

GUIDE | WHS (MINES AND PETROLEUM SITES) LEGISLATION

Statutory functions

June 2017

Note: This guide does not apply to tourist mines, opal mines or mines where no mining activity takes place other than exploring for minerals. There are no statutory functions for these mines.

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August 2012	1 (V14/4995#5)	
June 2017	2 (V16/6659#13) (V16/2729)	Reflect new legislative and regulatory changes

This guide has been updated in April 2017 to:

- reflect amendments commencement of Work Health and Safety (Mines and Petroleum)
 Amendment (Harmonisation) Regulation 2016 including to
 - amend references to the title of the Work Health and Safety (Mines and Petroleum Sites)
 Regulation
 - provide information about statutory functions at petroleum sites and the duties of operators of petroleum sites.
- reflect Order No 2 Recognition of existing qualifications published in the NSW Government Gazette on 18 March 2016 to make corrections to the titles of certain qualifications issued under the Coal Mine Health and Safety Act 2002.

More information

NSW Department of Planning and Environment, Resources Regulator

516 High St, Maitland NSW 2320

Phone: (02) 4931 6666 | Fax: (02) 4931 6790

mine.safety@industry.nsw.gov.au

resourcesandenergy.nsw.gov.au/safety

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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, Work Health and Safety (Mines and Petroleum Sites) Act 2013 and the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (WHS laws) as interpreted by the NSW Department of Planning and Environment (the Department at the time of writing, (June 2017). 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's website or with the user's independent legal advisor.

About statutory functions

There are some functions at mines and petroleum sites that can only be performed by people who are both eligible and have been nominated by the operator of their mine or petroleum site to do so. These functions are called 'statutory functions'. The list of statutory functions is given in schedule 10 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014. Different statutory functions apply for different types of mines or petroleum sites. For each type of mine or petroleum site, appendix A sets out:

- the title and a description of each statutory function
- whether you need a practising certificate to perform the function
- the eligibility requirements for performing the function or the qualification requirements to obtain a practising certificate¹.

Key statutory functions

Additional rules apply to certain statutory functions known as 'key statutory functions'. Petroleum sites do not have key statutory functions.

Due to the key nature of these functions, a mine operator is prohibited from undertaking certain activities known as 'mining activities' if the operator has not nominated someone to perform a key statutory function at the mine for more than seven days. Mining activities includes activities for the purpose of extracting minerals from the ground so this is an important restriction. However, other mining operations such as transporting minerals that have already been extracted can be undertaken.

The key statutory functions at mines are:

- electrical engineer
- electrical engineering manager
- mechanical engineer
- mechanical engineering manager
- mining engineering manager
- quarry manager and
- ventilation officer.

A key statutory function can only be exercised by **one person** at any time.

Some mines operate multiple shifts, including shifts of crews who work 7-days-on/7-days-off. However, the rule that **only one** person can be nominated to perform a key statutory function still applies. For example, at an underground coal mine there might be several people who are eligible to be nominated as the mechanical engineering manager but only one person can be nominated to exercise this statutory function at the mine, not one person per roster. This rule promotes the coordination of key statutory function activities across the different shifts.

¹ These requirements are set out variously in schedules 10 and 10A of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 and in orders dealing with recognition of existing qualifications and other related matters published in the NSW Government Gazette on 30 January 2015 at page 119 and published on 24 March 2016 at page 528 in accordance with clause 20(2) of Schedule 12 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014.

The term mining activities is defined in section 7 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014.

End of eligibility

People are not able to carry out their statutory function if they cease to be eligible to exercise it. This could happen if, for example, the function requires a practising certificate and the person's practising certificate has been cancelled. If this happens, the legal effect is that the person is no longer nominated to the statutory function.

Multiple statutory functions

A person can perform more than one statutory function (including at different mines or petroleum sites) if they are readily able and capable of exercising those statutory functions. For example, a person could be a quarry manager for several quarries. However, the mine operator must **not** nominate someone to be a quarry manager to manage multiple quarries if, due to the distance between the quarries, they will not be readily available to exercise the function at each quarry.

More than one person can perform a statutory function (except for a key statutory function).

Obligations of the mine or petroleum site operator

The mine or petroleum site operator must ensure that:

- no one performs a statutory function at the mine or petroleum site unless they meet the eligibility requirements
- the person nominated to perform a statutory function at a mine or petroleum site is readily available to exercise, and is capable of exercising, the statutory function
- only one person is nominated to exercise a key statutory function at any one time
- no mining activities are undertaken if a key statutory function is vacant for more than 7 days (except non-mechanical exploration
- in the case of a coal mine, the regulator is notified of changes to people nominated to exercise key statutory functions using the <u>notifying the regulator of other matters (including reportable events)</u> form.

Obligations of the nominated person

If you are nominated to perform a statutory function then you have an obligation to tell the mine or petroleum site operator if there is any matter that could interfere with your ability to exercise the function. An example of this is if you require a practising certificate and your practising certificate is suspended or cancelled.

Mining supervisors

Additional regulatory requirements apply for functions that are named as mining supervisors. For example, in underground coal mines, there is a duty on the mine operator to equip mining supervisors with portable gas detectors, and to ensure a mining supervisor is present in the production area whenever extraction takes place.

A 'mining supervisor' at a mine means a person who is nominated to exercise any of the following statutory functions at the mine:

deputy

- mining engineering manager
- open cut examiner
- quarry manager
- undermanager
- underground mine supervisor.

Eligibility criteria and previous qualifications

Appendix A contains a description of the statutory functions and a summary of the eligibility requirements for each statutory function, including whether a practising certificate is required.

In some cases a practising certificate or certificate of competency may satisfy the eligibility requirements for other statutory functions. For example, a practising certificate to be a mining engineering manager for an underground coal mine also allows the person to exercise the statutory function of mining engineering manager for a surface coal mine.

Transitional arrangements are currently in place to recognise certain 'former certificates' as being equivalent to practising certificates or certificates of competence. These former certificates include certain certificates of competence, permits, licences or other qualifications granted or required under previous mine safety legislation (the *Mine Health and Safety Act 2004* (MHS Act) or the *Coal Mine Health and Safety Act 2002* (CMHS Act)). Any former certificates that are recognised are listed in Appendix A.

Practising certificates

Practising certificates are being launched in stages, by type of practising certificate, from **September 2017**. Practising certificates are issued for five years and require holders to undertake ongoing learning to maintain their competency. If you currently hold a certificate of competence where a practising certificate is required, you will need to apply for a practising certificate. For further information about the practising certificate scheme, including details of when and how to apply for a practising certificate visit our <u>practising certificate</u> webpage and read our guide <u>Maintenance of competence scheme for practising certificates</u>.

Only people who are 21 years of age or older are eligible for a practising certificate.

Appendix A

Please note:

- If a practising certificate is required, the last column sets out the qualifications required for that practising certificate. Other eligibility criteria will also apply to the practising certificate scheme, such as requirements to maintain competency.
- While practising certificates are being phased in, someone can be nominated to perform a statutory function if they meet one of the requirements in the last column. See our <u>practising certificates</u> page for more information.
- If there is more than one eligibility requirement listed, you are only required to meet **one** of these requirements.

Mines other than underground mines or coal mines

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Quarry manager	Supervise mining operations at the mine.	Quarry manager	 Certificate of competence - quarry manager Former certificates Certificate of competence - production manager for an above-ground mine (MHS Act) Certificate of competence - production manager for an underground mine (MHS Act) Production manager permit (limited by and subject to all the conditions of the permit) granted under: MHS Act, or Schedule 12 of the WHS (Mines and Petroleum Sites) Regulation before 1 February 2017.
Mining surveyor (only required if mine survey plan is required)	Prepare and certify the mine survey plan.	Not required	Registered mining surveyor within the meaning of the Surveying and Spatial Information Act 2002.
Electrical engineer (only required if total connected power at mine is greater than 1,000 kilowatts or high voltage is used)	Develop and review the standards and procedures for the installation, commissioning, maintenance and	Not required	 Certificate of competence - electrical engineering manager (coal), or Certificate of competence - electrical engineering manager (surface coal), or Evidence of compliance with Australian Engineering Competency Standards Stage 2 in respect of mining operations at a mine and be: a professional electrical engineer who is registered on the National Professional Engineers Register, or

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
	repair of electrical plant and installations at the mine, and supervise the installation,		ii. an electrical engineering technologist who is registered on the National Engineering Technologists Register, or iii. an electrical engineering associate who is registered on the National Engineering Associates Register.
	commissioning, maintenance and repair of electrical plant and installations at the mine.		Former certificates:
Qualified electrical tradesperson	Supervise the installation, commissioning, maintenance and repair of electrical plant and installations at the mine.	Not required	 Supervisor certificate that authorises performing electrical wiring work, or Proficiency certificate (issued by State Training Services) in an electrical trade, or Have been continuously employed as an electrical tradesperson at a mine since 20 December 2005.

Underground mines other than coal mines

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Mining engineering manager	Develop, supervise, monitor and review the mining engineering standards and procedures forming part of mining operations at the mine.	Mining engineering manager for an underground mine other than a coal mine	 Certificate of competence - mining engineering manager for an underground mine other than a coal mine Former certificates: Certificate of competence - production manager for an underground mine (under MHS Act) Production manager permit (limited by and subject to all the conditions of the permit) granted under: MHS Act, or

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
			 Schedule 12 of the WHS (Mines and Petroleum Sites) Regulation before 1 February 2017.
Underground mine supervisor (Note: the requirement to nominate a person to carry out this statutory function does not apply until 1 February 2018.)	Supervise mining operations at the mine for a shift during which production is taking place.	Underground mine supervisor	Certificate of competence - underground mine supervisor
Electrical engineer (only required if total connected power at mine is greater than 1000 kilowatts or high voltage is used)	Develop and review the standards and procedures for the installation, commissioning, maintenance and repair of electrical plant and installations at the mine, and to supervise the installation, commissioning,	Not required	 Certificate of competence - electrical engineering manager (coal), or Certificate of competence - electrical engineering manager (surface coal), or Evidence of compliance with Australian Engineering Competency Standards Stage 2 in respect of mining operations at a mine and be: a professional electrical engineer who is registered on the National Professional Engineers Register, or an electrical engineering technologist who is registered on the National Engineering Technologists Register, or an electrical engineering associate who is registered on the National Engineering Associates Register.
	maintenance and repair of electrical plant and installations at the mine.		 Certificate of competence - mine electrical engineer (underground) (under CMHS Act) Certificate of competence - mine electrical engineer (surface) (under CMHS Act).
Mining surveyor (only required if mine survey plan is required)	Prepare and certify the mine survey plan.	Not required	Registered mining surveyor within the meaning of the Surveying and Spatial Information Act 2002.

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Qualified electrical tradesperson	Supervise the installation, commissioning, maintenance and repair of electrical plant and installations at the mine.	Not required	 Supervisor certificate that authorises the doing of electrical wiring work, or Proficiency certificate (issued by State Training Services) in an electrical trade, or Have been continuously employed as an electrical tradesperson at a mine since 20 December 2005.

Coal mines other than underground coal mines

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Mining engineering manager (only required at mines where extraction occurs)	Develop, supervise, monitor and review the mining engineering standards and procedures forming part of mining operations at the mine (but only to the extent that those standards and procedures relate to extraction).	Mining engineering manager for a coal mine other than an underground coal mine	 Certificate of competence - mining engineering manager for an underground coal mine Certificate of competence - mining engineering manager for a coal mine other than an underground coal mine Former certificates (under the CMHS Act): Certificate of competence - manager of a mine (underground) Certificate of competence - manager of an open cut mine.

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Open cut examiner (only required at mines where extraction occurs)	Supervise workers and inspect work areas in a part of the mine.	Open cut examiner	 Certificate of competence - mining engineering manager for an underground coal mine Certificate of competence - mining engineering manager for a coal mine other than an underground coal mine Certificate of competence - open cut examiner Former certificates (under the CMHS Act): Certificate of competence - manager of a mine Certificate of competence - manager of an open cut mine Certificate of competence - examiner of an open cut mine.
Mining surveyor	Prepare and certify the mine survey plan.	Not required	Registered mining surveyor within the meaning of the Surveying and Spatial Information Act 2002.
Electrical engineer	Develop and review the standards and procedures for the installation, commissioning, maintenance and repair of electrical plant and installations at the mine, and supervise the installation, commissioning, maintenance and repair of electrical plant and installations at the mine.	Not required	 Certificate of competence - electrical engineer for a coal mine other than an underground coal mine, or Certificate of competence - electrical engineering manager for an underground coal mine, or Have evidence of compliance with Australian Engineering Competency Standards Stage 2 in respect of mining operations at a mine and be: a professional electrical engineer who is registered on the National Professional Engineers Register, or an electrical engineering technologist who is registered on the National Engineering Technologists Register, or an electrical engineering associate who is registered on the National Engineering Associates Register. Former certificates (under the CMHS Act): Certificate of competence - mine electrical engineer (underground)
Mechanical engineer	Develop and review the standards, mechanical engineering practice and procedures for	Not required	 Certificate of competence - mine electrical engineer (surface) Certificate of competence - mechanical engineer for a coal mine other than an underground mine, or Certificate of competence - mechanical engineering manager for an underground coal mine, or Have evidence of compliance with Australian Engineering Competency

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Qualified electrical tradesperson	the life cycle of mechanical plant and installations at the mine, and supervise the installation, commissioning, maintenance and repair of mechanical plant at the mine. Supervise the installation, commissioning, maintenance and repair of electrical plant and installations at the	Not required	Standards Stage 2 in respect of mining operations at a mine and be: i. a professional mechanical engineer who is registered on the National Professional Engineers Register, or ii. a mechanical engineering technologist who is registered on the National Engineering Technologists Register, or iii. a mechanical engineering associate who is registered on the National Engineering Associates Register. Former certificates (under the CMHS Act): • Certificate of competence - mine mechanical engineer (underground) • Certificate of competence - mine mechanical engineer (surface) • Supervisor certificate that authorises electrical wiring work, or • Proficiency certificate (issued by State Training Services) in an electrical trade, or • Have been continuously employed as an electrical tradesperson at a coal mine since 21 December 2004.
Qualified mechanical tradesperson	mine. Supervise the installation, commissioning, maintenance and repair of mechanical plant at the mine.	Not required	 Proficiency certificate (issued by State Training Services) in a mechanical trade, or Have been continuously employed as a mechanical tradesperson at a coal mine since 21 December 2004, or Have a qualification that the regulator has declared, by notice published in the Gazette, to be a qualification equivalent to a qualification referred to above.

Underground coal mines

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Mining engineering manager	Develop, supervise, monitor and review the mining engineering standards and procedures forming part of mining operations at the mine.	Mining engineering manager for an underground coal mine	 Certificate of competence - mining engineering manager for an underground coal mine Former certificate (under the CMHS Act): Certificate of competence - manager of a mine
Electrical engineering manager	Develop, supervise, monitor and review the electrical engineering standards and procedures forming part of mining operations at the mine, and supervise the installation, commissioning, maintenance and repair of electrical plant and installations at the mine.	Electrical engineering manager	Certificate of competence - electrical engineering manager of an underground coal mine Former certificate (under the CMHS Act): Certificate of competence - mine electrical engineer (underground).
Mechanical engineering manager	Develop, supervise, monitor and review the mechanical engineering standards and procedures forming part of mining operations at the mine, and supervise the installation,	Mechanical engineering manager	Certificate of competence - mechanical engineering manager of an underground coal mine Former certificate (under the CMHS Act): Certificate of competence - mine mechanical engineer (underground).

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
	commissioning, maintenance and repair of mechanical plant at the mine.		
Undermanager	Supervise the mining operations at the mine for a shift during which there are more than 15 people underground, or secondary extraction is occurring at the mine, or major changes are being made to the ventilation system for the mine.	Undermanager	Certificate of competence - mining engineering manager of an underground coal mine Certificate of competence – undermanager of an underground coal mine Former certificate (under the CMHS Act): Certificate of competence - undermanager of a mine Certificate of competence - manager of a mine
Ventilation auditor	Audit the ventilation system and ventilation control plan for the mine.	Ventilation auditor	 Former certificates (under the CMHS Act): Licence for auditing of ventilation arrangements under the Coal Mine Health and Safety Regulation 2006 Graduate Diploma in Mine Ventilation from the University of New South Wales.
Ventilation officer	Control and manage the ventilation activities and standards forming a part of the mining operations at the mine.	Ventilation officer	 Certificate of competence to be a mining engineering manager of an underground coal mine. Former certificate (under the CMHS Act): Statutory Coal Mine Ventilation Officer's Qualification from the University of New South Wales Certificate of competence to be a manager of a mine
Dust explosion control measures auditor	Audit the dust explosion control measures and standards used at the mine and report the results of those	Dust explosion control measures auditor	Former certificate: • Licence to audit dust explosion management plans under: o the CMHS Act, or o Schedule 12 of the WHS (Mines and Petroleum Sites) Regulation before 1 February 2017.

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
	audits to the mine operator.		
Deputy	Supervise workers and inspect work areas in a part of the mine.	Deputy	 Certificate of competence to be a mining engineering manager of an underground coal mine Certificate of competence to be an undermanager of an underground coal mine Certificate of competence to be a deputy of an underground coal mine Former certificate (under the CMHS Act): Certificate of competence to be a manager of a mine Certificate of competence to be an under manager of a mine Certificate of competence to be a deputy.
Mining surveyor	Prepare and certify the mine survey plan.	Not required	Registered mining surveyor within the meaning of the Surveying and Spatial Information Act 2002.
Fire officer	Inspect and maintain firefighting equipment at the mine.	Not required	Have demonstrated competency in the Nationally Recognised Training unit RIIERR201D Conduct fire team operations (or any Nationally Recognised Training unit that is equivalent to that unit).
Roadway dust sampler	Take roadway dust samples at the mine and ascertain the level of incombustible material in those samples.	Not required	Have completed a course on the sampling and testing of roadway dust conducted by the NSW Department of Planning and Environment (or formerly by the NSW Department of Industry or the NSW Department of Trade and Investment).
Qualified electrical tradesperson	Supervise the installation, commissioning, maintenance and repair of electrical plant and installations at the mine.	Not required	 Supervisor certificate that authorises the doing of electrical wiring work, or Proficiency certificate (issued by State Training Services) in an electrical trade, or Have been continuously employed as an electrical tradesperson at a coal mine since 21 December 2004.

Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Qualified mechanical tradesperson	Supervise the installation, commissioning, maintenance and repair of mechanical plant at the mine.	Not required	 Proficiency certificate (issued by State Training Services) in a mechanical trade, or Have been continuously employed as a mechanical tradesperson at a coal mine since 21 December 2004, or Have a qualification that the regulator has declared, by notice published in the Gazette, to be a qualification equivalent to a qualification referred to above.

Petroleum sites

Statutory function title	Function	Practising certificate	oility requirements or qualifications for a practising certificate (m	inimum of one)
Rig manager (drilling operations)	Manage all drilling rig operations at the petroleum site.	Not required	lationally Recognised Training unit RII50815 Diploma of Drilling On shore) (or any equivalent Nationally Recognised Training ur	
Rig manager (well workover and well servicing operations)	Manage all drilling rig operations for well workovers and well servicing at the petroleum site.	Not required	lationally Recognised Training unit RII51015 Diploma of Well Soperations (or any equivalent Nationally Recognised Training ur	
Driller (drilling operations)	Supervise the conduct of drilling, well control and other work carried out in connection with drilling at the petroleum site.	Not required	lationally Recognised Training unit RII41115 Certificate IV in Di cas (On shore) (or any equivalent Nationally Recognised Trainin	

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Statutory function title	Function	Practising certificate	Eligibility requirements or qualifications for a practising certificate (minimum of one)
Driller (well workover and well servicing operations)	Supervise the conduct of drilling, well control and other work carried out in connection with well workovers and well servicing at the petroleum site.	Not required	Nationally Recognised Training unit RII41215 Certificate IV in Well Servicing Operations (or any equivalent Nationally Recognised Training unit).