



Improving demolition licensing in NSW

Consultation paper

Work Health and Safety Amendment (Demolition Licensing)
Regulation 2022

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Minister's message



I am proud to present this consultation paper that sets out the objectives and intent of the proposed Work Health and Safety Amendment (Demolition Licensing) Regulation 2022 and seeks feedback from key stakeholders and the community.

The proposed Demolition Licensing Regulation will move the current demolition licensing

provisions from the repealed Occupational Health and Safety Regulation 2001 (NSW) into the Work Health and Safety Regulation 2017 (NSW). This will modernise the regime and ensure that it is consistent with the approach to licensing for other high-risk activities established under the *Work Health and Safety Act 2011* (NSW).

Demolition licences, like other authorisations to perform high-risk workplace activities, should be provided for in the current Work Health and Safety Regulation 2017 (NSW), rather than through savings and transitional provisions that refer to the repealed legislation. If the legislation governing licensing of this type of work is easy to find, it will give licence holders and the community clarity about the rules.

The purpose of the demolition licensing scheme is to protect workers and others from the risks arising from demolition work. It achieves this by ensuring that the work is carried out by those with the training and experience to do it safely.

Demolition work is licensed because it is a high-risk activity. It may involve heavy machinery, the use of explosives, or the dismantling of structures which have contained hazardous chemicals. Demolition work creates a risk of falling objects, from either part or all of a structure or debris; a risk of being struck or crushed by operating mobile plant; and risks of exposure to airborne contaminants, such as asbestos or silica.

The proposed amendments will maintain strong safety standards to ensure demolition work is carried out safely by competent persons. They will also retain all the necessary features for a robust regulatory scheme, including licensing and notification obligations, and compliance and enforcement powers.

I encourage you to take part in this consultation and have your say on these important regulatory changes.

Eleni Petinos MP

Minister for Small Business and Minister for Fair Trading

1. Consultation process

1.1 Make a submission

Interested organisations and individuals are invited to read this consultation paper and comment on specific areas of interest, or all the issues raised. Submissions are invited on any of the matters raised in this consultation paper or anything contained in the proposed amendment regulation. To assist stakeholders in providing a comment on the consultation paper, discussion questions are provided at **Appendix 1**.

Other matters covered by the *Work Health and Safety Act 2011* and Work Health and Safety Regulation 2017 are not the subject of this consultation process.

To assist you in making a submission, an optional online survey will be available at <https://www.haveyoursay.nsw.gov.au/improving-demolition-licensing>. However, this survey is not compulsory and submissions can be in any written format.

Submissions can also be made by email and the Department requests that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to people who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is available at <http://webaim.org/techniques/word/>. Printed copies can be requested from SafeWork NSW by phone on 13 10 50.

1.2 How to lodge your submission

You can provide a submission in one of following ways:

- complete the online survey for this consultation at <https://www.haveyoursay.nsw.gov.au/improving-demolition-licensing> the survey will take about 5 to 10 minutes to complete.
- upload a submission for the consultation at <https://www.haveyoursay.nsw.gov.au/improving-demolition-licensing> or send by email to: whspolicy@customerservice.nsw.gov.au.

Submissions close at 5:00 pm on Monday 2 May 2022.

1.3 Important note: release of submissions

All activities must be conducted in an ethical and transparent manner and comply with the values, principles and articles in the Department of Customer Service Code of Ethics and Conduct.

Staff will ensure they are not, or are not perceived to be, in a conflict of interest. Those staff who have, or may be perceived to have, a vested interest in the outcome of a purchase or decision should

disclose any conflict to their manager and discuss whether they should exclude themselves from any role in decisions.

1.4 Next steps

After the consultation period has closed:

- all submissions will be considered and assessed
- if necessary, the proposed amendment regulation will be changed to address issues identified in the consultation process, and
- if further information is required, targeted consultation will be held before the amendment regulation is finalised.

2. Introduction and key changes

2.1 Introduction

The demolition licensing provisions are currently in the repealed Occupational Health and Safety Regulation 2001 (**OHS Regulation**) and have continued to operate through savings and transitional provisions since the enactment of the *Work Health and Safety Act 2011* (**WHS Act**). These arrangements were intended to be temporary until a national approach or model regulations for licensed demolition work were established. These have not eventuated and there are no plans at a national level to progress towards a consistent regulatory framework.

It is not appropriate to continue to leave the provisions in effect through savings and transitional provisions. To ensure consistency with the licensing of other high-risk activities in NSW, the draft Work Health and Safety Amendment (Demolition Licensing) Regulation 2022 (**draft Regulation**) moves the demolition licensing regime into the Work Health and Safety Regulation 2017 (**WHS Regulation**). While it is proposed that the amendments will substantively continue the current OHS Regulation demolition licensing provisions, there is an opportunity to streamline and modernise these laws.

This consultation paper sets out the key changes proposed by the draft Regulation and seeks feedback from stakeholders and the community. This paper should be read along with the draft Regulation.

2.2 Objectives of the WHS Act

The primary objective of the WHS Regulation is to provide legislative support and administrative detail for the operation of the WHS Act. The WHS Regulation is a detailed component of the WHS regulatory framework in NSW and forms a critical link between the WHS Act and monitoring compliance. It is integral to the effective operation and achievement of the WHS Act's objectives, which are:

- protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work or from specified types of substances or plant
- providing for fair and effective workplace representation, consultation, cooperation and issue resolution in relation to work health and safety
- encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices, and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment
- promoting the provision of advice, information, education and training in relation to work health and safety

- securing compliance with the WHS Act through effective and appropriate compliance and enforcement measures
- ensuring appropriate scrutiny and review of actions taken by persons exercising powers and performing functions under the WHS Act
- providing a framework for continuous improvement and progressively higher standards of work health and safety, and
- maintaining and strengthening the national harmonisation of laws relating to work health and safety and to facilitate a consistent national approach to work health and safety in this jurisdiction.

2.3 Key changes proposed

The key changes proposed in the draft Regulation include:

- amending the definitions for the scope of work permitted under a demolition licence, including aligning it with the notification of demolition work
- setting consistent and stronger criteria that SafeWork NSW (**the regulator**) must be satisfied with before granting, renewing, suspending, or cancelling a demolition licence, including extending these criteria to the named supervisor/s on the licence
- mandating appropriate training for all demolition workers and requiring the licence holder to retain those training records
- enabling SafeWork NSW to authorise Registered Training Organisations (**RTOs**) to deliver training and assessment for a demolition licence, and
- increasing licence duration to five years for new applications and renewals .

A summary of all the proposed changes to the WHS Regulation is provided at **Appendix 2**.

2.4 Existing licence holders

The draft Regulation (clause 702A) will allow those persons conducting a business or undertaking (**PCBU**) who are currently licensed, to continue to undertake demolition work until their current licence expires or is renewed.

2.5 Jurisdictional comparison

Demolition work and the licensing of demolition work is not regulated the same way across the States and Territories in Australia. Some States and Territories regulate and issue demolition licences within building legislation, rather than WHS legislation.

To provide context to the proposed changes in the draft Regulation, a jurisdictional analysis is provided at **Appendix 3**. This shows a comparison of the current key requirements for the authorisation of demolition work across Australia, including an analysis of licence duration, how 'demolition work' is defined, and eligibility requirements for a demolition licence.

3. Key changes to the Work Health and Safety Regulation 2017

This chapter explains the key changes proposed in the draft Regulation, which centre around:

- new definitions
- an expanded scope of matters to consider when making decisions about licences
- additional training requirements, and
- increased licence duration.

3.1 Definitions

3.1.1 Current scope of licensed demolition work

Under the current demolition licensing regime within the OHS Regulation, there are two types of demolition licences:

- (i) Demolition Licence (DE1), and
- (ii) Restricted Demolition Licence (DE2).

There are two types of licences because there are different types of demolition work under each.

- A Demolition Licence (DE1) authorises a licence holder to do all types of demolition work. 'Demolition work' as defined by the OHS Regulation includes demolition (or partial demolition) of any building, structure or installation as outlined in Table 1 – (DE1 licence).
- A Restricted Demolition Licence (DE2) authorises all demolition work **except** demolition work as described in Table 2 – (DE2 licence).

Applicants must show experience in the demolition work they wish to obtain a licence to perform.

For example, applicants for a Demolition Licence must show they have experience in demolition work using load shifting machinery. This manages risks, as it ensures licence holders carrying out demolition work can only perform work, they are experienced and skilled in.

Table 1: Current demolition license types

Licence type	Authorised work:
Demolition Licence (DE1)	<p>Includes demolition or partial demolition of any building or structure that:</p> <ul style="list-style-type: none">• is 10 metres or more in height• uses load shifting machinery on suspended floors• involves pre-tensioned or post-tensioned structural components of a building or structure• involves explosives or methods of induced collapse, or

Licence type	Authorised work:
	<ul style="list-style-type: none"> is 4 metres or more in height, involving mechanical demolition.
Restricted Demolition Licence (DE2)	<p>All demolition work except demolition work involving demolition:</p> <ul style="list-style-type: none"> of chemical installations above 15 metres in height using a tower crane on site using a mobile crane with a rated capacity of more than 100 tonnes of pre-tensioned or post-tensioned structures involving floor propping using explosives.

3.1.2 Proposed changes

Unrestricted demolition licence and definition of 'licensed demolition work'

The draft Regulation proposes to change the name of the current Demolition Licence (DE1) to 'Unrestricted Demolition Licence' and amend the definition of demolition work to align with the notification of demolition work under clause 142 of the WHS Regulation.

Under the draft Regulation, an Unrestricted Demolition Licence is authorised to carry out 'licensed demolition work', which is proposed to be:

- demolition work required to be notified to the regulator under clause 142 of the WHS Regulation, that being demolition:
 - of a structure, or a part of a structure that is loadbearing or otherwise related to the physical integrity of the structure, that is at least 6 metres in height
 - work involving load shifting machinery on a suspended floor, or
 - work involving explosives.
- or demolition work on a chemical installation.

Restricted Demolition Licence and new definitions

The draft Regulation proposes the name of the Restricted Demolition Licence (DE2) remains and also does not propose to significantly change the type of demolition work a restricted demolition licence holder is authorised to undertake. However, to align with the clause 142 notification requirement there are some slight changes to the current scope of licensed demolition work that are discussed below in the *rationale for changes* section.

To clarify what is licensed demolition work, the draft Regulation proposes new definitions of 'load shifting machinery' and 'chemical installation' be provided for in the context of conducting licensed demolition work:

- Load shifting machinery - to mean powered mobile plant used in the demolition of a structure including bulldozers, cranes, excavators, and front-end loaders. 'Load shifting machinery' is currently referred to in the definition of 'demolition work' within the OHS Regulation however is not defined.
- Chemical installation - to mean a building, structure, major plant or installation that contains or may contain a hazardous chemical but does not include anything a competent person has declared in writing to be free from hazardous chemicals. Noting that 'hazardous chemical', 'competent person', 'structure' and 'plant' are already defined terms in the WHS Regulation.

3.1.3 Rationale for changes

The proposed new definition of 'licensed demolition work' will mean that any demolition of a structure, or part of a structure that is load-bearing or otherwise related to the physical integrity of the structure that is 6 metres or more in height will require a licence. This aligns with the notification requirements under clause 142 of the WHS Regulation. While it is not intended that the proposed definition of 'licensed demolition work' will considerably change the status quo, it is noted that the current licence requirement under the OHS Regulation is demolition work done to a building, structure or installation that is 10 metres or more in height, or 4 to 10 metres in height for demolition work involving mechanical demolition. Aligning 'licensed demolition work' with work required to be notified under clause 142 of the WHS Regulation is intended to make it easier for industry to know what demolition work is required to be licensed and what is required to be notified to SafeWork NSW.

Demolition of a chemical installation is work that carries significant safety risks and requires a high level of competency by the licence holder. This is why it is proposed to be captured by the definition of 'licensed demolition work', even though it is not demolition work that is currently required to be notified under clause 142 of the WHS Regulation. Amendments to clause 142 to include chemical installations are not proposed, to maintain consistency with the notification of demolition work under the national model WHS laws.

1. Do you have any comments on the definitions proposed in the draft Regulation to support licensed demolition work? These are 'licensed demolition work', 'load shifting machinery' and 'chemical installation'. Should any other terms be defined?
2. Do you support aligning the definition of 'licensed demolition work' with work that is required to be notified to SafeWork NSW under clause 142 of the WHS Regulation? If not, how should 'licensed demolition work' be defined and why?

3.2 Decisions on demolition licences: what SafeWork NSW will consider

To ensure that demolition work is carried out safely and competently, PCBU's who carry out demolition work must be licensed. There are a range of safety and competency obligations that apply to demolition licences, including the training units approved by SafeWork NSW for named supervisors and individual licence applicants. It is appropriate that SafeWork NSW considers compliance and conduct in relation to these obligations when deciding if a new licence applicant is suitable to hold a demolition licence, and if a current licence holder remains suitable upon renewal. SafeWork NSW will also consider compliance with safety and competency obligations, when determining whether to apply administrative sanctions such as suspension or cancellation of the licence.

3.2.1 Current considerations

Currently, when making these decisions, SafeWork NSW considers if the licence applicant or holder has:

- been convicted of an offence under the WHS Act, WHS Regulation, or other legislation administered by SafeWork NSW (including explosives legislation)
- made a statement or provided information in connection with a SafeWork NSW licence, permit or notification, knowing that the statement or information was false or misleading
- failed to comply with the conditions of a conditional asbestos or demolition licence
- been issued a significant number of notices pertaining to unsafe systems of work
- had an asbestos or demolition licence cancelled or suspended by SafeWork NSW
- done or authorised licensed work in such a manner as to expose any person (including their workers) to a health or safety risk from the licensed work that could reasonably have been avoided, or
- failed to comply with the requirements of an improvement notice or prohibition notice under the WHS Regulation.

3.2.2 Proposed additional considerations

It is proposed in the draft Regulation to extend the scope of considerations for SafeWork NSW to:

- (i) all relevant matters in relation to all WHS, demolition and explosives laws and licences in all Australian jurisdictions (that is, all States, Territories, and the Commonwealth)
- (ii) convictions or findings of guilt in relation to the unlawful disposal of hazardous waste in NSW and any other Australian State and Territory, and
- (iii) relevant matters regarding named supervisors, in the same way as proposed for licence applicants and holders.

(i) **Relevant matters in relation to: WHS; demolition and explosives laws; and licences in all Australian jurisdictions**

When SafeWork NSW is deciding whether to grant, renew, suspend or cancel an applicant or licence holder's NSW demolition licence, it is relevant to consider whether the applicant has offences or improper conduct related to demolition licences and explosives laws in other states and territories.

The draft Regulation proposes to extend what can be considered when making demolition licence decisions to laws in other jurisdictions. Not all states and territories issue demolition licences under WHS laws; NSW, Queensland and Western Australia are the only jurisdictions that regulate licensed demolition work under WHS laws. For this reason, the proposed extension also covers demolition work when it is licensed under different types of legislation, such as building regulations.

Further, as explosives are commonly used in demolition work, and explosive laws are also administered by SafeWork NSW and by WHS regulators across Australia, it is appropriate that matters relating to explosives laws are included. This is consistent with the considerations in making decisions about the other SafeWork NSW licences under the WHS Regulation.

(ii) **Convictions or findings of guilt in relation to the unlawful disposal of hazardous waste**

Demolition work often involves structures that comprise of asbestos containing material (**ACM**). As such, it is important that licence holders ensure ACM and other hazardous waste is removed and disposed of safely, in accordance with WHS and environment protection laws. For consistency of regulatory approach, it is proposed that demolition licensing requirements be similar to the requirements for asbestos removal licences under clauses 492 and 500 of the WHS Regulation.

(iii) **Relevant matters regarding named supervisors, in the same way as proposed for licence applicants and holders**

Named supervisors are appropriately trained and qualified people nominated by the licence holder and approved by SafeWork NSW to supervise demolition work on behalf of the licence holder. Named

supervisors have a direct influence over the work conducted by demolition workers under the conditions of a demolition licence at a work site. Applying the same considerations to the licence applicant's or holder's named supervisor(s) is important when SafeWork NSW is deciding whether licensed demolition work will be carried out safely and competently.

3.2.3 Proposed list of considerations ('relevant matters')

A new definition of 'relevant matter' is proposed in the draft Regulation to give effect to these decision-making considerations and align with other SafeWork NSW licences under the WHS Regulation, (see 'definitions' at clause 141A). Under this definition, it is proposed that all of the following **relevant matters** be considered by SafeWork NSW when making decisions about demolition licence applicants, holders and their named supervisors:

- (i) a conviction or finding of guilt in any Australian jurisdiction for an offence under WHS, demolition (relevant law) and explosives laws, as well as for the unlawful disposal of hazardous waste under the *Protection of the Environment Operations Act 1997* (NSW), or an environment protection law that has the same purpose in any other Australian State or Territory (corresponding environment protection law)
- (ii) an enforceable undertaking entered into under a WHS, demolition (relevant law) or an explosives law in any Australian jurisdiction
- (iii) a refusal to grant, conditions imposed on, suspension or cancellation of, or disqualification from applying for a demolition, asbestos removal, high risk work or explosives licence (relevant licence) in any Australian jurisdiction
- (iv) a person's record for matters arising under WHS, demolition (relevant law) or an explosives law in all Australian jurisdictions.

3.2.4 Proposed application of 'relevant matters' to demolition licence decision

Further to the new proposed 'relevant matter' definition, new definitions of 'corresponding demolition law', 'relevant law', 'explosives law', 'corresponding environment protection law', 'relevant licence' and 'corresponding demolition regulator', are also proposed in the draft Regulation (see 'definitions' at clause 141A). This is to ensure that the proposed relevant matters are applied appropriately to the following demolition licence decisions by SafeWork NSW:

- (i) when a licence application for grant or renewal must be refused
- (ii) what must be considered when deciding to grant or renew a licence
- (iii) when a licence can be suspended or cancelled, and
- (iv) when a supervisor may be removed from a licence.

(i) When a licence application must be refused

SafeWork NSW can refuse to grant or renew a licence where the applicant is disqualified from holding an equivalent licence under a WHS or demolition law (**corresponding demolition law**) in any Australian jurisdiction (**relevant law**) - see clauses 143C(2)(a), 143U(2)(a). For example, if disqualified from holding a Queensland demolition licence under the *Work Health and Safety Act 2011* (QLD) or a Victoria demolisher class registration under the *Building Act 1993*.

(ii) What must be considered when deciding to grant or renew a licence

SafeWork NSW may grant or renew a demolition licence if satisfied that the applicant is able to ensure that the work or other activities to which the licence relates, will be carried out safely and competently, see clauses 143C(1)(b) and 143U(1)(b). All **relevant matters** (listed above) concerning the applicant and named supervisor(s) must be considered when assessing whether or not an applicant is able to ensure the work or other activities to which the licence relates, can be carried out safely and competently – see clause 143D.

(iii) When a licence can be suspended or cancelled

Under clause 143Y(1), SafeWork NSW may suspend or cancel a demolition licence if satisfied of one or more of the following, namely that the licence holder:

- failed to ensure that the work or other activities authorised by the licence are carried out safely and competently
- failed to ensure compliance with a licence condition, including retraining or reassessments of themselves or a named supervisor during the term of the licence
- in the application for the granting or renewal of the licence or on request by the regulator for additional information, gave false or misleading information or failed to provide required information
- was granted a licence based on a certification obtained by them, or a named supervisor, based on the giving of false or misleading information
- does not have at least one named supervisor who has been assessed by SafeWork NSW to have the qualifications and experience necessary to supervise demolition work
- failed to comply with the requirements of a notice issued under the WHS Regulation
- has been convicted or found guilty of an offence under a WHS, demolition (relevant law) or an explosives law in any Australian jurisdiction, or
- was issued with a licence by mistake.

When deciding to cancel or suspend a demolition licence, SafeWork NSW:

- must consider advice from regulators of licensed demolition work in other Australian jurisdictions (***corresponding demolition regulator***), in making a decision under clause 143Y to suspend or cancel a demolition licence – see clause 143Z(1)(b).
- is to consider all of the same ***relevant matters*** as those for decisions to grant or renew a licence (listed above) in being satisfied that the licence holder and/or named supervisor(s) failed to ensure that work or other activities authorised by the licence are carried out safely and competently under clause 143Y(1)(a) and (b) as listed above – see clause 143Z(2). This is intended to align the considerations with the other demolition licence decisions, including granting or renewing a licence, for clarity and consistency.

Following a decision to suspend or cancel, SafeWork NSW may disqualify the licence holder from applying for a further demolition licence or another licence issued under the WHS Regulation - see clause 143Y(3).

SafeWork NSW may also immediately suspend a demolition licence without giving notice under clause 143Z ('Notice to and submissions by licence holder') on a ground mentioned in clause 143Y ('Suspension or cancellation of licence') as listed above – see clause 143ZC(1). SafeWork NSW can do this if satisfied that:

- a) the work carried out under the licence should cease because it may involve an imminent serious risk to the health or safety of a person, or
- b) an equivalent demolition licence held by the licence holder in another Australian State or Territory has been suspended by the regulator of licensed demolition work in that jurisdiction (***corresponding demolition regulator***).

(iv) When a supervisor may be removed from a licence

It is proposed that a new provision (see clause 143L) be introduced so that a named supervisor can be removed from a demolition licence when SafeWork NSW:

- becomes aware of a ***relevant matter*** for a named supervisor (same as the relevant matters listed above that apply to decisions to grant, renew, suspend, or cancel a licence), or
- is satisfied that the named supervisor was approved based on false or misleading information, including a certification obtained by them based on false or misleading information.

This means that the conduct of a named supervisor can be considered separately when the relevant matter or action does not involve or implicate the licence holder, without impacting on the status of the licence. Currently, if an issue with the conduct of a named supervisor is identified, the only adverse action that SafeWork NSW can take is to suspend or cancel the licence(s) the supervisor is attached to.

As such, a licence holder, other named supervisors attached to the licence and the demolition workers could be unduly penalised for the unrelated conduct of a named supervisor.

3.2.5 Reviewable decisions

It is important to note that the licence decisions, outlined above, are subject to review. The licence holder or applicant has 28 days after being given notice of SafeWork's decision, to make a submission to SafeWork NSW for an internal review of the decision. If still not resolved or the applicant or licence holder is unsatisfied with the outcome of the review, they may apply for an external review through the NSW Civil and Administrative Tribunal (**NCAT**). This is provided for by the additions to clause 676 of the WHS Regulation proposed in the draft Regulation.

3. Are there any issues with SafeWork NSW taking the newly defined relevant matters into account when making determinations about an application, renewal, suspension or cancellation of a licence? If so, please explain what those issues are.
4. Are there any other additional relevant matters that you think should be taken into account when SafeWork NSW is considering a licence application, renewal, suspension or cancellation? If so, what are they and why should they be considered?
5. Are there any issues with SafeWork NSW considering the relevant matters regarding named supervisors in determining licence applications, renewals, suspensions or cancellations? If so, please explain what those issues are.
6. Are there any issues with SafeWork NSW being able to remove a named supervisor from a licence without suspending or cancelling the licence? If so, please explain what those issues are?

3.3 Training requirements

Demolition work is high risk construction work that should only be undertaken by workers who are properly trained. Currently, only licence holders and nominated supervisors are required to complete formal training (11 units of competency from the Certificate III in Demolition (CPC30420) and Certificate IV in Demolition (CPC41013)) to apply for a demolition licence. Workers undertaking demolition work under the licence holder's demolition licence are not currently required to undertake formal training.

Further, the Registered Training Organisations (RTOs that deliver the units of competency that licence holders and named supervisors are required to complete, are not currently authorised or audited by SafeWork NSW, as they are for other licences issued under the WHS Regulation.

3.3.1 Proposed changes

It is proposed through the draft Regulation that training requirements be enhanced by:

- requiring licence holders to ensure all demolition workers complete a training unit of competency in safe demolition practice, that is approved by SafeWork NSW (see clause 142D)
- requiring licence holders to ensure approved training has been completed by every worker before they carry out licensed demolition work (clause 142D) and to keep a record of that training for five years (see clause 143E), and
- enabling SafeWork NSW to authorise RTOs to deliver training and assessment for individual demolition licence applicants and named supervisors (see clause 143F), noting that SafeWork NSW intends to retain the current required training units (clause 143F).

These proposed changes are intended to replicate the best practice arrangements and training standards for asbestos removal licences and increase consistency with the other authorisations issued under the WHS Regulation by SafeWork NSW. This will ensure the safety and competency of all workers in the demolition industry.

3.3.2 Proposed approved training for demolition workers

SafeWork NSW proposes that the training unit of competency to be approved under clause 142D for all demolition workers be [CPCCODE3016: Identify hazards on demolition sites and apply risk management strategies](#), which can be completed through any RTO that has this unit available in NSW.

This unit of competency is considered appropriate for demolition workers as it:

- specifies the skills and knowledge required to identify hazards common to demolition work, and undiscovered hazards that may arise during the course of work on demolition sites
- includes assessing risks and applying risk management strategies according to compliance and workplace requirements
- supports the induction procedure for specialist demolition workers before beginning work, and
- includes an important and relevant pre-requisite - [CPCCWHS2001 Apply WHS requirements, policies and procedures in the construction industry](#).

To enable a reasonably practicable transitional period, it is proposed to delay the demolition worker training requirement proposed at clause 142D for an initial 12-month period. This means workers will have 12 months from the commencement of the draft Regulation to complete the required unit of competency before licence holders may be fined or prosecuted for non-compliance.

3.3.3 Record keeping

The proposed requirement for licence holders to keep records of the workers training for five years after the worker finishes carrying out demolition work, under clause 142E, is intended to replicate provisions for asbestos removal workers, under clause 461 in the WHS Regulation. This is considered an

important requirement so that licence holders take responsibility for ensuring all their workers are appropriately trained to carry out demolition work safely and competently.

3.3.4 Authorising RTOs to deliver approved demolition licence training

It is proposed that SafeWork NSW authorise RTOs to deliver approved training units, to ensure that demolition licence holders and named supervisors are appropriately trained and qualified to carry out demolition work.

Clause 142F of the draft Regulation replicates similar requirements for other authorisations issued under the WHS Regulation, which is important to maintaining the integrity of the licensing scheme. RTOs who can offer the approved units of competency in NSW may apply to enter into an agreement with SafeWork NSW. Following receipt of the application, SafeWork NSW will conduct an initial site audit to determine suitability of the RTO to appropriately deliver training and assessment for a demolition licence. Once authorised, RTOs will need to adhere to certain conditions of authorisation including regular audits conducted by SafeWork NSW to ensure ongoing compliance.

It is important to note that at this stage, there is no proposed timeframe as to when RTO authorisations for demolition licences may commence. Key stakeholders will be advised of any transitional arrangements in due course.

7. Is CPCCDE3016: Identify Hazards on Demolition Sites and Apply Risk Management Strategies, a suitable course? Or should there be other or additional courses mandated?
8. Is 12 months from commencement of the regulation an appropriate transitional period to ensure all demolition workers have completed the mandated training course? If not, what length of time should the transitional period be and why?
9. What (if any) impact would a requirement to collect and retain training records of demolition workers have on licence holders?
10. Are there any issues with SafeWork NSW authorising and entering into agreements with RTOs for the delivery of training and assessment for demolition licences? If so, please explain those issues?

3.4 Licence duration

The duration of demolition licences in other States and Territories in Australia range from 1 year to 5 years.

It is proposed that the current licence duration of two years be increased to five years, unless cancelled earlier. This is consistent with other SafeWork NSW licences issued under the WHS Regulation, including asbestos removal and high-risk work licences. It is also consistent with the NSW Government Better Business Reforms, which aim to remove unnecessary administrative and regulatory burdens to make it easier and more cost effective to do business in NSW.

The change in the licence duration will not affect existing licence holders as it will only take effect when the applicant applies for a new licence or to renew their existing licence, and it is granted.

The application and renewal fee are proposed to remain at the current amount of \$2,348.

11. Are there any issues with the licence duration being increased from 2 years to 5 years? If so, what is the appropriate duration and why?

3.5 Transitional arrangements

The draft Regulation proposes to introduce new savings and transitional provisions under clause 702A of the WHS Regulation to ensure a smooth transition to the new provisions.

3.5.1 Current licences

A demolition licence issued under the OHS Regulation that was in force immediately before commencement of the draft Regulation, will continue to have effect as a demolition licence when the new provisions commence. It will continue to have effect until the licence expires, is renewed, or is cancelled. The licence may be amended, suspended, or cancelled by SafeWork NSW under the new provisions.

3.5.2 Pending applications and decisions

Applications for the granting, renewal or amendment of a demolition licence made under the OHS Regulation that were not determined before the commencement of the draft Regulation, will be determined under the new provisions. Further, regarding decisions on the suspension or cancellation of a licence, decisions that commenced but were not determined before the commencement of the draft Regulation will also be determined under the new provisions.

3.5.3 New training requirement

The proposed new requirement for licence holders to ensure all demolition workers complete an approved training unit of competency in safe demolition practice (clause 142D), is proposed to begin 12 months from the commencement of the draft Regulation. This is intended to enable sufficient time for all current demolition workers to complete the approved unit of competency through an RTO.

12. Are there any other transitional arrangements that need to be provided for? If so, what are they and why are they needed?

Appendix 1: Discussion questions

1. Do you have any comments on the definitions proposed in the draft Regulation to support licensed demolition work? Should any other terms be defined?
2. Do you support aligning the definition of 'licensed demolition work' with work that is required to be notified to SafeWork NSW under clause 142 of the WHS Regulation? If not, how should 'licensed demolition work' be defined and why?
3. Do you have any concerns with SafeWork NSW taking the newly defined relevant matters into account when making determinations about an application, renewal, suspension or cancellation of a licence? If so, please explain what those issues are.
4. Are there any other additional matters that you think should be taken into account when SafeWork NSW is considering an application, renewal, suspension or cancellation? If so, what are they and why should they be considered?
5. Are there any issues with SafeWork NSW considering the relevant matters regarding named supervisors in determining licence applications, renewals, suspensions or cancellations? If so, please explain what those issues are.
6. Are there any issues with SafeWork NSW being able to remove a named supervisor from a licence without suspending or cancelling the licence? If so, please explain what those issues are?
7. Is the training unit *CPCCDE3016: Identify Hazards on Demolition Sites and Apply Risk Management Strategies*, a suitable course? Or should there be other or additional courses mandated?
8. Is 12 months from commencement of the regulation an appropriate transitional period to ensure all demolition workers have completed the mandated training course? If not, what length of time should the transitional period be and why?
9. What (if any) impact would a requirement to collect and retain training records of demolition workers have on licence holders?
10. Are there any issues with SafeWork NSW authorising and entering into agreements with RTOs for the delivery of training and assessment for demolition licences? If so, please explain what those issues are?
11. Are there any issues with the licence duration being increased from 2 years to 5 years? If so, what is the appropriate duration and why?
12. Are there any other transitional arrangements that need to be provided for? If so, what are they and why are they needed?

13. Are there other matters that the Regulation needs to provide for?

14. Do you have any other comments?

Appendix 2: Summary of the proposed changes to the WHS Regulation

Please note the following table provides a brief overview of all the changes proposed to the WHS Regulation. Stakeholders are advised to refer to the full text of the draft Regulation for a more comprehensive understanding of the proposed changes.

Clause	Title	What the clause/change does
5	Definitions	Adds demolition licence holders to the definition of a 'licence holder' in the WHS Regulation and states that they must be a person conducting a business or undertaking (PCBU).
141A	Definitions	Defines the key terms relating to demolition work as it pertains to the proposed Part 4.6 of the WHS Regulation.
142	Notice of demolition work	Retains the current clause 142 for the scope of demolition work that must be notified to the SafeWork NSW, which aligns with clause 142 in the National Model WHS Regulations.
142A	Requirement to hold a demolition licence	Requires that licensed demolition work must only be carried out by or at the direction of a licence holder.
142B	Duty to ensure person undertaking licensed demolition work is licensed	Imposes a duty on a PCBU commissioning licensed demolition work that they must ensure it is only carried out by a licence holder.
142C	Named supervisor must be present	Requires that the licence holder must ensure that licensed demolition work is supervised by a named supervisor who is present at the worksite.
142D	Demolition worker must be trained	Adds that the licence holder must ensure all demolition workers must complete a course of training approved by SafeWork NSW.
142E	Licence holder must keep training records	Adds an obligation on the licence holder to ensure they retain evidence of the required training being completed by their workers.
142F	Approval of courses of training and authorisation of RTOs	Confirms that SafeWork NSW may approve courses of training and adds the option that SafeWork NSW may authorise Registered Training Organisations (RTOs) to deliver approved courses for the purposes of determining competency to hold a demolition licence.
143	Who may apply for a licence	Specifies only a PCBU may apply for a demolition licence.
143A	Application for a licence	Specifies what an application for a demolition licence must include and provides powers for SafeWork NSW to request additional information from the applicant.

Clause	Title	What the clause/change does
143B	Withdrawal of application	Provides that an applicant may withdraw their own application for a licence, or the application will be taken to be withdrawn if the applicant does not provide additional information within a 28-day period of the request.
143C	Decision about application	Outlines what SafeWork NSW will consider when determining whether to grant or refuse a demolition licence.
143D	Matters to be taken into account	Outlines that SafeWork NSW will consider all relevant matters about the licence applicant and named supervisors when assessing whether or not an applicant is able to ensure the work or other activities to which the licence relates will be carried out safely and competently.
143E	Refusal to grant licence - process	Provides that if SafeWork NSW proposes to refuse an applicant a licence, the applicant has the opportunity to make a submission to provide further information to SafeWork NSW in regard to their application.
143F	Licence conditions	Specifies that the regulator may impose one or more conditions that are appropriate on a demolition licence.
143G	Duration of licence	States that the licence term is five years, unless cancelled earlier.
143H	Licence document	Outlines what a demolition licence document must contain.
143I	Licence document to be available	Requires that the licence holder must have the licence in their possession and available for inspection by SafeWork NSW.
143J	Changes to information	Specifies that if material information that was given to SafeWork NSW in an application for a demolition licence changes, the licence holder must give written notice of the change within 14 days.
143K	Change to supervisor	Requires that if a licence holder ceases to use a named supervisor, the licence holder must ask SafeWork NSW to remove the named supervisor from the licence within 14 days.
143L	Removal of supervisor by regulator	Adds the ability for SafeWork NSW to remove a named supervisor from a licence. In certain circumstances SafeWork can remove the named supervisor without suspending or cancelling a licence.
143M	Amendment imposed by regulator	Specifies that SafeWork NSW can amend a licence, including vary, delete or impose a condition on a licence.
143N	Amendment on application by licence holder	Specifies that the licence holder can apply to SafeWork NSW to amend a licence, including vary or delete a condition on a licence.

Clause	Title	What the clause/change does
143O	Minor corrections to licence	Enables SafeWork NSW to make minor corrections to a licence without notification to the licence holder.
143P	Licence holder to return licence	Requires the licence holder upon written request to return the licence document to SafeWork for amendment if a licence has been amended.
143Q	Replacement licence document	Requires the licence holder to notify SafeWork NSW as soon as practicable if a licence document is lost, stolen or destroyed. The licence holder may apply for a replacement.
143R	Voluntary surrender of licence	Enables a licence holder to voluntarily surrender their licence to SafeWork NSW.
143S	Regulator may renew licence	States that SafeWork NSW may renew a licence upon application by a licence holder.
143T	Application for renewal	Specifies that the licence only continues in force if the application to renew is made before the expiry of the licence, and failure to make an application for renewal more than 3 months after the licence expires, will mean a renewal licence cannot be issued.
143U	Decision about renewal application	Outlines what the regulator will consider when determining an application to renew a demolition licence, including the factors that require an application to be refused.
143V	Matters to be taken into account	States that SafeWork NSW must consider all 'relevant matters' concerning the licence holder and named supervisor(s) when assessing a renewal application.
143W	Refusal to renew licence - process	Provides that if a renewal application is proposed to be refused by the regulator, the applicant has the opportunity to make a submission to provide further information to the regulator in regard to their application.
143X	Status of licence during review	Provides that a licence holder may apply for an internal and external review of SafeWork's decision to refuse to renew a licence and the status of the licence while the decision is reviewed.
143Y	Suspension or cancellation of licence	Outlines the circumstances in which a licence may be suspended or cancelled and provides that a licence holder may also be disqualified from a further demolition licence or another licence under the WHS Regulation.
143Z	Matters taken into account	States that SafeWork NSW must consider all relevant matters and any advice from a corresponding demolition regulator, when making a decision to suspend or cancel a licence as well as any submissions the licence holder makes under clause 143ZA.

Clause	Title	What the clause/change does
143ZA	Notice to and submissions by licence holder	Specifies that before a decision is made by SafeWork NSW to suspend or cancel a demolition licence, SafeWork must provide the licence holder written notice of the proposed decision and provides the licence holder with 28 days to make a submission.
143ZB	Notice of decision	Provides that SafeWork NSW must give notice to the licence holder of a decision under clause 142X to suspend or cancel a demolition licence within 14 days and sets out what that notice must include.
143ZC	Immediate suspension	Enables SafeWork NSW to suspend a licence without giving notice to the licence holder, on a ground mentioned in clause 143X if there is an imminent serious risk to health and safety of a person or a corresponding demolition regulator suspends an equivalent licence held by the licence holder.
143ZD	Licence holder to return licence document	Requires a licence holder to return a licence to SafeWork NSW on receiving notice of a suspension or cancellation under clause 143ZA.
143ZE	Regulator to return licence document after suspension ends	Specifies that SafeWork NSW must return a licence document to the licence holder within 14 days after a licence suspension ends.
676	Which decisions under this Regulation are reviewable	Outlines which decisions under the draft Regulation can be reviewed internally and externally and who is eligible to request a review.
702A	Savings and transitional provisions	Inserts transitional provisions so that the draft Regulation will apply to current licences issued under the OHS Regulation and applications made but not determined under the OHS Regulation before the commencement of the draft Regulation.
702B	Register of certain licences and training cards	Requires SafeWork NSW to keep a register of each person who is a holder of a demolition licence. This clause omits the previous reference to licences granted under the Occupational Health and Safety Regulation 2001.
Schedule 2	Fees	Prescribes fees for applying for a demolition licence, applying for a replacement of a demolition licence and applying to renew a demolition licence.
Schedule 18A	Penalty notice offences	Introduces new penalty notice offence provisions under the WHS Regulation.

Appendix 3: Jurisdictional analysis

NSW leads the way in putting in place reforms to protect workers and others from the risks arising from demolition work. This table provides a comparison of the key aspects of the current and proposed NSW demolition licensing scheme compared with current licensing arrangements in other States and Territories.

Category	Current	Proposed NSW Scheme
Legislation	Licensed demolition work is provided for solely in WHS legislation in NSW and Qld. All other States and Territories provide for the licensing of demolition work through a combination of building legislation and WHS legislation.	No change, including no mutual recognition of demolition licences.
Licence Type	<ul style="list-style-type: none"> – In NSW, Qld and WA a specific demolition licence (not attached to a builder's licence) is required for some or all demolition work. – In Victoria, persons performing demolition work need to be a registered building practitioner with a registration as a demolisher. – In the ACT, persons performing demolition work need to hold a building licence that is endorsed to do demolition work. – In SA, persons performing demolition work need to hold a building work contractor's licence or building work licence with conditions. – In Tasmania, persons performing demolition work need to hold a builder's licence. – In the NT, persons performing demolition work need to be a registered builder or approved owner builder. 	No change.

Category	Current	Proposed NSW Scheme
Licence duration	<ul style="list-style-type: none"> SA has a 1-year licence period. NSW, Queensland and WA have a 2-year licence period. The ACT and Tasmania have a 3-year licence period. Victoria has a licence period of up to 5 years. 	Proposed licence period is 5 years unless cancelled earlier.
How is 'demolition work' defined?	<ul style="list-style-type: none"> NSW, ACT and Queensland share the same definition of 'demolition work': <i>work to demolish or dismantle a structure or part of a structure that is load bearing or otherwise related to the physical integrity of the structure, but does not include the dismantling of formwork, falsework, scaffolding or other structures designed or used to provide support, access or containment during construction work, or the removal of power, light or telecommunication poles.</i> Victoria and WA share the same definition: <i>demolition work means the complete or partial dismantling of a building or structure by planned and controlled methods or procedures.</i> Tasmania's definition of 'demolition work' is: <i>building work that (a) completely, or partially, demolishes a building or structure by pre-planned and controlled methods or procedures; and (b) does not include the building of any new building or structure, or associated building works.</i> 	<p>Proposed new definition of licenced 'demolition work' to mean:</p> <ul style="list-style-type: none"> <i>Demolition work required to be notified to the regulator under clause 142, and demolition work on a chemical installation.</i> <i>Demolition work required to be notified to the regulator under clause 142 includes: Demolition of a structure that is loadbearing or otherwise related to the physical integrity of the structure, that is at least 6 metres in height, demolition work involving load shifting machinery on a suspended floor or demolition work involving explosives.</i>

Category	Current	Proposed NSW Scheme
Eligibility requirements	<p>Many of the eligibility requirements for a licence to carry out demolitions work are common amongst the States and Territories. The commonalities include:</p> <ul style="list-style-type: none"> – An applicant must be a fit and proper person. – An applicant must hold relevant qualifications and experience to carry out the type of work to which the licence relates. – An applicant must not have previously held demolition licences which have been suspended or cancelled. – An applicant must not have previous relevant convictions or be an undisclosed bankrupt. <p>The ACT, Victoria, SA and Tasmania make specific reference to the applicant being able to meet the financial needs of maintaining their licence.</p>	<p>The regulator may grant a demolition licence if satisfied:</p> <ul style="list-style-type: none"> <i>a) The application has been made in accordance with the Regulation</i> <i>b) The applicant is able to ensure the work or other activities to which the licence relates will be carried out safely and competently</i> <i>c) The applicant is able to ensure compliance with the conditions that will apply to the licence</i> <i>d) Each individual nominated as a named supervisor for the licence</i> <ul style="list-style-type: none"> <i>(i) At least 18 years of age</i> <i>(ii) Has the qualifications and experience necessary to safely supervise the work or other activities to which the licence relates.</i> <p>In addition to the current considerations, it is proposed that the regulator will now consider relevant matters' concerning the applicant, if the applicant is a body corporate each officer of the body corporate and each individual nominated as a named supervisor.</p> <p>Relevant matters include things like convictions under relevant demolition laws, explosive laws and environmental protection laws, and previous suspension or cancellation of a demolition licence in another State or Territory.</p>

Category	Current	Proposed NSW Scheme
Reasons for refusing to grant a licence	<p>Many of the reasons that regulators may refuse to grant a licence to an applicant are similar between the States and Territories. The commonalities include:</p> <ul style="list-style-type: none"> – The applicant is not a fit and proper person – The applicant does not satisfy the eligibility requirements – The applicant being disqualified previously from holding a licence within the jurisdiction or another corresponding jurisdiction; and – The applicant has provided false or misleading information in their application or have not provided enough information in their application. 	<p>This is proposed to be expanded so that the regulator can take in to account whether the applicant has been disqualified previously from holding a 'relevant licence' including an asbestos removal licence, high risk work licence or licence issued under an explosives law.</p>
Matters a decision maker must consider when renewing a licence.	<ul style="list-style-type: none"> – All States and Territories except for WA provide matters regulators must consider when determining whether to renew a licence. – Many States and Territories regulators will consider failure to comply with the conditions of the licence when considering whether to renew the applicant's licence. – Victoria and Tasmania consider whether the applicant for a renewed licence completed CPD requirements. – In the ACT, an applicant will be refused a licence if they have a debt owing to the Territory. – The Tasmanian regulator will refuse a licence if the applicant fails to attend an interview at the Consumer, Building, Occupational Services office. 	<p>In addition to the current matters the regulator will consider when renewing a licence, it is proposed that the regulator must refuse to renew a licence if the applicant does not have at least one named supervisor who has been assessed by the regulator as having the qualifications and experience necessary to supervise the work or other activities to which the licence relates.</p>

Category	– Current	Proposed NSW Scheme
Reasons for cancelling/suspending a licence.	<ul style="list-style-type: none"> – NSW, Queensland, WA and Tasmania cite an applicant providing false or misleading information in a licence application as a reason to cancel or suspend a licence. – NSW, ACT, Queensland, Victoria, SA and WA all provide that a reason to cancel or suspend a licence may be that the licence holder has failed to ensure the safety of their work, or that their poses a significant risk of injury or death, or harm to environment or property. 	<p>The regulator must consider submissions made by the licence holder, advice received from a corresponding demolition regulator and all ‘relevant matters’ for the licence holder, if the licence holder is a body corporate, each officer of the body corporate and each individual nominated as a named supervisor for the licence.</p>
Supervisors.	<p>The requirement for supervisors and supervision of worker is different between most States and Territories.</p> <ul style="list-style-type: none"> – In NSW an applicant that is a body corporate must nominate a person who is involved in the management of the corporation and who is suitably qualified (has the required experience and has completed the relevant training course) in the demolition for which the licence is sought It can also nominate a site supervisor. – ACT and Queensland require a corporation applying for a licence to name a ‘nominated person’ to be responsible for supervising the construction services of the company. – SA has a similar model whereby an applicant can register to e a building work supervisor. – Licence applicants in NT, Victoria and Tasmania have supervision requirements under their WHS 	<p>A named supervisor must be present and be supervising the carrying out of licenced demolition work.</p> <p>When an applicant is applying for a demolition licence, the regulator will take into account all relevant matters concerning the nominated supervisor. For example, the conduct of a nominated supervisor with regards to any conviction of guilt for an offence under an explosives or environment protection law will be considered by the regulator when deciding to grant, renew or refuse a demolition licence.</p>

	legislation however, do not mandate supervision with regards to a licence application.	
Is training of workers required?	Most of the State and Territory licence frameworks are required to train workers adequately under their applicable WHS legislation.	<p>It is proposed that in addition to the training required under Part 3.2 Division 1 of the WHS Regulation a demolition licence holder must not allow a worker to carry out licenced demolition work for the licence holder unless the licence holder is satisfied the worker has completed a course Insafe demolition practice approved by the regulator.</p> <p>Records of the training must also be kept while the worker is carrying out licenced demolition work and for 5 years after the worker ceases to do that work.</p> <p>Penalties are proposed to apply.</p>