

SOUTH AUSTRALIA

**OCCUPATIONAL HEALTH, SAFETY AND WELFARE (ASBESTOS)
REGULATIONS 1991**

**REGULATIONS UNDER THE OCCUPATIONAL HEALTH,
SAFETY AND WELFARE ACT 1986**

*Occupational Health, Safety and Welfare (Asbestos)
Regulations 1991*

being

No. 25 of 1991: *Gaz.* 14 March 1991, p. 865¹

as varied by

No. 100 of 1991: *Gaz.* 27 June 1991, p. 2115²

No. 269 of 1991: *Gaz.* 19 December 1991, p. 1982

No. 74 of 1992: *Gaz.* 4 June 1992, p. 1650³

No. 104 of 1993: *Gaz.* 17 June 1993, p. 1990⁴

No. 82 of 1994: *Gaz.* 9 June 1994, p. 1720⁵

- ¹ Came into operation 1 April 1991: reg. 2
- ² Came into operation 1 July 1991: reg. 2
- ³ Came into operation 1 July 1992: reg. 2
- ⁴ Came into operation 1 July 1993: reg. 2.
- ⁵ Came into operation 1 July 1994: reg. 2.

2.

PART I

PRELIMINARY

Citation

1. These regulations may be cited as the *Occupational Health, Safety and Welfare (Asbestos) Regulations 1991*.

Commencement

2. These regulations will come into operation on 1 April 1991.

Interpretation

3. (1) In these regulations, unless the contrary intention appears—

"the Act" means the *Occupational Health, Safety and Welfare Act 1986*:

"asbestos" means the fibrous form of mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, crocidolite (blue asbestos), chrysotile (white asbestos) and tremolite, or any combination of two or more of these:

"asbestos removal work" means work involving the removal of—

(a) insulation material that consists of or contains asbestos, or other friable asbestos-containing material;

or

(b) an asbestos-cement (fibro) product, or other non-friable asbestos-containing material:

"asbestos work" means any work where, in the course of that work, exposure to asbestos (or any material that consists of or contains asbestos) may occur:

"breathing zone", in relation to a person, means the area represented by an imaginary hemisphere 300 mm in radius that—

(a) extends in front of the face of the person;

and

(b) is measured from the midpoint of an imaginary line joining his or her ears:

"competent person" means a person who is suitably qualified (by experience and training) to carry out the kind of work in which the person is engaged and who is authorized to do the work by the person in charge of the work:

"the Director" means the Director of the Department of Labour:

"exposure standard" *see regulation 6*:

3.

"friable asbestos-containing material" means—

(a) non-bonded asbestos fabric;

or

(b) material that contains more than 1% asbestos by weight and—

(i) is in the form of powder;

or

(ii) can be crumbled, pulverized or reduced to powder by hand pressure when dry:

"material" includes any substance:

"non-friable asbestos-containing material" means material that contains more than 1% asbestos by weight and in which the asbestos fibres are bonded by cement, vinyl, resin or other similar material:

"raw asbestos" means asbestos as mined or subsequently processed to remove impurities, or to modify its physical properties, but does not include asbestos which has been mixed or combined with any other substance, or which has been converted into a manufactured article or product.

(2) For the purposes of these regulations, monitoring involves the sampling of the atmosphere at a workplace to derive a quantitative estimate of the levels of airborne asbestos, and includes (as appropriate) personal sampling within the breathing zone of a person and static sampling at fixed locations.

(3) For the purposes of these regulations, asbestos (or any material that consists of or contains asbestos) will be taken as being installed at any place where it has been put into use (whether as building material or cladding, to provide insulation or fire-proofing, or otherwise, and whether the asbestos is in or on a building or in or on any plant).

(4) A reference in these regulations to a guidance note will be taken as a reference to that guidance note as in force from time to time, and if that guidance note is revoked and remade (with or without modifications), includes a reference to the new guidance note in force from time to time.

(5) A reference in these regulations to the owner of a building will be taken to include a reference to any person appointed by the owner to manage the building on his or her behalf.

Note: For definition of divisional penalties see Appendix.

Consultation and provision of information

4. (1) Where a regulation requires that a person must consult with an employee in connection with the performance of any work, the regulation will be taken to include a requirement that the person must—

4.

- (a) consult with any health and safety representative that has responsibility in relation to that employee;
 - (b) consult with any health and safety committee that has responsibility in relation to the performance of that work;
 - (c) consult with, so far as is reasonably practicable, the employee who is required to carry out the work;
 - (d) where the employee is a member of a registered association—
 - (i) on the request of a health and safety representative who represents the employee;or
 - (ii) if the employee is not represented by a health and safety representative, on the request of the employee,invite the registered association to consult with him or her in relation to the work;
- and
- (e) where an invitation under (d) is accepted—consult with the registered association.

(2) For the purposes of subregulation (1), consultation involves the sharing of information and the exchange of views between managers and the persons or bodies which must be consulted and includes the genuine opportunity for them to contribute effectively to any decision-making process to eliminate or control risks to health from asbestos work.

(3) Where a regulation requires that a person must provide information to an employee in connection with the performance of any work, the regulation will be taken to include a requirement that the person must provide information to any health and safety representative that has responsibility in relation to that employee and any health and safety committee that has responsibility in relation to the performance of that work.

Application

5. These regulations apply to any place where, during the course of work, asbestos (or any material that consists of or contains asbestos) may be encountered.

Exposure standards

6. (1) For the purposes of these regulations, the exposure standards for airborne asbestos fibres are as follows:

*chrysotile	1.0 fibres per millilitre
*crocidolite	0.1 fibres per millilitre
*amosite	0.1 fibres per millilitre
*other forms of asbestos	0.1 fibres per millilitre
*any mixture of these, or where the composition of the material is unknown	0.1 fibres per millilitre.

5.

(2) The amount of airborne asbestos fibres to which a person is exposed will be taken to be the Time Weighted Average concentrations of those fibres in his or her breathing zone, as measured in accordance with the *Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Dust* published by the National Occupational Health and Safety Commission.

6.

PART II

LICENCE FOR ASBESTOS REMOVAL WORK

Licence to carry out asbestos removal work

7. (1) Subject to subregulation (2), a person (not being an employee) must not commence asbestos removal work unless the person is the holder of a current asbestos removal licence issued by the Director under this regulation.

Penalty: Division 7 fine.

(2) A licence is not required—

- (a) to remove samples in order to determine whether asbestos is present and, if so the kind of asbestos installed at the particular place;
- (b) to remove insulation material that consists of or contains asbestos, or other friable asbestos-containing material, for the purpose of carrying out maintenance or repair work, where—
 - (i) the material to be removed does not extend more than one metre in any direction from the place of maintenance or repair;

and

- (ii) the total amount of material to be removed does not cover more than 0.5 square metres;

or

- (c) to remove an asbestos-cement (fibro) product, or other non-friable asbestos-containing material, that covers less than 200 square metres.

(3) An application for an asbestos removal licence—

- (a) must be in the form of the first schedule;

and

- (b) must be accompanied by the appropriate fee fixed by the second schedule.

(4) The Director may grant an asbestos removal licence if he or she is satisfied that the applicant is able to carry out asbestos removal work in a safe and proper manner.

(5) Subject to subregulation (6), an asbestos removal licence is subject to the following conditions:

- (a) that the licensee will carry out asbestos removal work in accordance with any conditions of the licence as determined by the Director;

7.

(b) that the licensee will not commence asbestos removal work at a particular site (being work for which a licence is required) without first obtaining the approval of the Director (which may be given subject to conditions);

and

(c) that the licensee will immediately give the Director written notice of any change in the licensee's workforce, equipment or work practices that would adversely affect the licensee's ability to remove and handle, in a safe and proper manner, materials that consist of or contain asbestos.

(6) The Director may vary a condition under subregulation (5) as the circumstances of the particular case may require.

(7) An asbestos removal licence may, if the Director so determines, be limited to a licence to perform asbestos removal work of a class specified in the licence.

(8) Unless another period is specified in the licence, an asbestos removal licence is effective for a period of two years.

(9) A licence is not transferable.

(10) If the Director considers, on reasonable grounds—

(a) that, due to changes in the licensee's workforce, equipment or work practices, the licensee can no longer carry out asbestos removal work in a safe and proper manner;

(b) that the licensee has failed to comply with a condition imposed with respect to the licence;

or

(c) that the licensee is no longer able to comply with such a condition,

the Director may, by notice in writing—

(d) cancel an asbestos removal licence;

or

(e) suspend the licence for a period of up to three months.

Suspension of work pending an appeal

8. Subject to an order of the Industrial Court to the contrary, the institution of an appeal pursuant to section 69(4) of the Act against a decision of the Director under this Part does not entitle the appellant, pending the determination of the appeal, to carry out asbestos removal work contrary to the terms of the Director's decision.

8.

PART III

PERFORMANCE OF ASBESTOS WORK

Prohibited or restricted processes

9. (1) A person must not, while at work—

- (a) use or handle raw asbestos, other than for the purpose of sampling or analysis;
- (b) use any product that consists of or contains asbestos, other than chrysotile (but this paragraph does not prevent the handling of installed asbestos for maintenance purposes, or the removal, encapsulation or enclosure of asbestos in accordance with these regulations);
- (c) spray any material that consists of or contains asbestos;
- (d) install as insulation any material that consists of or contains asbestos;

or

- (e) use any high pressure process to clean the surface of any material that consists of or contains asbestos.

Penalty: Division 4 fine.

(2) A person must not seal installed insulation material that consists of or contains asbestos.

Penalty: Division 4 fine.

(3) A person must not, without the written authority of the Director, encapsulate or enclose installed insulation material that consists of or contains asbestos.

Penalty: Division 6 fine.

(4) The Director must not give his or her approval under subregulation (3) unless the Director is satisfied that the encapsulation or enclosure of the material—

- (a) is the only reasonable method of protecting the health of persons who may be in the vicinity of the material;

and

- (b) can be carried out safely.

(5) Subregulation (3) does not apply in relation to—

- (a) the encapsulation or enclosure of any edges of insulation that have been exposed as a result of maintenance or repair work that does not require an asbestos removal licence;

or

9.

(b) any encapsulation that is in accordance with an approved code of practice.

(6) For the purposes of this regulation—

(a) material is sealed if it is covered with a protective coating that is impermeable to asbestos fibres;

(b) material is encapsulated if it is treated with a substance that penetrates to the surface beneath the material and hardens the material;

and

(c) material is enclosed if a structural barrier that is impermeable to asbestos fibres is placed between the material and the surrounding environment.

General duty

10. (1) Where—

(a) a person must undertake asbestos work (whether as an employer or self-employed person);

(b) a person is the owner of a building where any material that consists of or contains asbestos is installed;

or

(c) a person is in possession of plant that contains, or has on it, any material that consists of or contains asbestos,

the person must, subject to these regulations—

(d) ensure that the risk to health that exists, or may exist, on account of the presence of asbestos is assessed;

(e) ensure that any person who might come into contact with any asbestos during the course of any work is warned of the presence of the asbestos;

and

(f) ensure so far as is reasonably practicable that the health of any person who may be required to carry out asbestos work is not endangered by any asbestos fibres that may be released into the air.

Penalty: Division 5 fine.

(2) A person undertaking asbestos work (whether as an employer or self-employed person) must take all reasonable steps to minimize the release of asbestos fibres into the air.

Penalty: Division 5 fine.

(3) Without derogating from the requirements of subregulation (2)—

(a) an employer must not allow an employee to be exposed to airborne asbestos fibres in excess of the exposure standards prescribed by these regulations;

and

(b) an employer or a self-employed person must not expose himself or herself to airborne asbestos fibres in excess of the exposure standards prescribed by these regulations.

Penalty: Division 5 fine.

(4) A person must, so far as is reasonably practicable, use products or materials that do not consist of or contain asbestos and, to such extent as that is not reasonably practicable, must use products or materials—

(a) that consist of or contain the lowest possible amount of asbestos (being chrysotile);

and

(b) that are of a size, shape and type that minimize the need to work with asbestos and the possibility of asbestos fibres being released into the air.

Penalty: Division 6 fine.

Duties of employers

11. (1) Without derogating from any other duty under these regulations, an employer who is to undertake asbestos work must—

(a) before an employee commences any of the work—

(i) ensure that an assessment of the work to be undertaken is carried out in order to identify the risks to health that may exist on account of the presence of asbestos;

(ii) consult with his or her employees on the steps to be taken to protect their health during the performance of the work;

and

(iii) ensure that adequate information, instruction and training are given to each employee to ensure that the employee is aware of any risks involved in the performance of the work and the precautions that should be taken to protect his or her health;

and

11.

- (b) during the performance of the work—
- (i) keep under consideration the conditions at the workplace;
 - (ii) inform his or her employees of any change in the risks to health associated with the work;
- and
- (iii) regularly consult with his or her employees on the safe performance of the work.

Penalty: Division 6 fine.

(2) Subject to subsection (4), an employer must keep detailed records in relation to any asbestos work carried out by his or her employees.

Penalty: Division 6 fine.

- (3) The records must—
- (a) contain, under the name of each employee, detailed information in relation to the asbestos work carried out by the employee (including the dates on which the work is carried out, the place or places where the work is carried out, and the results of any air monitoring undertaken to determine the levels of airborne asbestos fibres);
- and
- (b) be retained by the employer for 30 years from the date of the last entry in the records.

Penalty: Division 6 fine.

(4) An employer is not required to keep records in relation to any work where the exposure to airborne asbestos fibres is assessed as being no more than trivial, infrequent and of short duration.

(5) A record kept by an employer for the purposes of this regulation must be made available to the person to whom it relates as follows:

- (a) the employer must allow the person to inspect the record at any reasonable time;
 - (b) the employer must supply a copy of the record to the person—
 - (i) whenever the person makes a reasonable request for a copy;
- and
- (ii) when the person ceases work with the employer;

and

12.

- (c) after the person has ceased work with the employer—the former employer must supply a copy of the record to the person whenever he or she makes a reasonable request for a copy.

Penalty: Division 6 fine.

(6) When an employer who has undertaken asbestos work winds up his or her business or otherwise ceases operations in the State, the employer must, within one month, send to the Director any records kept under this regulation.

Penalty: Division 6 fine.

Duties as to monitoring

12. (1) For the purposes of this regulation—

(a) monitoring must be—

- (i) undertaken in accordance with the *Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Dust* published by the National Occupational Health and Safety Commission;

and

- (ii) supervised by a person who is competent in air sampling strategies;

and

- (b) samples must be analysed by a laboratory that is accredited by the National Association of Testing Authorities or approved by the Director.

(2) A person who must undertake asbestos work (whether as an employer or self-employed person) must ensure that steps are taken to monitor the amount of airborne asbestos fibres to which any person who—

(a) performs the work;

or

(b) may be required to work in the vicinity of the asbestos work,

may be exposed.

Penalty: Division 5 fine.

(3) Where asbestos removal work is being carried out, the monitoring must be undertaken continuously during the performance of the work in accordance with a programme approved by the Director.

Penalty: Division 5 fine.

13.

(4) Where asbestos work other than asbestos removal work is being carried out, the monitoring must be undertaken on a regular basis.

(5) Notwithstanding the preceding provisions of this regulation, monitoring is not required in relation to any work—

(a) where the exposure to airborne asbestos fibres is no more than trivial, infrequent and of short duration;

or

(b) where the Director has granted an exemption from the requirement to undertake monitoring in relation to the performance of that work.

(6) An exemption under subregulation (5) may be granted by the Director on such conditions as the Director thinks fit.

(7) The Director, may, at any time, by notice in writing, revoke an exemption under subregulation (5).

(8) A person must not contravene or fail to comply with a condition imposed by the Director under subregulation (6).

Penalty: Division 6 fine.

Duties of building owner and other persons in possession of asbestos

13. (1) A person must take reasonable steps to identify any asbestos that is installed in any building of which he or she is the owner or contained in, or located on, any plant that is in his or her possession.

(2) Where a person—

(a) is the owner of a building where any material that consists of or contains asbestos is installed;

or

(b) is in possession of plant that contains, or has on it, any material that consists of or contains asbestos,

the person must ensure—

(c) if the asbestos is assessed as being in an unstable condition or otherwise imposes a significant risk to health—that the asbestos is removed as soon as it is reasonably practicable to do so;

(d) that policies and procedures are established to control the asbestos and to prevent (or where that is not reasonably practicable, to minimize) the exposure of any person to airborne asbestos fibres;

and

- (e) that the asbestos is only removed by a competent person (who must, except as otherwise provided by these regulations, be a person who holds an asbestos removal licence and who has obtained the approval of the Director to perform the relevant work).

Penalty: Division 6 fine.

(3) The policies required under subregulation (2)(d) must address—

- (a) an assessment of the degree of stability of the asbestos;
 - (b) the steps that can be taken to restrict access to the place where the asbestos is situated;
 - (c) the steps that can be taken to prevent disturbance of the asbestos;
 - (d) the use of labels and signs to warn of the asbestos;
 - (e) regular inspections of the asbestos (at least annually) by a competent person;
- and
- (f) work practices in the vicinity of the asbestos.

(4) A person to whom subregulation (2) applies must maintain a register of the type, condition and location of the asbestos.

Penalty: Division 7 fine.

(5) Where a register under subregulation (4) relates to asbestos installed in a building and the owner of the building is not the occupier of the building, the owner must ensure that—

- (a) a copy of the register;
- and
- (b) a copy of any alterations made to the register from time to time,

is supplied to the occupier of the building.

Penalty: Division 7 fine.

(6) Any person who is required to maintain a register under subregulation (4), or who receives a copy of a register under subregulation (5), must present the register (or a copy of the register) for inspection when requested to do so by—

- (a) an inspector;
- (b) a person authorized by the Commission or the Director;
- (c) any person who, in the course of work, could come into contact with any material, or fibres from any material, required to be included in the register;

15.

or

- (d) any health and safety representative, or any health and safety committee, that has any responsibility in relation to the performance of any work in the area of the asbestos.

Penalty: Division 7 fine.

(7) This regulation does not apply in relation to asbestos in a private residence.

Personal safety

14. (1) A person who carries out asbestos work must, so far as is reasonable (but without derogating from any common law right)—

- (a) use any equipment supplied for the safe handling of asbestos;
- (b) carry out the work in a manner that minimizes the release of asbestos fibres into the air;
- (c) wear protective clothing and use respiratory protective equipment supplied to the person for the purposes of that work;
- (d) exercise due care to ensure that any protective clothing and respiratory protective equipment is in good condition;

and

- (e) practise a high standard of personal hygiene and make proper use of any decontamination facilities provided in relation to the performance of that work.

Penalty: Division 7 fine.

(2) A person must not eat, drink or smoke in the vicinity of a place where asbestos work is being carried out.

Penalty: Division 7 fine.

(3) A person must not take home any clothing or equipment that is contaminated with asbestos.

Penalty: Division 7 fine.

Note: The following codes of practice also relate to the performance of asbestos work:

- (a) *Approved Code of Practice for the Safe Removal of Asbestos* (see *Government Gazette* 2 November 1989—Published by the South Australian Government);
- (b) *Approved Code of Practice for Asbestos Work* (Gazetted in conjunction with this regulation—see *Government Gazette*).

FIRST SCHEDULE

Application for a Licence to Carry Out Asbestos Removal Work

(OR)

(Application for a Limited Licence to Carry Out Asbestos Removal Work)

To: The Director
Department of Labour
Adelaide

PURSUANT to the *Occupational Health, Safety and Welfare (Asbestos) Regulations 1991* the following application is made for a licence to carry out asbestos removal work:

1. Full name of applicant and details of any business name.
2. Business address and telephone number of applicant.
3. Postal address of applicant.
4. In the case of a body corporate—the address of its registered office.
5. Details of asbestos removal work previously undertaken by the applicant*.
6. Describe fully the make, type, etc., of equipment to be used for asbestos removal work, including personal protective equipment and waste disposal equipment*.
7. State arrangements for asbestos monitoring.
8. Describe fully the training in safe methods for performing asbestos removal work undertaken by any person who is to carry out the work (whether employed or otherwise engaged by the applicant on a regular basis)*.
9. Describe the method of transport and final disposal of asbestos waste material*.
10. State the regulations, codes of practice and other procedures to be observed for the safe removal of asbestos or materials containing asbestos.
11. State whether a limited licence only is required and, if so, the type of work proposed to be undertaken.
12. The prescribed fee accompanies this application.

13. I CERTIFY THAT THE ABOVE STATEMENTS AND THE INFORMATION SHOWN ON THE ATTACHMENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

.....
Date

Signature of applicant (or, in the case of a body corporate, its authorized agent).

* If necessary, a separate sheet setting out the relevant information may be attached to this application.

SECOND SCHEDULE

Fees

Application for an asbestos removal licence under these regulations—

- (a) In the case of a licence limited to the removal of asbestos-cement (fibro) products or other non-friable asbestos-containing material \$ 695
- (b) In any other case \$4 565

APPENDIX 1

Legislative History

Regulation 13(3):	varied by 269, 1991, reg. 2(a)
Regulation 13(4):	varied by 269, 1991, reg. 2(b)
Regulation 13(5):	varied by 269, 1991, reg. 2(c)
Regulation 13(6):	varied by 269, 1991, reg. 2(d)
Second Schedule	
Paragraph (a):	varied by 100, 1991, reg. 3(a); 74, 1992, reg. 3; 104, 1993, reg. 3; 82, 1994, reg. 3
Paragraph (b):	varied by 100, 1991, reg 3(b); 74, 1992, reg. 3; 104, 1993, reg. 3; 82, 1994, reg. 3

APPENDIX 2**DIVISIONAL PENALTIES**

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act, 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	-	\$500
10	-	\$200
11	-	\$100
12	-	\$50

Note: This appendix is provided for convenience of reference only.