

Ref: BN-06245-2023

29/09/23

Ms Michelle Baxter
Chief Executive Officer
Safe Work Australia
By email: [REDACTED]

Re: Consultation on the requirements for competent persons in relation to asbestos-related tasks

Dear Ms Baxter,

I am writing to provide comments from SafeWork NSW on the consultation on the requirements for competent persons in relation to asbestos-related tasks.

SafeWork NSW appreciates the opportunity to comment on the current regulatory framework and to assist in providing SWA with a more detailed understanding of the extent of the issues surrounding the term 'competent person' for asbestos-related tasks.

I have no objections to this letter and enclosed information being published, if required, as part this consultation process.

Yours sincerely,

[REDACTED]

Emma Hogan
Secretary, Department of Customer Service
On behalf of Natasha Mann, Deputy Secretary, Department of Customer Service, and Head of SafeWork NSW

[REDACTED]

[REDACTED]



Consultation on the requirements for competent persons in relation to asbestos-related tasks

Cover sheet and consultation questions for submissions provided by email or post

When making your submission by:

- email to occhygiene@swa.gov.au
- or post to

Consultation – Competent Persons for Asbestos-related Tasks
Safe Work Australia
GPO Box 641
Canberra ACT 2601

please complete the following form, answer the consultation questions, and include the form with your submission.

Submissions will be accepted until **11.59 pm (AEST) on Sunday 1st October 2023**.

1. Your details

(Please leave blank if you wish to remain anonymous)

Title, First Name, Surname: [REDACTED]

Organisation name, if applicable: SafeWork NSW

Email: [REDACTED]

Contact number, including area code: [REDACTED]

2. This submission is written on behalf of an:

☐ Individual ☒ Organisation

3. Which of the following categories best describes you? Choose more than one if applicable.

☒ Government agency representative

4. Which jurisdiction is your workplace in? Choose more than one if applicable.

☒ New South Wales

5. What industry do you operate in? Choose more than one if applicable.

☒ Other Services - please specify: SafeWork NSW

Publication of submission

Select one:

- ☒ Publish my submission online.
(your organisation or individual name will be identified along with your submission)
- ☐ Do not publish my submission online.
- ☐ Publish my submission online anonymously.

Note: by selecting "publish my submission online" or "publish my submission online anonymously", you accept Safe Work Australia:

- has the right to decline to publish a submission online if does not meet Australian Government accessibility requirements, and
- may change or convert a submission to conform with [accessibility requirements](#).

Terms and conditions

- ☒ I have read and understand the Engage [terms and conditions](https://engage.swa.gov.au/terms) (<https://engage.swa.gov.au/terms>) for making this submission.
- ☒ I have read and understand the below Privacy Collection Notice and other terms listed below.

Privacy Collection Notice

Safe Work Australia collects, uses and discloses your personal information when you respond to our consultation on the requirements for competent persons in relation to asbestos-related tasks, in accordance with the *Privacy Act 1988* (Cth). We collect this information to help us perform one of Safe Work Australia's core functions in evaluating and, if necessary, revising the model WHS legislative framework and other WHS materials.

If you do not wish to disclose your personal information, you can choose not to include identifying information on the cover sheet and in your submission. However, if we are not able to collect your personal information, we will not be able to contact you for any further consultation if required. If you choose not to provide details about your occupation, this may limit our understanding of the implementation potential options across different workplaces and industries.

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Where a submission includes both confidential and non-confidential material, the confidential material should be provided under a separate cover sheet and clearly marked 'IN CONFIDENCE'. Material marked 'in confidence' will not be placed on the website.

Disclosure of submissions

Any submission, regardless of whether it is published, must be released if requested under the *Freedom of Information Act* 1982 (Cth), unless an exemption applies. Your personal information may also be disclosed to third parties in accordance with our Privacy Policy, including where disclosure is authorised or required by law.

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Consultation questions

These consultation questions are aimed at understanding the nature and extent of any issues with the term “competent person” as it relates to asbestos-related tasks. There is no requirement to answer all the questions; and stakeholders are welcome to provide other feedback relevant to the requirements for competent persons for asbestos-related tasks. Wherever possible, please include reference to the relevant regulation number in the model WHS Regulations in your response.

Q.1 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?

The current definition of a ‘competent person’ in the *Model Work Health and Safety Regulations* (model WHS Regulation) is not clearly defined as to what competence the person must have to perform specific asbestos-related tasks or what training and experience is required to undertake these tasks.

Under clause 5 of the model WHS Regulation a ‘competent person’ means –

- a) *for electrical work on energised electrical equipment or energised electrical installations (other than testing referred to in clauses 150 and 165) – a person who is authorised under the Home Building Act 1989 to do electrical wiring work,*
- b) *for general diving work – see clauses 174 and 177,*
- c) *for a major inspection of a mobile crane or a tower crane under clause 235 – see clause 235,*
- d) *for an inspection of an amusement device or passenger ropeway under clause 241— see clause 241,*
- e) *for design verification under clause 252 – a person who has the skills, qualifications, competence, and experience to design the plant or verify the design,*
- 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 experience the knowledge and skills to carry out the task.*

Clause 5 defines a competent person dependent upon the industry in which they work.

The definitions of competent persons that apply to asbestos-related tasks are as follows:

- clause 5(f), which relates to clearance inspections under clause 473, defines a competent person as being a person who has acquired through training or experience the knowledge and skills of relevant asbestos removal industry practice, and
- clause 5(g), which relates to all other asbestos-related activities including asbestos identification, sampling, and air monitoring, defines a competent person as a person

who has acquired through training, qualification or experience the knowledge and skills to carry out the task.

Most definitions of competent persons in clause 5 of the model WHS Regulation require both training and experience. For example, clause 5(a) which applies to electrical work deems someone to be a competent person if they have a licence to undertake electrical work. Clause 5(b) which applies to general diving work deems a competent person to have a specified qualification and experience in the type of diving work being supervised. These definitions of competent persons require the person to be licensed or have both training and experience.

However, unlike these definitions, the definitions for competent persons for asbestos-related tasks only require the person to have knowledge and skills from either training or experience or qualification (as is applicable). For example, the definition for a competent person for asbestos clearance inspections under clause 5(f) requires the person to have knowledge and skills from either training or experience. Similarly, the general definition of competent persons under clause 5(g), which applies to all other asbestos-related tasks, requires the person to have acquired the knowledge and skills to carry out the task through training, qualification, or experience. Therefore, both definitions contain a legislative option, without elaborating what training is considered sufficient or what experience or the amount of experience is required.

Verbal feedback received from industry stakeholders confirm that the current definition of a competent person under clause 5(g) is difficult to apply within the workplace, as the implied requirements to demonstrate competency can either be evidence of training, a qualification or experience, rather than it being a totality of all three elements of which experience is the critical element. As a result, SafeWork NSW recommends that the legislative option in both of the definitions contained in clause 5(f) and 5(g) be removed and instead require training and qualification and experience (as is applicable).

Clause 5(f) relates to clearance inspections. Under the model WHS Regulation, a Licensed Asbestos Assessor can undertake a clearance inspection following either a friable (crumbled) asbestos (Class A) removal or a following non-friable (Class B) asbestos removal. A clearance inspection following non-friable (Class B) asbestos removal may also be undertaken by competent persons as defined by clause 5(f) of the model WHS Regulation. SafeWork NSW considers the current definition of a 'competent person' under clause 5(f) to be too broad and recommends that competent persons are licenced, to ensure that all friable and non-friable asbestos removal clearance inspections are undertaken by Licensed Asbestos Assessors.

Pursuant to clause 5(f), the training or experience obtained by the 'competent person' must provide the person with 'knowledge and skills of relevant asbestos removal industry practice.' SafeWork NSW interprets this to mean a clear understanding of the safe removal practices for either non-friable or friable asbestos removal work. The current definition of a 'competent person' for the purposes of performing an asbestos clearance inspection under clause 5(f) allows a person who has only conducted training (but has **not** acquired any experience) to perform non-friable asbestos clearance inspections.

The current definition would arguably allow a person who has undertaken training in 'non-friable asbestos removal' (as little as a two day training course), and training in 'air monitoring and clearance inspections for asbestos removal work' (a one day training course), but who has **no** industry experience, to perform non-friable asbestos clearance inspections. Additionally, the 'experience' component of the definition is not clearly stipulated. For example,

an individual with a bachelor's degree in environmental health with claims to being 'experienced' can still conduct a clearance inspection at a non-friable asbestos removal site. This renders it difficult to determine what is adequate 'experience' under the definition of a 'competent person.' This has led to an increased number of asbestos contaminated sites remaining after clearance inspections have been performed by allegedly 'competent persons'.

SafeWork NSW regularly responds to Requests for Service (complaints) where asbestos fragments are still on site following the clearance inspection. As competent persons are not currently licensed, collating records or a data base of competent persons is not mandated and managing any issues or enforcement actions competent persons are difficult whilst they are not under a licensing regime.

SafeWork NSW recommends that competent persons are licenced to ensure that all non-friable asbestos removal and friable asbestos removal clearance inspections are undertaken by Licensed Asbestos Assessors. This, together with the above recommendation of removing the legislative option in 5(f) of 'training *or* experience' will provide regulators with greater oversight of licensed persons and will improve capability within the asbestos industry.

SafeWork NSW Recommendations to model WHS Regulation

1. That the definition of a competent person under clause 5(f) be amended so that a competent person is required to have acquired through training and experience the knowledge and skills of relevant asbestos removal industry practice, as opposed to the current legislative option of training or experience.
2. That the general definition of a competent person under clause 5(g) be amended so that a competent person is required to have acquired through training, qualification and experience the knowledge and skills to carry out the task, as opposed to the current legislative option of training, qualification, or experience.
3. That all non-friable asbestos removal and friable asbestos removal clearance inspections are undertaken by Licensed Asbestos Assessors.

Q.2 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.

The definitions of a 'competent person' under clause 5(f) and clause 5(g) in the model WHS Regulation must be amended to ensure that training and experience and qualification (as is applicable) are considered collective requirements for a competent person.

Whilst there is specific training for asbestos removalists (e.g. non-friable asbestos removal, friable asbestos removal and supervise asbestos), there is a lack of suitable training to currently support competent persons in undertaking other asbestos-related tasks, such as asbestos identification, clearance certificates, sampling, and air monitoring. More training in these areas is required.

Under clause 5(f)(ii), a competent person requires a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction, or environmental health. Competent persons are then able to apply to be a Licenced Asbestos Assessor (LAAs). This means that applicants can undertake a tertiary degree that has little or no relevance to asbestos management or asbestos removal work and can be granted an Asbestos Assessor Licence based on the current definition in the model WHS Regulation.

SafeWork NSW Recommendations to model WHS Regulation

1. The list of tertiary qualifications required for competent persons and Asbestos Assessors outlined in clause 5(f) should be reviewed to ensure that they are relevant to the asbestos removal industry.
2. A national training for 'competent persons' undertaking other asbestos-related tasks must be developed by SWA.
3. National guidance to assist regulators and stakeholders in determining what level of experience is required for a person to be deemed as competent under clause 5(f) and 5(g) must be developed by SWA.

Q.3 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.

SafeWork NSW requests greater clarity or expansion around the definition of "independent" competent person in relation to clearance inspections under clause 5(f) and clause 473 of the model WHS Regulation.

There have been many cases where family members are undertaking clearance inspections on behalf of the asbestos removal licence holder as they have not been involved in the asbestos removal or are involved in the asbestos removal company.

Greater clarification around the meaning of "independent" would help resolve any perceived conflict of interest when undertaking clearance inspections.