



Guide

# Appointment and notification of mine operator

WHS (Mines and Petroleum Sites) Legislation

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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 *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (WHS laws) as interpreted by the Department of Industry, Skills and Regional Development at the time of writing (February 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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## Introduction

This guide will help mine holders and mine operators understand the requirements in relation to:

- the mine holder appointing a mine operator for the mine
- the mine holder notifying the regulator about who will operate the mine (whether it is the mine holder or a different mine operator).

Information in this guide is primarily based on clauses 6 and 7 of the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (the Regulation) and the definitions of mine holder and mine operator in the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (the Act).

The mine operator is a key duty holder under the Act and Regulation. Their responsibilities include developing and implementing a safety management system that is used as the primary means of ensuring, so far as is reasonably practicable:

- the health and safety of workers at the mine, and
- that the health and safety of other people is not put at risk from the mine or work carried out as part of mining operations.

A person conducting a business or undertaking (PCBU) will be a mine operator only if:

- they are the mine holder for the mine, or
- they are appointed by the mine holder to be the mine operator.

## 1 How is a mine operator appointed?

If the mine holder decides to appoint a person to operate the mine, the appointment and the notification of the appointment of a mine operator must be made in writing using the *Appointment and notification of operator of a mine or petroleum site form*. This includes a signed statement that the person to be appointed as mine operator agrees to the appointment. The mine holder must give the requisite authority to the mine operator to allow the mine operator to discharge their duties and have actual management or control of the mine.

The form also includes other details such as:

- the name and contact details of the mine operator
- when the appointment takes effect
- details of the location of the mine, including the boundaries of all mineral exploration sites and mineral extraction sites, and land title identification.

If the mine holder has appointed a mine operator, then the mine holder must also complete sections 5, 6, 8, and 9 of the *Appointment and notification of operator of a mine or petroleum site form*. This will be considered as compliance with the requirement of providing a copy of the appointment document for the purposes of clause 7(5) of the Regulation.

The mine holder must take all reasonable steps to ensure that the regulator is notified before the appointment takes effect

The form may be emailed, posted or faxed to the addresses of NSW Department of Industry, Resources and Energy, Mine Safety shown in the form. The form must not be submitted to any other departmental addresses. Email notification is preferred.

The *Appointment and notification of operator of a mine or petroleum site* form may be used by the mine holder to appoint the same person to operate more than one mine.

## **Additional obligations when appointing a mine operator**

The mine holder must give the mine operator all relevant information that they hold or control that may reasonably be required by the mine operator to discharge the duties imposed on the mine operator under the WHS laws. This includes survey information, any hazards identified and the method of mining

The mine holder must also notify the regulator if the mine operator's appointment is terminated or altered. Again, the mine holder must take all reasonable steps to ensure that the regulator is notified before the termination or alteration to the appointment takes effect.

## **What if a mine operator is not appointed?**

The mine holder does not have to appoint another PCBU to operate the mine on their behalf, unless directed to do so by the regulator (see section 8 of the Act). However, if no mine operator is appointed the mine holder is the mine operator. The mine holder must notify the regulator that they will be the mine operator before mining operations begin using the *Appointment and notification of operator of a mine or petroleum site* form. The form may be emailed, posted or faxed to the addresses of NSW Department of Industry, Resources and Energy, Mine Safety shown in the form. The form must not be submitted to any other departmental addresses. Email notification is preferred.

## **What if there is a change in mine holders?**

If the mine is sold or for some other reason there is a change in mine holders, the PCBU who proposes to become the mine holder of a mine may appoint a person to be the mine operator of the mine in advance. In such cases the appointment takes effect when the prospective mine holder becomes the mine holder for the mine, but only if, at that time, the person is still eligible to be appointed as the mine operator.

This means, for example, that if the mine is to be sold and the prospective mine holder wants to continue with the same mine operator they can make that appointment in advance using the *Appointment and notification of operator of a mine or petroleum site* form.

Provided that mine operator remains eligible to operate the mine (for example, it hasn't gone into liquidation or for some other reason ceased to have the skills, knowledge resources or experience to operate the mine), it can continue as the mine operator without interruption and the new appointment will take effect for WHS purposes when the prospective mine holder becomes the mine holder.

The same requirements to notify the regulator of the appointment apply.

## What are the obligations on the mine operator who ceases to operate that mine?

If a mine operator ceases, or intends to cease, being the mine operator of the mine they must ensure, so far as is reasonably practicable, that all records they have kept under the WHS laws are given to:

- the mine holder for the mine
- or the PCBU who is to become the new mine operator.

This must be done before the new mine operator begins in that role.

The records kept under WHS laws include all records required to be kept such as the mine record which, in turn, includes the safety management system for the mine. The requirements for the mine record are set out in clauses 133 and 134 of the Regulation. The mine record includes:

- a record of any improvement, prohibition or notice issued in relation to the mine under Part 10 of the WHS Act
- a copy of any provisional improvement notice issued in relation to the mine by a health and safety representative and, for a coal mine, any provisional improvement notice issued in relation to the mine by a safety and health representative
- a record of every incident and high potential incident notified to the regulator together with a summary of records kept in relation to a review of control measures following any notifiable incident or high potential incident
- each report under clause 27 by a shift supervisor at the mine as communication between outgoing and incoming shifts
- a record of all first aid treatment provided at the mine
- any other record that the mine operator is required to keep in respect of the mine under the WHS laws (eg the safety management system and records of risk assessments)
- if there is other information that has been kept for work health and safety purposes, even if not specifically required to be kept, it must also be provided to the mine holder or new mine operator of the mine.

The new mine operator will be required to keep the records for at least the remainder of the period that the WHS laws require the record to be kept. For example, some records of exposure to substances such as asbestos must be kept for 30 years.

WHS laws mean all of the following legislation:

- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2011*
- *Work Health and Safety (Mines and Petroleum Sites) Act 2013*
- *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014.*

## Related forms

- Appointment and notification of operator of a mine or petroleum site form