

Exercising work health and safety regulator functions outside mines or petroleum sites

Objective

To provide clarity about the Resources Regulator's ability to perform its regulatory functions at workplaces outside mining and petroleum workplaces.

Introduction

Globalisation and technological advances have led to an increase in mining and petroleum operations moving certain services and control rooms away from mines or petroleum sites and in some cases outside New South Wales. Work undertaken away from mines or petroleum sites, whether in NSW or another state, can impact on health and safety at mines or petroleum sites.

The Resources Regulator has appropriate powers to obtain information and documents in relation to work undertaken at any workplace. It can also compel persons to appear before the regulator and to provide information during investigation and regulatory activities concerning the health and safety of workers at a mine or petroleum site.

Obligation of PCBUs

The principal duty holder under the *Work Health and Safety Act 2011* (WHS Act) is a 'person conducting a business or undertaking' (PCBU). The primary duty of care requires those who control or influence the way work is done to protect the health and safety of those carrying out the work. The duty of care is not limited to physical 'workplaces' but is tied to work activities. The duty extends to cover all other persons affected by the carrying out of work .

All PCBUs have an obligation to ensure there are competent people to undertake the work and that workers are properly informed and supervised. This applies to any PCBU whose activities affect health and safety at a mine or petroleum site, whether they are performing the work at a mine or petroleum site or at another NSW workplace (away from a mine or petroleum site), or outside NSW.

Obligation of company officers of a PCBU

Company officers have a due diligence obligation under section 27 of the WHS Act to ensure they understand the operational risks in the workplace and to verify that appropriate systems are in place to manage those WHS risks.

Mining or petroleum site operators

A mine or petroleum site is a workplace where mining operations or petroleum operations are carried out. Mine operators and petroleum site operators are PCBUs under the WHS Act and are the key duty holders with specific obligations in relation to a mine or petroleum site under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (WHS (MPS) Act). These obligations include establishing and implementing a safety management system (SMS) in accordance with the requirements of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014 (WHS (MPS) Regulation).

The operator's SMS must provide a comprehensive and integrated system for managing all aspects of risks to health and safety in relation to the operation of the mine or petroleum site. It must address all activities and decisions relating to health and safety at the site, regardless of whether they occur at the mine or petroleum site or whether they are made at workplaces away from the mine or petroleum site.

If more than one PCBU has a duty in relation to the same matter then each PCBU must consult, cooperate and co-ordinate activities with all other PCBUs (section 46 WHS Act). This applies to both PCBUs that are physically located at a mine or petroleum site and those located away from the site.

For example, a control room may be physically located away from a mine or petroleum site (e.g. in a city location or in another state). However, the health and safety risks created by the work carried out at the control room that manifests at the mine or petroleum site must be identified, assessed and controlled through the operator's documented SMS. The operator must undertake this in consultation with other PCBUs with the shared duty to the same extent as if the work was being undertaken at the mine or petroleum site. The operator must ensure that work being undertaken away from the mine or petroleum site is properly supervised, and that workers have appropriate information, instruction and training.

When there are multiple PCBUs at multiple locations that share a duty in relation to the activities at a mine or petroleum site, those PCBUs must establish how they will meet their shared obligations.

It should be noted that the health and safety of workers at a control room that is away from the mine or petroleum site is the duty of the PCBU in control of that workplace, and not the duty of the mine operator.

Powers of the regulator and inspectors

The WHS Act and WHS (MPS) Act confer a range of powers on the regulator and inspectors to monitor and enforce compliance with the WHS laws at any workplace in NSW. This includes right of entry to all workplaces in NSW and the power to obtain information from workplaces outside the State.

Non-mining workplaces in NSW

Section 12A of the WHS (MPS) Act provides for the regulator and inspectors to exercise their function in any NSW workplace regardless of whether it is a mine, petroleum site or any other workplace.

This means all the powers of the regulator and inspectors apply to any workplace, including the issuing of improvement and prohibition notices, requests for information, issuing of penalty notices, commencement of prosecutions and acceptance of enforceable undertakings.

Any work undertaken at a workplace away from a mine, but which impacts on health and safety at a mine, can be investigated by the regulator and inspectors, and relevant compliance and enforcement action undertaken.

This also enables the regulator to conduct its functions with regard to other duty holders such as designers, importers, manufacturers and suppliers.

Workplaces not in NSW

The investigation of activities and decisions relating to health and safety extends beyond NSW into other states. The regulator can obtain information from workplaces outside NSW (e.g. control room data and records of decisions).

Section 155A of the WHS Act ensures the regulator can require persons outside NSW to:

- provide information of which a person located outside of NSW has knowledge
- provide documents located outside NSW
- require a person located outside NSW to give either oral or written evidence.

This enables the regulator to obtain information it needs to properly investigate incidents at a mine or a petroleum site where actions outside the State may have influenced WHS outcomes at a NSW mine or petroleum site.

The regulation of health and safety of workers at workplaces outside NSW is the responsibility of the relevant state-based jurisdiction.

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