



Conditions for conducting asbestos removal and asbestos assessor training and assessments in NSW under the *Work Health and Safety Regulation 2011*

1 January 2013

Disclaimer

This publication may contain work health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au).

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

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Purpose

These *Conditions for conducting asbestos removal and asbestos assessor training and assessments in NSW under the Work Health and Safety Regulation 2011* (catalogue no. WC03775) (the conditions) are issued under the *Work Health and Safety Regulation 2011* (WHS Regulation) and are effective from 1 January 2013. The conditions form part of the agreement between WorkCover NSW and the registered training organisation (RTO) to conduct asbestos removal and/or asbestos assessor training and assessments in NSW under the WHS Regulation.

Clauses 460, 485 and 487 of the WHS Regulation require that a person conducting a business or undertaking (PCBU) must not carry out or direct a person to carry out friable or non-friable asbestos removal work unless the person holds the respective class A or class B asbestos removal licence for that work. A class A asbestos removal licence permits that holder to carry out the removal of both friable and non-friable (bonded) asbestos. A class B asbestos removal licence permits the holder to carry out removal of non-friable (bonded) asbestos only.

To obtain a class A or B asbestos removal licence, the person must hold the specified vocational education and training (VET) qualification (unit of competency (UOC)), have evidence that a certified management system is in place (class A only), and name one or more competent persons that also hold the specified qualifications (UOC) to supervise that work (clauses 493 and 494 of the WHS Regulation).

To be a named competent person/supervisor, the person must hold the supervisor UOC as well as the UOC relating to the asbestos removal work (class A and/or class B) to which the supervision applies.

Under clause 489 of the WHS Regulation, a person must not carry out air monitoring, clearance inspections or issuing clearance certificates for class A asbestos removal work unless the person holds an asbestos assessor licence. To obtain an asbestos assessor licence, the person must have evidence that they have acquired, through training or experience, the knowledge and skills of relevant asbestos removal industry practice, and evidence of the specified VET UOC or tertiary qualification (clause 495 of the WHS Regulation).

Under chapter 8 of the WHS Regulation, asbestos removal training for a class A or class B licence is defined as training delivered in Australia by an RTO for the specified VET UOC. Asbestos assessor training is also defined this way, but includes the acceptance of tertiary qualifications in lieu of a VET course. For the purposes of the conditions and the agreement, the provisions and requirements outlined for asbestos assessor training only applies to RTOs offering the VET UOC course option.

The specified VET UOC relevant to each class of asbestos removal licensing are available in attachment A. These UOC are required to be delivered by an RTO in accordance with the standards for national VET regulator (NVR) RTOs and/or state VET regulator standards.

An RTO is defined under chapter 1, Part 1.1 of the WHS Regulation as an organisation on the national register established under the *National Vocational Education and Training Regulator Act 2011* (NVETR Act) that has entered into an agreement with the regulator (in this case WorkCover) to deliver training and conduct assessments.

Adherence to the conditions by an approved RTO, its staff and representatives, forms part of the agreement requirements.

In addition to responsibilities and obligations under the agreement, the conditions, the WHS Regulation and the *Work Health and Safety Act 2011* (WHS Act), an RTO, their staff and representatives may have responsibilities and obligations under the:

- *Privacy and Personal Information Protection Act 1998* (PPIP Act)
- *Anti-Discrimination Act 1977* (AD Act)
- *State Records Act 1998* (SR Act)
- *Independent Commission Against Corruption Act 1998* (ICAC Act)
- *National Vocational Education and Training Regulator Act 2011* (NVETR Act)
- *Copyright Act 1968* (Copyright Act).

Whilst the conditions refer primarily to the obligations of the RTO, it is understood that, even where not specifically stated, that the RTO's staff and representatives must also comply with the conditions. It is the responsibility of the RTO to ensure that all persons comply with the conditions. A breach of the conditions may place the RTO in breach of the agreement and may lead to the agreement being terminated.

If WorkCover is satisfied that an RTO's training or assessment was not conducted properly or in accordance with the conditions, WorkCover may not recognise that training or assessment for the purposes of issuing a class A or class B (including nominated supervisor) or asbestos assessor licence to an individual or individuals.

Additional copies of this document are available on the WorkCover website at workcover.nsw.gov.au or by contacting the Asbestos and Demolition Unit.

Asbestos and Demolition Unit

WorkCover NSW

Locked Bag 2906

Lisarow NSW 2252

Phone: (02) 4321 5209

Fax: (02) 9287 5209

Section 1 – Summary of conditions

The following conditions of approval apply to all RTOs, their staff and representatives delivering asbestos removal and/or asbestos assessor training and assessment (ART) in NSW.

All RTOs must:

- a. comply with the requirements of the agreement
- b. comply with all requirements of the conditions
- c. comply with the code of conduct (section 2 of the conditions) and advertising specifications (section 3 of the conditions)
- d. comply with the *Standards for NVR RTOs* and/or state VET regulator standards when delivering and assessing the VET UOC for ART
- e. notify WorkCover in writing within 14 days of any change to the contact details of the RTO or changes to authorised officers
- f. attend any compulsory briefings, orientation programs or assessment programs as requested by WorkCover. Non-attendance may result in a suspension or cancellation of WorkCover's approval to deliver ART in NSW and termination of the agreement
- g. cooperate with any reasonable requests from WorkCover in connection with the registration, approval or delivery of ART in NSW
- h. represent WorkCover in a professional manner
- i. maintain ethical and professional conduct in connection with the advertising and delivery of ART in NSW
- j. protect the copyright of WorkCover publications
- k. immediately advise WorkCover, in writing, of any court conviction against the RTO, its directors or authorised officers in Australia for a work health and safety (WHS)/occupational health and safety (OHS) offence
- l. immediately advise WorkCover if the RTO's registration is suspended, cancelled or amended in any way by the Australian Skills Quality Authority (ASQA) or a State Training Authority (STA)
- m. immediately advise WorkCover of any criminal offence of the RTO, its directors or authorised officers
- n. immediately report to WorkCover any identified breach of the conditions or code of conduct by another WorkCover approved RTO
- o. immediately report to WorkCover any approved RTO who is identified as being suspended or cancelled as an WHS/OHS service provider in any state or territory.

Section 2 – Code of conduct

RTOs, their staff and representatives are deemed 'public officials' for the purposes of the ICAC Act as they are conducting ART on behalf of WorkCover.

Public officials have an obligation to the community to conduct business diligently, efficiently, honestly, impartially and with integrity. Public officials must act in a manner to maintain public confidence and trust. Unethical or improper behaviour or any form of corruption is not acceptable.

Corrupt conduct includes:

- any conduct by any person which adversely affects or could adversely affect – either directly or indirectly – the honesty or impartiality of the RTO
- any conduct by the RTO which involves dishonest or partial exercise of the functions of an RTO.

The requirements include, but are not limited to, RTOs, their staff and representatives meeting the following requirements:

- a. To comply with the conditions, including the code of conduct, at all times whilst delivering ART in NSW.
- b. To deliver ART activities professionally, fairly and without bias or collusion.
- c. Must not demand or accept a gift, benefit or favour for services associated with the delivery of ART in NSW.
- d. Must not accept any bribe, gift, hospitality, travel, benefits or inducement that may directly or indirectly influence, or appear to influence, the RTO, its staff or its representatives' ability to act or perform their duties impartially. This includes partners, family members, friends and associates of the RTO, its staff and representatives.
- e. If offered a bribe, the training must be terminated immediately. A detailed account of what occurred, including the time, location and exactly what was said is to be recorded. The RTO/staff member/representative must inform any person who offered a bribe, or inducement for training, that it will be reported to WorkCover. The matter must then be immediately reported to the Asbestos and Demolition Unit (A&D Unit) on **(02) 4321 5209**.
- f. Must not make false or misleading declarations in their dealings with WorkCover or in relation to the delivery of ART. This could include, for example, falsifying information or omitting information, or providing incorrect information on documentation including a participant's answers, a participant's training records, training delivery times or assessment results etc.
- g. Report to the A&D Unit any corrupt behaviour associated with the training of participants or behaviour that they may be aware of which is contrary to the conditions, including any suspicion or reasonable belief that the training process may be compromised.
- h. Must not carry out ART if they know, suspect or reasonably believe that any information provided by the participant is false or misleading.
- i. Must fully disclose any actual or potential conflicts of interest involving delivery of ART to the A&D Unit. If there is a conflict or potential conflict of interest, the training is not to proceed.

Conflicts of interest include any financial or personal interest that could directly or indirectly influence the performance of the duties of the RTO, its staff or representatives. An example of a conflict of interest is delivering ART for family or friends, or for organisations in which the RTO representative or a family member of the RTO representative has a financial interest.

Note: If an RTO, its staff or representatives are uncertain about a potential conflict of interest, they are to immediately contact the A&D Unit. In general, the issue of conflict of interest does not apply where an RTO representative is employed as an in-house trainer for an employer. However, if still in doubt, contact the A&D Unit for clarification.

- j. Provide any records requested by WorkCover that are associated with ART. The requested records are to be provided within the timeframe specified by WorkCover.

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- k. A participant's personal details and training records must be kept confidential at all times and must not be disclosed by the RTO's staff or representatives to any person other than their RTO and/or authorised WorkCover officers.

Note: Information collected from a participant is covered by the PPIP Act and may be made available to other state government agencies for the purpose of confirming the participant's details.

- l. Must not deliver ART if under the influence of alcohol, illicit drugs or substances.
- m. Must not deliver ART if they suspect that a participant is under the influence of alcohol, illicit drugs or substances.
- n. Must advise WorkCover in writing immediately, if:
- o they have a court conviction in Australia for a work health and safety/occupational health and safety offence, or any criminal offence
 - o their approval as an RTO/trainer in any state or territory is cancelled or suspended and provide the reason.
- o. Must not reproduce WorkCover publications (except as provided by the Copyright Act) without prior written permission from WorkCover.

Section 3 – Advertising specifications for WorkCover approved registered training organisations

3.1 Use of the term 'approved'

RTOs are approved by WorkCover to deliver ART in NSW.

RTOs must ensure that any advertising or publicity they undertake uses the term 'approved' correctly.

'Approved' refers only to the RTO that has WorkCover approval, and WorkCover must be identified as the approving authority. The term cannot be used to refer to partners or to individual trainers or representatives.

3.2 General guidelines

- It is the responsibility of an approved RTO to ensure that their staff, representatives and partners comply with these advertising guidelines.
- Any advertising or publicity claiming that an RTO has WorkCover approval must refer to the RTO name exactly as it has been approved and documented on the WorkCover certificate of approval.
- Any advertising or publicity carried out by an RTO partner, trainer or representative must not carry the claim to be WorkCover approved without reference to the approved RTO with which they are affiliated.
- Interstate RTOs must obtain approval from WorkCover before advertising services in NSW.
- An RTO must not advertise that they are WorkCover approved when they are not
- Advertising and publicity must not be misleading or ambiguous.

3.3 Copyright

WorkCover material

Use of WorkCover material is protected by copyright. It may only be downloaded, displayed, printed or reproduced, without amendment, for personal, in-house or non-commercial use.

WorkCover does not approve the commercial use of its material where a direct profit will be made from its reproduction/distribution.

Other use of WorkCover material, including alteration, transmission or reproduction for commercial use is permitted only with written permission from WorkCover. A *Copyright request for use of WorkCover materials: Application Form* (catalogue no WC03734) is on workcover.nsw.gov.au

WorkCover logo

The WorkCover logo is a registered trademark. It must only be reproduced by non-government sites that have written permission from WorkCover.

Using WorkCover branding to promote individual companies for competitive advantage is strictly prohibited.

All inquiries regarding the use of WorkCover's material or logo should be directed to the Communications Group comms@workcover.nsw.gov.au

WorkCover website

Written consent is required from the Communications Group to link to the WorkCover website. Applicants are required to complete a *Request to link to WorkCover website* (catalogue no. WC02618).

Links to the WorkCover website must, when activated, continue to display frames of the original website around the Workcover web pages and must not state or imply that WorkCover endorses a brand, product or service. Non-government sites linking to WorkCover must check these links every 30 days to ensure they are active.

3.4 Audit and self-audit

Advertising and promotional material produced by RTOs, their partners and representatives may be subject to an audit by WorkCover against the advertising guidelines and the RTO's conditions of approval. Non-compliance will be regarded as a breach by the RTO and may result in disciplinary action.

RTOs are encouraged to undertake regular self-audit, to ensure that their own and their partner's/representative's advertising and promotional material is fully compliant with WorkCover's specifications and those of their training authority.

Section 4 – Conditions

An administration summary is available at attachment B.

4.1 Notifications of scheduled training to WorkCover

1. The RTO is required to notify ART to WorkCover via WorkCover's Online Environment (OLE) by providing at least seven calendar days notice of the scheduled training and complying with the requirements of OLE as specified in the OLE User Guide. The RTO should retain, with the training records, the email acknowledgement from OLE as evidence of the date and time the training was entered into OLE.
2. If there is any variation to the initial notification of scheduled training, the RTO is responsible for updating the scheduled training details on OLE at least 48 hours prior to the training. The RTO should retain the email acknowledgement from OLE as evidence of the date and time the variation was entered onto OLE. Variations to move the training forward within the seven day calendar notice period will not be accepted.
3. Where a variation to training occurs less than 48 hours prior to the training – including cancellation or change of address – the Licensing Solutions Unit must be contacted immediately on **(02) 4321 5507** and the details of the training varied within the OLE. All cancellations of training on a weekend or public holiday are to be notified to the Licensing Solutions Unit on the next business day and varied within the OLE.

4.2 Before delivering training

4. The RTO is to ensure the maximum number of participants attending ART in any one session does not exceed 20.

4.3 Delivering training

5. The RTO is to ensure that ART is delivered and assessed in accordance with the requirements of the specified VET UOC, and VET Quality Framework, and the WHS Regulation.
6. The RTO is to ensure that the trainer has a copy of the conditions in their possession at the time of delivery of ART. These may be in electronic form provided they can be easily accessed and consulted.
7. The RTO is to ensure that the trainer has in their possession at the time of delivery of ART, appropriate teaching and instructional material (ie trainer's notes, overheads, assessment tools, evaluation forms etc) and sufficient resources (ie handouts etc) to issue to each participant.
8. The RTO is to ensure that ART is delivered via face-to-face delivery mode only.
9. The RTO is to ensure that if delivering training to an individual with language difficulties, or if delivering in a language other than English, that they comply with the relevant VET standards.
10. The RTO is to ensure appropriate breaks are provided during the training. These breaks should be at the discretion of the trainer.
11. The RTO is to ensure the nominated trainer promotes a positive and effective learning environment by:
 - a. clearly outlining the learning outcomes and assessment processes
 - b. encouraging participation and interaction
 - c. ensuring that participants with differing learning needs are given the same opportunity as other participants in gaining skills and knowledge through the training
 - d. ensuring that the learning environment is free from harassment and discrimination
 - e. ensuring that the audiovisual material (eg slides) are well-organised and easy to follow
 - f. ensuring enough resources are available for all learners to participate in the activities and assessment
 - g. providing enough time to complete activities
 - h. answering questions clearly and correctly
 - i. providing handouts in colour where appropriate (eg safety signs, fire extinguishers)
 - j. using a variety of delivery methods (eg lecture, large and small group discussions, videos)
 - k. engaging participants in a range of learning activities (eg group activities, question and answer sessions, brainstorming, case studies)
 - l. using clear language to describe concepts
 - m. summarising the content at the end of each topic
 - n. providing feedback to the participants on their progress throughout the training session.
12. The RTO is to collect and record documented evidence of competence for each individual who undertakes ART to demonstrate that the individual can perform to the competency standard. Records of all assessments must be maintained for WorkCover and the ASQA auditing, as per the VET Quality Framework record-keeping requirements.

4.4 After delivering training

13. The RTO must issue to all successful participants a Statement of Attainment (SOA) for the specified VET UOC in accordance with the VET Quality Framework to enable them to apply to WorkCover for the corresponding licence.
14. The RTO must ensure that evaluation of training is undertaken in line with continuous improvement principles and the VET Quality Framework.

Section 5 – Training records

15. WorkCover requires training records be retained by the RTO in hard copy for a minimum of five years after the training. This includes:
 - documentary evidence gathered that demonstrates each participant who has successfully completed ART has been assessed in accordance with the specified VET UOC
 - documentary evidence gathered that demonstrates each participant who has been granted recognition of prior learning (RPL) has been assessed in accordance with the VET Quality Framework.
16. In the event training records are lost, stolen, destroyed or damaged, the RTO must advise WorkCover in writing as soon as possible with details on what happened and what specific records were affected.
17. Training records must be made available to WorkCover upon request.

Section 6 – Asbestos and Demolition Unit

The Asbestos and Demolition (A&D) Unit can provide clarification of any of the conditions or any other issues related to the delivery of ART in NSW. The A&D Unit number should not be provided to ART participants who are seeking information regarding the processing of their ART cards or any other health and safety issue. Participants seeking information on their ART card should contact the Licensing Solutions Unit on **(02) 4321 5507**. For all other matters, the WorkCover Customer Service Centre may be contacted on **13 10 50**.

A&D Unit – Conditions and delivery of training only

Phone:	(02) 4321 5209
Address:	Asbestos and Demolition Unit WorkCover NSW Locked Bag 2906 Lisarow NSW 2252
Fax:	(02) 9287 5209

Licensing Solutions – Training notifications and processing of ART cards only

Phone: (Hours 8:30am – 5:00pm Monday to Friday)	(02) 4321 5507
Address:	Licensing Solutions WorkCover NSW Locked Bag 2906 Lisarow NSW 2252
Email:	LS@workcover.nsw.gov.au
Fax:	(02) 9287 5497

WorkCover Customer Service Centre – General and other contact information

WorkCover Customer Service Centre (Hours: 8:30am – 5:00pm Monday to Friday)	13 10 50
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Section 7 – WorkCover forms

The following forms are to be used by the RTO for the administration of ART. These forms are available online on the WorkCover website at workcover.nsw.gov.au.

Form name	Catalogue number
<i>Application for a registered training organisation to deliver asbestos removal and asbestos assessor training in NSW (ART-RTO-1)</i>	WC03766
<i>Application for a registered training organisation to add or remove an authorised officer or change of contact details for the delivery of asbestos removal and asbestos assessor training (ART-ADD-1)</i>	WC03768
<i>Notification of training (if OLE is unavailable) for the delivery of asbestos removal and asbestos assessor training (ART-PRE-1)</i>	WC03764
<i>Variation/cancellation of training (if OLE is unavailable) for the delivery of asbestos removal and asbestos assessor training (ART-VAR-1)</i>	WC03765

Section 8 – Site visits, audits and compliance

To ensure the quality and integrity of ART in NSW, WorkCover staff may observe and monitor the delivery and assessment of ART. WorkCover has a systematic auditing process in place to review the conduct of RTOs, their representatives and their trainers in the delivery and assessment of ART, to ensure compliance with the specified VET UOC, the agreement requirements and the conditions.

WorkCover will investigate any allegation made, or a complaint received, against an RTO, their representatives or trainers including, but not restricted to, the following:

- A breach of the agreement requirements.
- A breach of the conditions.
- Inappropriate, discriminatory or corrupt behaviour.
- Inappropriate or discriminatory comments.

As a result of an audit or investigation, WorkCover may contact the RTO requesting further information or assistance. The RTO is required to cooperate with any such request, and refusal or hindrance may result in the cancellation of WorkCover's agreement with the RTO. An RTO that is not a party to an agreement with WorkCover under the WHS Regulation in relation to training and assessment cannot carry out ART under the WHS Regulation.

WorkCover may also share any information regarding the RTO and its nominated trainers with ASQA, other STA and other state and territory WHS/OHS regulators.

Penalties for non-compliance

WorkCover may impose penalties on an RTO for not complying with the conditions, the agreement requirements and/or relevant provisions of the WHS Act and WHS Regulation.

The penalty will be determined by the type, frequency and severity of the breach. Penalties may include:

- corrective action notice
- suspension of agreement and therefore WorkCover approval to deliver ART in NSW (up to 12 months)
- cancellation of agreement and WorkCover approval to deliver ART in NSW
- prosecution.

Prior to any suspension or cancellation, WorkCover will issue to the RTO written notice of the proposed suspension or cancellation. The RTO will be given 28 days to make written representations to WorkCover in relation to the proposed suspension or cancellation. WorkCover will have regard to the written representations before making a final decision on suspending or cancelling an RTO's approval.

If an RTO has had their approval to deliver ART suspended or cancelled, this may also result in the suspension or cancellation of other accreditations, approvals or registrations held by the RTO with WorkCover.

WorkCover may refuse to accept an application from an RTO or refuse to acknowledge training delivered by an RTO who has been suspended or cancelled from delivering a service by either ASQA, or a STA, or by any state or territory WHS/OHS regulator.

Review process

If the RTO does not agree with the decision by WorkCover to suspend or cancel their approval, the RTO is entitled to request an internal review of the decision.

If the RTO wishes to apply for a further internal review, a written request, including any additional information, must be submitted to the following address within 28 days of being notified of the decision to suspend or cancel the RTO's approval:

**Team Coordinator
Governance and Appeals
WorkCover NSW
PO Box 592
Richmond NSW 2753**

The request for review is to specifically address the issues as identified by WorkCover. The RTO will be advised of the outcome of the review in writing.

Attachment A – Specified vocational education and training courses (units of competency)

- Class A: CPCCE3015A – Remove friable asbestos
- Class B: CPCCE3014A – Remove non-friable asbestos
- Supervisor: CPCBC4051A – Supervise asbestos removal
- Assessor: CPCBC5014A – Conduct asbestos assessment associated with removal

Attachment B – Administration summary

	Description	Condition
Notifications of training	<p>Notify ART to WorkCover via WorkCover’s OLE by providing at least seven calendar days notice of the scheduled training.</p> <p>Variations to the initial notification of scheduled training must be made via OLE at least 48 hours prior to the training. Variations to move the training forward (within the seven day calendar notice period) will not be accepted. Where a cancellation or change of address occurs within 48 hours, the Licensing Solutions Unit must be contacted immediately on (02) 4321 5507 with OLE updated.</p>	1 2 & 3
Before delivering training	Maximum number of participants must not exceed 20.	4
Delivering the training	<p>Delivery of ART is via face-to-face mode only.</p> <p>Documented evidence of competence for each individual is to be collected, recorded and maintained.</p>	8 12
After the training	<p>Statement of Attainment to be issued by the RTO to the participant for a licence application to be made with WorkCover.</p> <p>Evaluation of training to be conducted in line with the RTO’s continuous improvement strategy.</p> <p>WorkCover requires training records to be retained by the RTO in hard copy for a minimum of five years after the training.</p>	13 14 15

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