



NSW DEPARTMENT OF  
PRIMARY INDUSTRIES

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

**Questions and answers from seminar**  
**and workshop presentations**

## **Questions and Answers**

### ***Q1: Does NSW DPI have jurisdiction over suppliers?***

The Department of Primary Industries will have jurisdiction over suppliers for matters relating to mines. This jurisdiction arises from the appointment of Inspectors, mine safety officers & investigators pursuant to Section 47A of the Occupational Health and Safety Act 2000.

Suppliers of any plant or substance have responsibilities pursuant to Section 11 of the Occupational Health and Safety Act 2000.

### ***Q2: Can an operator be an individual person?***

Yes, the Operator must be a person at law i.e. either a natural person or a corporation.

The Operator must be the employer with the day to day control of the mine pursuant to Section 22 of the Mine Health and Safety Act 2004.

### ***Q3: How will Penalty Infringement Notices (PINs) be part of the new legislative framework?***

The use of penalty infringement notices is currently being considered by DPI. It is possible that the Department may utilise pins as a tool for enforcement in the future.

### ***Q4: If the operator is a corporation, which individual do you write to in regards to a failure to have a Mine Safety Management Plan?***

The Operator is obliged to prepare a Mine Safety Management Plan. Clause 8 of the Mine Health and Safety Regulation 2007 requires the Mine Holder to include the identity and contact details of a primary and alternative contact at the mine with the nomination of operator.

Correspondence concerning any failures would normally be addressed to the Operator via the primary or alternative contact provided.

***Q5: How does the new legislation affect the focus on the mine general manager as the head of the mine?***

Pursuant to the *Mine Health and Safety Act 2004* the primary responsibility for the safe operation of the mine rests with the Operator, not the General Manager as was the case in the *Mines Inspection Act 1901*.

The Operator must set out a management structure which includes positions, areas of responsibility and accountability.

Sections 54 to 61 of the Act specifically address the responsibilities supervisors and persons in management positions. These include:

- Complying with the mine safety management plan
- Informing the Operator of non-compliance
- Ensuring the workplace and work methods are safe
- Identifying and controlling hazards
- Communicating safety information
- Having regard to appropriate risk management standards &
- Implementing risk management practices

***Q6: Can other parties institute legal proceedings against a mine under the Mine Health and Safety Act, e.g. a boundary neighbour?***

Legal proceedings under the Mine Health and Safety Act 2004 can only be instituted by the government, government officials or the secretary of a concerned industrial organisation/union.

***Q7: Should Inspectors/Mine Safety Officers stop referring to mine workers as operators in official correspondence?***

Persons using the term “operator(s)” should take care to ensure that they clearly communicate whether they are in fact referring to the Operator of a mine or a mine worker/operator.

***Q8: Is civil engineering mining?***

Civil engineering is not mining. “Civil engineering” is defined under section 11 of the MHSR as “...the construction, structural alteration, repair, maintenance and demolition of, for example, airports, docks, harbours...” etc. Section 11 of the MHSR excludes “civil engineering works” from the application of the Act.

Section 6 of the MHSR describes in detail the places of work which are called “mines” in the Act.

***Q9: Does NSW DPI have jurisdiction over construction work on a mine site?***

NSW DPI have jurisdiction over construction work being carried out at a mine. Clause 77 of the MHSR deals with “building construction or demolition” and refers to the relevant Occupational Health and Safety Regulation provisions.

***Q10: What are the requirements for the appointment of a production manager?***

No extraction can take place at a mine (with the exception of opal mines) unless the Operator has appointed a competent production manager. The operator must notify the chief inspector in writing of the appointment of the production manager.

Clause 21 of the MHSR sets out the eligibility requirements for the issue of production manager permits.

More than one person at a mine may hold a production manager certificate of competency or production manager permit. However, the management structure

should state who, at any time, has the responsibility to perform the function of the production manager.

***Q11: What can NSW DPI do when a mine has a formal Mine Safety Management Plan but there is no evidence of its implementation?***

Section 28 of the MHSa prohibits the carrying out of work directly related to mining unless a compliant mine safety management plan “has been implemented for the mine.”

Government officials including inspectors and mine safety officers have the power to provide advice or require a non compliant operator to cease operations, take any actions or make any improvements deemed necessary to ensure the health, safety and welfare of persons at the mine. Serious non-compliances may also result in a prosecution.

***Q12: Does an exploration drilling site need to have a Mine Safety Management Plan?***

An exploration drilling site is required to prepare and implement a mine safety management plan. Section 6 1 (f) of the MHSa applies the Act to and describes “any place where exploration is carried out,” as a “mine”.

Section 22 of the Act requires the mine holder to nominate an operator and section 27 requires the operator to prepare a mine safety management plan.

***Q13: What is the definition of the word ‘mining’ (noun and verb) in the new legislation?***

Section 6 of the Act describes in detail the various places of work and the activities that occur at those places of work which are considered to be “mines” for the purposes of the Act.

The legislation does not define “mining” as a noun or verb.

**Q14: Will registration of breathing apparatus be considered for inclusion in the Mine Health and Safety Regulation?**

The registration of breathing apparatus is not included in the Mine Health and Safety Regulation 2007.

**Q15: What constitutes modification/alteration of plant?**

Section 82 of the OHS Regulations defines **alter** for the purposes of chapter 5 of the OHS Regulations as follows:

*“alter, in relation to plant, means change the design of, add to or take away from the plant if the change may affect health or safety, but does not include routine maintenance, repair or replacement.”*

**Q16: Is it possible for small mines to comply with codes of practice?**

Yes, the purpose of a mining industry code of practice is to provide practical guidance to operators, employers and others who have duties with respect to occupational health, safety and welfare at mines.

Mines are not required to comply with a code of practice although a code of practice that is relevant may be used in evidence to prove a breach of occupational health and safety legislation.

Operators of small mines should use relevant codes of practice to provide practical guidance in the way they conduct their operation.

**Q17: Will existing production manager permits remain valid under the new legislation?**

Yes, but only permits granted after 1 January 2000. Schedule 5 of the MHSA provides that a certificate of competency as a production manager granted

under section 7 of the former Act is taken to have been granted under section 118 of the MHSA.

Clause 172 of the MHSR provides for the saving of production manager permits as follows:

- (1) A permit issued under section 5C of the Mines Inspection Act 1901 (as in force immediately before its repeal), if granted on or after 1 January 2000, is taken to have been issued under clause 19 of this Regulation subject to the same conditions as those to which it was issued.
- (2) A permit issued under section 5C of the Mines Inspection Act 1901 (as in force immediately before its repeal), if granted before 1 January 2000, is for one year after the commencement of this Regulation, taken to have been issued under clause 19 of this Regulation subject to the same conditions as those to which it was issued.
- (3) A permit that is taken to have been issued under this Regulation, by virtue of this clause, may be varied, suspended or cancelled in accordance with this Regulation.

***Q18: Is there a minimum age for employees working in above ground mines? Will this be reflected in the Mine Health and Safety Regulation, as it was in the Mines Inspection Act 1901?***

There is no minimum age for employing a person to work in above ground mines contained in the MHSA and MHSR.

Clause 89 of the MHS regulation provides a minimum age for underground work of 16. A person under the age of 18 may only be employed underground if the person employed is receiving instruction or vocational training in relation to the underground parts of a mine.

***Q19: Do Inspectors/Mine Safety Officers have to give advice in writing?***

Yes, Sections 131 of the MHSA and clause 163 of the MHSR require that a government official providing advice relevant to health safety or welfare at a mine should do so in writing.

This advice may either be given at the time of the officer's visit to the mine, in a follow up letter or via a formal notice.

***Q20: Will Inspectors/Mine Safety Officers be involved in information presentations/seminars about the new legislation to educate industry?***

Inspectors and Mine Safety Officers have been closely involved with information seminars already provided to industry and will continue to assist industry where required.

***Q21: Will NSW DPI produce an abstract/summary on the Mine Health and Safety Act and Regulation?***

There is currently no intent to produce an abstract or summary of the legislation although various forms of information will be disseminated to industry as the need arises.

An "Overview of New Safety Legislation for NSW Mines" can currently be found on the NSW DPI website at: [www.dpi.nsw.gov.au/minerals/safety](http://www.dpi.nsw.gov.au/minerals/safety)

***Q22: Will the Occupational Health and Safety Regulation be extended to the mining industry in its entirety?***

The OHS Regulation will generally apply to the mining industry. Any parts of the regulation that don't apply, due to a lack of relevance or to avoid duplication between legislation, will state that they don't apply to mines.

**Q23: What safety legislation applies to the mining industry?**

The safety legislation for the mining industry is:

*Occupational Health and Safety Act 2000*

*Occupational Health and Safety Regulation 2001*

*Mine Health and Safety Act 2004*

*Mine Health and Safety Regulation 2007 (draft)*

*Explosives Act 2003*

*Explosives Regulation 2005.*

**Q24: Why does the mining industry have both the MHS Regulation and the OHS Regulation?**

The OHS Regulation covers matters that are common across all industries, such as typical hazards and risks, and also procedures such as consultation. The MHS Regulation covers only those additional matters that are particular to mining, such as the risks characteristic of work underground, and also procedures, such as those in relation to check inspectors and competency. The mine health and safety legislation is subordinate to the OHS legislation.

**Q25: What is the difference between the MHS Regulation and the OHS Regulation?**

The MHS Act and Regulation place duties mainly on the mine operator (which is generally a corporation). These duties are in addition to those that the mine operator may have under the OHS Act and Regulation in their role as an employer, a self-employed person, or controller of premises, plant or substance.

Other parties at the mine may also have duties as employers or self-employed persons under the OHS legislation.

***Q26: Why does the MHS Regulation have to be read in conjunction with the OHS Regulation?***

The OHS Regulation addresses risks and matters that are not specifically provided for in the mining legislation. The mine health and safety legislation provides an additional focus on particular risks encountered in mining.

***Q27: Doesn't the MHS Regulation and OHS Regulation duplicate the duties on mine operators?***

The duties of the operator found in the MHS Regulation build upon the duties found in the OHS Regulation by specifically addressing matters that are of particular relevance to the risks associated with mining.

***Q28: What happens if a mine operator can't comply with both the MHS Regulation and the OHS Regulation at the same time?***

In the unlikely event that compliance with both Regulations is not possible the OHS Regulation prevails.

***Q29: What is a Regulatory Impact Statement (RIS)?***

The RIS is a way of justifying and explaining the decision to make the regulation. It is mandatory to distribute this for public comment and it must include a cost-benefit analysis.

The RIS is a way of ensuring that the regulation is the most efficient and effective way of achieving the policy objectives defined by the Act, with a net benefit to the community.

***Q30: What is the duty of a mine holder?***

The mine holder (the person with the right to mine) must nominate the mine operator (the employer with day to day control of the mining work), and provide the mine operator with relevant information.

**Q31: What are the duties of a mine operator?**

Section 22 of the MHSa requires the mine operator to be the employer with the day to day control of the mine. The mine operator therefore has the general duties place upon employers along with any specific duties found in the legislation.

**Q32: What are the duties of an employer?**

Employers have a general duty to ensure the health safety and welfare of employees and other persons at the employer's place of work. An employer's duties are extensive and are generally described in section 8 of the Occupational Health and Safety Act 2000 and more specifically addressed in the OHS Act, OHS Regulation and Mine Health and Safety Act and Regulation.

**Q33: What are the key things that must be done to comply with the new legislation?**

Key actions that should be taken to ensure compliance with the new legislation include:

- The nomination of an operator for the mine;
- The preparation of a management structure for the mine; &
- The preparation and implementation of a mine safety management plan, contractor management plan and emergency plan.

Mine operators should also review the new mining legislation and the OHS regulation in detail and identify any further actions needed to ensure compliance.

**Q34: When will the new legislation start?**

The new legislation will commence on the 1<sup>st</sup> of September 2008.

Most duties on mine operators will commence on the 1<sup>st</sup> of March 2009.

Registration of "general" plant will commence on the 1<sup>st</sup> of September 2009.

Registration of powered winding systems will commence on the 1<sup>st</sup> of September 2010 with the provisions of the General Rule being maintained until that time.

***Q35: How is construction work covered by the legislation?***

Clause 77 of the Mine Health and Safety Regulation requires the designation of a “construction zone” where building major construction or demolition is being undertaken at a mine.

The construction provisions found in the OHS Regulation will also apply to mines.

***Q36: What are the advantages of these reforms to the legislation?***

The Mine Health and Safety Act and Regulation along with the further application of the OHS Regulation will assist in improving mine safety by ensuring a more modern approach to the management of risks to health, safety and welfare in the work place. They will also ensure that there is a more consistent approach between the metalliferous and quarrying sectors and coal mining sectors of the mining industry and other industries.

***Q37: Why introduce plant registration?***

The aim of plant registration is to ensure standards are applied to the design and manufacture of certain “high risk” types of plant, so that the plant is safe to use. One advantage of plant registration is that it can be cancelled, either for an individual item, or for a class of items by cancelling the design registration. In effect, this would prohibit use of the plant if investigation revealed that it did not meet recognised standards.

***Q38: How can the duties of suppliers in relation to the supply of plant and substances to mines be enforced when the supplier is not at the mine site?***

The Department of Primary Industries will have jurisdiction over suppliers for matters relating to mines. This jurisdiction arises from the appointment of inspectors, mine safety officers & investigators pursuant to Section 47A of the Occupational Health and Safety Act 2000.

Suppliers of any plant or substance have responsibilities pursuant to Section 11 of the Occupational Health and Safety Act 2000. These responsibilities can be enforced through the use of the various powers provided to government officials including inspectors, mine safety officers and investigators or via prosecution.

***Q39: Where does the public find out about the amendments to the Occupational Health and Safety Regulation 2001?***

An outline is provided on the DPI web site in the *Explanatory paper – Overview of New Safety Legislation for NSW Mines*.

***Q40: Who is the mine holder in the case of a Council operating a quarry on private land?***

In cases where a right to extract materials or quarry products exists, other than under the *Mining Act 1992*, the person who holds that right, may transfer that right via a contractual arrangement. Once that right has been transferred the duties imposed under the MHS Act will pass to the new right holder.

In the case of a Council acquiring that right from a private land owner the Council will become the 'mine holder' for the purposes of the Act.