

**OCCUPATIONAL HEALTH AND SAFETY ACT 1983—
REGULATION**

(Occupational Health and Safety (Asbestos Removal Work) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Occupational Health and Safety Act 1983, has been pleased to make the Regulation set forth hereunder.

J. W. Shaw
Minister for Industrial Relations.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Occupational Health and Safety (Asbestos Removal Work) Regulation 1995.

Commencement

2. This Regulation commences on 2 September 1996.

Application of Regulation

3. This Regulation applies to work in which asbestos is removed, repaired or disturbed, other than:

- (a) work done in relation to bonded asbestos material having a total surface area of less than 200 square metres; or
- (b) work done in a mine within the meaning of the Coal Mines Regulation Act 1982 or the Mines Inspection Act 1901; or
- (c) work done by a person, at the person's usual place of business, at a frequency of one hour per week or less; or

- (d) work done for the purpose only of obtaining a sample of asbestos for identification.

Definitions

4. (1) In this Regulation:

“asbestos” means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite;

“bonded asbestos material” means any material (other than friable asbestos material) that contains more than a mere trace of asbestos;

“bonded asbestos removal work” means work in which bonded asbestos material is removed, repaired or disturbed;

“certificate of registration” means a certificate of registration as a bonded asbestos removal contractor under Division 2 of Part 3;

“friable asbestos material” means any material that contains more than 0.1 per cent of asbestos, by weight, and is in the form of a powder or can be crumbled, pulverised or reduced to powder by hand pressure when dry;

“friable asbestos removal work” means work in which friable asbestos material is removed, repaired or disturbed;

“licence” means a licence to carry on the business of friable asbestos removal work granted under Division 2 of Part 2;

“permit” means a permit to do friable asbestos removal work granted under Division 3 of Part 2;

“the Act” means the Occupational Health and Safety Act 1983;

“WorkCover” means the WorkCover Authority constituted by the WorkCover Administration Act 1989.

(2) For the purposes of this Regulation:

- (a) a person carries on a business if the person carries on the business personally, in partnership or by employees or agents or if the person advertises that the person carries on such a business; and
- (b) a person does work if the person does the work personally, in partnership or by employees or agents.

PART 2—FRIABLE ASBESTOS REMOVAL WORK**Division 1—Regulation of friable asbestos removal work****Business of friable asbestos removal work not to be carried on without a licence**

5. A person must not carry on the business of friable asbestos removal work otherwise than in accordance with a licence.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

Friable asbestos removal work not to be done without a permit and a licence

6. (1) A person must not do friable asbestos removal work otherwise than:

- (a) in accordance with a permit; and
- (b) under the authority of a licence.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

(2) WorkCover may, by order in writing, exempt any person or class of persons, either unconditionally or subject to conditions, from the requirements of this clause.

Division 2—Licences**Applications for licences**

7. (1) An application for a licence to carry on the business of friable asbestos removal work:

- (a) must be in the form approved for the time being by WorkCover; and
- (b) must be accompanied by an application fee of \$200; and
- (c) must be lodged at the offices of WorkCover.

(2) An application by persons who intend to carry on business in partnership may be made by any one or more of those persons.

Determination of applications

8. (1) After considering an application, WorkCover:

- (a) may grant the licence to which the application relates, either unconditionally or subject to conditions; or
- (b) may refuse the application.

(2) WorkCover must not grant a licence unless it is satisfied:

- (a) in the case of an application made by an individual:
 - (i) that the individual is of or above the age of 18 years; and
 - (ii) that the individual is a fit and proper person to hold a licence; and
 - (iii) that the individual has demonstrated his or her knowledge of safe working methods in relation to asbestos and asbestos materials; and
 - (iv) that appropriate arrangements exist to ensure that the individual's employees do not do friable asbestos removal work unless they have had proper training in safe working methods in relation to asbestos and asbestos materials; or
- (b) in the case of an application made by a corporation:
 - (i) that the corporation is a fit and proper person to hold a licence; and
 - (ii) that each director of the corporation would, if he or she were the applicant, be a fit and proper person to hold a licence; and
 - (iii) that at least one person engaged in the management of the corporation has demonstrated his or her knowledge of safe working methods in relation to asbestos and asbestos materials; and
 - (iv) that appropriate arrangements exist to ensure that the corporation's employees do not do friable asbestos removal work unless they have had proper training in safe working methods in relation to asbestos and asbestos materials.

(3) The provisions of subclause (2) (a) (iii) and (b) (iii) do not apply to an applicant who has previously held a licence if

- (a) in the case of an individual—the individual; or
- (b) in the case of a corporation—each officer or employee of the corporation by whom friable asbestos removal work has been done,

has demonstrated, by the manner in which he or she has done friable asbestos removal work, that he or she has knowledge of safe working methods in relation to asbestos and asbestos materials.

(4) If an application is refused, WorkCover must ensure that written notice of the refusal, and of the reasons for the refusal, are given to the applicant.

(5) For the purposes of clause 16, an application is taken to have been refused if a determination is not made within 3 months after the application is made.

(6) A licence is to be in the form approved for the time being by WorkCover.

Term of licences

9. (1) A licence has effect for the period of 2 years commencing on the date on which it is granted or on such later date as may be specified in the licence.

(2) A licence ceases to have effect while it is suspended or if it is cancelled.

Licence fees

10. (1) A licence fee of \$1,800 is payable to WorkCover in respect of a licence granted under this Division.

(2) A licence has no effect until the licence fee has been paid.

Division 3—Permits

Applications for permits

11. (1) An application for a permit to do friable asbestos removal work:

- (a) must be in the form approved for the time being by WorkCover; and
- (b) must specify the nature and extent of the work to be done and the method by which the applicant proposes to do the work; and
- (c) must specify the estimated cost of doing the work; and
- (d) must be accompanied by an application fee of such amount (not exceeding \$500) as WorkCover may determine as the appropriate amount to cover WorkCover's administrative costs in dealing with the application; and
- (e) must be lodged at the offices of WorkCover.

(2) An application by persons who carry on the business of friable asbestos removal work in partnership may be made by any one or more of those persons.

Determination of applications

12. (1) After considering an application, WorkCover:

- (a) may grant the permit to which the application relates, either unconditionally or subject to conditions; or
- (b) may refuse the application.

(2) WorkCover must not grant a permit unless it is satisfied that the work to which the application relates is work in respect of which the applicant is authorised to carry on the business of friable asbestos removal work.

(3) If an application is refused, WorkCover must ensure that written notice of the refusal, and of the reasons for the refusal, are given to the applicant.

(4) For the purposes of clause 16, an application is taken to have been refused if a determination is not made within 7 days after the application is made.

(5) A permit is to be in the form approved for the time being by WorkCover.

Term of permits

13. (1) A permit has effect for such period (commencing on the date on which it is granted or on such later date as may be specified in the permit) as is necessary to complete the friable asbestos removal work to which the permit relates.

(2) A permit ceases to have effect while it is suspended or if it is cancelled.

Division 4—General

Amendment of conditions of licences and permits

14. (1) WorkCover, on the application of the holder of a licence or permit or otherwise:

- (a) may amend or cancel any condition to which the licence or permit is subject; or
- (b) may impose further conditions on the licence or permit.

(2) An amendment to a condition, or a further condition, takes effect on the date on which notice of the amendment or further condition is given to the holder of the licence or permit or on such later date as may be specified in the notice.

Suspension and cancellation of licences and permits

15. (1) Workcover may suspend or cancel a licence or permit if satisfied that the holder of the licence or permit:

- (a) has made a statement, in or in connection with an application under this Regulation, that the holder knew, when the statement was made, to be false or misleading in a material particular; or
- (b) has done friable asbestos removal work in such a manner as to expose any person (including any of his or her employees or agents) to a health risk from asbestos that could reasonably have been avoided; or
- (c) has contravened a condition of the licence or permit; or
- (d) has failed to comply with the requirements of an improvement notice or prohibition notice under the Occupational Health and Safety (Inspectors' Notices and Penalty Notices) Regulation 1988; or
- (e) has been convicted of an offence against the Act or any regulation (including this Regulation) under the Act, or an offence against the Construction Safety Act 1912 or any regulation under that Act; or
- (f) in the case of an individual, is no longer a fit and proper person to hold the licence or permit; or
- (g) in the case of a corporation, has a director who is no longer a fit and proper person to hold a licence or permit.

(2) Before suspending or cancelling a licence or permit, WorkCover:

- (a) must cause notice of the proposed suspension or cancellation to be given to the holder of the licence or permit; and
- (b) must give the holder of the licence or permit a reasonable opportunity to make representations to WorkCover in relation to the proposed suspension or cancellation; and
- (c) must have regard to any representations so made.

(3) The suspension or cancellation of a licence or permit takes effect on the date on which notice of the suspension or cancellation is given to the holder of the licence or permit or on such later date as may be specified in the notice.

Appeals

16. (1) An appeal may be made to an Industrial Magistrate against the decision of WorkCover:

- (a) to refuse to grant an application for a licence or permit that has been duly made by the appellant; or
- (b) to impose conditions or further conditions on a licence or permit held by the appellant, or to amend the conditions to which a licence or permit held by the appellant is subject; or
- (c) to suspend or cancel a licence or permit held by the appellant.

(2) Notice of an appeal:

- (a) must be in the form approved for the time being by the Industrial Registrar; and
- (b) must specify the grounds of the appeal; and
- (c) must be lodged at the office of the Industrial Registrar within 21 days after the date on which notice of the decision to which it relates was given to the appellant.

(3) The Industrial Registrar is to give a copy of the notice of appeal to WorkCover and to give notice to WorkCover and to the appellant of the time and place at which the appeal has been set down for hearing.

(4) The hearing of an appeal may proceed despite any omission or error in a notice under subclause (3), or the failure of the Industrial Registrar to give any such notice, if the Industrial Magistrate hearing the appeal is satisfied that the appellant and WorkCover each had knowledge of the time and place set down for the hearing and were not prejudiced because of the omission, error or failure.

(5) An appeal is to be dealt with by way of a new hearing and fresh evidence (or evidence in addition to, or in substitution for, the evidence before WorkCover when the relevant decision was made) may be given on the appeal.

(6) An Industrial Magistrate is to determine an appeal by disallowing the appeal, or by allowing the appeal and making such decision as WorkCover could have made in respect of the matter to which the appeal relates.

(7) The decision of an Industrial Magistrate on an appeal is final and is to be given effect to according to its terms.

PART 3—BONDED ASBESTOS REMOVAL WORK**Division 1—Regulation of bonded asbestos removal work****Business of bonded asbestos removal work not to be carried on without registration or a licence**

17. A person must not carry on the business of bonded asbestos removal work unless the person is:

- (a) a registered bonded asbestos removal contractor; or
- (b) the holder of a licence to carry on the business of friable asbestos removal work granted under Part 2 of this Regulation; or
- (c) the holder of a licence to carry on the business of doing demolition work granted under the Occupational Health and Safety (Demolition Licensing) Regulation 1996.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

Notification of work: sec. 27A

18. (1) Bonded asbestos removal work (other than work for which a permit is in force) is prescribed as work for which notice is required to be given to WorkCover under section 27A of the Act.

(2) Particulars of any such notice are to be kept by WorkCover and made available, free of charge, to members of the public.

(3) This clause does not affect the operation of section 27A (5) of the Act.

Division 2—Registration as a bonded asbestos removal contractor**Applications for registration**

19. (1) An application for registration as a bonded asbestos removal contractor:

- (a) must be in the form approved for the time being by WorkCover; and
- (b) must be accompanied by an application fee of \$100; and
- (c) must be lodged at the offices of WorkCover.

(2) An application by persons who carry on the business of a bonded asbestos removal contractor in partnership may be made by any one or more of those persons.

Determination of applications

20. (1) After considering an application, WorkCover:

- (a) may register the applicant as a bonded asbestos removal contractor; or
- (b) may refuse the application.

(2) WorkCover must not register an applicant as a bonded asbestos removal contractor unless it is satisfied:

- (a) in the case of an application made by an individual:
 - (i) that the individual is of or above the age of 18 years; and
 - (ii) that the individual is a fit and proper person to be registered as a bonded asbestos removal contractor; and
- (b) in the case of an application made by a corporation:
 - (i) that the corporation is a fit and proper person to be registered as a bonded asbestos removal contractor; and
 - (ii) that each director of the corporation would, if he or she were the applicant, be a fit and proper person to be registered as a bonded asbestos removal contractor.

(3) If an application is refused, WorkCover must ensure that written notice of the refusal, and of the reasons for the refusal, are given to the applicant.

(4) For the purposes of clause 24, an application is taken to have been refused if a determination is not made within 3 months after the application is made.

(5) On registering a person as a bonded asbestos removal contractor, WorkCover must cause a certificate of registration to be sent to the person.

(6) A certificate of registration is to be in the form approved for the time being by WorkCover.

Term of registration

21. (1) Registration takes effect on the date on which it is granted or on such later date as may be specified in the certificate of registration.

(2) Registration ceases to have effect while it is suspended or if it is cancelled.

Registration fees

22. (1) At the end of each 2 year period after a person becomes registered as a bonded asbestos removal contractor, the person must pay to WorkCover a registration fee of \$100.

(2) Registration has no effect while any such registration fee remains unpaid.

Division 3—General**Suspension and cancellation of registration**

23. (1) WorkCover may suspend or cancel the registration of a bonded asbestos removal contractor if satisfied that the contractor:

- (a) has made a statement, in or in connection with an application under this Regulation, that the contractor knew, when the statement was made, to be false or misleading in a material particular; or
- (b) has done bonded asbestos removal work in such a manner as to expose any person (including any of his or her employees or agents) to a health risk from asbestos that could reasonably have been avoided; or
- (c) has failed to comply with the requirements of an improvement notice or prohibition notice under the Occupational Health and Safety (Inspectors' Notices and Penalty Notices) Regulation 1988; or
- (d) has been convicted of an offence against the Act or any regulation (including this Regulation) under the Act, or an offence against the Construction Safety Act 1912 or any regulation under that Act; or
- (e) in the case of an individual, is no longer a fit and proper person to be registered as a bonded asbestos removal contractor; or
- (f) in the case of a corporation, has a director who is no longer a fit and proper person to be registered as a bonded asbestos removal contractor.

(2) Before suspending or cancelling the registration of a bonded asbestos removal contractor, WorkCover:

- (a) must cause notice of the proposed suspension or cancellation to be given to the contractor; and

(b) must give the contractor a reasonable opportunity to make representations to WorkCover in relation to the proposed suspension or cancellation; and

(c) must have regard to any representations so made.

(3) The suspension or cancellation of registration takes effect on the date on which notice of the suspension or cancellation is given to the contractor or on such later date as may be specified in the notice.

Appeals

24. (1) An appeal may be made to an Industrial Magistrate against the decision of WorkCover:

(a) to refuse to grant an application for registration that has been duly made by the appellant; or

(b) to suspend or cancel the appellant's registration as a bonded asbestos removal contractor.

(2) Notice of an appeal:

(a) must be in the form approved for the time being by the Industrial Registrar; and

(b) must specify the grounds of the appeal; and

(c) must be lodged at the office of the Industrial Registrar within 21 days after the date on which notice of the decision to which it relates was given to the appellant.

(3) The Industrial Registrar is to give a copy of the notice of appeal to Workcover and to give notice to WorkCover and to the appellant of the time and place at which the appeal has been set down for hearing.

(4) The hearing of an appeal may proceed despite any omission or error in a notice under subclause (3), or the failure of the Industrial Registrar to give any such notice, if the Industrial Magistrate hearing the appeal is satisfied that the appellant and WorkCover each had knowledge of the time and place set down for the hearing and were not prejudiced because of the omission, error or failure.

(5) An appeal is to be dealt with by way of a new hearing and fresh evidence (or evidence in addition to, or in substitution for, the evidence before WorkCover when the relevant decision was made) may be given on the appeal.

(6) An Industrial Magistrate is to determine an appeal by disallowing the appeal, or by allowing the appeal and making such decision as WorkCover could have made in respect of the matter to which the appeal relates.

(7) The decision of an Industrial Magistrate on an appeal is final and is to be given effect to according to its terms.

PART 4—MISCELLANEOUS

Licences, permits and certificates of registration to be displayed

25. A person who does friable or bonded asbestos removal work at any place must cause a copy of the relevant licence, permit or certificate of registration to be displayed at that place while that work is being done.

Maximum penalty: 10 penalty units (in the case of a corporation) or 5 penalty units (in any other case).

Cancelled licences, permits and certificates of registration to be returned to WorkCover

26. The holder of a licence, permit or certificate of registration that is cancelled must return the licence, permit or certificate of registration to Workcover within such period as may be specified in the notice of cancellation given to the holder.

Maximum penalty: 10 penalty units (in the case of a corporation) or 5 penalty units (in any other case).

False or misleading information

27. A person must not, in or in connection with an application under this Regulation, make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

Repeal

28. (1) The Occupational Health and Safety (Asbestos Removal Contractors) Regulation 1988 is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the Occupational Health and Safety (Asbestos Removal Contractors) Regulation 1988, had effect under that Regulation continues to have effect under this Regulation.

(3) In particular:

- (a) an application for a licence under the Occupational Health and Safety (Asbestos Removal Contractors) Regulation 1988 that had not been determined before the repeal of that Regulation is to be determined as if that Regulation had not been repealed; and

- (b) a licence that was in force under the Occupational Health and Safety (Asbestos Removal Contractors) Regulation 1988 immediately before the repeal of that Regulation, or that is granted under that Regulation under paragraph (a), is taken to be a licence granted under this Regulation and remains in force (unless sooner cancelled) until the date on which it would have expired under that Regulation.

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EXPLANATORY NOTE

The objects of this Regulation are to repeal the Occupational Health and Safety (Asbestos Removal Contractors) Regulation 1988 and to make new provision with respect to the regulation of asbestos removal work. The Regulation recognises two kinds of work, “friable asbestos removal work” and “bonded asbestos removal work”. The former is to be regulated by means of a licensing system, the latter by means of a system of registration. The new Regulation contains provisions in relation to the following matters:

- (a) the regulation of friable asbestos removal work (Part 2), including:
 - (i) the requirement of a licence for the business of friable asbestos removal work and a permit for the doing of friable asbestos removal work (Division 1); and
 - (ii) the granting of licences for the carrying on of the business of friable asbestos removal work (Division 2); and
 - (iii) the granting of permits for the doing of friable asbestos removal work (Division 3); and
 - (iv) the amendment, suspension and cancellation of licences and permits and the making of appeals (Division 4);
- (b) the regulation of bonded asbestos removal work (Part 3), including:
 - (i) the requirement of registration as a bonded asbestos removal contractor, or a licence under Part 2 or under the Occupational Health and Safety (Demolition Licensing) Regulation 1996, for the business of bonded asbestos removal work, and the requirement for notification under section 27A of the Occupational Health and Safety Act 1983 of the doing of bonded asbestos removal work (Division 1); and
 - (ii) the registration of bonded asbestos removal contractors (Division 2); and

(iii) the suspension and cancellation of registration and the making of appeals (Division 3);

(c) other matters of a minor, consequential or ancillary nature (Parts 1 and 4).

This Regulation is made under the Occupational Health and Safety Act 1983, including section 45 (the general regulation making power), and section 27A.
