

GUIDE | WHS (MINES AND PETROLEUM SITES) LEGISLATION

Contractors and other businesses at mines and petroleum sites

June 2016

Introduction

In modern mining workplaces there may be a number of different duty holders influencing how work is carried out. For example, there may be the operator of the mine or petroleum site, contractors supplying equipment and ongoing workers for particular activities, as well as suppliers and contractors engaged only occasionally.

The work health and safety (WHS) laws require duty holders with shared responsibilities to work together to make sure someone does what is needed. This requires consultation, cooperation and coordination between duty holders. The *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (WHSMP Regulation) builds on this requirement and makes specific provision for the arrangements between an operator of a mine or petroleum site and other businesses or undertakings, including contractors.

This guide is intended to assist businesses operating at mines or petroleum sites and the mine or petroleum site operators that engage them to understand mandatory requirements under the WHSMP Regulation that:

- apply to all business or undertakings at a mine or petroleum site or
- govern the relationship between the operator of a mine or petroleum site and other businesses or undertakings at the site.

The primary duty of care

Under the *Work Health and Safety Act 2011* all persons conducting a business or undertaking (PCBUs), have a primary duty to ensure the health and safety of workers they engage, or whose work activities they influence or direct. These duties apply to mine or petroleum site operators as well as contractors.

PCBUs must also ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

They must ensure, so far as is reasonably practicable:

- the provision and maintenance of a work environment without risks to health and safety
- the provision and maintenance of safe plant and structures
- the provision and maintenance of safe systems of work
- the safe use, handling, and storage of plant, structures and substances
- the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities
- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking
- that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

This means that the operator of a mine or petroleum site has responsibility for the safety of its direct and indirect employees and any other workers at the mine or petroleum site whose work they direct or influence, for example contractors and their staff. Equally, a business providing services at a mine or petroleum site has responsibility for

the safety of workers it engages as well as other workers whose work it influences or directs. Operators of mine or petroleum sites and other PCBUs also have a duty to ensure that their activities at the mine or petroleum site do not put others at risk from work carried out as part of the business.

Duty to consult, cooperate and coordinate

If more than one person has a duty in relation to the same matter, then each person with the duty must, so far as is reasonably practicable, consult, cooperate and coordinate activities with all other persons who have a duty in relation to the same matter in order to manage risks in the workplace. More information on this duty to consult, cooperate and coordinate can be found in the *Work Health and Safety Consultation, Cooperation and Coordination Code of Practice*, published by [SafeWork NSW](#).

Managing risk

All PCBUs at a mine or petroleum site must comply with clause 9 of the WHS (Mines and Petroleum Sites) Regulation in managing the risks to health and safety associated with operations at the mine or petroleum site. The guides, *Managing risk in mining* and *Managing risk in petroleum operations* provide guidance on complying with these requirements.

Records of risk assessments and the controls implemented to eliminate or minimise any risk that was identified through any such risk assessment will form part of the safety management system (SMS) and the mine or petroleum site record or as the contractor's health and safety management plan (see below).

The relationship between the mine or petroleum site operator and other PCBUs

The WHSMP Regulation includes a range of provisions that relate to or impact on the relationship between the operator of a mine or petroleum site and other businesses at the mine or petroleum site. While some provisions relate to all PCBUs at a mine or petroleum site, some relate only to certain types of contractors. In the WHSMP Regulation and the remainder of this guidance document, the term 'contractor' refers to a contractor who conducts a business or undertaking at a mine or a petroleum site other than a delivery, office equipment service, office cleaning, or catering business or undertaking (or other persons gazetted).

In relation to all PCBUs, including the operator of a mine or petroleum site and contractors, the provisions deal with responsibilities relating to:

- notifying the regulator of incidents
- training workers in basic risk management techniques
- health monitoring.

In relation to 'contractors' as described above, the provisions deal with:

- the provision of information between the operator of a mine or petroleum site and a contractor
- ensuring the contractor's work arrangements are consistent with the safety management system (SMS) for the mine or petroleum site.

As noted in the list above, all PCBUs at a mine or petroleum site have a duty to ensure the regulator is notified as soon as is reasonably practicable of 'notifiable incidents' that arise out of the conduct of any business or undertaking at the mine or petroleum site. These are incidents that involve the death of a person, a serious injury or illness, or a dangerous incident. As PCBUs must ensure notification is given to the regulator immediately after becoming aware of the notifiable incident. PCBUs at a mine or petroleum site should consult with one another to develop procedures for notifying one another and the regulator of notifiable incidents. Note that where a PCBU (other than the operator of a mine or petroleum site) notifies the regulator, they must also inform the operator of the mine or petroleum site of that incident as soon as is reasonably practicable.

Contractor arrangements

Duty to provide information and access

The operator of a mine or petroleum site has a duty to ensure that a contractor at the mine or petroleum site receives all relevant information as well as access to the mine or petroleum site, to enable the contractor to identify any risks associated with the proposed operations.

The contractor has a duty to ensure that the operator of a mine or petroleum site at a mine or petroleum site is given all relevant information – so far as is reasonably practicable – to allow the operator of a mine or petroleum site to identify any risks that may be associated with the proposed operations the contractor will carry out.

What is considered relevant will depend on the circumstances. It is likely that some discussion between the parties will be required to identify what types of information may be relevant and ensure incorrect assumptions are not made by either party.

Confirming the arrangements for ensuring health and safety

The WHSMP Regulation requires a formal process for the contractor and the operator of the mine or petroleum site to consider and agree on the arrangements for ensuring the safety of workers undertaking mining or petroleum operations. The arrangements provide flexibility as to who takes the lead in developing and documenting the proposed arrangements, for example:

- where the contractor is engaged in work in which the operator of a mine or petroleum site has greater experience or a greater directive role, the contractor may prefer to review and elect to adopt relevant parts of the operator's SMS

or

- where the contractor has specialist expertise in the work to be performed, the contractor may be better placed to prepare a contractor health and safety management plan, to be reviewed by the mine or petroleum site operator.

There will often be expertise on both sides of the relationship and the contractor and the operator of mine or petroleum site will need to consult to determine who should take the lead in developing and providing documentation for the other party to consider.

While flexibility exists as to who takes the lead role in relation to developing and documenting the arrangements, it is critical that the other party undertakes active consideration of the arrangements to ensure the risks to health and safety are managed and that:

- the mine or petroleum site operator's arrangements are compatible with the contractor's arrangements
- all relevant matters are addressed.

Accordingly, before a contractor may carry out mining or petroleum operations at a mine or petroleum site, they must have either:

- prepared a contractor health and safety management plan and:
 - provided a copy of the plan to the operator of the mine or petroleum site and
 - obtained written notice from the operator of the mine or petroleum site that the operator has reviewed the plan and is of the opinion that the plan is consistent with the SMS for the mine or petroleum site

or

- reviewed the relevant parts of the SMS for the mine or petroleum site and
 - given the operator of the mine or petroleum site written notice that the contractor has conducted the review and is of the opinion that the SMS is consistent with:
 - the contractor's arrangements to manage the risks to health and safety from mining or petroleum operations and
 - any other requirements under the WHS laws that relate to those operations.

Contractor health and safety management plans

If a contractor prepares a health and safety management plan it must:

- set out how the contractor will manage risks to health and safety from mining or petroleum operations carried out by the contractor at the mine or petroleum site and any other requirements under the WHS laws
- be designed to be used by the contractor as the primary means of ensuring, so far as is reasonably practicable, the health and safety of the contractor's workers and others at the mine or petroleum site
- so far as is reasonably practicable, be set out and expressed in a way that is readily understandable by those who use it
- be documented.

Duty to include contractor matters within the mine or petroleum site's safety management system

The operator of a mine or petroleum site must include the following in the safety management system (SMS) in relation to a contractor who is working or is likely to work at the mine or petroleum site:

- the control measures that will be used to control risks associated with the contractor's work at the mine or petroleum site
- any contractor health and safety management plan prepared by each contractor
- how the contractor health and safety management plan will be integrated with the SMS
- the process for assessing the health and safety policies and procedures (including competency requirements) of the contractor and integrating them into the SMS
- the arrangements for monitoring and evaluating compliance by the contractor with the health and safety requirements of the SMS.

More information

[Work Health and Safety Consultation, Cooperation and Coordination Code of Practice](#) SafeWork NSW

[Labour hire: duties of persons conducting a business or undertaking](#) SafeWork Australia: Legislative fact sheet series.

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Disclaimer: This publication provides a general summary of some of the provisions under the Work Health and Safety Act 2011, Work Health and Safety Regulation 2011 and the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (WHS laws) as interpreted by the NSW Department of Industry, Skills and Regional Development of at the time of writing (May 2016). Compliance with the WHS laws is a legal requirement. This publication does not provide or purport to provide legal advice. Users are reminded of the need to ensure that the information upon which they rely is up to date by checking the currency of the information at the Department of Industry, Skills and Regional Development website or with the user's independent legal advisor.

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