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INTRODUCTION

The *Work Health and Safety Regulations 2012* (SA) (the WHS Regulations) provide for the licensing for asbestos removal work and asbestos assessor work. It also requires notification of asbestos work; when results of air monitoring show the concentration of respirable asbestos fibres is more than 0.02 fibres/ml and before the demolition of a structure or plant in an emergency situation where asbestos is fixed or installed in the structure or plant.

WHY YOU NEED A LICENCE

The Asbestos Removal Licences aim to protect workers with the greatest potential for asbestos exposure and to secure safe removal practices to protect building occupants and others at the workplace.

Asbestos assessor licences aim to improve the consistency and accuracy of advice from consultants who provide air monitoring, and clearance certificates in relation to asbestos removal work.

SCOPE

Asbestos assessor licence

An Asbestos Assessor Licence is required for air monitoring, clearance inspections or the issuing of clearance certificates for licenced asbestos removal work. [Regulation 489].

A competent person who is not a licensed asbestos assessor can carry out clearance inspection for Class B asbestos removal work. [Regulation 473 (2)(b)]. However competency for this work is also defined in the legislation, and requires the person clearing Class B removals to have knowledge and skill in asbestos removal work as well as holding either the VET certificate in Asbestos Assessor Work or have tertiary qualifications in a field related to this work eg occupational hygiene monitoring, environmental monitoring etc. For this purpose states have accepted the occupational hygiene unit W504 by persons with sufficient additional experience.

WHO MAY APPLY FOR A LICENCE

Only an individual holding the qualifications set out in regulation 493, 494 or 495 may apply for an asbestos assessor licence. [Regulation 491 (2)].

EXPERIENCE AND QUALIFICATIONS

Asbestos assessor licence

The applicant must demonstrate through training or experience the knowledge and skills of the relevant asbestos removal industry. [Regulation 495 (a)].

SafeWork SA will generally require a description of work experience in performing or supervising the work of an asbestos assessor (i.e. air monitoring, clearance inspections and issue of clearance certificates) over the preceding two years. The description should include the name and contact telephone numbers of (2) referees.

Competencies required

An applicant must submit, with their application evidence of the successful completion of either:

- The national unit/s of competency for asbestos assessor work; or
- A tertiary qualification in occupational health and safety, industrial hygiene, science, building construction or environmental health.

[Regulation 495 (b)].

PHOTOGRAPHS

Two colour passport photographs to be enclosed that was taken within six months of the date of the application. [Regulation 492 (2) (b)].

RESIDENCY/LOCATION

An asbestos assessor licence will not be issued if the applicant holds an equivalent licence under a WHS law of another state or territory or the Commonwealth unless the licence is due for renewal [Regulation 497 (2) (b)].

SafeWork SA must issue an asbestos assessor licence to an applicant who:

- Resides in South Australia or if residing outside the South Australia satisfies SafeWork SA of circumstances justifying the granting of the licence [Regulation 497 (2) (c)]; or
- as a body corporate applicant, has its registered office in South Australia or if located outside South Australia satisfies SafeWork SA of circumstances justifying the granting of the licence. Regulation 497 (1) and 497 (2) (d)).

A circumstance justifying the grant of the licence would be the proximity of the residence/registered address to a state or territory or the Commonwealth WHS Regulator's office.

PROOF OF IDENTITY

Applicants must provide evidence of their identity. [Regulation 492 (2) (a) and 492 (2) (b)].

Individual applicants will be required to attach a copy of both sides of the applicant's current driver's licence, which clearly shows the facial features of the applicant and must show the applicant's current address which matches that on the application.

DURATION OF LICENCE

An asbestos assessor licence lasts for 5 years unless cancelled earlier. [Regulation 503].

RECOGNITION OF INTERSTATE AUTHORISATIONS

SafeWork SA will recognise a current asbestos removal licence or current asbestos assessor's licence issued by another state or territory or the Commonwealth that is being

used in accordance with the terms and conditions under which it was granted. [Regulation 490]. **However** an SA application will still need to be completed for Asbestos Assessors to be licenced for work in SA due to additional state regulatory conditions.

HOW TO APPLY FOR A LICENCE

Application forms can be found at the SafeWork SA website: www.safework.sa.gov.au.

FEES

Please see the SafeWork SA website for current fees: www.safework.sa.gov.au

GRANTING/RENEWING/REFUSING

What does the regulator take into account when deciding whether to grant or renew a licence

SafeWork SA will consider the following in making a decision for the issue of an assessor licence or the renewal of an asbestos assessor licence:

- Whether an equivalent licence is held by the applicant under the WHS law of another state or territory or the Commonwealth and whether the licence is due for renewal.
- Whether the applicant lives in South Australia or if a body corporate applicant has its registered address in South Australia. Where the applicant resides/is located outside South Australia, the applicant must satisfy SafeWork SA that circumstances exist that justify the grant of the licence.
- Whether the applicant has provided evidence of the successful completion of the required competencies and/or other qualifications and experience.
- Whether the applicant is disqualified under a corresponding WHS law of another state or territory or the Commonwealth from holding an equivalent licence (mandatory refusal).
- Whether the applicant in making the application has given information that is false or misleading or has failed to provide information that should have been provided in the application (mandatory refusal).
- Whether the applicant is able to ensure that work or other activities to which the licence relates is carried out safely and competently in compliance with any conditions on the licence. In making its decision SafeWork SA will consider:
 - Whether the applicant has been convicted or found guilty of any offence under the WHS Act or the Regulations or under the WHS law of another state or territory or the Commonwealth; and
 - Whether the applicant or in the case of a body corporate, any officer of the body corporate has been convicted or found guilty of any offence in relation

to the unlawful disposal of hazardous waste under the *Environment Protection Act 1993 (SA)*; and

- Whether an equivalent licence or other authorisation held by the applicant or in the case of a body corporate, any officer of the body corporate has been refused or suspended or cancelled under the WHS Act or the Regulations or under the WHS law of another state or territory or the Commonwealth; and
- Whether the applicant or in the case of a body corporate, any officer of the body corporate has entered into an enforceable undertaking* under the WHS Act or under the WHS law of another state or territory or the Commonwealth.
- The compliance record of the applicant, or in the case of a body corporate, any officer of the body corporate with respect to any matters arising under the WHS Act or the WHS Regulations or under the WHS law of another state or territory or the Commonwealth. SafeWork SA will consider the following in making a decision; current and previous suspension, cancellation or disqualification. A previous refusal of a licence by any WHS Regulator. History of compliance to any condition of the licence and/or any requirement to improve or modify performance and improvement and prohibition notices that have been issued.

[Regulation 497, 498, 499, 500].

If SafeWork SA decides to grant the licence, it must notify the applicant within 14 days after making the decision. [Regulation 497 (4)].

If SafeWork SA does not make a decision within 120 days after receiving the application, the application is taken to have been refused. [Regulation 497 (5)].

GRANTING OF A CONDITIONAL LICENCE

As South Australia requires the monitoring of both Class A and Class B removals. A limited Class B asbestos assessor licence may be an option for those without significant Class A asbestos removal experience.

SafeWork SA may also impose conditions on an asbestos assessor licence. Conditions that may be imposed include:

- Control measures to be implemented in carrying out of the work
- Record keeping
- Requiring the licence holder, or nominated supervisor, to undertake training or obtain information
- Provision of information to SafeWork SA.
- Nature of work or activities authorised by the licence

- Circumstances in which work may be carried out.

[Regulation 502].

The imposition of conditions on a new licence or the renewal of a licence is a reviewable decision. See section titled 'Application for review of decision' below.

Amendment imposed by the regulator

SafeWork SA may, on its own initiative amend an asbestos assessor licence, including varying or deleting a condition or to impose a new condition on the licence.

If SafeWork SA proposes to amend a licence it must provide written notice to the licence holder that includes reasons for the proposed amendment and advising the licence holder that they may, by a specified date (not being less than 28 days after the giving of the notice) make a submission in relation to the proposed amendment.

After the specified date SafeWork SA must:

- consider the submission, where a submission has been made, and
- decide whether or not to make the proposed amendment or a different amendment resulting from consideration of the submission received.

Within 14 days after making a decision SafeWork SA must provide written notice to the licence holder that:

- Sets out the amendment; and
- If a submission was made in relation to the proposed amendment, sets out the reasons for making the amendment; and
- Specifies the date (not being less than 28 days after the licence holder is given notice) on which the amendment takes effect. [Regulation 508]

A decision to amend a licence is a reviewable decision. [Regulation 676]

REFUSING TO GRANT OR RENEW AN ASBESTOS ASSESSOR LICENCE

SafeWork SA will not issue a licence or renew a licence if satisfied that the applicant:

- Has been disqualified under the WHS Law of another state or territory or the Commonwealth from holding an equivalent licence. [Regulation 497 (3) (a)].
- In making the application has given information that is false or misleading or did not provide information that should have been provided. [Regulation 497 (3) (b)].

If SafeWork SA proposes to refuse to grant the licence or renewal, it must provide written notice to the applicant:

- Informing the applicant of the reasons for the proposed refusal; and

- Advising the applicant that they may, by a specified date (being not less than 28 days after giving the notice) make a submission in relation to the proposed refusal.

After the specified date SafeWork SA must:

- If the applicant has made a submission, consider the submission; and
- Whether or not the applicant has made a submission, decide whether to grant or refuse to grant the licence; and
- Within 14 days after making the decision, give the applicant written notice of the decision including reasons for the decision.

[Regulation 501]

The refusal to grant a licence or renew a licence is a reviewable decision. [Regulation 676]

OBLIGATIONS

Change of details

The licensed asbestos assessor must advise SafeWork SA of any changes to their details within 14 days of becoming aware of the change. [Regulation 506].

Replacement licence document

A licence holder of an asbestos assessor licence must give written notice to SafeWork SA as soon as practicable if the licence is lost, stolen or destroyed, and may apply for a replacement licence. An application for a replacement licence must include a declaration describing the circumstances in which the original document was lost, stolen or destroyed. [Regulation 513].

A decision to refuse to issue a replacement asbestos removalist or asbestos assessor licence document is a reviewable decision.[Regulation 676]

CANCELLATIONS/SUSPENSIONS OF A LICENCE

SafeWork SA may suspend or cancel an asbestos assessor licence if satisfied about one or more of the following:

- The licence holder has failed to ensure that the work or other activities authorised by the licence were carried out safely and competently;
- The licence holder has failed to comply with a condition of the licence;
- The licence holder has given false or misleading information or failed to give information that should have been given in the application for the grant of a licence or renewal of the licence or where requested by SafeWork SA.

In making a decision regarding these first two points above, SafeWork SA must take into account any relevant matter, including:

- Any offence under the WHS Act or Regulations or under the WHS laws of another state or territory or the Commonwealth, of which the licence holder has been convicted or found guilty;
- Any suspensions or cancellations, and refusals to grant any conditions, of an equivalent licence or other authorisations held under the WHS Act or Regulations or under the WHS laws of another state or territory or the Commonwealth; [Regulation 521 (2) (b) (i & ii)]
- The licence holder's record (compliance record) in relation to any matters arising under the WHS Act or Regulations or under the WHS laws of another state or territory or the Commonwealth.

[Regulation 521].

Notice to and submissions by the licence holder (prior notice)

Before suspending or cancelling an asbestos removal licence or asbestos assessor licence SafeWork SA must:

- Give the licence holder written notice of the proposed suspension, cancellation or disqualification that outlines all relevant allegations, facts and circumstances known to SafeWork SA.
- Give the licence holder not less than 28 days to make submissions to SafeWork SA in relation to the proposed suspension or cancellation and any proposed disqualification.

[Regulation 522].

Notice of the decision

SafeWork SA must give the licence holder written notice of a decision to suspend or cancel an asbestos removal licence or an asbestos assessor licence within 14 days after the decision is made. The notice must state that the licence is to be suspended or cancelled and:

- If the licence is to be suspended, state when the suspension begins and ends and the reasons for the suspension;
- If suspended, whether the licence holder is required to obtain retraining or reassessment or take any other action before the suspension ends; and
- Any class of licence or authorisation under the WHS Regulations that the licence holder must not apply for during the suspension.

If the licence is to be cancelled, the notice must state when the cancellation takes effect and the reasons for the cancellation and whether or not the licence holder is disqualified from applying for a further licence.

If the licence holder is disqualified from obtaining a further licence or authorisation the notice must state:

- When the disqualification begins and ends and the reasons for the disqualification and whether or not the disqualification ending is conditional upon the licence holder obtaining retraining or reassessment or taking any other action and any class of licence or authorisation under the WHS Regulations that the licence holder is disqualified from applying for.

The notice must also state when the licence document must be returned to SafeWork SA. [Regulation 523].

Immediate suspension

SafeWork SA may immediately suspend an r asbestos assessor licence without giving prior notice, if satisfied that:

- Work carried out under the licence should cease because the work may involve an imminent serious risk to the health and safety of any person; or
- Another state or territory or the Commonwealth regulator has suspended an equivalent licence held by the licence holder.

[Regulation 524 (1)]

If SafeWork SA decides to immediately suspend the licence, it must give the licence holder written notice of the suspension and the reasons for the suspension. The suspension of the licence takes effect on the giving of the notice. [Regulation 524 (2)]

SafeWork SA may, in addition to the notice of suspension under regulation 524 (2), give notice to the licence holder giving them not less than 28 days to make a submission in relation to the suspension. SafeWork SA must issue this notice within 14 days of the notice advising of the suspension. [Regulation 524 (3)].

If SafeWork SA does not give notice under Regulation 524 (3), the suspension of the licence ends at the end of the 14 days. If notice is given the licence remains suspended until a decision is made. [Regulation 524 (4)].

SafeWork SA must return the licence document to the licence holder within 14 days after the licence suspension ends. [Regulation 526].

A decision to suspend or cancel a licence or to disqualify a licence holder from applying for a further licence is a reviewable decision. [Regulation 676].

NOTIFICATION OF RESPIRABLE ASBESTOS FIBRE LEVEL OF MORE THAN 0.02 FIBRES/ML

The licensed asbestos removalist must notify SafeWork SA immediately by telephone or fax when the results of air monitoring show the concentration of respirable asbestos fibres is more than 0.02 fibres/ml. [Regulation 476 (1) (b) (ii)].

Immediate notification of respirable asbestos fibres

A licensed removalist should provide the following information when making an immediate or telephone notification to SafeWork SA for air monitoring results of more than 0.02 fibres/ml:

- Name of licensed removalist;
 - Address of worksite;
 - Date on which the notification of the asbestos removal was made to SafeWork SA;
- and

The submission of a copy of the air monitoring results, as soon as practical.

APPLICATION FOR A REVIEW OF DECISION

The table in Regulation 676 sets out decisions that are reviewable (reviewable decisions) and who is eligible (eligible person) to apply for the review of a reviewable decision.

The applicant is the eligible person to request a review of a decision to refuse to grant or refuse to renew a licence and for the imposition of a condition on a licence or the imposition of a condition on the renewal of a licence [Regulation 501 & 502] and for the refusal to issue a replacement licence document [Regulation 513 (6)].

The licence holder is the eligible person to request a review of the decision to cancel or suspend a licence or a decision to disqualify the licence holder from applying for another licence [Regulation 520] and for the decision, initiated by SafeWork SA to amend a licence [Regulation 508].

Internal review

A written application for the internal review of a reviewable decision is made using the application form provided by SafeWork SA. The application must be lodged with 28 days of the day on which the decision first came to the eligible person's notice or such longer period as SafeWork SA allows. [Regulation 678 (1)].

The internal reviewer may:

- confirm or vary the reviewable decision; or
- set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.

[Regulation 680 (2)].

If the reviewable decision is not varied or set aside within the 14 day period the internal decision is taken to have been confirmed. [Regulation 680 (6)].

SafeWork SA will give the applicant written notice of the decision and reasons for the decision. [Regulation 681].

An application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision. [Regulation 682].

External review

If the applicant or licence holder is not satisfied with the internal review process, they can apply to the Industrial Relations Court of South Australia. [Regulation 683]

FURTHER INFORMATION

For further information please contact SafeWork SA:

VISIT www.safework.sa.gov.au

CALL SafeWork SA Help Centre on 1300 365 255

LEGISLATION

The **Work Health and Safety Act 2012 (SA)**; and

The **Work Health and Safety Regulations 2012 (SA)** can be found on the SafeWork SA

Web site: www.safework.sa.gov.au

LIST OF JURISDICTION CONTACTS

Jurisdiction	Name of regulator	Telephone	Web site
South Australia	SafeWork SA	1300 365 255	www.safework.sa.gov.au
New South Wales	WorkCover NSW	13 10 50	www.workcover.nsw.gov.au
Victoria	WorkSafe Victoria	1800 136 089	www.worksafe.vic.gov.au
Queensland	Workplace Health and Safety Qld	1300 369 915	www.justice.qld.gov.au
Western Australia	WorkSafe WA	1300 307 877	www.worksafe.wa.gov.au
Australian Capital Territory	WorkSafe ACT	(02) 6207 3000	www.worksafety.act.gov.au
Tasmania	Workplace Standards TAS	1300 366 322 (Inside Tasmania) (03) 62337657 (Outside Tasmania)	www.wst.tas.gov.au
Commonwealth	Comcare	1300 366 979	www.comcare.gov.au
Northern Territory	NT WorkSafe	1800 019 115	http://www.nt.gov.au/justice/worksafe