



**NSW  
Resources  
Regulator**

# **APPROVED TRAINING PROVIDER CONDITIONS DEED**

For safety and health representative training course

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# Approved training provider conditions deed

## Parties

The state of NSW by its Department of Planning Industry and Environment

and

The approved training provider (ATP) named in the Schedule

## Background

- a) The department administers as a process for the approval of training providers to deliver training courses that are accredited by the NSW Resources Regulator for the purposes of section 45 of *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.
- b) The ATP is approved to deliver the accredited course.
- c) The ATP must use the course materials and comply with the ATP conditions to deliver the accredited course.
- d) The department sub-licences the rights to the course materials to the ATP.

## General terms

### 1. The ATP conditions

The ATP conditions set out the terms and conditions of approval to deliver the accredited course. The ATP conditions are comprised of:

- a) this ATP conditions deed (this deed); and
- b) the guidelines and policies.

To the extent of any inconsistency between the items referred to in (a) and (b) above, the order of priority will be (a) then (b) unless the guidelines and policies expressly acknowledge the inconsistency and state that the guidelines and policies will apply in priority.

## 2. Dictionary and interpretation

In the ATP conditions, except where the contrary intention is expressed, words have the meaning given to them, and the rules of interpretation are set out, in Schedule 1 (Definitions and interpretation).

## 3. Term and renewal of approval

3.1. The approval of the ATP to deliver the accredited course commences on the date on which the department confirms to the ATP its execution of this deed (the deed acceptance date) and continues until the earlier of:

- a) 3 years from the deed acceptance date; and
- b) the date it is terminated under the ATP conditions,  
(the term).

3.2. The department reserves its rights to terminate this deed for any reason at the expiry of the term.

## 4. Guidelines and policies

The ATP will comply with the guidelines and policies. The department may update the guidelines and policies and issue new guidelines and policies from time-to-time.

## 5. Accredited course

5.1. The accredited course must only be delivered:

- a) by a nominated trainer (as defined in clause 6)
- b) to MSHRs or potential ISHRs, and
- c) in accordance with the training conditions.

The training conditions are set out in Schedule 2 to this deed.

5.2. The accredited course must not include any materials or content other than the course materials.

## 6. Nominated trainer

6.1. A nominated trainer is a natural person who meets the mandatory requirements:

- a. nominated in the ATP's application, or
- b. notified to the department in writing.

The mandatory requirements are set out in Schedule 3 to this deed.

6.2. A nominated trainer must be:

- a) an employee of the ATP, or
- b) the ATP – if the ATP is a natural person
- c) a contractor to the ATP.

6.3. A nominated trainer must at all times meet the mandatory requirements. The ATP must provide evidence as specified in Schedule 3 on request by the department.

6.4. The ATP is responsible for the actions and omissions of the nominated trainers at all times. This includes ensuring nominated trainers comply with their obligations under the ATP conditions.

6.5. A reference to a nominated trainer in the ATP conditions is a reference to the ATP.

## 7. Sub-licence of course materials

7.1. The department grants the ATP a non-exclusive, non-transferable sub-licence to use the course materials for the sole purpose of delivering the accredited course in accordance with the ATP conditions.

7.2. The ATP must not:

- a. represent that it owns the course materials
- b. alter, customise, modify or create derivative works of the course materials in any way whatsoever
- c. use the course materials for any purpose other than in accordance with the ATP conditions, or
- d. sell, lease, transfer, assign, sub-licence, license or otherwise part with possession of the course materials, or any part of them, without the prior written consent of the department.

7.3. The department may notify the ATP of additional terms applicable to the licence of the course materials, including terms imposed by the owner of the course materials. The ATP must comply with such terms.

7.4. If the ATP engages in any activities listed in clause 7.2, or if this deed expires or is terminated, the ATP must return or destroy all copies of course materials as requested by the department.

## 8. Quality of training

The ATP must maintain the capacity to deliver the accredited course to the standard described by the ATP in the application and as otherwise required in the ATP conditions, including maintaining:

- a) all licenses and consents
- b) at least one nominated trainer.

## **9. Ethics and conduct**

9.1. The ATP must comply with and ensure that its nominated trainers comply with, the code of conduct.

9.2. The ATP must:

- a) (information true, accurate and correct) ensure that all information it provides the department is true, accurate, complete and correct and not misleading in any way
- b) (marketing and communications): only market, publicise or otherwise communicate its connection to the accredited course in accordance with the ATP conditions
- c) (dangerous work practices) immediately cease an activity if it would result in participants or other persons being placed in danger or injured. The ATP must immediately notify the NSW Resources Regulator if an activity that it is participating in promotes an unsafe work practice
- d) (obligations to government agencies) comply with its obligations to any Commonwealth or state government agency, including obligations under any applicable laws
- e) (collection of funds) not collect any funds under the auspices of the department or the NSW Resources Regulator. For example, the ATP must not claim that training fees are charged by NSW Resources Regulator
- f) (notification of investigation) notify the department immediately when the ATP is notified or becomes aware that it is or may become subject to an investigation (or a similar process) by any government agency including Australian Skills Quality Authority (ASQA), SafeWork NSW, Australian Competition and Consumer Commission (ACCC), Australian Securities and Investments Commission (ASIC) or the Australian Tax Office (ATO)
- g) (no unethical or dishonest conduct) act in good faith and not act in any way that could be seen to be unethical, reckless, illegal or dishonest conduct or do anything that may bring into disrepute or be detrimental to the department or the NSW Resources Regulator.

## **10. Conflict of interest**

- 10.1. The ATP warrants that at the deed acceptance date and on each day following during the term that no conflict of interest exists or is likely to arise in the performance of its obligations under the ATP conditions.
- 10.2. If during the term, a conflict of interest arises, the ATP must:
- a) immediately notify the department in writing of that conflict of interest making a full disclosure of all information relating to the conflict of interest
  - b) take such steps as the department may reasonably require to resolve or otherwise deal with that conflict of interest.
- 10.3. If the ATP does not notify the department under this clause or is unable or unwilling to resolve or deal with the conflict of interest as required, the department may terminate the ATP conditions.
- 10.4. The ATP agrees that it will not, and will ensure that the nominated trainers do not, engage in any activity or obtain any interest during the course of this ATP conditions that is likely to conflict with or restrict the ATP in performing the ATP conditions.

## 11. Monitoring

- 11.1. The department may at any time carry out monitoring of the delivery of the accredited course and the ATP's operations and compliance with the ATP conditions (including compliance with applicable laws and guidelines and policies) (monitoring).
- 11.2. The department will carry out monitoring by any means including by requesting a self-assessment by the ATP, monitoring and/or auditing all records of the ATP and any other information provided by the ATP, by attending the ATP's site(s), interviewing the ATP's board of management, employees, agents or subcontractors, or interviewing any participants who are receiving or have received training. This monitoring may be carried out by any person authorised by the department including external contractors.
- 11.3. The ATP will provide all assistance, information or access required to the department to enable the department to carry out monitoring within the timeframe requested by the department, including:
- a) responding honestly to questions
  - b) ensuring availability and accessibility of records.

## 12. Marketing and advertising

- 12.1. The department may, from time to time, issue guidelines governing the marketing and advertising in connection with the accredited course.
- 12.2. The ATP must not market or advertise the accredited course or the approval of the ATP to deliver the accredited course, without prior written approval from the department or compliance with any guidelines issued under clause 12.1 above.
- 12.3. The department will not approve any marketing or advertising that does not comply with the following:
- a) The term ‘accredited’ may only be used in connection with the accredited course. The NSW Resources Regulator must be identified as the accrediting body. This term cannot be used to refer to the ATP or to the ATP’s individual trainers and/or assessors.
  - b) The ATP may only refer to itself as:  
“approved to deliver a course of training accredited by the NSW Resources Regulator for mine safety and health representatives.”
  - c) All advertising must include the ATP’s approval number provided by the NSW Resources Regulator.
  - d) Advertising and publicity must not be misleading or ambiguous.
  - e) Any use of the NSW Government logo is restricted to advertising the accredited course and must be consistent with *NSW Government Brand Guidelines*.

### 13. Records and reporting

- 13.1. The ATP will maintain records in connection with its obligations under the ATP conditions including the delivery of the accredited course. This includes records specified in the training conditions.
- 13.2. The ATP will maintain records for not less than seven years after the end of this deed.
- 13.3. The ATP will liaise with and report to the department as required by the department for the purposes of the ATP conditions in connection with the delivery of the accredited course.

### 14. Insurance

- 14.1. The ATP will have and maintain the following insurance:
- a) for the term:
    - i. public and products liability insurance with a minimum limit of \$20 million for any one occurrence; and

- ii. professional indemnity insurance with a minimum limit of \$1 million for any one occurrence and in the aggregate for the insurance period; and
    - iii. workers compensation and other compulsory third party insurance as required by law; and
  - b) for six years after the term, a valid and enforceable professional indemnity insurance policy to the extent and in the amounts specified above,  
(the insurance policies).
- 14.2. The insurance policies must be taken out by the ATP with a reputable and solvent insurer(s) acceptable to the department, which carries on insurance business in Australia and is authorised in Australia to operate an insurance company.
- 14.3. The ATP must:
- a) not do or allow to be done anything which may vitiate, invalidate, prejudice or render ineffective the insurance or entitle the insurer to refuse the claim; and
  - b) without limiting clause 14.1, promptly reinstate any insurance if it lapses or if the cover is exhausted.
- 14.4. The ATP will, on request by the department, provide current relevant confirmation of insurance documentation including certificates of currency, certifying that it has insurance as required by this clause 14, noting any restrictions that may be relevant to the performance of the ATP conditions.
- 14.5. The ATP will as soon as practicable notify the department of any occurrence that may give rise to a claim under the public liability or professional indemnity insurance policies and afterwards keep the department fully informed of developments concerning any claim.
- 14.6. The requirements of this clause do not affect the ATP's liabilities in connection with the ATP conditions.
- 14.7. The ATP's obligations under this clause are continuing obligations and survive termination of the ATP conditions whilst the obligations of the ATP under this clause continue.

## 15. Termination, suspension or variation

### 15.1. Termination for convenience:

- a) The department may, at any time, terminate the ATP conditions for any reason by giving at least two months' notice to the ATP.
- b) The ATP may, at any time, terminate the ATP conditions for any reason by giving at least two months' notice to the department.

### 15.2. Termination, suspension or variation for default:

- a) The ATP will not allow an event of default to occur.
- b) If an event of default occurs, the ATP will immediately notify the department of the event of default and provide sufficient detail to the department to assess the significance and impact of the event of default.
- c) If an event of default occurs, the department may, by written notice to the ATP, immediately:
  - i. suspend all or part of the ATP's rights under the ATP conditions, including the approval to deliver the accredited course
  - ii. vary the ATP conditions
  - iii. exercise any of its other rights under the ATP conditions; or
  - iv. terminate this deed.
- d) If the department believes that the ATP has failed to comply with the ATP conditions, the department may give the ATP a notice requiring the ATP, within 14 days after receiving the notice, to show that there has been no such failure, or to remedy the failure where the failure is capable of remedy. If, after the 14 days have expired, the department is satisfied that the ATP did fail to comply as alleged in the notice and has not remedied the failure, the department may, by written notice to the ATP, terminate this deed. This clause does not limit the department's rights under this deed or at law.
- e) Event of default means any of the following (whether or not caused by anything outside the control of the ATP):
  - i. non-compliance: the ATP has not complied with any term or condition of the ATP conditions

- ii. untrue warranty: a representation, warranty or statement made by the ATP is untrue or misleading or a reply to a question made by, or on behalf of, the department, is untrue or misleading
- iii. void document: the ATP conditions or any other related agreement, entered into by the ATP and the department is void, voidable or otherwise unenforceable by the department or is claimed to be so by the ATP
- iv. compliance unlawful: it is unlawful for the ATP to comply with any of its obligations under the ATP conditions or it is claimed to be so by the ATP, and
- v. unable to perform obligations: the department reasonably considers that the ATP is unlikely to perform its obligations under the ATP conditions or to deliver the accredited course.

### 15.3. Variation of the ATP conditions

- a) The department may vary this deed:
  - i. at any time if there is an event of default and the ATP has failed to, or is unable to, remedy the event of default within 14 days of the department providing notice to the ATP of the event of default
  - ii. at any time, with the consent of the ATP or by giving at least one months' notice to the ATP, or
  - iii. otherwise in accordance with the ATP conditions.
- b) To be clear, this clause does not limit the department's rights under the remainder of the ATP conditions.
- c) In giving notice of any changes under this clause, the department will specify the date on which the change is to take effect.

### 15.4. Effect of termination

On termination of this deed:

- a) the ATP (including its nominated trainers) will immediately no longer be approved to deliver the accredited course.
- b) the ATP will (at its own cost) do anything that the department requests.

## 16. Warranties

The ATP warrants that, on the deed acceptance date and on each day following during the term:

- a) it complies with all applicable laws
- b) it has the legal right and power to enter into the ATP conditions and to perform its obligations under the ATP conditions
- c) the execution, delivery and performance of the ATP conditions by it has been duly and validly authorised by all necessary corporate action on its part
- d) each authorisation necessary to enable it to unconditionally execute and deliver and comply with its obligations under the ATP conditions, and to carry on its principal business or activity, has been obtained, effected and complied with
- e) the deed constitutes a valid and binding agreement and is enforceable against it by the department in accordance with its terms
- f) the ATP is not aware of any circumstances, including any financial circumstances or any litigation or other proceedings that are taking place, pending or are threatened, which adversely affects or might adversely affect the ATP's ability to perform the ATP conditions or deliver the accredited course, and
- g) all information provided by the ATP to the department before the deed acceptance date (including in connection to the application) is true, accurate and complete and is not misleading in any way.

## 17. Indemnities and liability

### 17.1. Indemnities

- a) The ATP must indemnify and keep indemnified the department, including its personnel (the indemnified) against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment (including legal fees on a solicitor/client basis) which the indemnified pays, suffers, incurs or is liable for in respect of or as a result of any act or omission by the ATP or its personnel in connection with or arising out of this deed including delivery of the accredited course.
- b) The ATP's liability under this clause 17.1 will be reduced to the extent that any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment was caused or contributed to by the department's breach of the deed, negligent or unlawful acts or omissions.

### 17.2. Exclusion of liability:

The department will not be liable to the ATP for any loss or damage suffered or incurred by the ATP that:

- a) does not arise naturally or in the ordinary course of things, or
- b) is a loss of goodwill, income, revenue, profit or savings.

## 18. Assumption of risks by ATP

18.1. The ATP accepts all risks connected to the ATP conditions and its performance of the ATP conditions, including the risk of not being engaged to deliver the accredited course.

18.2. The ATP will not make any claim against the department in respect of these matters or any other related matters.

18.3. The ATP will perform its obligations under the ATP conditions at its own cost.

## 19. Privacy

### 19.1. ATP information:

- a) The ATP agrees that the department may collect from the ATP or any other source, information about the ATP that relates to the ATP's performance under the ATP conditions, and the ATP's delivery of the accredited course (ATP information). This includes any information that the ATP provides the department as part of the ATP conditions or under its application and any feedback the department obtains from third parties regarding the ATP's provision of training.
- b) The ATP agrees that the department may share and disclose ATP information to any Australian government agency, including those located in states and territories outside NSW who may use ATP information for any purpose connected to the exercise of their government functions.

### 19.2. Personal information

- a) The ATP must comply with all applicable Australian privacy laws, including the *Privacy Act 1988* (Cth) (Privacy Act) in relation to the collection, use and disclosure of personal information, as defined under section 6 of the Privacy Act, of all participants (participant personal information).
- b) The ATP must comply with the principles under the *Privacy and Personal Information Protection Act 1998* (NSW) as if it is a 'public sector agency'.

- c) It is the ATP's responsibility to ensure that it:
- i. (complies with the Australian Privacy Principles) complies with the Australian Privacy Principles under the Privacy Act in relation to its privacy obligations under the ATP conditions and at law
  - ii. (obtains notifications and disclosures) provides all necessary notifications and disclosures as required under the Privacy Act in relation to its collection, use and disclosure of participant personal information, including disclosure under the ATP conditions, and
  - iii. (obtains consent and records) ensures that it obtains all necessary consents for the collection, use and disclosure of participant personal information in accordance with this clause and retains written records and logs of all consents.

#### 19.3. Provision of information to the department and other government agencies:

The ATP must provide the department with all information, including requirements of section 121 of the *Government Information (Public Access) Act 2009* and including participant personal information collected or obtained by the ATP in relation to all participants in accordance with the ATP conditions.

#### 19.4. General:

The ATP's obligations under this clause are in addition to its obligations under Australian privacy laws, including the Privacy Act.

## 20. General

20.1. (Waivers and consents) Except as expressly stated in the ATP conditions, each party acknowledges that:

- a) a waiver or consent under the ATP conditions is not effective unless it is in writing and signed by the parties entitled to give the waiver or consent
- b) a waiver or consent may be given conditionally or unconditionally or withheld in the absolute discretion of the party entitled to give the waiver or consent
- c) a waiver of a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given
- d) a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right, and
- e) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

20.2. (No employment, partnership or agency):

- a) The ATP is not by virtue of the ATP conditions, or for any purpose, an employee, partner or agent of the department, or invested with any power or authority to bind or represent the department.
- b) The ATP must not represent itself and must ensure that its personnel do not represent themselves, as being an employee, partner or agent of the department, or as otherwise able to bind or represent the department.

20.3. (Change in control) Any change in control (as defined by section 50AA of the *Corporations Act 2001* (Cth)) of the ATP requires the department's approval.

20.4. (Subcontracting) The ATP must not subcontract any part of its obligations under the ATP conditions or any part of the delivery of the accredited course.

20.5. (Further assurance) Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to the ATP conditions.

20.6. (Government taxes, duties and charges) All taxes, duties and charges imposed or levied in any state or territory or federally in Australia or overseas in connection with the performance of the ATP conditions and the delivery of the accredited course must be borne by the ATP.

20.7. (Costs) Each party must pay its own legal costs and other expenses connected with the negotiation, preparation and execution of the ATP conditions.

20.8. (Severability) If anything in the ATP conditions is unenforceable, illegal or void then it is severed and the rest of the ATP conditions remains in force.

20.9. (Notices) A notice or communication has no effect unless it is in writing and sent by email, prepaid post, faxed or delivered to the addressee. Each party's address, fax and email details are set out in the Schedule. A party can change its details by giving notice to the other party.

A notice is received: if sent by email at the time the email is sent if there is no failure delivery report; if sent by post 2 (or 9 if overseas) business days after posting; if sent by fax at the time an error free confirmation is received; or if delivered when it is left at the main office address.

20.10. (Entire understanding) The ATP conditions:

- a) is the entire agreement and understanding between the parties on everything connected with the subject matter of the ATP conditions, and
- b) supersedes any prior agreement or understanding between the parties on anything connected with that subject matter including the application.

- 20.11. (Variation) An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.
- 20.12. (Waivers and consents) If a party has a right arising from another party's failure, the delay in exercising that right does not waive any rights.
- 20.13. (Assignment) The ATP must not assign any or all of its rights and obligations under the ATP conditions without the department's approval.
- 20.14. (Survival) Clauses [14, 16, 17, 18 and 19], and the Schedules (to the extent it refers to clauses or Schedules that survive this deed) will survive the termination or expiry of this deed.
- 20.15. (Governing law and jurisdiction) This deed will be governed by the laws of NSW, Australia and the parties submit to the jurisdiction of the courts of NSW and any courts which are entitled to hear appeals from them.

# Execution

## Department

Signed, sealed and delivered for and on behalf of the **Department** by its authorised signatory but not so as to incur personal liability:

..... Signature of Authorised Signatory	..... Signature of Witness
..... Name of Authorised Signatory	..... Name of Witness
..... Position of Authorised Signatory	..... Address of Witness
	..... Date

## ATP

Signed, sealed and delivered for on and on behalf of [INSERT] in accordance with section 127 of the *Corporations Act 2001* by:

..... Signature of Director(1)	..... Signature of Director(2)/Company Secretary
..... Name of Director (1)	..... Name of Director(2)/Company Secretary
..... Date	..... Date

## Schedule 1

### Details of parties

<b>Department</b>	The state of NSW by its Department of Planning Industry and Environment
<b>Department notice details</b>	Postal address: Fax: Email: Attention of:

<b>ATP</b>	name of corporation or natural person, including ABN or ACN as applicable]
<b>ATP notice details</b>	Postal address: Fax: Email: Attention of:

### Definitions

Term	Definition
<b>Accredited course</b>	The training course accredited by the NSW Resources Regulator for the purposes of section 45 of the Act.
<b>Act</b>	<i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i>

<b>Application</b>	The ATP's application for approval to deliver the accredited course.
<b>Code of conduct</b>	Department of Planning, Industry and Environment's <i>Code of Ethics and Conduct for Employees (2015)</i>
<b>Course materials</b>	Training material for the accredited course provided by the NSW Resources Regulator as further described in point 3 of the training conditions.
<b>Conflict of interest</b>	Any perceived or actual conflict of interest including engaging in any activity, or obtaining any interest which restricts or is likely to conflict with the performance by the ATP of, or to restrict the ATP in performing, its obligations under the ATP conditions.
<b>Guidelines and policies</b>	Any guidelines or policies communicated to the ATP by the department from time to time, including the code of conduct.
<b>Licences and consents</b>	Any licenses, consents, authorisations, recognitions, qualifications, approvals and permits required by applicable laws and legislative instruments to deliver the accredited course and to perform obligations under the ATP conditions.
<b>Mandatory requirements</b>	The mandatory requirements for nominated trainers set out in Schedule 3 to this deed.
<b>Mine safety and health representative or MSHR</b>	A person who is elected under section 38 of the Act as: <ul style="list-style-type: none"> <li>(a) a site safety and health representative; or</li> <li>(b) an electrical safety and health representative, for a coal mine.</li> </ul>

**MSHR certificate** A certificate of completion of the accredited course issued by the ATP in accordance with the ATP conditions, including the training conditions.

<b>Participant</b>	A MSHR or potential ISHR attending the accredited course in the capacity of a learner.
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**Personnel** Personnel of a person includes that person's employee, agent, officer, or contractor.

<b>Potential ISHR</b>	A person who is seeking appointment as an industry safety and health representative under section 28 of the Act.
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**NSW Resources Regulator** As defined as the 'Regulator' in the Act.

<b>Training conditions</b>	The conditions set out in Schedule 2 to this deed.
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## Interpretation

In this deed, unless the contrary intention appears:

- a) a reference to a document (including this deed) includes any variation or replacement of it
- b) the words include, including, for example or such as when introducing an example do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind
- c) a provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of the provision in this deed.

## Schedule 2: Training conditions

Terms not defined in these training conditions having the meaning given to them in Schedule 1 of the deed.

### A. Summary of training conditions

#### Before delivering training

- ATPs must ensure that participants provide adequate evidence of identity before the training (points 1 - 2).
- ATPs must retain records of the evidence collected in a secure records management system (point 31).

#### Delivering training

- The course objectives, learning outcomes and delivery requirements specified in the facilitator's guide and course materials must be met (point 5).
- The sessions must be delivered in sequence, face-to-face over a minimum five-day period (points 12, 13 and 15).

#### After delivering training

- The ATP is to request participants complete an evaluation form (point 16).
- The ATP must issue a MSHR certificate to participants upon completion of all MSHR training sessions.
- The ATP is also required to provide a copy of the MSHR certificate to the mine operator or the person conducting the business who paid for the training (point 22).
- The ATP must record and retain the number of each MSHR certificate as part of its secure record management system (point 20).
- The ATP must notify the details of any participants who have completed the accredited course to the NSW Resources Regulator within seven calendar days of completing the training (point 21).

## B. Before delivering training

### Notification of training

The ATP is encouraged to notify the relevant Industry Safety and Health Representative(s) (ISHR) of a scheduled course prior to commencement of training to give ISHRs the opportunity to assist in the training of MSHRs. Assisting in the training of MSHRs is a function of an ISHR given under s. 29 (2)(c) of *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

### Evidence of identity

1. The ATP must ensure that each participant provides adequate evidence of identity (EOI) before the start of the training and maintain secure records, in a form that can be easily retrieved on request by the NSW Resources Regulator.

The ATP must only record the type and currency of the EOI sighted by the ATP on the day of training. The ATP must not allow any person to undertake the training if adequate evidence of identify cannot be supplied.

2. Adequate EOI means that the combination of documents provided by the participants must include the participant's name and:
  - photo (e.g. current driver's licence, passport)
  - signature (e.g. current driver's licence, credit card).

All EOI documentation must:

- be originals (certified documents are not to be accepted)
- be issued by a government body or a financial institution (see note 1 below)
- be in the same name unless accompanied by a document from the NSW Registry of Births, Deaths and Marriages (or state/territory equivalent) verifying the change of name
- include the participant's full name
- be in English, unless accompanied by an English translation issued by a NAATI accredited translator.

Note 1: Credit cards and savings account cards from overseas institutions can only be accepted if the institutions have representation in Australia, and subject to the card or statement being issued in Australia and in English.

Note 2: The department may give special considerations for Aboriginal and Torres Strait Islanders and certain disadvantaged groups.

## C. Delivering the training

3. The nominated trainer must have in their possession a copy of the NSW Resources Regulator's MSHR training course outline and timetable, the facilitator's guide, presentation with trainer's notes and references, and the participant handouts (the course materials) at the time of the training.
4. The nominated trainer must have in their possession a copy of the ATP conditions at the time of the training.
5. The ATP must ensure that the training is delivered and satisfies the objectives and learning outcomes of the accredited course in the manner specified in the course materials and the ATP conditions.
6. The nominated trainer must comply with the course content detailed in the facilitator's guide.
7. The nominated trainer may customise the accredited course to meet audience requirements and venues/opportunities for the practical activity within the accredited course. To be clear, any customisation must be in accordance with the ATP conditions (including clause 7 of the deed).
8. The nominated trainer must provide a hard copy of the relevant Work Health Safety and Work Health and Safety (Mines and Petroleum Sites) legislation to all participants.
9. The ATP must ensure that training is takes place in a suitable venue that provides for an appropriate learning environment.
10. The ATP must ensure participants receive training that meets their individual needs in line with adult learning principles, including:
  - a) clearly outlining the learning outcomes
  - b) encouraging participation and interaction
  - c) ensuring that participants with differing learning needs are given the same opportunity as other participants in gaining skills and knowledge through the training
  - d) ensuring that the learning environment is free from harassment and discrimination
  - e) ensuring that the audio-visual materials (e.g. slides) are well organised and easy to follow
  - f) ensuring enough resources are available for all learners to participate in the activities and discussions
  - g) providing enough time to complete activities
  - h) answering questions clearly and correctly
  - i) providing handouts in colour where appropriate (e.g. safety signs, fire extinguishers)
  - j) using a variety of delivery methods (e.g. lecture, large and small group discussions, videos)

- k) engaging participants in a range of learning activities (e.g. group activities, question and answer sessions, brainstorming, case studies)
  - l) using clear language to describe concepts
  - m) summarising the content at the end of each session
  - n) providing feedback to the learners on their progress throughout the training session.
11. Nominal delivery times have been allocated to each session in the course materials.
  12. Individual sessions must be delivered in the sequence stated in the facilitator's guide of the course materials.
  13. All training must be delivered face-to-face.
  14. Appropriate breaks during course delivery should be timed at the discretion of the nominated trainer. Two short breaks of 10 to 15 minutes (morning and afternoon tea) and one longer break of 30 minutes (lunch) are recommended. This time is additional to the delivery times indicated for each topic.
  15. The training may be delivered as a single block of five days or as separate sessions delivered over a six-month period.

## D. After delivering training

16. The ATP must request participants complete an evaluation form. ATPs must use the form supplied by the NSW Resources Regulator in the course materials.
17. The ATP must issue a MSHR certificate to participants upon completion of the accredited course.
18. MSHR certificates are required to include the following:
  - a) ATP approval details (name and number) and its logo
  - b) A statement that the ATP has been approved by the NSW Resources Regulator to deliver the course.
  - c) The session names on the reverse side of the MSHR certificate.
  - d) a unique sequence of numbers issued by the ATP.

The use of the NSW Government logo is prohibited.

19. The ATP must provide a copy of the MSHR certificate to the mine operator or the person conducting the business who paid for the training.
20. The ATP must record and retain the number and a copy of each MSHR certificate in its secure record management system. The ATP must have a mechanism in place to ensure that those who

have completed the training are able to be provided with a replacement certificate, if required, on request.

21. MSHR certificates must be issued to participants within 10 calendar days of completion of the training.
22. The ATP must provide the NSW Resources Regulator the details of any participants who have completed the accredited course within 10 calendar days of completion.
23. Participants who complete one or more topics (but not all topics) in the course materials must be issued a 'topic completion certificate' by the ATP. All 'topic completion certificates' must be in a form provided by the NSW Resources Regulator and must record the topics completed, the dates of completion and other particulars as specified on the template.

## E. Maintaining training records

24. The ATP is to ensure that the following training records are maintained:
  - a) course notification
  - b) course variation
  - c) records of training dates and documentary evidence of the dates that each of the participants was in attendance at training (e.g. attendance sheets)
  - d) participant details and the number of participants who complete the accredited course
  - e) records of participant evidence of identity and evidence of prerequisite training sighted before training begins
  - f) records of MSHR certificate numbers issued to participants
  - g) approvals from the NSW Resources Regulator for any exemptions of these conditions
  - h) participant evaluation forms
  - i) change of mailing address forms
  - j) any other relevant correspondence with NSW Resources Regulator
  - k) any other forms relevant to the delivery of the accredited course.
25. Training records must be maintained by the ATP for a minimum of seven years and must be made available to the NSW Resources Regulator on request.

Records in relation to training, including notification forms, record of training forms, and participant details, must be kept in a secure location to prevent loss or damage through theft, fire or flooding or to prevent access that would enable alteration by other people.



## Schedule 3: Mandatory requirements

Terms not defined in these mandatory requirements having the meaning given to them in Schedule 1 of the deed. All people who will deliver the accredited course must meet all mandatory requirements to be a nominated trainer.

Mandatory Requirement	Information/evidence required
<p><b>(Qualifications)</b> The nominated trainer must hold a training qualification and a:</p> <ul style="list-style-type: none"> <li>(a) WHS qualification or</li> <li>(b) mining qualification.</li> </ul> <p><b>Training qualification</b> includes:</p> <ul style="list-style-type: none"> <li>• Certificate IV in Training and Assessment (TAE40110 or TAE40116)*</li> <li>• a diploma or higher-level qualification in adult education.</li> </ul> <p><b>WHS qualification</b> includes:</p> <ul style="list-style-type: none"> <li>• Certificate IV in Work Health and Safety (BSB41412 or BSB41415)*</li> <li>• Diploma of Work Health and Safety (BSB51312 or BSB51315)*</li> <li>• Advanced Diploma of Work Health and Safety (BSB60612 or BSB60615)*</li> <li>• a diploma or higher-level qualification in work health and safety.</li> </ul> <p>* Includes the successors of any of the qualifications referred to above.</p> <p><b>Mining qualification</b> includes a Certificate IV or higher qualification in surface or underground coal mining operations or any of the following certificates of competence:</p> <ul style="list-style-type: none"> <li>• mining engineering manager</li> <li>• undermanager</li> <li>• deputy</li> <li>• open cut manager</li> <li>• open cut examiner</li> </ul>	<p>Provide the following details of at least 1 training qualification and:</p> <ul style="list-style-type: none"> <li>(a) one WHS qualification or</li> <li>(b) one Mining qualification</li> </ul> <ul style="list-style-type: none"> <li>• qualification name and code</li> <li>• date of issue</li> <li>• name and code (if a RTO) of issuer of qualification</li> </ul> <p>Provide a copy of each certificate of qualification.</p>

**(Knowledge)** The nominated trainer must have industry relevant knowledge.

A person will meet this requirement if they have:

- **(qualification)** at least one of the following:
  - Certificate IV or higher **industry relevant** qualification within the RII – Resources and Infrastructure Industry Training Package (Release 2.0); or
  - a diploma or higher-level **industry relevant** qualification, or
  - a certificate of competence listed above under **qualifications**.

OR

- **(Industry relevant experience)** at least two years of experience working in, or providing services to, a mine operation in Australia within the past five years.

**Industry relevant** means relevant to surface or underground coal mining operations.

**(qualification)** Provide the following details of at least one industry relevant qualification held:

- qualification name and code
- date of issue
- name and code (if a RTO) of issuer of qualification

Provide a copy of each certificate of qualification.

**(industry relevant experience)** Provide details of experience working in, or providing services, to mine operations in Australia. Include start and end dates, name of mine operator, details of engagement and role (indicating hours worked).

Provide details of a referee for each engagement detailed above.

**(Experience)** The nominated trainer must have delivered at least 150 hours of face-to-face work health and safety training within the past three years to:

- students enrolled in a:
  - Certificate IV or higher **industry relevant** qualification within the RII – Resources and Infrastructure Industry Training Package (Release 2.0) or
  - diploma or higher level **industry relevant** qualification,
- OR
- employees of a mine operation in Australia.

Provide details of, and evidence supporting, the delivery of training that meets this mandatory requirement.

**(Independence)** The nominated trainer must not have an actual or perceived conflict of interest in the delivery of the training. This includes any matter that could potentially affect their independence.

Confirm that no actual or perceived conflict of interest exists.