



DRAFT SUBMISSION

# Asbestos: Competent Person Requirements

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Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

# OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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# Recommendations

## Definitions of a Competent Person in the Work Health and Safety Regulation

1. Revise the definition of a competent person in the Regulation to specify the required training, skills, qualifications, and experience for all asbestos related tasks that require a competent person.
2. Empower the Regulator to determine the minimum skills, knowledge, and experience of a competent person for asbestos related tasks.

## Training and Qualifications of a Competent Person

3. Develop defined training, qualifications, and experience for competent persons carrying out the same or similar tasks as asbestos assessors, asbestos removalists, and asbestos removal supervisors.
4. That the required training, qualifications, and experience are consistent with those of assessors, removalist, and supervisors.
5. For competent person asbestos related tasks not covered by the requirements for assessors, removalists, and supervisors, equivalent standards should be developed to ensure consistency across the regulatory framework.

## Other Issues

6. For asbestos related work not specified as requiring a competent person in the Regulation, development of specified training, qualifications, skills, and experience that is consistent with those for competent persons, assessors, removalists, and supervisors.
7. Empower the Regulator to determine the minimum skills, knowledge, and experience for asbestos related work, and publishing the list of people deemed competent to undertake those asbestos related tasks listed in the Regulation.
8. Develop defined pathways for council workers with extensive experience with asbestos in the workplace to gain recognition to carry out asbestos related tasks, asbestos related work, and the tasks of competent person in relation to asbestos related tasks.

# Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission to Safe Work Australia's public consultation on the nature and extent of the issues surrounding the definition and requirements of competent persons for asbestos-related tasks.

LGNSW has consulted with councils to inform this submission, which is provided as a draft, pending endorsement by the LGNSW Board at its next meeting. We will advise of any amendments to the submission in due course.

## Asbestos Management in Local Government

Councils are committed to fulfilling responsibilities to workers under the *Work Health and Safety Act 2011* (NSW) (WHS Act) and the *Work Health and Safety Regulation 2017* (NSW) (WHS Regulation), and for maintaining a safe work environment. Part of this commitment is a reliance on competent persons in relation to asbestos-related tasks.

Local government plays a critical role in reducing the risks posed by asbestos. Councils work together with the State Government and wider public to address the unfortunate legacy of asbestos in building materials and land contaminated with asbestos, as well as addressing naturally occurring asbestos.

Councils have an important dual role in minimising exposure to asbestos, as far as is reasonably practicable, for both:

- residents and the public within the Local Government Areas (LGAs) prescribed by the *Local Government Act 1993* (NSW)

- workers (employees and other persons) in council workplaces.

Council's legislative functions for minimising the risks from asbestos apply in various scenarios including:

- as a responsible employer
- contaminated land management
- council land, building and asset management
- emergency response
- land use planning (including development approvals and demolition)
- management of naturally occurring asbestos
- regulation of activities (non-work sites)
- waste management and regulation.

General Managers of councils have a duty to exercise due diligence to ensure that their council complies with the NSW WHS Act and the NSW WHS Regulation. This includes taking reasonable steps to ensure that councils have and use appropriate resources and processes to eliminate or minimise risks associated with asbestos.

Officers at councils, such as directors, have a duty to exercise due diligence to ensure that the business or undertaking complies with the WHS Act and WHS Regulation. This includes taking reasonable steps to ensure that the person conducting a business or undertaking (PCBU) has and uses appropriate resources and processes to eliminate or minimise risks that arise from work involving asbestos, including asbestos management, at the workplace.

Council workers have a duty to take reasonable care for their own health and safety and to not adversely affect the health and safety of other persons. Workers must comply with reasonable instructions, as far as they are reasonably able, and cooperate with reasonable health and safety policies or procedures that have been notified to worker.

# Model Work Health and Safety Laws

Work health and safety (WHS) law in Australia is legislated and regulated separately by each of Australia's state, territory, and Commonwealth jurisdictions. WHS laws are largely harmonised across the jurisdictions through a set of uniform laws (the model WHS laws). All jurisdictions other than Victoria have adopted the model WHS laws.

The Commonwealth works closely with the states and territories through Safe Work Australia to develop and maintain the model WHS laws. The model WHS laws are comprised of the model Work Health and Safety Act, model Regulations and model Codes of Practice.

## Background

The model Work Health and Safety Regulations define a competent person in relation to asbestos-related tasks as follows:

**competent person** means—

- (f) for a clearance inspection under clause 473—a person who has acquired through training or experience the knowledge and skills of relevant asbestos removal industry practice and holds—
  - (i) a certification in relation to the specified VET course for asbestos assessor work, or
  - (ii) a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction or environmental health,
- (g) for any other case—a person who has acquired through training, qualification or le the knowledge and skills to carry out the task.

The "other cases" requiring a competent person for asbestos related tasks are as follows:

- **Soil assessment** for the presence of friable asbestos (*Regulation 419*)

- **Identifying** all asbestos or ACM at the workplace (*Regulation 422*)
- **Determining the presence** of asbestos or ACM when demolition or refurbishment is to be carried out and there is no asbestos register (*Regulation 451*)
- **Air monitoring when asbestos-related work is carried out** and when there is uncertainty as to whether the exposure standard is likely to be exceeded (*Regulation 482*)
- **Removal of 10 square metres or less** of non-friable asbestos or asbestos-contaminated dust or debris associated with the removal of that amount of non-friable asbestos, or removal of asbestos-contaminated dust or debris that is not associated with the removal of friable or non-friable asbestos and is only a minor contamination (*Regulation 458*)

## Consultation questions

### Q.1 Definitions of a Competent Person in the Work Health and Safety Regulation

**Question:** Do you have a clear understanding of the definitions of a competent person for asbestos-related tasks? How could any misunderstandings be addressed or clarified?

#### **LGNSW Response:**

It is difficult to gain a clear understanding of the definitions of a competent person for asbestos-related tasks because there are two definitions provided within the model regulations:

1. The first definition relates to clearance inspections under c 473 of the model regulations where a specific VET course for asbestos assessment or a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction, or environmental health are stated as a requirement. While these qualifications are easy to understand there no clear connection to the specific skills, experience and knowledge also required to safely complete the task of clearance inspections.



2. The second definition relates to soil assessment (c 419), Identification of asbestos (c 422), Determining the presence of asbestos (c 451), Air monitoring when asbestos-related work is carried out (c 482), and Removal of 10 square metres or less of non-friable asbestos (c 482). For each of these tasks the definition of a competent person is stated as " a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task". Unlike for c 473 there are no specified VET or tertiary qualifications, and like c 473 there is no defined amount of experience or specific required skills.

Working with asbestos is a restricted activity under the work health and safety laws with severe consequences for exposing workers to asbestos in the workplace. The lack of a clear and consistent definition of the training, qualification or experience, the knowledge and skills to carry out asbestos related tasks leads to inconsistent interpretations by PCBUs and workers as to the minimum requirement. This can be improved by revising the definition of competent person in the regulation to specify the required qualifications for all asbestos related tasks that require a competent person, and by also empowering the regulator to determine the minimum skills, knowledge and experience of a competent person for asbestos related tasks.

## Q.2 Training and Qualifications of a Competent Person

**Question:** Do you see a benefit in aligning the training, qualification and experience requirements of competent persons, licensed asbestos assessors and asbestos removal supervisors for asbestos-related tasks? If so, what do you think the training, qualification and experience requirements should be? Please provide information and reasons to support your response.

### **LGNSW Response:**

There is no safe exposure level for asbestos. Working with asbestos is a prohibited activity that is high risk, requiring many controls to eliminate exposure to asbestos in the workplace. To ensure exposure is eliminated the requirements for asbestos assessors, asbestos removalists, and asbestos removal supervisors are defined under the model WHS Regulations and include licensing requirements.

Where competent persons are carrying out the same or similar tasks as asbestos assessors, asbestos removalists, and asbestos removal supervisors it makes sense that they are subject to the same requirements for training, qualifications, and experience. Where requirements of a competent person are less well defined than those for assessors, removalists, and supervisors, the licensing system is undermined, and workers are at greater risk of exposure to asbestos.

For competent person asbestos related tasks not covered by the requirements for assessors, removalists and supervisors, equivalent standards should be developed to ensure consistency across the regulatory framework. This should be done in consultation with industry to ensure minimum standards are established.

### Q.3 Other Issues

**Question:** Are there any other issues regarding the definition and requirements of competent persons for asbestos-related tasks that should be considered? Please provide information and reasons to support your response.

**LGNSW Response:**

In addition to specified tasks for competent persons listed above there are also requirements for those that are engaged in asbestos related work that are substantially similar to that of the competent person, assessors, removalist and supervisors. The definition of the qualifications, training, skills, knowledge and experience related to asbestos related work are also non-specific.

The defined requirement is listed as to:

"ensure that workers engaged by the person, whom the person 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."

This broad definition is meant to apply to the following range of circumstances involving asbestos related work as listed in **clause 419** of the WHS Regulation:

- genuine research and analysis,

- sampling and identification in accordance with this Regulation,
- maintenance of, or service work on, non-friable asbestos or ACM, fixed or installed before 31 December 2003, in accordance with this Regulation,
- removal or disposal of asbestos or ACM, including demolition, in accordance with this Regulation,
- the transport and disposal of asbestos or asbestos waste in accordance with the [Protection of the Environment Operations Act 1997](#),
- demonstrations, education or practical training in relation to asbestos or ACM,
- display, or preparation or maintenance for display, of an artefact or thing that is, or includes, asbestos or ACM,
- management in accordance with this Regulation of in situ asbestos that was installed or fixed before 31 December 2003,
- work that disturbs asbestos during mining operations that involve the extraction of, or exploration for, a mineral other than asbestos,
- laundering asbestos contaminated clothing in accordance with this Regulation.

Each of these categories of asbestos related work should also have specified training, qualifications, skills, and experience that is consistent with those for competent person, assessors, removalists and supervisors where applicable. Additionally, there are many people in councils with extensive experience with buildings and building products, who have worked in the 1970s and 1980s and have a firsthand experience with asbestos in the workplace. This is a valuable resource for councils and these employees would benefit from defined pathways to recognise their competency and expertise.

For further information regarding this submission, please contact [Daniel Adler](#), LGNSW's Project Manager – Asbestos Policy on 02 9242 4128.