaminated with asbestos—
  - (a) is placed in a sealed container and marked clearly (and in a way that complies with the requirements of any applicable safe work instrument) to indicate the presence of asbestos before the waste is removed from an asbestos removal area; and
  - (b) so far as is reasonably practicable, is disposed of on the completion of the asbestos removal work in a place approved for the purpose by a territorial authority under section 73 of the Resource Management Act 1991.
- (3) If it is not reasonably practicable to dispose of equipment that is clothing, the asbestos removalist must ensure that the clothing—
  - (a) is laundered at a laundry equipped to launder asbestos-contaminated clothing; or
  - (b) if it is not practicable to launder the clothing, is kept in the sealed container until it is reused for asbestos removal purposes.
- (4) If it is not reasonably practicable to dispose of equipment that is not clothing, the asbestos removalist must ensure that the equipment—
  - (a) is decontaminated before it is removed from the asbestos removal area; or
  - (b) if it is not practicable to decontaminate the equipment in the asbestos removal area, is kept in the sealed container until it is reused for asbestos removal purposes.
- (5) An asbestos removalist must ensure that a sealed container referred to in subclause (2) is decontaminated before the container is removed from the asbestos removal area.
- (6) A person who contravenes this regulation commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000:

(b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 472

#### 41 Clearance inspection

- (1) This regulation applies if a person commissions licensed asbestos removal work at a workplace.
- (2) The person or, if the workplace is a home, the licensed asbestos removalist commissioned by the person must ensure that, when the licensed asbestos removal work is completed, a clearance inspection of the asbestos removal area at the workplace is carried out by,—
  - (a) in the case of Class A asbestos removal work, an independent licensed asbestos assessor; or
  - (b) in any other case, an independent competent person.

- (3) In this regulation,—

**clearance inspection** means an inspection (including a visual inspection) of an asbestos removal area after asbestos removal work has been completed to verify that the area is safe for normal use, and—

- (a) in the case of Class A asbestos removal work, includes surface testing and air monitoring in a dry condition before the enclosure is dismantled or removed from the asbestos removal area;
- (b) in the case of Class B asbestos removal work, may include surface testing and air monitoring

**competent person** means a person who has acquired, through training and experience, the knowledge and skills of relevant asbestos removal industry practice and who holds—

- (a) a certificate in relation to a training course specified by WorkSafe for asbestos assessor work; or
  - (b) a tertiary qualification in occupational health and safety, occupational hygiene, science, or environmental health.
- (4) A person who contravenes subclause (2) commits an offence and is liable on conviction,—
    - (a) for an individual, to a fine not exceeding \$10,000;
    - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 473

#### 42 Clearance certificates

- (1) This regulation applies if a clearance inspection has been carried out in accordance with regulation 41.
- (2) The PCBU with management or control of the workplace at which the clearance inspection was carried out must obtain a clearance certificate from the li-

- censed asbestos assessor or competent person, in accordance with this regulation, before the asbestos removal area at the workplace is reoccupied.
- (3) The licensed asbestos assessor or competent person must not issue a clearance certificate unless satisfied that—
- (a) the asbestos removal area and the area immediately surrounding it are free from visible asbestos contamination; and
  - (b) if the assessor or competent person undertook air monitoring as part of the clearance inspection, the monitoring shows that the respirable asbestos fibre level does not exceed trace level; and
  - (c) the asbestos removal area does not pose a risk to health and safety from exposure to asbestos.
- (4) The clearance certificate must be in writing, must contain the name, qualifications, and contact details of the licensed asbestos assessor or competent person issuing the certificate, and must state—
- (a) the address and location of the asbestos removal area and the date and time that the inspection occurred; and
  - (b) that the assessor or competent person found no visible asbestos residue from asbestos removal work in the area, or in the vicinity of the area, where the work was carried out; and
  - (c) if air monitoring was carried out by the assessor or competent person as part of the clearance inspection, that the respirable asbestos fibre level does not exceed 0.01 fibres/ml; and
  - (d) that, as far as can be determined from the clearance inspection, the asbestos removal area does not pose a risk to health and safety from exposure to asbestos.
- (5) A person who contravenes subclause (2) or (3) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 474

## **Part 4**

### **Class A licences and related air monitoring requirements**

#### **43 Air monitoring for Class A asbestos removal work**

- (1) A PCBU who commissions Class A asbestos removal work at a workplace must ensure that an independent licensed asbestos assessor undertakes air monitoring of the asbestos removal area at the workplace in accordance with subclause (3).

- (2) If the workplace is a home, the licensed removalist carrying out Class A asbestos removal work at the home must ensure that an independent licensed asbestos assessor undertakes air monitoring of the asbestos removal area at the home in accordance with subclause (3).
- (3) The air monitoring must be carried out—
  - (a) immediately before the licensed asbestos removal work commences, if the assessor determines that it is likely that the air contains respirable asbestos fibres in a concentration greater than trace level; and
  - (b) while the licensed asbestos removal work is carried out; and
  - (c) in a place that is adjacent to any negative pressure enclosure.
- (4) The PCBU who commissions the licensed asbestos removal work must ensure that the results of the air monitoring are given to the following:
  - (a) workers of the workplace;
  - (b) representatives of workers at the workplace;
  - (c) a PCBU at the workplace;
  - (d) other persons at the workplace;
  - (e) so far as is reasonably practicable, other persons living or working in the vicinity of the workplace if it is likely that they may be affected by contamination.
- (5) If the workplace is a home, the licensed asbestos removalist carrying out the licensed asbestos removal work at the home must ensure that the results of the air monitoring are given to the following:
  - (a) the PCBU who commissioned the asbestos removal work;
  - (b) workers at the workplace;
  - (c) representatives of workers at the workplace;
  - (d) a PCBU in relation to the workplace;
  - (e) the occupier of the home;
  - (f) the owner of the home;
  - (g) other persons at the workplace.
- (6) An independent licensed asbestos assessor who undertakes air monitoring for the purposes of this regulation must use—
  - (a) a membrane filter method for the air monitoring; and
  - (b) if a membrane filter method is prescribed in a safe work instrument, that prescribed method.
- (7) A person who contravenes this regulation commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;



- (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 475

#### **44 Duties relating to respirable asbestos fibre levels exceeding trace level**

- (1) This regulation applies if—
  - (a) a licensed removalist is carrying out Class A asbestos removal work at a workplace; and
  - (b) respirable asbestos fibre levels recorded at the asbestos removal area exceed the trace level but are below 0.02 fibres/ml.
- (2) The licensed removalist must immediately—
  - (a) investigate the cause of the respirable asbestos fibre level; and
  - (b) implement controls to prevent exposure of anyone else to asbestos; and
  - (c) prevent the further release of respirable asbestos fibres.
- (2) A person who contravenes subclause (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 476

#### **45 Action if respirable asbestos fibre level too high**

- (1) This regulation applies if—
  - (a) a licensed removalist is carrying out Class A asbestos removal work at a workplace; and
  - (b) respirable asbestos fibre levels recorded at the asbestos removal area are at or above 0.02 fibres/ml.
- (2) The licensed removalist must immediately—
  - (a) order the asbestos removal work to stop; and
  - (b) notify WorkSafe about the incident in accordance with section 56 of the Act; and
  - (c) investigate the cause of the respirable asbestos fibre level; and
  - (d) implement controls to prevent exposure of anyone else to asbestos; and
  - (e) prevent the further release of respirable asbestos fibre.
- (3) If the licensed removalist stops Class A asbestos removal work because the recorded respirable asbestos fibre level is at or above 0.02 fibres/ml, the removalist must ensure that the asbestos removal work does not resume until air monitoring shows that the recorded respirable asbestos fibre level is at or below 0.01 fibres/ml.
- (4) A person who contravenes subclause (2) or (3) commits an offence and is liable on conviction,—

- (a) for an individual, to a fine not exceeding \$10,000:
- (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 476

#### **46 Duties relating to removal of friable asbestos**

- (1) A licensed asbestos removalist who is removing friable asbestos must ensure, so far as is reasonably practicable, the following:
  - (a) the area in which the asbestos removal work is to be carried out is enclosed to prevent the release of respirable asbestos fibres:
  - (b) subject to subclause (3), negative pressure is used:
  - (c) the wet method or an alternative method of dust suppression is used:
  - (d) subject to subclause (3), the asbestos removal work does not commence until the air monitoring is commenced by a licensed asbestos assessor:
  - (e) air monitoring is undertaken during the asbestos removal work, outside the enclosed area, at times decided by the independent licensed asbestos assessor undertaking the monitoring:
  - (f) any glove bag used to contain the release of respirable fibres is dismantled and disposed of safely.
- (2) A licensed asbestos removalist must ensure that any enclosure used in removing friable asbestos is tested for leaks.
- (3) Subclauses (1)(b) and (1)(d) do not apply if glove bags are used in the Class A asbestos removal work.
- (4) The licensed removalist must not dismantle an enclosure for an area in which friable asbestos removal work has been carried out until the removalist receives results of air monitoring, from one of the following, that shows that the recorded respirable asbestos fibre level within the enclosure is less than 0.01 fibres/ml:
  - (a) if the friable asbestos is removed from a home, the licensed asbestos assessor who undertook the air monitoring:
  - (b) in any other case, the PCBU who commissioned the Class A asbestos removal work.
- (5) The licensed removalist must ensure that an enclosure for an area in which friable asbestos removal work has been carried out is dismantled in a way that, so far as is reasonably practicable, eliminates the release of respirable asbestos fibre.
- (6) The PCBU who commissioned the removal of the friable asbestos must obtain a clearance certificate from a licensed asbestos assessor after the enclosure for the area in which friable asbestos removal work has been carried out has been dismantled.

- (7) A person who contravenes this regulation commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000:
  - (b) for any other person, to a fine not exceeding \$50,000.
- Compare: Model Work Health and Safety Regulations 2011 (Aust) r 477

## **Part 5**

### **Asbestos-related work**

#### **47 Application of Part 5**

This Part applies to asbestos-related work.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 478

#### **48 Uncertainty as to presence of asbestos**

- (1) If a PCBU is uncertain whether asbestos or ACM is present at a workplace, the PCBU must ensure that analysis of a sample is undertaken to determine if asbestos or ACM is present.
- (2) For the purposes of subclause (1), the PCBU must ensure that the sample is analysed in accordance with regulation 11(2).
- (3) Subclause (1) does not apply—
  - (a) if the PCBU assumes that asbestos is present; or
  - (b) in relation to soil at the workplace, unless there is reasonable cause for the PCBU to suspect that asbestos-contaminated soil is present.
- (4) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000:
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 479

#### **49 Duty to give information about health risks of asbestos-related work**

- (1) A PCBU must give the following information to a person likely to be engaged to carry out asbestos-related work for the business or undertaking before the person is engaged to carry out the work:
  - (a) the health risks and health effects associated with exposure to asbestos:
  - (b) the need for, and details of, health monitoring of a worker carrying out asbestos-related work.
- (2) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000:

(b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 480

**50 Duty to ensure asbestos-related work area separated from other work areas**

- (1) A PCBU that carries out asbestos-related work must ensure that—
- (a) the asbestos-related work area is separated from other work areas at the workplace; and
  - (b) signs are posted or erected at the asbestos-related work area clearly indicating the presence and location of asbestos and the fact that asbestos-related work is being carried out; and
  - (c) the signs comply with any applicable safe work instrument; and
  - (d) barriers are erected to delineate the asbestos-related work area.
- (2) A PCBU who contravenes subclause (1) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 481

**51 Duty to carry out air monitoring**

- (1) A PCBU at a workplace must ensure that a competent person carries out air monitoring of the work area where asbestos-related work is being carried out if there is uncertainty as to whether the airborne contamination standard for asbestos is likely to be exceeded.
- (2) If the competent person determines that the airborne contamination standard for asbestos has been exceeded at any time in a work area, the PCBU must, so far as is reasonably practicable,—
- (a) determine which workers and other persons were in the work area during that time; and
  - (b) warn those workers about possible exposure to respirable asbestos fibres; and
  - (c) warn the other persons about possible exposure to respirable asbestos fibres.
- (3) The PCBU must ensure that information about exposure to respirable asbestos fibres, including the determination made by the competent person and the results of the air monitoring, is readily accessible to the workers and other persons referred to in subclause (2).
- (4) A PCBU who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
- (a) for an individual, to a fine not exceeding \$10,000;

- (b) for any other person, to a fine not exceeding \$50,000.
  - (5) A PCBU who contravenes subclause (3) commits an offence and is liable on conviction,—
    - (a) for an individual, to a fine not exceeding \$6,000:
    - (b) for any other person, to a fine not exceeding \$30,000.
- Compare: Model Work Health and Safety Regulations 2011 (Aust) r 482

## **52 Duty to make decontamination facilities available**

- (1) A PCBU for which asbestos-related work is carried out must ensure that facilities are available to decontaminate the following:
    - (a) the asbestos-related work area:
    - (b) any plant used in the asbestos-related work area:
    - (c) workers carrying out the asbestos-related work.
  - (2) The PCBU must ensure that nothing that is likely to be contaminated with asbestos is removed from the asbestos-related work area unless the thing, before being removed,—
    - (a) is decontaminated; or
    - (b) is sealed in a container, and the exterior of the container is—
      - (i) decontaminated; and
      - (ii) marked clearly (and in a way that complies with the requirements of any applicable safe work instrument) to indicate the possible presence of asbestos.
  - (3) A PCBU who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
    - (a) for an individual, to a fine not exceeding \$10,000:
    - (b) for any other person, to a fine not exceeding \$50,000.
- Compare: Model Work Health and Safety Regulations 2011 (Aust) r 483

## **53 Duties relating to disposal of asbestos waste and contaminated personal protective equipment**

- (1) Subject to subclauses (2), (3), and (4), a PCBU for which asbestos-related work is carried out must ensure that asbestos waste—
  - (a) is placed in a sealed container that is marked clearly (and in a way that complies with the requirements of any applicable safe work instrument) to indicate the possible presence of asbestos before the waste is removed from an asbestos-related work area; and
  - (b) is disposed of safely and regularly by depositing it in a place approved for the purpose by a territorial authority under section 73 of the Resource Management Act 1991.

- (2) The PCBU must ensure that equipment (including personal protective equipment) used in asbestos-related work and contaminated with asbestos—
  - (a) is placed in a sealed container that is marked clearly (and in a way that complies with the requirements of any applicable safe work instrument) to indicate the possible presence of asbestos before the waste is removed from an asbestos-related work area; and
  - (b) so far as is reasonably practicable, is disposed of on the completion of the asbestos-related work in a place approved for the purpose by a territorial authority under section 73 of the Resource Management Act 1991.
- (3) If it is not reasonably practicable to dispose of equipment that is clothing, the PCBU must ensure that the clothing—
  - (a) is laundered at a laundry equipped to launder asbestos-contaminated clothing; or
  - (b) if it is not practicable to launder the clothing, is kept in the sealed container until it is reused for the purposes of asbestos-related work.
- (4) If it is not reasonably practicable to dispose of equipment that is not clothing, the PCBU must ensure that the equipment—
  - (a) is decontaminated before it is removed from the asbestos-related work area; or
  - (b) if it is not practicable to decontaminate the equipment in the asbestos-related work area, is kept in the sealed container until it is reused for the purposes of asbestos-related work.
- (5) A PCBU must ensure that a sealed container referred to in subclause (2) is decontaminated before the container is removed from the asbestos-related work area.
- (6) A PCBU who contravenes this regulation commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 484

## Part 6

### Licensing of asbestos removalists and asbestos assessors

#### Subpart 1—Requirement to be licensed

##### *Asbestos removalists*

#### **54 Requirement to hold Class A asbestos removal licence**

- (1) A person must not carry out the removal of the following at a workplace unless the person, or the person on whose behalf the work is carried out, holds a Class A asbestos removal licence:
  - (a) friable asbestos;
  - (b) except as provided in regulation 55, ACD.
- (2) A PCBU must not direct or allow a worker to carry out the removal of the following unless the PCBU holds a Class A asbestos removal licence:
  - (a) friable asbestos;
  - (b) except as provided in regulation 55, ACD.
- (3) A person who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000;
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 485

#### **55 Exception to requirement to hold Class A asbestos removal licence**

A Class A asbestos removal licence is not required for the removal of ACD that—

- (a) is associated with the removal of non-friable asbestos; or
- (b) is not associated with the removal of friable or non-friable asbestos and is only a minor contamination.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 486

#### **56 Requirement to hold Class B asbestos removal licence**

- (1) A person must not carry out the removal of the following at a workplace unless the person, or the person on whose behalf the work is carried out, holds a Class B asbestos removal licence or a Class A asbestos removal licence:
  - (a) more than 10 m<sup>2</sup> (cumulatively over the whole course of the removal project for the site) of non-friable asbestos or ACM;
  - (b) ACD associated with the removal of more than 10 m<sup>2</sup> (cumulatively over the whole course of the removal project for the site) of non-friable asbestos or ACM.

- (2) A PCBU must not direct or allow a worker to carry out the removal of the following unless the PCBU holds a Class B asbestos removal licence or a Class A asbestos removal licence:
  - (a) more than 10 m<sup>2</sup> (cumulatively over the whole course of the removal project for the site) of non-friable asbestos or ACM:
  - (b) ACD associated with the removal of more than 10 m<sup>2</sup> (cumulatively over the whole course of the removal project for the site) of non-friable asbestos or ACM.
- (3) A person who contravenes subclause (1) or (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000:
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 487

### *Asbestos assessors*

#### **57 Requirement to hold asbestos assessor licence**

- (1) A person must not carry out the following at a workplace unless the person holds an asbestos assessor licence:
  - (a) air monitoring during Class A asbestos removal work:
  - (b) clearance inspections for Class A asbestos removal work:
  - (c) issuing of clearance certificates in relation to Class A asbestos removal work.
- (2) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$10,000:
  - (b) for any other person, to a fine not exceeding \$50,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 489

### Subpart 2—Licensing process

#### **58 Who may apply for licence**

- (1) Only a person who conducts, or proposes to conduct, a business or an undertaking may apply for an asbestos removal licence.
- (2) Only an individual who holds the qualifications set out in regulation 62 may apply for an asbestos assessor licence.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 491

#### **59 Application for asbestos removal licence or asbestos assessor licence**

- (1) An application for an asbestos removal licence or asbestos assessor licence must—



- (a) be in the manner and form required by WorkSafe; and
  - (b) be accompanied by the relevant fee prescribed in Schedule 2.
- (2) An application under subclause (1) must include the following:
- (a) the name and address of the applicant;
  - (b) if required by WorkSafe in relation to an applicant who is an individual, a photograph of the applicant in the form required by WorkSafe;
  - (c) any other evidence of the applicant's identity required by WorkSafe;
  - (d) the class of licence to which the application relates;
  - (e) if, in the case of an asbestos removal licence, the applicant conducts the business or undertaking under a business name, that business name and a certificate or other written evidence of the registration of the business name;
  - (f) if the applicant is an individual,—
    - (i) a declaration as to whether the applicant has ever been convicted or found guilty of any offence under the Act or regulations, under a former Act, or under any corresponding law; and
    - (ii) details of any conviction or finding of guilt declared under subparagraph (i); and
    - (iii) a declaration as to whether the applicant has been convicted or found guilty of any offence in relation to the unlawful disposal of hazardous waste under the Resource Management Act 1991; and
    - (iv) details of any conviction or finding of guilt declared under subparagraph (iii); and
    - (v) a declaration as to whether the applicant has ever entered into an enforceable undertaking under the Act or under any corresponding law; and
    - (vi) details of any enforceable undertaking declared under subparagraph (v); and
    - (vii) if the applicant has previously been refused an equivalent licence under a corresponding law, a declaration giving details of that refusal; and
    - (viii) if the applicant has previously held an equivalent licence under a corresponding law, a declaration—
      - (A) describing any condition imposed on that licence; and
      - (B) stating whether that licence had been suspended or cancelled and, if so, whether the applicant had been disqualified from applying for any licence; and
      - (C) giving details of any suspension, cancellation, or disqualification;

- (g) if the applicant is a body corporate, the information referred to in paragraph (f) in relation to—
  - (i) the body corporate; and
  - (ii) each officer of the body corporate;
- (h) in the case of an application for an asbestos removal licence, the additional information referred to in regulation 60 or 61, as applicable:
- (i) in the case of an asbestos assessor licence, the additional information referred to in regulation 62.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 492

#### **60 Class A asbestos removal licence: content of application**

- (1) For the purposes of regulation 59(2)(h), an application for a Class A asbestos removal licence must include the following:
  - (a) the name, date of birth, and a recent passport photograph of each of the 1 or more competent persons who have been engaged by the applicant to supervise the asbestos removal work to be authorised by the licence:
  - (b) evidence, as required by WorkSafe, that each nominated supervisor is at least 18 years of age:
  - (c) a copy of a certificate held by each nominated supervisor for the relevant course for the supervision of asbestos removal work:
  - (d) evidence that each nominated supervisor has at least 3 years of relevant industry experience:
  - (e) evidence that the applicant has a certified safety management system in place.
- (2) If the applicant is an individual who proposes to supervise the carrying out of the Class A asbestos removal work, the statement and information referred to in subclause (1)(b), (c), and (d) must relate to the applicant.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 493

#### **61 Class B asbestos removal licence: content of application**

- (1) For the purposes of regulation 59(2)(h), an application for a Class B asbestos removal licence must include the following:
  - (a) the name, date of birth, and a recent passport photograph of each of the 1 or more competent persons who have been engaged by the applicant to supervise the asbestos removal work to be authorised by the licence:
  - (b) evidence, as required by WorkSafe, that each nominated supervisor is at least 18 years of age:
  - (c) a copy of a certificate held by each nominated supervisor for the relevant course for the supervision of asbestos removal work:

- (d) evidence that each nominated supervisor has at least 1 year of relevant industry experience.
- (2) If the applicant is an individual who proposes to supervise the carrying out of the Class B asbestos removal work, the statement and information referred to in subclause (1)(b), (c), and (d) must relate to the applicant.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 494

## **62 Asbestos assessor licence: content of application**

For the purposes of regulation 59(2)(i), an application for an asbestos assessor licence must include—

- (a) evidence that the applicant has acquired through training and experience the knowledge and skills of relevant asbestos removal industry practice; and
- (b) either—
  - (i) a copy of a certificate held by the applicant in relation to a training course specified by WorkSafe for asbestos assessor work; or
  - (ii) evidence that the applicant holds a tertiary qualification in occupational health and safety, occupational hygiene, science, or environmental health.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 495

## **63 WorkSafe may request additional information**

- (1) WorkSafe may, if it regards an application for a licence as incomplete, ask the applicant to provide the additional information required.
- (2) A request under subclause (1) must—
  - (a) specify the date by which the additional information is to be provided, which must not be less than 28 days after the date on which the request was made; and
  - (b) be in writing.
- (3) If an applicant does not provide the additional information by the specified date, the application is to be taken to have been withdrawn.
- (4) WorkSafe may make more than 1 request for additional information.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 496

## **64 Decision on application**

- (1) Subject to subclause (3), WorkSafe must grant an asbestos removal licence or asbestos assessor licence if it is satisfied about—
  - (a) the matters referred to in subclause (2); and
  - (b) the additional matters referred to in regulation 65 or 66, as applicable.
- (2) WorkSafe must be satisfied about the following:

- (a) the application has been made in accordance with these regulations:
  - (b) if the applicant is an individual, the applicant—
    - (i) resides in New Zealand; or
    - (ii) resides outside New Zealand and circumstances exist that justify the grant of the licence:
  - (c) if the applicant is a body corporate, the applicant's registered office—
    - (i) is located in New Zealand; or
    - (ii) is located outside New Zealand and circumstances exist that justify the grant of the licence:
  - (d) the applicant is able to ensure that the work or other activities to which the licence relates are carried out safely and competently:
  - (e) the applicant is able to ensure compliance with any conditions that will apply to the licence.
- (3) WorkSafe must refuse to grant a licence if satisfied that—
- (a) the applicant is disqualified under a corresponding law from holding an equivalent licence; or
  - (b) the applicant, in making the application, has—
    - (i) given information that is false or misleading in a material particular; or
    - (ii) failed to give any material information that should have been given.
- (4) If WorkSafe decides to grant the licence, it must notify the applicant within 14 days after making the decision.
- (5) If WorkSafe does not make a decision within 120 days after receiving the application or the additional information requested under regulation 63, WorkSafe is taken to have refused to grant the licence.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 497

**65 Class A asbestos removal licence: WorkSafe to be satisfied about additional matters**

For the purposes of regulation 64(1)(b), in relation to a Class A asbestos removal licence, WorkSafe must be satisfied that—

- (a) each supervisor nominated by the applicant—
  - (i) is at least 18 years of age; and
  - (ii) holds a certificate for—
    - (A) the relevant course for the supervision of asbestos removal work; and
    - (B) the relevant course for the Class A asbestos removal work; and

- (iii) has at least 3 years of relevant industry experience; and
- (b) the applicant has a certified safety management system in place.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 498

#### **66 Class B asbestos removal licence: WorkSafe to be satisfied about additional matters**

For the purposes of regulation 64(1)(b), in relation to a Class B asbestos removal licence, WorkSafe must be satisfied that each supervisor nominated by the applicant—

- (a) is at least 18 years of age; and
- (b) holds a certificate for—
  - (i) the relevant course for the supervision of asbestos removal work; and
  - (ii) the relevant course for the Class B asbestos removal work; and
- (c) has at least 1 year of relevant industry experience.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 499

#### **67 Criteria for considering licence application**

- (1) For the purposes of regulation 64(2)(d) and (e), WorkSafe must have regard to all relevant matters, including the following:
  - (a) any offence under the Act or regulations, under a former Act, or under a corresponding law of which the applicant has been convicted or found guilty:
  - (b) any offence in relation to the unlawful disposal of hazardous waste under the Resource Management Act 1991 of which the applicant has been convicted or found guilty:
  - (c) any enforceable undertaking the applicant has entered into under the Act or a corresponding law:
  - (d) in relation to any equivalent licence applied for or held by the applicant under the Act or these regulations or other regulations made under the Act or under a corresponding law,—
    - (i) any refusal to grant the licence; and
    - (ii) any condition imposed on the licence, if granted; and
    - (iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence:
  - (e) the record of the applicant in relation to any matters arising under the Act or these regulations or under a corresponding law.
- (2) For the purposes of regulation 64(2)(e) and (f), if the applicant is a body corporate, WorkSafe must have regard to all relevant matters, including the matters referred to in subclause (1), in relation to—

- (a) the body corporate; and
- (b) each officer of the body corporate.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 500

### **68 Refusal to grant licence: process**

- (1) If WorkSafe proposes to refuse to grant a licence, WorkSafe must give the applicant a written notice—
  - (a) informing the applicant of the reasons for the proposed refusal; and
  - (b) advising the applicant that the applicant may, by a specified date (being no less than 28 days after WorkSafe gives the notice), make a submission to WorkSafe in relation to the proposed refusal.
- (2) After the date specified in a notice under subclause (1), WorkSafe must,—
  - (a) if the applicant has made a submission in relation to the proposed refusal to grant the licence, consider that submission; and
  - (b) whether or not the applicant has made a submission, decide whether to grant or refuse to grant the licence; and
  - (c) within 14 days after making the decision, give the applicant written notice of the decision, including the reasons for the decision.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 501

### **69 WorkSafe may impose conditions on licence**

- (1) WorkSafe may impose any conditions it considers appropriate on an asbestos removal licence or asbestos assessor licence.
- (2) Without limiting subclause (1), WorkSafe may impose conditions in relation to 1 or more of the following:
  - (a) control measures that must be implemented in relation to the carrying out of work or activities under the licence:
  - (b) the recording or keeping of information:
  - (c) requiring the licence holder, or a supervisor nominated by the licence holder, to undergo training, retraining, or reassessment during the term of the licence:
  - (d) the provision of information to WorkSafe:
  - (e) the nature of work or activities authorised by the licence:
  - (f) the circumstances in which work or activities authorised by the licence may be carried out.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 502

**70 Duration of licence**

Subject to this Part, an asbestos removal licence or asbestos assessor licence takes effect on the day it is granted and, unless cancelled earlier, expires 5 years after that day.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 503

**71 Licence document**

- (1) If WorkSafe grants an asbestos removal licence or asbestos assessor licence, WorkSafe must issue to the applicant a licence document in the form determined by WorkSafe.
- (2) The licence document must include the following:
  - (a) the name of the licence holder:
  - (b) if the licence holder conducts the business or undertaking under a business name, that business name:
  - (c) in the case of an asbestos removal licence, the class of asbestos removal licence and a description of the work within the scope of the licence:
  - (d) any conditions imposed on the licence by WorkSafe:
  - (e) the date on which the licence was granted:
  - (f) the expiry date of the licence.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 504

**72 Licence document to be available**

- (1) A licence holder must keep the licence document available for inspection under the Act.
- (2) Subclause (1) does not apply if the licence document is not in the licence holder's possession because—
  - (a) it has been returned to WorkSafe under regulation 79; or
  - (b) the licence holder has applied for, but has not received, a replacement licence document under regulation 80.
- (3) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000:
  - (b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 505

**Subpart 3—Alteration of licence and related matters****73 Changes to information**

- (1) The holder of an asbestos removal licence or asbestos assessor licence must give WorkSafe written notice of any change to any material particular in any

information given at any time by the licence holder to WorkSafe in relation to the licence within 14 days after the licence holder becomes aware of the change.

- (2) Subclause (1) applies whether the information was given in the application for grant or renewal of the licence or in any other circumstance.
- (3) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000;
  - (b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 506

#### **74 Change to nominated supervisor**

- (1) If there is a change in relation to a supervisor nominated to WorkSafe by the holder of an asbestos removal licence (other than a licence holder who is an individual), the licence holder must,—
  - (a) if the change is to remove a supervisor, within 14 days after the change, ask WorkSafe to amend the licence under regulation 76 to make that change; and
  - (b) if the change is to add a supervisor, pay the relevant fee prescribed in Schedule 2 and give WorkSafe the information about the supervisor referred to in regulation 65 or 66.
- (2) If the change referred to in subclause (1) is to add a supervisor, that supervisor is not a nominated supervisor for the purposes of these regulations until WorkSafe has approved the nomination.
- (3) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000;
  - (b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 507

#### **75 Amendment imposed by WorkSafe**

- (1) WorkSafe may, on its own initiative, amend an asbestos removal licence or asbestos assessor licence, including by amending the licence to—
  - (a) vary or delete a condition of the licence; or
  - (b) impose a new condition on the licence.
- (2) If WorkSafe proposes to amend a licence, WorkSafe must give the licence holder written notice that—
  - (a) sets out the proposed amendment and the reasons for it; and



- (b) advises the licence holder that the licence holder may, by a specified date (being not less than 28 days after giving the notice), make a submission to WorkSafe in relation to the proposed amendment.
- (3) After the date specified in a notice under subclause (2), WorkSafe must,—
  - (a) if the licence holder has made a submission in relation to the proposed amendment, consider that submission; and
  - (b) whether or not the licence holder has made a submission, decide—
    - (i) to make the proposed amendment; or
    - (ii) not to make any amendment; or
    - (iii) to make a different amendment that results from consideration of any submission made by the licence holder; and
  - (c) within 14 days after making that decision, give the licence holder written notice that—
    - (i) sets out the amendment, if any, or states that no amendment is to be made; and
    - (ii) if a submission was made in relation to the proposed amendment, sets out WorkSafe's reasons for making the amendment; and
    - (iii) specifies the date (being not less than 28 days after WorkSafe gives the notice) on which the amendment, if any, takes effect.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 508

## **76 Amendment on application by licence holder**

- (1) WorkSafe, on the application of the licence holder (accompanied by the relevant fee prescribed in Schedule 2, if any), may amend an asbestos removal licence or asbestos assessor licence, including by amending the licence to vary or delete a condition of the licence.
- (2) If WorkSafe proposes to refuse to amend the licence, WorkSafe must give the licence holder a written notice—
  - (a) informing the licence holder of the proposed refusal to amend the licence and the reasons for the proposed refusal; and
  - (b) advising the licence holder that the licence holder may, by a specified date (being not less than 28 days after WorkSafe gives the notice), make a submission to WorkSafe in relation to the proposed refusal.
- (3) After the date specified in a notice under subclause (2), WorkSafe must,—
  - (a) if the licence holder has made a submission in relation to the proposed refusal, consider that submission; and
  - (b) whether or not the licence holder has made a submission, decide—
    - (i) to make the amendment applied for; or
    - (ii) not to make any amendment; or

- (iii) to make a different amendment that results from consideration of any submission made by the licence holder; and
- (c) within 14 days after making that decision, give the licence holder written notice of the decision in accordance with this regulation.
- (4) If WorkSafe makes the amendment applied for, the notice under subclause (3)(c) must specify the date (being not less than 28 days after WorkSafe gives the notice) on which the amendment takes effect.
- (5) If WorkSafe refuses to make the amendment applied for or makes a different amendment, the notice under subclause (3)(c) must,—
  - (a) if a submission was made in relation to the proposed refusal of the amendment applied for, set out the reasons for WorkSafe’s decision; and
  - (b) if WorkSafe makes a different amendment,—
    - (i) set out the amendment; and
    - (ii) specify the date (being not less than 28 days after WorkSafe gives the notice) on which the amendment takes effect.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 509

#### **77 Minor corrections to licence**

WorkSafe may make minor amendments to a licence, including an amendment—

- (a) to correct an obvious error; or
- (b) to change an address; or
- (c) that does not impose a significant burden on the licence holder.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 510

#### **78 WorkSafe to give amended licence document to holder**

If WorkSafe amends an asbestos removal licence or asbestos assessor licence and considers that the licence document requires amendment, WorkSafe must give the licence holder an amended licence document within 14 days after making the decision to amend the licence.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 511

#### **79 Licence holder to return previous licence document**

- (1) This regulation applies if the holder of an asbestos removal licence or asbestos assessor’s licence (an **old licence**) has been replaced with an amended licence under regulation 78.
- (2) The holder of the licence must return the old licence to WorkSafe.
- (3) A person who contravenes subclause (2) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000:

(b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 512

### **80 Replacement licence document**

- (1) The holder of an asbestos removal licence or an asbestos assessor licence must give written notice to WorkSafe as soon as practicable if the licence document is lost, stolen, or destroyed.
- (2) If a licence document is lost, stolen, or destroyed, the licence holder may apply to WorkSafe for a replacement document.
- (3) An application for a replacement licence document must be made in the manner and form required by WorkSafe.
- (4) The application must—
  - (a) include a declaration describing the circumstances in which the original document was lost, stolen, or destroyed; and
  - (b) be accompanied by the relevant fee prescribed in Schedule 2.
- (5) WorkSafe must issue a replacement licence document if satisfied that the original document was lost, stolen, or destroyed.
- (6) If WorkSafe refuses to issue a replacement licence document, it must give the licence holder written notice of that decision, including the reasons for the decision, within 14 days after making the decision.
- (7) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000;
  - (b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 513

### **81 Voluntary surrender of licence**

- (1) A licence holder may voluntarily surrender the licence document to WorkSafe.
- (2) The licence expires on the surrender of the licence document.
- (3) Nothing in this regulation prevents WorkSafe from cancelling a surrendered licence under regulation 86.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 514

## **Subpart 4—Renewal of licence**

### **82 WorkSafe may renew licence**

- (1) The holder of an asbestos removal licence or asbestos assessor licence may apply to WorkSafe for the licence to be renewed.
- (2) An application under subclause (1) must—
  - (a) be made before the expiry of the licence holder's current licence; and

- (b) be made in the manner and form required by WorkSafe; and
  - (c) include, or be accompanied by, the information specified in subclause (3); and
  - (d) be accompanied by the relevant fee prescribed in Schedule 2.
- (3) For the purposes of subclause (2)(c), the information is—
- (a) the name and address of the applicant;
  - (b) the date of birth of the applicant (if applicable);
  - (c) if required by WorkSafe in relation to an applicant who is an individual, a photograph of the applicant in the form required by WorkSafe;
  - (d) any other evidence of the applicant's identity required by WorkSafe;
  - (e) written evidence that the applicant has obtained any training, retraining, or reassessment or taken any other action required under regulation 69;
  - (f) a declaration by the applicant that the applicant or a supervisor nominated by the applicant, as applicable, has maintained the competency required to carry out the work covered by the licence.

Compare: Model Work Health and Safety Regulations 2011 (Aust) rr 515, 516

### **83 Provisions relating to renewal of licence**

- (1) For the purposes of this subpart,—
- (a) regulation 63 applies as if a reference in that regulation to an application for a licence were a reference to an application to renew a licence; and
  - (b) regulations 64 (except subclauses (3) and (5)), 67, and 70 apply as if a reference in those regulations to the grant of a licence were a reference to the renewal of a licence; and
  - (c) regulations 64(3) and (5) and 68 apply as if a reference in those regulations to a refusal to grant a licence were a reference to a refusal to renew a licence.
- (2) WorkSafe must not renew an asbestos removal licence unless WorkSafe is satisfied about the matters referred to in regulation 84.
- (3) If a licence holder applies under regulation 82 for the renewal of an asbestos removal licence or asbestos assessor licence, the licence is taken to continue in force from the day it would, apart from this subclause, have expired until the licence holder is given notice of the decision on the application.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 517

### **84 Criteria for renewal of asbestos removal licence**

For the purposes of regulation 83, WorkSafe must not renew an asbestos removal licence unless it is satisfied that—

- (a) each supervisor nominated by the applicant—

- (i) holds a certificate for the relevant course for supervision of the asbestos removal work to be authorised by the licence; and
  - (ii) has appropriate experience in the asbestos removal work to be authorised by the licence; and
- (b) asbestos removal work of the type authorised by the licence has been carried out on behalf of the applicant during the term of the licence.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 518

### **85 Status of licence during review or appeal**

- (1) This regulation applies if WorkSafe gives a licence holder written notice of its decision to refuse to renew the licence.
- (2) If the licence holder does not apply for a review of the decision, the licence continues to have effect until the last of the following events:
  - (a) the expiry of the licence;
  - (b) the end of the time for applying for a review.
- (3) If the licence holder applies for a review of the decision, the licence continues to have effect until the earlier of the following events:
  - (a) the licence holder withdraws the application for review;
  - (b) WorkSafe makes a decision on the review.
- (4) If the licence holder does not lodge an appeal against the decision on the review, the licence continues to have effect until the end of the time for lodging an appeal.
- (5) If the licence holder lodges an appeal, the licence continues to have effect until the earlier of the following events:
  - (a) the licence holder withdraws the appeal;
  - (b) the District Court makes a decision on the appeal.
- (6) The licence continues to have effect under this regulation even if its expiry date passes.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 519

## Subpart 5—Suspension and cancellation of licence

### **86 Suspension or cancellation of licence**

- (1) WorkSafe may suspend or cancel an asbestos removal licence or asbestos assessor licence if satisfied about 1 or more of the following:
  - (a) the licence holder has failed to ensure that the work or other activities authorised by the licence are carried out safely and competently;
  - (b) the licence holder has failed to ensure compliance with a condition of the licence, including a condition requiring the licence holder, or a nomin-

- ated supervisor of the licence holder, to undergo training, retraining, or reassessment during the term of the licence:
- (c) the licence holder, in the application for the grant or renewal of the licence or on request by WorkSafe for additional information,—
    - (i) gave information that was false or misleading in a material particular; or
    - (ii) failed to give any material information that should have been given in that application or on that request:
  - (d) in relation to an asbestos removal licence, the licence was granted or renewed on the basis of a certificate that was obtained on the basis of the giving of false or misleading information by any person or body:
  - (e) in relation to a Class A asbestos removal licence, the licence holder has failed to have a certified safety management system in place.
- (2) It is a ground for the suspension or cancellation of an asbestos removal licence if the licence holder does not have a qualified nominated asbestos removal supervisor.
- (3) For the purposes of subclause (1)(b), a licence holder complies with a condition on the licence that requires the licence holder or a nominated supervisor of the licence holder to undergo training, retraining, or reassessment during the term of the licence if the licence holder provides a certificate in relation to that retraining or reassessment.
- (4) If WorkSafe suspends or cancels a licence, WorkSafe may disqualify the licence holder from applying for—
- (a) a further licence of the same type; or
  - (b) another licence under these regulations to carry out work which requires skills that are the same as or similar to those required for the work authorised by the licence that has been suspended or cancelled.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 520

### **87 Matters to be taken into account in considering suspension or cancellation of licence**

- (1) In making a decision under regulation 86, WorkSafe must have regard to—
  - (a) any submissions made by the licence holder under regulation 88; and
  - (b) any advice received from a corresponding regulator.
- (2) For the purposes of regulation 86(1)(a) and (b), if the licence holder is an individual, WorkSafe must have regard to all relevant matters, including the following:
  - (a) any offence of which the licence holder has been convicted or found guilty under the Act or regulations, under a former Act, or under a corresponding law:

- (b) any enforceable undertaking that the licence holder has entered into under this Act or a corresponding law:
  - (c) in relation to any equivalent licence applied for or held by the licence holder under the Act or regulations, a former Act, or under a corresponding law,—
    - (i) any refusal to grant the licence; and
    - (ii) any condition imposed on the licence, if granted; and
    - (iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence:
  - (d) the record of the licence holder in relation to any matters arising under the Act or these regulations or under a corresponding law.
- (3) For the purposes of regulation 86(1)(a) and (b), if the licence holder is a body corporate, WorkSafe must have regard to all relevant matters, including the matters referred to in subclause (2), in relation to—
- (a) the body corporate; and
  - (b) each officer of the body corporate.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 521

### **88 Notice to and submissions by licence holder**

Before suspending or cancelling an asbestos removal licence or asbestos assessor licence, WorkSafe must give the licence holder a written notice of the proposed suspension or cancellation and any proposed disqualification that—

- (a) outlines all relevant allegations, facts, and circumstances known to WorkSafe; and
- (b) advises the licence holder that the licence holder may, by a specified date (being not less than 28 days after WorkSafe gives the notice), make a submission in relation to the proposed suspension or cancellation and any proposed disqualification.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 522

### **89 Notice of decision**

- (1) WorkSafe must give the licence holder written notice of a decision under regulation 86 to suspend or cancel an asbestos removal licence or asbestos assessor licence within 14 days after making the decision.
- (2) The notice must—
  - (a) state that the licence is to be suspended or cancelled (as applicable); and
  - (b) if the licence is to be suspended, state—
    - (i) when the suspension begins and ends; and
    - (ii) the reasons for the suspension; and

- (iii) whether the licence holder is required to undergo training, retraining, or reassessment or take any other action before the suspension ends; and
- (iv) whether the licence holder is disqualified from applying for a further licence during the suspension; and
- (c) if the licence is to be cancelled, state—
  - (i) when the cancellation takes effect; and
  - (ii) the reasons for the cancellation; and
  - (iii) whether the licence holder is disqualified from applying for a further licence; and
- (d) if the licence holder is disqualified from applying for a further licence, state—
  - (i) when the disqualification begins and ends; and
  - (ii) the reasons for the disqualification; and
  - (iii) whether the licence holder is required to undergo retraining or reassessment or take any other action before the disqualification ends; and
  - (iv) any other class of licence under these regulations that the licence holder is disqualified from applying for; and
- (e) state when the licence document must be returned to WorkSafe.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 523

## **90 Immediate suspension**

- (1) WorkSafe may suspend an asbestos removal licence or asbestos assessor licence on a ground referred to in regulation 86, without giving notice under regulation 88, if satisfied that—
  - (a) work carried out under the licence should cease because the work may pose an imminent serious risk to the health or safety of any person; or
  - (b) a corresponding regulator has suspended an equivalent licence held by the licence holder under this regulation as applying in the corresponding jurisdiction.
- (2) If WorkSafe decides to suspend a licence under this regulation,—
  - (a) WorkSafe must give the licence holder written notice of the suspension and the reasons for the suspension; and
  - (b) the suspension of the licence takes effect on the giving of the notice.
- (3) WorkSafe must then—
  - (a) give notice under regulation 88 within 14 days after giving the notice under subclause (2); and
  - (b) make its decision under regulation 86.



- (4) If WorkSafe does not give notice under subclause (3), the suspension ends at the end of the 14-day period.
- (5) If WorkSafe gives notice under subclause (3), the licence remains suspended until the decision is made under regulation 86.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 524

#### **91 Licence holder to return licence document**

- (1) A licence holder, on receiving a notice under regulation 89, must return the licence document to WorkSafe in accordance with the notice.
- (2) A person who contravenes subclause (1) commits an offence and is liable on conviction,—
  - (a) for an individual, to a fine not exceeding \$2,000:
  - (b) for any other person, to a fine not exceeding \$10,000.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 525

#### **92 WorkSafe to return licence document after suspension**

WorkSafe must return the licence document to the licence holder within 14 days after the licence suspension ends.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 526

### Subpart 6—Review of decisions

#### **93 Which decisions under these regulations are reviewable**

- (1) The applicant may apply for a review of any of the following decisions:
  - (a) refusal to approve a relevant method for managing risk associated with asbestos (under regulation 8):
  - (b) refusal to grant licence (under regulation 64):
  - (c) refusal to grant a licence (under regulation 68):
  - (d) imposition of a condition when granting or renewing a licence (under regulation 69):
  - (e) refusal to renew a licence (under regulation 83).
- (2) The licence holder may apply for a review of any of the following decisions:
  - (a) refusal to approve the nomination of a supervisor (under regulation 74(2)):
  - (b) amendment of a licence, on WorkSafe's initiative (under regulation 75):
  - (c) refusal to amend a licence on application (or a decision to make a different amendment) (under regulation 76):
  - (d) refusal to issue replacement licence document (under regulation 80):
  - (e) suspension of licence (under regulation 86):
  - (f) cancellation of licence (under regulation 86):

- (g) disqualification of licence holder from applying for another licence (under regulation 86(4)).

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 676

#### **94 How to apply for review**

- (1) A review application is made by giving an application that complies with sub-clause (2) to WorkSafe.
- (2) The application must—
  - (a) be in writing;
  - (b) whenever practicable, be made on the form made available by WorkSafe for the purpose;
  - (c) identify the decision or decisions in respect of which it is made;
  - (d) state the grounds on which it is made;
  - (e) be made within 28 days after—
    - (i) the date on which WorkSafe gave written notice of the decision in respect of which the application is made; or
    - (ii) in a case where no notice of decision has been given in respect of an application for renewal of a licence, the date that is 120 days after the date on which an application for renewal of a licence was made.

Compare: 1998 No 114 s 136; 2001 No 49 s 135(1), (2)

#### **95 WorkSafe must acknowledge receipt of review application**

When WorkSafe receives a review application, it must send the applicant an acknowledgement stating when the review application was received.

Compare: 2001 No 49 s 136(a)

#### **96 Review decisions**

- (1) WorkSafe must make a review decision as soon as is reasonably practicable after receiving the review application.
- (2) In making a decision on the review, WorkSafe must have regard to—
  - (a) any written submissions made by the applicant; and
  - (b) any action taken by the applicant to address a matter, or to prevent the recurrence of a matter, that was a ground for WorkSafe's original decision.
- (3) In making a review decision, WorkSafe must—
  - (a) dismiss the application and confirm the decision; or
  - (b) vary the decision; or
  - (c) withdraw the decision.
- (4) A review decision must—

- (a) be in writing; and
- (b) contain the reasons for the decision.

Compare: 2001 No 49 ss 144(2), 145(1), (3), (4)

### **97 Appeal to District Court**

- (1) An applicant may appeal to a District Court against a review decision.
- (2) The appeal must be brought within 28 days after the date on which the appellant was given notice of the decision, or within any longer period as the court may allow.
- (3) The appeal must be brought by filing a notice of appeal in the registry—
  - (a) nearest to the residence, registered office, or principal place of business of the appellant; or
  - (b) nearest to the office of WorkSafe at which the decision subject to appeal was made.
- (4) On an appeal under subclause (1), the court must inquire into the decision and may—
  - (a) confirm, vary, or set aside the decision; or
  - (b) refer the matter back to WorkSafe with directions for WorkSafe to reconsider the whole or any specified part of the matter.
- (5) Subject to any order of the court, every decision of WorkSafe against which an appeal is brought continues in force and has effect pending the determination of the appeal.

## **Part 7**

### **Miscellaneous provisions**

#### *Registers*

### **98 Register of asbestos removalists**

- (1) WorkSafe must keep a register of—
  - (a) each person holding an asbestos removal licence; and
  - (b) each supervisor nominated to WorkSafe in relation to an asbestos removal licence.
- (2) The register must be made publicly available on an Internet site maintained by or on behalf of WorkSafe.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 527

### **99 Register of asbestos assessors**

- (1) WorkSafe must keep a register of each person holding an asbestos assessor licence.

- (2) The register must be made publicly available on an Internet site maintained by or on behalf of WorkSafe.

Compare: Model Work Health and Safety Regulations 2011 (Aust) r 528

### *Revocation*

#### **100 Revocation**

The Health and Safety in Employment (Asbestos) Regulations 1998 (SR 1998/443) are revoked.

## Schedule 1

### Transitional, savings, and related provisions

r 5

#### Part 1

#### Provisions relating to these regulations as made

##### 1 Interpretation

In this schedule,—

- (a) **1998 regulations** means the Health and Safety in Employment (Asbestos) Regulations 1998; and
- (b) any other references are to regulations in these regulations.

##### 2 Transitional provision relating to asbestos management plan

Until 4 April 2018, a PCBU with management or control of a workplace is not required to comply with regulations 13 (duty to prepare asbestos management plan) or 14 (duty to review asbestos management plan).

##### 3 Transitional provision relating to training for licensed asbestos removal work, and training record

Until 4 April 2018, a licensed asbestos removalist is not required to comply with regulation 29(1) or 30.

##### 4 Transitional and savings provision relating to certificates of competence and licensing

- (1) A certificate of competence issued under regulation 26 of the 1998 regulations remains valid under these regulations until its expiry, or until 4 April 2018, whichever is earlier.
- (2) For the period during which a certificate remains valid under subclause (1),—
  - (a) if the certificate specifies that the restricted work that the holder is authorised to undertake includes removal of friable asbestos, the certificate is taken to be a Class A asbestos removal licence for the purposes of regulations 27 (duty to ensure asbestos removalist is licensed) and 54 (requirement to hold Class A asbestos removal licence) that is limited to the same type of work that the certificate authorises; and
  - (b) if the certificate does not specify that the restricted work that the holder is authorised to undertake includes removal of friable asbestos, the certificate is taken to be a Class B asbestos removal licence for the purposes of regulations 27 (duty to ensure asbestos removalist is licensed) and 56 (requirement to hold class B asbestos removal licence).

- (3) Until 4 April 2018, the holder of a certificate that remains valid under subclause (1) is taken to be a nominated supervisor for the class of work specified in the certificate (and subject to any conditions in the certificate) for the purposes of regulations 65 (Class A asbestos removal licence: WorkSafe to be satisfied about additional matters) and 66 (Class B asbestos removal licence: WorkSafe to be satisfied about additional matters).
- (4) Until 4 October 2016, a PCBU that has made an application for a Class B asbestos removal licence may carry out asbestos removal work that is not restricted work under the 1998 regulations, and the PCBU is not required to comply with regulation 56 while that application is being processed.

## **5 Transitional provision relating to clearance inspections and air monitoring**

Until 4 April 2018,—

- (a) a competent person (as defined in regulation 41(3)) is taken to be an independent licensed assessor for the purposes of regulations 41(2)(a) and 43(1) and (2); and
- (b) regulation 57 does not apply to a competent person who undertakes a clearance inspection or air monitoring for Class A asbestos removal work in reliance on paragraph (a).

## **6 Transitional provision relating to content of application for asbestos removal licence**

(1) Until 4 April 2018,—

- (a) an applicant for a Class A asbestos removal licence is not required to comply with regulation 60(1)(c) and (e); and
- (b) an applicant for a Class B asbestos removal licence is not required to comply with regulation 61(1)(c).

(2) In the case of an application for a Class A licence made before 4 April 2018 in reliance on subclause (1)(a), WorkSafe is not required to comply with paragraphs (a)(ii) or (b) of regulation 65, and may grant the licence only—

- (a) if satisfied of the competence of each nominated supervisor, which must be demonstrated in a form and manner specified by WorkSafe; and
- (b) with the condition imposed on the licence that the applicant complies with the requirements of paragraphs (c) and (e) of regulation 60(1) by a date specified in the licence (being a date not later than 4 April 2018).

(3) In the case of an application for a Class B licence made before 4 April 2018 in reliance on subclause (1)(b), WorkSafe is not required to comply with regulation 66(b), and may grant the licence only—

- (a) if satisfied of the competence of each nominated supervisor, which must be demonstrated in a form and manner specified by WorkSafe; and

- (b) with the condition imposed on the licence that the applicant complies with the requirements of regulation 61(1)(c) by a date specified in the licence (being a date not later than 4 April 2018).

**7 Transitional provision relating to content of application for change to nominated supervisor**

Until 4 April 2018, the holder of an asbestos removal licence applying under regulation 74(1)(b) to add a nominated supervisor—

- (a) is not required to give WorkSafe the information referred to in regulation 65(a)(ii) or 66(b) (as the case may be); and
- (b) must demonstrate the competence of the proposed nominated supervisor in a form and manner specified by WorkSafe.

## Schedule 2 Licence fees

rr 59(1)(b), 74(1)(b), 76(1), 80(4)(b),  
82(2)(d)

<b>Item</b>	<b>Fee (\$)</b>
Application for Class A asbestos removal licence	490.00
Nominated supervisor in Class A asbestos removal licence application	470.00 each supervisor
Application for Class B asbestos removal licence	490.00
Nominated supervisor in Class B asbestos removal licence application	80.00 each supervisor
Application for asbestos assessor licence	490.00
Application for renewal of Class A asbestos removal licence	490.00
Nominated supervisor in Class A asbestos removal licence renewal	470.00 each supervisor
Application for renewal of Class B asbestos removal licence	490.00
Nominated supervisor in Class B asbestos removal licence renewal	80.00 each supervisor
Application for renewal of asbestos assessor licence	490.00
Amendment application to add new nominated supervisor to Class A asbestos removal licence	550.00
Amendment application to add new nominated supervisor to Class B asbestos removal licence	170.00
Application to amend licence conditions	220.00
Application for replacement licence document	120.00

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 4 April 2016, are made under the Health and Safety at Work Act 2015 (the **Act**).

Part 2 of the Act imposes general duties on persons conducting a business or undertaking (**PCBUs**) to ensure, so far as is reasonably practicable, that the workplace is without risks to the health and safety of any person. The effect of these regulations, which are based on corresponding provisions in the Model Work Health and Safety Regulations (Aust), is to impose additional duties on PCBUs in relation to work involving asbestos (including work on sites containing asbestos-contaminated soil).

*Part 2 (regulations 7 to 26)* prohibits a PCBU from carrying out, or directing or allowing a worker to carry out, work involving asbestos, other than in circumstances expressly permitted. It imposes a general duty on PCBUs at a workplace to eliminate



exposure to airborne asbestos at the workplace. It provides for a range of mechanisms to manage asbestos risks, including the imposition of the following duties on PCBUs with management or control of a workplace:

- to identify asbestos and asbestos-containing material (ACM) at the workplace:
- to prepare and keep an asbestos management plan:
- to provide appropriate health monitoring to a worker carrying out asbestos removal work who is at risk of exposure to asbestos:
- prior to demolition or refurbishment, to identify and remove asbestos and ensure emergency procedures are developed.

*Part 3 (regulations 27 to 42)* deals with asbestos removal. It requires asbestos removal work to be licensed, and requires notification of that work to WorkSafe and other persons by the PCBU with management or control of the workplace and by licensed removalists. It also requires licensed asbestos removalists to ensure asbestos removal workers have appropriate training, and to provide information about the health risks of exposure to asbestos and the need for health monitoring. *Part 3* requires licensed asbestos removalists to prepare an asbestos removal control plan for any licensed asbestos removal work. It includes measures to limit access to an asbestos removal area and provides for decontamination facilities and disposal of asbestos waste. This Part also provides for clearance inspections of an asbestos removal area to be undertaken after asbestos removal work is complete in order to verify that the area is safe for normal use.

*Part 4 (regulations 43 to 46)* deals with air monitoring and related requirements for Class A asbestos removal work. It requires certain action to be taken if the level of respirable asbestos fibres is too high. *Regulation 46* requires certain safety measures to be employed when removing friable asbestos.

*Part 5 (regulations 47 to 53)* is concerned with asbestos-related work. It imposes duties on PCBUs to—

- ensure analysis of a sample is undertaken by an IANZ-accredited laboratory if the PCBU is uncertain whether asbestos or ACM is present at a workplace:
- give to a person likely to be engaged to carry out asbestos-related work information about the health risks and health effects associated with exposure to asbestos and about the need for and details of health monitoring of a worker carrying out asbestos-related work:
- ensure asbestos-related work is carried out in an area that is separated from other work areas and that is properly delineated by barriers:
- ensure air monitoring of the asbestos-related work area is carried out if there is uncertainty as to whether the airborne contamination standard for asbestos is likely to be exceeded:
- ensure decontamination facilities are available when asbestos-related work is carried out and that anything likely to be contaminated is decontaminated or

sealed in a decontaminated container before being removed from the workplace:

- ensure that asbestos waste and personal protective equipment used in asbestos-related work is properly disposed of (or in the case of clothing, properly laundered or stored).

*Part 6 (regulations 54 to 97)* governs the licensing of asbestos removalists and asbestos assessors. It prescribes the types of work for which a Class A asbestos removal licence, a Class B asbestos removal licence, or an asbestos assessor licence is required. *Part 6* also sets out the process for applying for and obtaining a licence, including the criteria that must be satisfied for the grant of each type of licence. This Part contains provisions regulating licence documents, alterations to licences, renewal of licences, and the suspension and cancellation of licences. Provision is made for the review of certain licensing decisions and for appeal to a District Court in relation to a review decision.

*Part 7 (regulations 98 to 100)* contains miscellaneous provisions that—

- require WorkSafe to keep a register of asbestos removal licences and asbestos assessors and make the registers publicly available;
- revoke the Health and Safety in Employment (Asbestos) Regulations 1998 (the **former regulations**).

*Schedule 1* contains transitional and savings provisions relating to the transition from the former regulations to these regulations, and provides that certain provisions do not need to be complied with until a specified period after the commencement of these regulations.

*Schedule 2* prescribes the fees payable for licences and amendments to, and renewal and replacement of, licences.

### Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced Regulatory impact statements on 10 March 2015 (updated 21 September 2015) and 4 February 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of these Regulatory impact statements can be found at—

- <http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/document-and-image-library/ris-cabinet-paper-phase-one-regulations.pdf>
- <http://www.mbie.govt.nz/info-services/employment-skills/workplace-health-and-safety-reform/document-and-image-library/ris-further-decisions-to-improve-whss-system.pdf/>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

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These regulations are administered by the Ministry of Business, Innovation, and Employment.