

Overview of new safety legislation for NSW mines

(covering the metalliferous, extractives and opal mining sector)

Mine Health and Safety Act 2004
Mine Health and Safety Regulation 2007

and

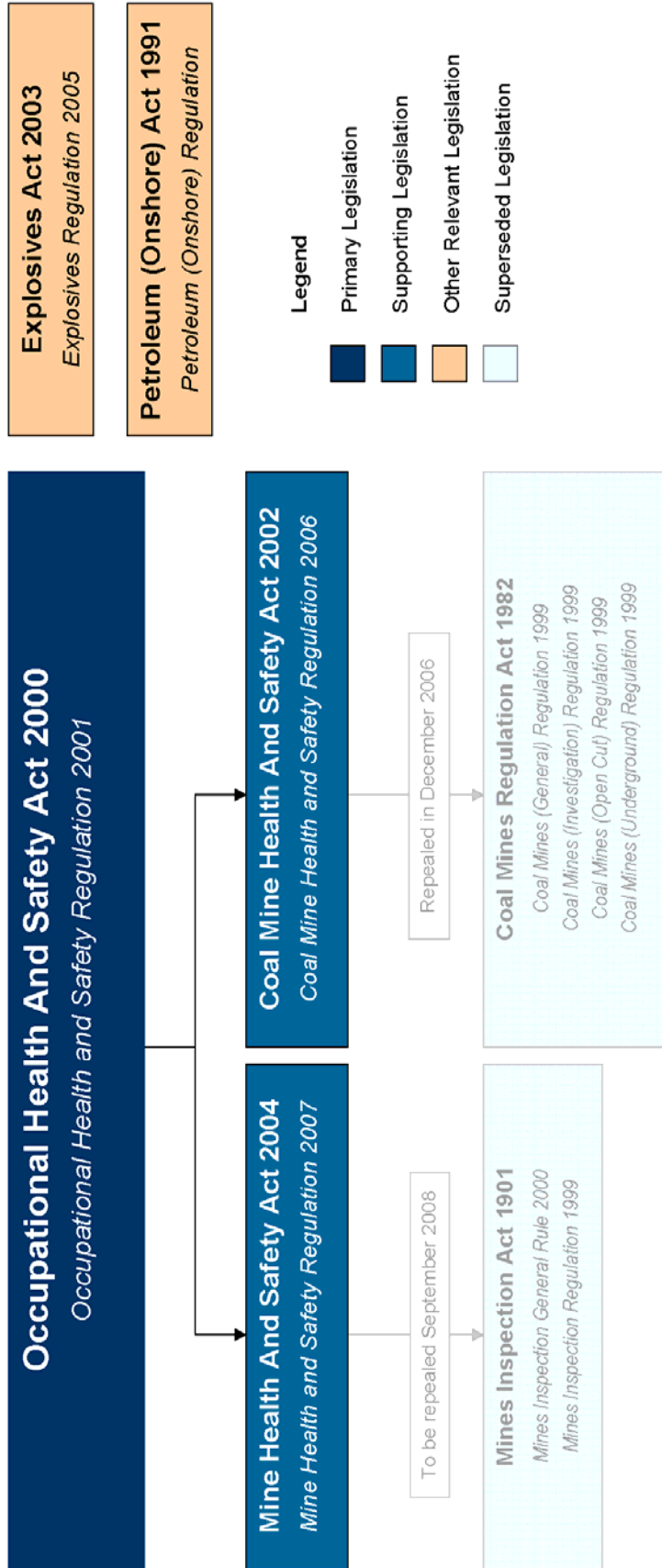
Occupational Health and Safety Act 2000
Occupational Health and Safety Regulation 2001

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MINE HEALTH AND SAFETY LEGISLATIVE FRAMEWORK



New laws for health and safety

The NSW mining industry is moving to a better, more relevant and modern framework for its workplace safety laws.

Safety standards will be more consistent across NSW. Employers, particularly contractors moving in and out of the mining industry, will find the new safety framework easier to understand. Better safety outcomes will be promoted through a stronger focus on risk management and effective workplace consultation.

The *Occupational Health and Safety Act 2000* (OHS Act) is the main legislation in NSW dealing with health, safety and welfare at work.

The OHS Act applies to all workplaces in NSW including the mining industry.

The OHS Regulation supports the OHS Act and sets out responsibilities for controlling risks that may be found in any industry including the mining industry. For example, risks associated with using plant or dangerous goods.

The OHS Act and OHS Regulation are supplemented by the new *Mine Health and Safety Act 2004* (MHS Act) and the *Mine Health and Safety Regulation 2007* (MHS Regulation).

The MHS Act creates specific responsibilities for people in the metalliferous mining and extractive industries and sets out measures for controlling the particular risks that might be found in a mining workplace.

The MHS Act and Regulation commence on 1 September 2008.

From 1 September 2008 the OHS Regulation will also apply to mining workplaces. A number of Codes of Practice made under the OHS Act will also commence on this date. These Codes provide practical guidance on how to comply with the OHS Act.

The *Mines Inspection Act 1901* and the *Mines Inspection General Rule 2000* will continue until their repeal on 1 September 2008.

The purpose of this Guidance Note

The OHS Act has applied to mining workplaces since its creation in 1983.

This Guidance Note primarily serves to provide information on the:

- *New Mine Health and Safety Act 2004*
- *New Mine Health and Safety Regulation 2007*, and
- *Occupational Health and Safety Regulation 2001* (which will be amended to generally apply to the mining industry)

MHS Act : Key changes

The key changes made by the MHS Act include:

- every mine must have a nominated operator (who must be the employer with day-to-day control of the mine) responsible for health and safety responsibilities under the MHS Act
- there is no requirement or duties for a General Manager
- when more than one person has a responsibility under the MHS Regulation each retains responsibility for the matter and the responsibility is to be discharged in a co-ordinated manner
- an operator must have a documented mine safety management plan and an emergency plan and mining cannot be carried out unless there are such plans

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- a mine must have a production manager whenever extraction is occurring
- The MHS Act does not include provision for the temporary appointment of a production manager
- an operator must ensure contractors work safely and follow a safe work method statement
- a contractor must provide a safe work method statement before starting work
- a new Metalliferous Mines and Extractive Industries Competence Board will oversee health and safety competence in the mining industry
- employees have the right to elect a site check inspector
- penalties for offences are increased significantly

Application of MHS Act

The MHS Act applies where the activity and proximity conditions set out in Section 6 of the MHS Act, are met.

This Act does not apply to coal mines, railway operations or civil engineering works.

The Act does apply to quarries extracting minerals or quarry products for supply to civil engineering works.

Note: A 'mine' within the meaning of section 6 of the MHS Act, includes a mine holding registered in accordance with the *Mining Act 1992*. The provision for registration of a 'mine holding' has since been reviewed, and the concept of a 'mine holding' will not be commenced.

Mine holder

A mine holder is any person who has been granted the right to mine through a mining title, lease, claim under other Acts, or otherwise – such as in the case of extracting quarry product.

A mine holder must:

- Nominate a mine operator
- Provide health and safety information to the nominated operator
- Ensure that no mining takes place unless an operator has been nominated
- Ensure mining ceases if the Chief Inspector rejects the nomination of an operator

Nominating an operator

The operator must be the employer with day-to-day control of the mining operation.

The mine holder can nominate themselves as the operator if they are the employer in control.

Different operators can be nominated for separate mines.

The Chief Inspector can reject a nomination within 28 days if they believe the nominated operator is not the employer with day-to-day control.

If the Chief Inspector rejects a nomination, the mine holder must prevent mining from continuing until the Chief Inspector is provided with a further written nomination.

Mine operator

An operator has the duties of an employer in the OHS Act. This includes the general duty of care in section 8 of the OHS Act and the duty to consult employees in sections 13 to 19 of the OHS Act.

In addition the MHS Act gives an operator additional duties which include to:

- coordinate health and safety measures
- prepare a mine safety management plan, contractor management plan and an emergency plan
- create and maintain records
- consult employees and their representatives

Note: Other persons on a mine site where an operator is nominated will also have obligations under the OHS Act and MHS Act. The appointment of an operator does not affect these obligations.

Mine Safety Management Plan

An operator must prepare and implement a Mine Safety Management Plan. The operator must ensure work directly related to mining is not carried out before a Mine Safety Management Plan is implemented.

The Mine Safety Management Plan must provide for:

- the basis for the identification of hazards, for the assessment of risks arising from those hazards, the development of controls for those risks, and for the reliable implementation of those controls
- a management structure including positions, responsibilities and accountabilities

- plans for managing an emergency
- a contractor management plan for managing the risks associated with the use of contractors.

The MHS Regulation details the elements required of a Mine Safety Management Plan.

People working at the mine (including contractors) must be consulted when the Mine Safety Management Plan is being prepared and before its amendment.

The operator must communicate the plan to all persons working at the mine (including contractors) and regularly review the plan and the consultation process.

The operator must ensure a copy of the plan is kept at the mine and is made available for inspection by a government official, a site check inspector, authorised representative, and any person who works at the mine.

Management structure

The management structure is to be documented and included in the Mine Safety Management Plan.

The management structure must:

- nominate persons within the structure by position outlining responsibility and accountability
- must include a production manager when extraction is occurring (the operator will have to ensure that the production manager is replaced for any absences by another production manager)
- include competent persons with appropriate engineering competence
- include an adequate number of competent supervisors.

An operator must keep an on-site register which lists the current occupant of each position in the management structure and all people who have occupied each position in the last five years.

Emergencies

An operator must prepare and implement an emergency plan.

People with emergency functions must have appropriate training to perform those functions.

The emergency plan must include:

- an up-to-date plan of the mine operation
- emergency evacuation procedures
- procedures to test the effectiveness of the plan for emergency scenarios.

The MHS Regulation identifies the specific matters which must be addressed by a mining operation in their emergency plan.

No work is to be carried out in a mine unless an appropriate emergency plan is in place.

Contractors

An operator must ensure that all contractors:

- are familiar with all relevant parts of the operator's Mine Safety Management Plan
- have arrangements for managing health and safety consistent with the operator's Mine Safety Management Plan
- receive induction training with respect to occupational health and safety as specified in the Mine Safety Management Plan

- provide written safe work method statements before they commence work.

An operator must also ensure that all contractors are monitored to make sure they comply with their safe work method statements.

If a contractor is not complying, the operator must direct the contractor to take immediate corrective action, and to stop work immediately any non-compliance creates a risk.

A contractor must:

- comply with the Mine Safety Management Plan prepared by the operator except where compliance would put the contractor in breach of their own OHS Act obligations
- assess risks associated with the work the contractor is going to undertake
- prepare a written safe work method statement for the work the contractor is going to undertake and provide a copy to the operator or a nominee of the operator
- ensure that work is carried out in accordance with the safe work method statement, including stopping work that does not comply
- ensure that any sub-contractor complies with these requirements
- provide any changes to work method statements to relevant employees and sub-contractors.

A safe work method statement must:

- describe how work is to be carried out
- identify work activities which have risks to health and safety and identify those risks

- describe the control measures that will be applied to the work activities.

Manager and supervisor duties

Managers and supervisors must:

- take reasonable care that their actions or omissions do not adversely affect the health or safety of people at the mine
- co-operate with the operator and any relevant contractors to enable them to comply with their duties under the OHS Act and the MHS Act and any supporting regulations
- comply with the Mine Safety Management Plan prepared by the operator
- inform the operator if they are aware that conduct of the mine operation does not comply with the OHS Act or MHS Act or any regulations supporting those Acts.

Further obligations are made in the MHS Act for managers and supervisors to require:

- that the workplace and work methods for which they are responsible are safe
- that hazards are identified and appropriate risk management standards are in place
- that safety information is communicated to relevant persons.

Employee duties

An employee must take reasonable care to not adversely affect the health or safety of any people at the mine. They must co-operate with the operator and any relevant contractors to enable them to comply with their duties under the OHS Act and the MHS Act.

An employee must also:

- comply with the Mine Safety Management Plan prepared by the operator
- follow procedures set out in the operator's emergency plan
- immediately report to their supervisor any health and safety risk that they can not control – the report is made to another senior person if the supervisor is not available.

Site check inspector

Employees at a mining operation have the right to elect a site check inspector. To be elected as a site check inspector, a person must be employed at the mine.

A site check inspector is automatically a member of any OHS committee at the mine established under the OHS Act. The operator and all persons at the mine must provide assistance and access to facilities for the site check inspector if they are reasonably necessary to carry out their functions.

Competence standards

The Metalliferous Mines and Extractive Industries Competence Board is to be constituted under the control and direction of the Minister. It advises the Minister and oversees the development of health and safety competence standards.

One of the important factors to improve mine safety performance is to ensure that persons in the industry are competent to work safely.

Job functions that require a particular health and safety competence:

- production manager for a mine that is above ground
- production manager for a mine that is underground

- mine operator for an opal mine
- qualified electrical engineer
- qualified electrical tradesperson

The Metalliferous Mines and Extractive Industries Competence Board will conduct examinations for the issue of certificates of competence with respect to the functions of production managers.

Specific risk controls

The OHS Regulation and the MHS Regulation detail specific risk controls. Persons must comply with the risk controls set out in both regulations.

Note: The Explosives Act 2003 and the Explosives Regulation 2005 may set out additional risk controls for the handling of explosives.

Obligations of an employer (who may be the operator or a contractor or both) in relation to risk management include, but are not limited to:

- identifying foreseeable hazards
- assessing risk
- eliminating the risk or determining and implementing control measures
- monitoring and reviewing risk assessment.

Application of the OHS Regulation

From the 1 September 2008 the OHS Regulation will apply to all mines and extractive industries with some exceptions. The OHS Regulation contains the following parts:

Chapter 1 – Preliminary – contains definitions and meanings. Clause 8 provides that persons must coordinate OHS responsibilities.

Chapter 2 – Risk management –

details general duties including with respect to provision of information, training, supervision, PPE, emergencies, amenities and first aid.

Chapter 3 – Consultation – covers details of arrangements for consultation between employers and employees.

Chapter 4 – Work premises and working environment – includes common risks associated with fall prevention, electricity, noise, atmosphere and manual handling.

The following provisions will be limited in their application:

- Clause 53 (Ventilation) will be limited so that it does not apply to the underground parts of a mining workplace, as mining legislation has specific provisions.
- Clauses 66 to 78 (Confined spaces) will not apply to the underground parts of a mining workplace.

Chapter 5 – Plant – covers all aspects of plant (defined as including any machinery, equipment or appliance). Designers, manufacturers, suppliers and users have specific duties. Certain high risk plant must be registered.

General industry plant

- Design registration of general industry plant (as currently specified in clause 107) will be required for plant designed after the 1 September 2008 for mining workplaces, and
- Item registration will be required for plant currently specified in clause 113 regardless of when it was designed or manufactured.
- Registration of this plant is undertaken by the NSW Government through WorkCover. Plant will need to be registered by 1 September 2009.

Mining specific plant

- Design and item registration of mining-specific plant used in a mining workplace (that is, powered winding systems) will not be required until 1 September 2010. The Department of Primary Industries will register this plant.

Chapter 6 – Hazardous substances (including carcinogens)

Chapter 6A – Dangerous goods – contains requirements in relation to storage and handling

Chapter 7 – Hazardous processes – covers the specific activities of: spray painting, abrasive blasting, electroplating, molten metal, lead processes and lead risk work, and electrical work.

Chapter 8 – Construction work – covers excavation (other than excavation work for the purposes of recovering minerals or quarry product), building construction and civil works – and deals with matters such as induction training, overhead protective structure, formwork, structural collapse, site security, compressed air, demolition and asbestos work, and diving work.

Appointment of Principal Contractor

The appointment of a ‘principal contractor’ (as required by clause 210) will NOT be required where there is a mine operator nominated under the *Mine Health and Safety Act 2004*.

Induction Training

The duty for persons to hold an OHS General Construction Industry Induction Training Certificate (issued by WorkCover) will NOT apply under certain circumstances including if the employee is not principally or regularly engaged in construction work.

‘Work activity’ based induction

training (as required in clause 216) will NOT apply.

Chapter 9 – Certification of workers – requires persons to hold a National Certificate of Competency for certain high risk work carried out at a mining workplace. (This is ‘scheduled work’ as defined in clause 266.) Certificates are issued by the NSW Government through WorkCover.

Persons who carry out scheduled work must obtain certificates to operate the relevant plant by 1 September 2009.

However, this Chapter will NOT be applied to the use of load shifting equipment (eg. front end loaders). Part 9.2 will also not apply at this stage.

Chapter 10 – Licensing of certain businesses – covers the licensing of businesses to carry out demolition and asbestos removal work. This will include coverage of construction work at a mining workplace. This licensing will be undertaken by WorkCover.

Chapter 11 – Permits for certain work – covers demolition and asbestos removal on a case by case basis. These are issued by WorkCover.

Chapter 12 – Miscellaneous and administrative matters.

The notification requirements of Parts 12.1 and 12.2 will NOT apply since it is covered by the MHS Act.

Part 12.3 does apply and covers notification of proposed work and will apply to mining workplaces. This work involves the use of carcinogens, lead risk work, and certain asbestos removal and demolition work. Notification is to be made to the NSW Department of Primary Industries.

Application of the MHS Regulation

A mine operator must ensure that the risk assessment and the measures identified to control the risks, is documented for ‘prescribed hazards’ (as

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defined) and during the design of buildings and structures.

The level of detail required to be documented is to be commensurate with the degree of risk identified.

Prescribed hazards under the MHS Regulation are:

- ground instability
- inrush
- atmospheric contamination
- shaft design, construction and use
- the use of conveyors and earthmoving machinery
- fire and explosion
- the handling of explosives
- electricity
- mine road design, construction and use.

The MHS Regulation details risk controls for prescribed hazards as well as 'Controlled Areas' (covering *Waste Materials, Excavations, Construction Zones, Disused Workings* and *Abandoned Mines*) and 'Working Arrangements' (covering *Hours of Work, Fitness for Work, Minimum Age* and *Health Surveillance*).

Some risk controls of the *Mines Inspection General Rule 2000* have been abolished in favour of those set out in the OHS Regulation. For example, in relation to plant and hazardous substances. Other risk controls of the General Rule have been modernised or varied. For example, there are new electrical safety standards that bring the mining industry into conformity with the standard that applies to general industry.

How to comply with the two Acts

If the OHS Act and MHS Act both deal with the same matter - a person must comply with the OHS Act.

If possible, the person must also comply with the MHS Act.

If it is not possible to comply with both

Acts, then the person must comply with the provisions under the OHS Act and OHS Regulation.

Disclaimer

This overview of the MHS Act and MHS Regulation presents a brief summary of the key points in the legislation. The summary does not provide a complete statement of a person's legal rights or duties.

The full text of legislation summarised in this publication is available from NSW Government Information Bookshop or online at <http://www.legislation.nsw.gov.au>

It may also be appropriate for a person to obtain advice from a legal practitioner with relevant qualifications and experience.

The NSW Department of Primary Industries is not responsible for the results of any actions taken on the basis of information in this publication, nor for any error or omission in this publication.

Further information

NSW DPI has prepared a series of Guidance Notes and guidelines that will assist industry in understanding and fulfilling their obligations under the new legislation.

Supporting material and documents can be downloaded at:

www.dpi.nsw.gov.au/minerals/safety/legislation/mines

Related legislation

Occupational Health and Safety Act 2000
Occupational Health and Safety
Regulation 2001
Mine Health and Safety Act 2004
Mine Health and Safety Regulation 2007
Explosives Act 2003
Explosives Regulation 2005

Legislation can be viewed online at
www.legislation.nsw.gov.au

A summary of the *Occupational Health and Safety Act 2000* is available for download from:
www.workcover.nsw.gov.au/Publications/LawAndPolicy/Acts/ohsact2000.htm

A summary of the *Occupational Health and Safety Regulation 2001* is available for download from:
www.workcover.nsw.gov.au/Publications/LawAndPolicy/Regulations/summaryohsreg2001.htm