

# Maintaining current practising certificates for holders

Compliance priority project – January to June 2024


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The Department of Regional New South Wales acknowledges that it stands on Country which always was and always will be Aboriginal land. We acknowledge the Traditional Custodians of the land and waters, and we show our respect for Elders past, present and emerging. We are committed to providing places in which Aboriginal people are included socially, culturally and economically through thoughtful and collaborative approaches to our work.

# Zoom webinar protocols

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Today's presentation is best viewed on a laptop or desktop screen if possible



Microphones will be muted till the **Q&A** segment



Cameras can be turned off during the presentation as this **session is being recorded**



Please use the chat function to ask questions, which we will answer during the dedicated **Q&A** segment, or you may raise your hand to speak, at this time

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# Introduction to Webinar

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# The Webinar for holders of practicing certificates

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1. Purpose is to inform holders on how to comply with the legislation to maintain a current practising certificate. Separate workshop to follow for mine operators.
2. Part of the Compliance priorities projects for the regulator January to June 2024, in response to ongoing issues of some holders and mine operators not being compliant.
3. A question and answer session will be available at the end of the presentation so wait until then. BUT we are not here to debate the merits of the schemes or individual issues.
4. Webinar is being recorded for publishing on the Resources Regulator website – Practising certificates Please keep your cameras turned off.

# Legislative requirements and their application

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# WHS (Mines and Petroleum Sites) Regulation 2022

## Part 9 statutory functions – Division 2 ‘...at mines’

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- **s132:** summarises the system that only individuals who are nominated to exercise the function by a mine operator can do so if they meet the requirements set out in schedule 10. If they cease to meet the requirements (hold a practising certificate) then they can no longer practise and be nominated.

Refer to the [Factsheet: Practising certificates](#)

- **s133: obligations on mine operator:** summarised here so holders know how they impact on mine operators with corporate penalties up to 300 units (\$110 x 300 = **\$33,000**)
  - (1) If individual does not meet the schedule 10 requirements – **e.g. the practising certificate has expired and the holder is still practising. This is HAPPENING!**
  - (2) Is readily available to exercise and capable of exercising the statutory function – **e.g. one person exercising the function at different mines, or between shifts, or across a shift geographically e.g. Deputy inspections**
  - (3) no more than 1 individual is nominated to exercise a key statutory function at a mine **e.g. mining engineering manager**



## Part 9 statutory functions – division 2 At mines (continued)

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– **s133**: obligations on mine operator (continued):

(4) Ensure mining activities do not take place (excepting other than mechanical exploration) if the class of mine has a key statutory function where no individual is not nominated to exercise it for more than 7 days.

Refer to [Guide: Statutory functions](#).

The regulator expectation is mine operators will have plans with actions that enable them to nominate alternate holders to cover absences.

## Part 9 statutory functions – division 2 At mines (continued)

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– **s134: obligations on nominee:** ‘An individual nominated to exercise a statutory function at a mine must, as soon as reasonably practicable, inform the mine operator of a matter that may interfere with the individual’s ability to exercise the statutory function.

Maximum penalty – 60 penalty units (**\$6,600**). Example – suspension or cancellation of a practising certificate.’

Other example could include expiry of the practising certificate, cannot meet the maintenance of competence condition before expiry.

**Note:** for certificate related matters, nominees may contact the Regulator to seek advice on how to address any compliance issues for their certificate.

-s138: Eligibility for practising certificate

Refer to [Guide: Statutory functions](#) for summary.

# Part 9 Division 4 Practising certificates (division 3 for petroleum sites not covered)

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## – s140: Grant of practising certificate:

(3) A practising certificate remains in force, unless sooner cancelled —

(a) for a period of 5 years commencing on the date on which it is granted, or **(‘no extensions’)**

(b) for a shorter period specified in the practising certificate. **(‘don’t do it to date’)**

...

(5) More than 1 practising certificate may be issued to an individual under this section, whether as —

(a) a replacement or renewal of an existing certificate, or **(‘grant new one, or before expiry of former’)**

(b) a separate practising certificate authorising the individual to exercise another statutory function **(‘now only issuing one where we may add functions’)**

# Part 9 Division 4 Practising certificates

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- s141: Interstate practising certificates ('disregard currently – don't exist between NSW, Qld & WA')
- s142: Conditions of practising certificate (**bolding added for emphasis**)
  - (2) It is a condition of a practising certificate that the holder of the certificate must, if required by the regulator by written notice, do the following within the time specified in the notice –
    - (a) provide specified information relating to the **individual's competency** or other matters relating to the practising certificate,
    - (b) satisfy the regulator that the individual has a **knowledge of law and ethics** to the level necessary to hold the particular practising certificate,
    - (c) undertake and successfully **complete specified training courses or other specified forms of training.**

**This is part of the basis of the condition to maintain competency for the holder practising certificate.**

# Part 9 Division 4 Practising certificates

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## – s142: Conditions of practising certificate (continued)

(3) It is a condition of a practising certificate that the holder of the certificate must keep records that demonstrate the individual's eligibility to hold the certificate, including evidence of the completion of courses and time sheets.

This is also part of the basis of the condition to maintain competency, expanded upon in the gazette notice.

(4) The holder of a practising certificate must comply with the conditions imposed on the practising certificate.

Maximum penalty – (a) for an individual – 12.5 penalty units, or... (\$1,375)

# Part 9 Division 4 Practising certificates

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## 143 Suspension or cancellation of practising certificate

Refer to the 'Information sheet - Suspending or cancelling a practising certificate' for the Regulator approach to this:

<https://www.resourcesregulator.nsw.gov.au/sites/default/files/2023-02/information-sheet-suspending-or-cancelling-a-practicing-certificate.pdf>

**Note:** there is no provision that enables a holder to voluntarily surrender their practising certificate to cease the certificate conditions.

The Regulator may be able to cancel the certificate if the holder provides one of the grounds under section 143.

Holders in these circumstances should email [mca@regional.nsw.gov.au](mailto:mca@regional.nsw.gov.au) to seek resolution.

# Part 9 Division 4 Practising certificates

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## 146 Register of practising certificates

- (1) The regulator must maintain a register of practising certificates (the register).
- (2) The purpose of the register is to provide a relevant person with information about the holders of practising certificates, including the following—
  - (a) the identifying details of the holder, including the name and contact details of the holder and the unique identifier of the holder’s practising certificate,
  - (b) the qualifications and skills of the holder,
  - (c) the places at which the holder works and has worked,
  - (d) details of the practising certificate of the holder, including its expiry date and conditions of the practising certificate,
  - (e) details of an action under the WHS laws in relation to the holder, including convictions or the suspension or cancellation of a current or previous practising certificate.

**The details required to be maintained in the register is partly what the holder must maintain with the Regulator, as per the condition on their practising certificate**

# Part 9 Division 4 Practising certificates

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## 146 Register of practising certificates (continued)

(3) The regulator may collect, store, use and disclose information for the purposes of the register.

(4) The regulator may disclose information on the register to a relevant person if the regulator considers it reasonably necessary to do so to reduce or control a risk to the health or safety of a person, including an individual outside New South Wales.

(5) In this section —

certification agency means —

(a) the Board, or (NSW Mining and Petroleum Competence Board)

(b) an agency in another Australian jurisdiction that exercises functions in relation to the certification of the competency of workers in mines, including the following agencies —

(i) Resources Safety & Health Queensland,

(ii) Government of Western Australia Department of Mines, Industry Regulation and Safety, ...

**A request from an interstate regulator that may justify disclosure could be a holder has an interstate certificate under mutual recognition that is being investigated for their WHS competence.**



# Part 9 Division 4 Practising certificates

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## 146 Register of practising certificates (continued)

(5) (continued) ...

relevant person means the following –

- (a) a certification agency,
- (b) the operator of a mine or petroleum site,
- (c) an industry safety and health representative,
- (d) a mine safety and health representative,
- (e) a person exercising a function similar to a function described in paragraphs (a)–(d) in another jurisdiction.

**Typical requests enabled under the above are mine operator HR staff emailing [mca@regional.nsw.gov.au](mailto:mca@regional.nsw.gov.au) to confirm a prospective employee holds a practising certificate.**

**Note:** it does not enable disclosure to employment or reference checking agencies – they must supply a consent form from the holder, regardless if they are on behalf of a mine operator.

# Observations for compliance performance

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# Compliance – applying for a new certificate

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- Some people registering for a user account on the Resources Regulator portal to apply are:
  - leaving it too late so are rushing and putting unreasonable expectations on us to deliver
  - reapplying multiple times
  - not responding to our email with the requested ID documents to prevent identity fraud and ensure privacy, or the documents are not certified as true copies of the original
  - not checking their emails for Regulator communication in the process
  - not following the instructions in our email for what they need to do next
  - ringing the Mining Competency team because they have not done one or more parts of the above
- Apply in the incorrect online application form and/or pay the incorrect fee requiring us to refund the difference in most cases

There is sufficient guidance on the Regulator website to guide people through the process easily and quickly!

E.g. the Help Guide: Navigating to the Mine Workers portal on the Applying or renew a practising certificate [webpage](#)

If still in doubt then they can email [mca@regional.nsw.gov.au](mailto:mca@regional.nsw.gov.au) or phone 1300 814 609 (option 2 > 3).

# Compliance – while holding a practising certificate - maintenance of competence

- The report for 2023 audits of holders (soon to be published) has similar findings to 2022 report, with a few exceptions:
  - Around 33% increase in requests (206 in total) to audit 100, due in the main to email bounce backs or ignoring the request being from a contractor (despite factsheet attached verifying their email address and details)
  - Outcomes were comparative to 2022 with 82% substantially conforming and a new category of 4% total conforming
  - The types and number of non-conformances were similar but slightly less
  - The 14% substantially non-conforming mostly had completed far more hours than required in extensive logs but did not:
    - apply the requirements to what they claimed e.g. learning not eligible
    - did not meet the requirements e.g. 6 had not completed Learning from Disasters training
- Not seeing consistent evidence of individuals interacting with their mine operator or employer in a systemised way to:
  - plan their learning to maintain competence, instead of just doing whatever and whenever to comply, and/or
  - checking on their progress to ensure they are and will be compliant with their certificate conditions, and/or
  - ensure they renew and have a new certificate prior to the former one expiring

\* observations based on a review of 48 maintenance of competence logs for individuals applying for a new practising certificate after their previous one expired, since September 2023 to 20 March 2024. They are mainly first line supervisors, but some managers.

# Compliance – holding and renewing a practising certificates

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- **Some** holders are doing one or more of the following:
  - have not read and actioned the expiry date on their certificate or the conditions (apart from the Regulator and their mine operator assisting with this). This includes not identifying their employer had incorrectly recorded their expiry date.
  - not maintaining their contact details with the Regulator so they don't receive a reminder email 3 months prior to expiry, and at expiry, and then say its the Regulator fault they did not renew
  - the email from our portal address 'nswresourcesregulator@service-now.com' goes to their spam folder
  - they don't monitor their email address and miss the reminder and expiry emails
  - don't apply when reminded and then leave it to the last moment to, sometime not being able to practise for a period until the new one is granted
  - certificate expires and they are still practising in the function nominated

# Regulator processes for new and renewed certificates

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# Applying for a new practising certificate

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- Process is unchanged for a person applying for a new certificate for the first time
- If person could have applied in the implementation period for practising certificates to 1 October 2020, then an additional condition to complete 20% more MOC in the first year of the certificate may be imposed by the Regulator
- There are additional steps now for a person applying when their previous certificate has expired, as it was thought some were avoiding the compliance declaration in the renewal application:
  1. section 155 notice is served to provide information and records to demonstrate compliance
  2. person to provide response within 6 weeks otherwise application is closed off
  3. response requires person to show they have and will satisfy the law & conditions including:
    - they have not been practising after the expiry date
    - a log of learning for MOC during the expired certificate and since

# Renewing a practising certificate - planning

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- Refer to the 14 June 2023 webinar presentation for steps and screen shots to renew as it is covered in full. The [Apply or renew practising certificate webpage](#) also provides guidance through the lifecycle of holding a practising certificate.
  - You may renew your practising certificate up to 6 months prior to the expiry date.
  - The Resources Regulator portal will email a reminder to your email address on our records 3 months prior to expiry
  - Most holders now have a user account for the Resources Regulator portal, but for those who don't, allow time of at least one week to register for one by providing ID documents. If you don't follow the process and our instructions then you risk wasting valuable time and delays.
  - The Regulator will generally process **complete** applications with payment within 3 weeks, but it can be longer.
  - You may apply up until the day prior to expiry and we can back date a new certificate issued, but there will be a period where you not be able to practise - clearly we want to avoid this by holders applying much earlier!



# Renewing a practising certificate – changes!

- The renewal application has an amended section for declaring whether you are met the conditions on your practicing certificate that requires to answer yes or no to the questions:

## Maintenance of Competence Condition

Please refer to the [Gazette](#) when answering the following question:

\* Have you met the requirements for the maintenance of competence in relation to the practising certificate published by notice of the regulator in the Gazette?

No

\* You must specify why in the text box below and what you will do to be compliant for any new certificate

I have not worked for 3 years due to my medical condition. I have attached my log of maintenance of competence completed below to show what I have done but I am short on total hours. I plan to resume working now and will complete my learning to comply.

- In this example for MOC condition, the answer is No and sufficient details are supplied with a log attached at the bottom of the application (otherwise we may have asked for the log)

# Renewing a practising certificate – changes! (continued)

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- For Maintaining contact details question, in the example below they have answered yes:

Maintaining Contact Details with the Regulator Condition

If you have not kept your details up to date, please ensure the "Personal Details" section above contains your updated details.

\* Have you maintained the currency of your contact details and places of work with the regulator in the manner and form determined by the regulator?

Yes

Tip: if you have not (No) then before you apply, update your contact details by following the steps in the previous section. Then you can declare you have been compliant – JUST!

- It is proposed to send an SMS text at the same time as the reminder email in the near future!

# Guidance for certificate holders compliance

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# Sample of PC expiry date and standard conditions

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Granted 23 May 2024  
Expires 22 May 2029

This Practising Certificate is granted subject to the following conditions:

1. The holder must comply at all times with any requirements for the maintenance of competency in relation to the practising certificate published by notice of the Regulator in the Gazette.
2. The holder must maintain the currency of their contact details and places of work with the Regulator in the manner and form determined by the Regulator.

**Tip:** note the expiry date in your personal records systems to remind you to renew 6 months prior, & cross check against any employer or mine operator management system for the date they have.

• Follow links here to maintenance of competency gazette <https://www.resourcesregulator.nsw.gov.au/our-role/legislation/gazettals>

and webpage <https://www.resourcesregulator.nsw.gov.au/safety/certification/practising-certificates/maintenance-of-competence>

# Maintenance of competence (MOC) webpage – guidance

<https://www.resourcesregulator.nsw.gov.au/safety/certification/practising-certificates/maintenance-of-competence>

- **Apps are not owned or operated by the Resources Regulator!**
- Using an app or spreadsheet without understanding and applying what is required may mean you have a higher risk of being found substantially non-conforming in an audit.

## Guidance available on the MOC webpage:

- **Guide to maintenance of competence:** read it in full at least once, then refer to it as necessary for sections like:
  - 5. Areas of competence
  - 6. Learning hours
  - 7. Learning types requirements, especially 7.4.1, 7.4.3
- **FAQs:** built up by enquiries from holders e.g. Can I claim attendance at pre-shift meetings and toolbox talks?
- **Webinar presentations:** copies of previous ones e.g. 14/6/2023



# Maintenance of competence webpage – guidance (continued)

- Regulator Recommended logbook to use or refer to worksheets for:
  - Summary of types of formal and informal learning, any caps on hours that can be claimed and options for evidence to keep

Summarised from Resources Regulator - Guide to maintenance of competence (ver March 2021)		Key: yellow indicates learning type where maximum 4 hours can be claimed per year from date of certificate issue	Evidence required in order of preference (summary - see Guide for details)
<b>Formal learning types</b>			
Number	Title	Notes on eligibility from Guide with clarification (all require evidence)	
1	seminars, webinars, conferences, forums	Cannot account for more than 50% of the total formal hours required or amount claimed above it	a) attendance certificate b) email registration c) payment d) picture eg. agenda
2	External training *	Actual hours (not travelling, pre-reading etc), provided by outside organisation to your employer on or off mine site	a) course completion eg. certificate b) picture of content c) payment d) registra
3	Completing study towards tertiary qualifications *	Same as for type 1 above, see also 7.4.2 (relevant and face to face essentially)	a) attendances record b) notification of assessments completion c) required re
4	In house formal training courses within an organisation*	Same as for type 1 above	a) course completion eg. certificate b) electronic calendar c) picture of content
5	OEM formal training courses*	Actual hours up to 4 hours per year (only formal type with cap per year from date of issue of certificate)	As above for in house informal training courses
6	Mines Rescue Brigades formal training courses or similar*		As above for in house informal training courses
	* must satisfy criteria for formal training course (refer to 7.4.1) in order to be claimed	Evidence required as part of that for each individual one eg. RTO certificate, email, agenda or training record from mine operator	
<b>Informal learning types</b>			
Number	Title	Notes on eligibility from Guide and clarification (require evidence unless stated)	
1	Reading	Actual hours up to 4 hours per year,	No evidence required
2	Relevant field trips (eg. visiting other mines to see alternative methods of mining)	Actual hours up to 4 hours per year (2 hours per field trip X 2)	No evidence required

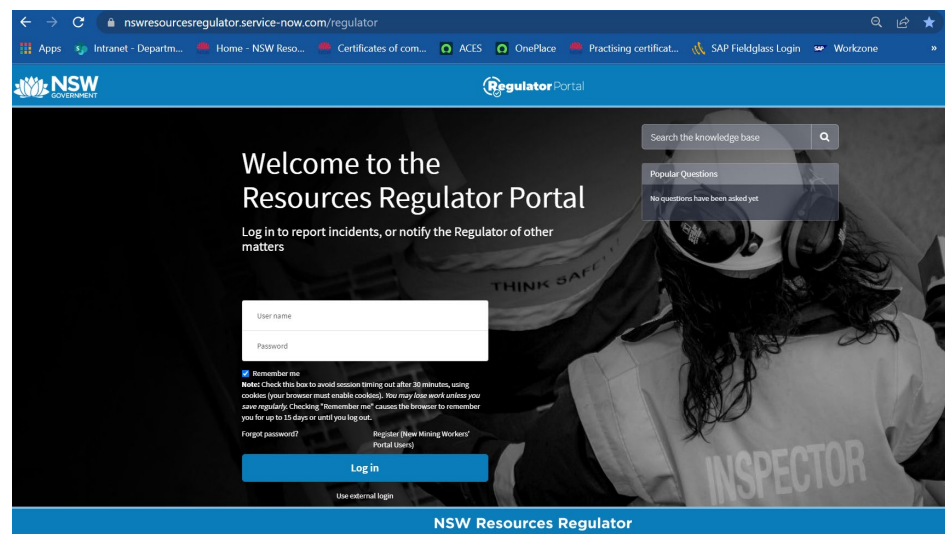
# Maintenance of competence webpage – guidance (continued)

- Regulator Recommended logbook to use or refer to worksheets for (continued):
  - Self-assessment for conformance to maintenance of competence requirements (based on criteria used in audits)

Check	Guidance	Response - Yes / No	If no, detail actions to correct	Action completed (if applicable)
4. Are you on track or have complied at the end of the certificate period?	a) Areas of learning: satisfy the total hours for each: i. <u>minimum</u> of 1/3 for Mining /WHS systems and within it some learning is claimed for each of the 4 sub areas			

# Condition - maintain contact/work details with the Regulator

(slides from 14 June 2023 webinar presentation, provided here to promote compliance)



**Note:** 14 June 2023 webinar available on PC overview and MOC webpages

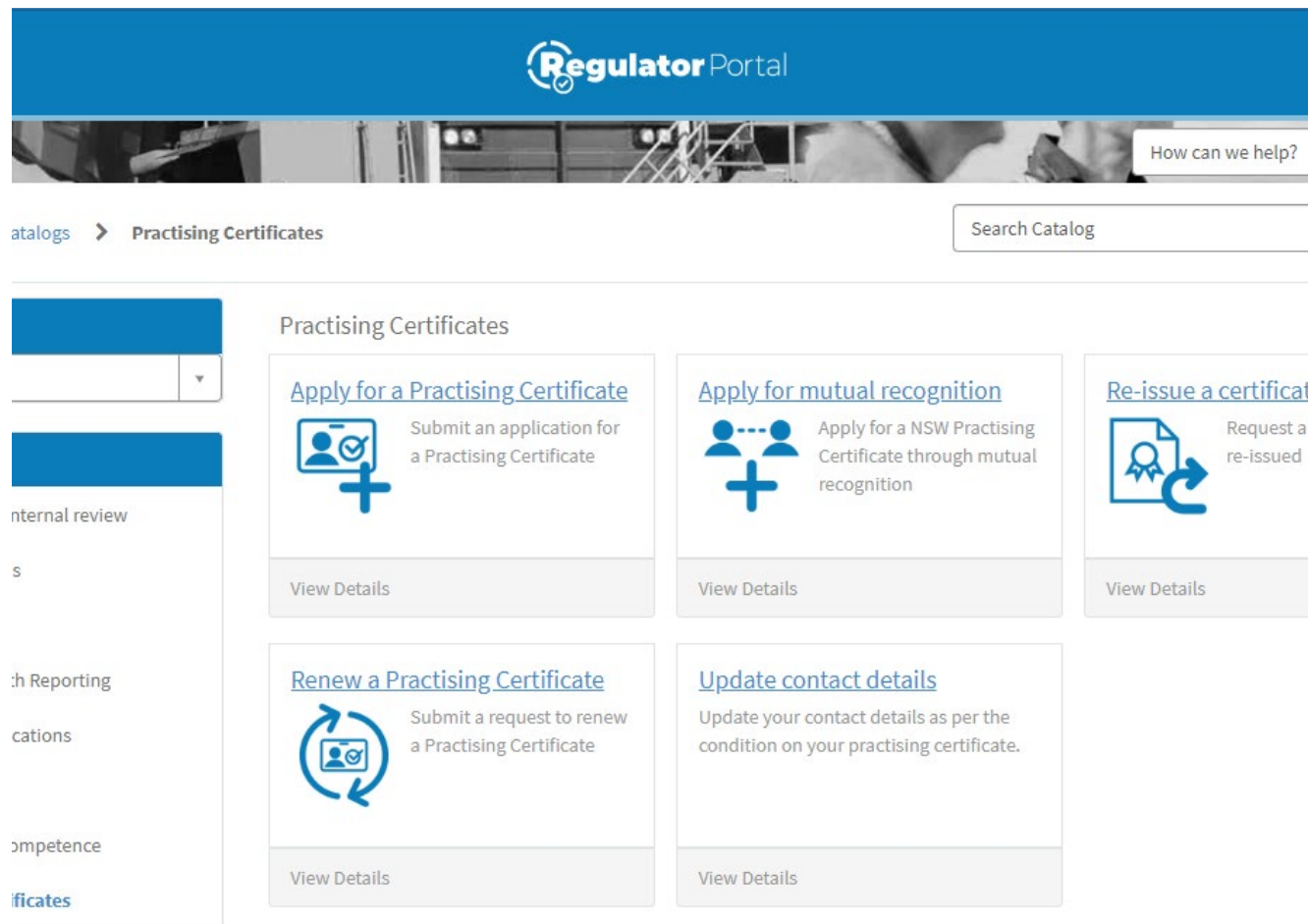
- 1) You must have a login to the Resources Regulator portal by selecting Register on the landing page

<https://nswresourcesregulator.service-now.com/regulator>

- 2) If you **already** have a login for a mine, then email [cau@regional.nsw.gov.au](mailto:cau@regional.nsw.gov.au) requesting to extend it to the Mining Workers section
- 3) If your nominated login email address is to change, then email [cau@regional.nsw.gov.au](mailto:cau@regional.nsw.gov.au) before it does to have it updated
- 4) Maintaining your login is part of maintaining your contact details!!



# Updating contact/work details on the portal




- Login from landing page for portal
- Select the following in order:
  - Mining Workers portal >
  - Practising certificates >
  - **Update contact details (as pictured)**

Image: Practising certificates page

### Update personal details

\* Do you want to provide or update your personal details? 


You are unable to update your email address using this form. If you need to update your email please contact the CAU on 1300 814 609 or at [cau@planning.nsw.gov.au](mailto:cau@planning.nsw.gov.au). 

Yes 

Mobile phone  Home phone


Home address  Home city

Home state  Home postcode

\* Is your postal address the same as your home address?  
-- None -- 

### Skills and qualifications

\* Do you want to enter details of qualification(s) or skill(s) relevant to the statutory functions listed on your certificate? 

Please do not enter details of your Certificate of Competence or Practising Certificate as we already hold this information. 

Yes 

\* Skills and qualifications

Actions	Name of qualification or skill	Issuing body	Issue date	My qualification/skill has an expiry date	Expiry date
No data to display					

### Places of work

\* Do you want to add a current or previous place(s) of work?

Yes 

Workplaces

Actions	Employer	Not listed	Enter the full legal company name of your employer using the free text	Start date	T
No data to display					

You can then select which details that you want to update by answering yes or no to the prompts for each area as pictured:

- Update personal details
- Skills and qualifications
- Places of work

Image: Update contact details page

# Regulator expectations for compliance best practise

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# Best practise – guidance

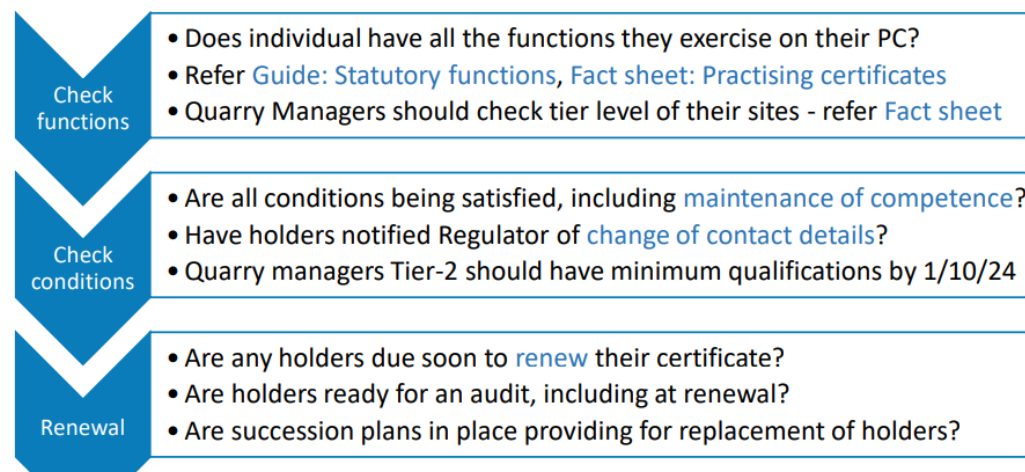
<https://www.resourcesregulator.nsw.gov.au/safety/certification/practising-certificates/practising-certificates-overview>

Guidance available on the practising certificates overview webpage (refer address above):

- **Flyer on practising certificates – check on progress:** ver. issued in April 2021 is
  - current as an overview of steps for mine operators, employers and holders
  - to refer to when actioning the best practises in the slide(s) that follow, but it does not cover it all

## PRACTISING CERTIFICATES – CHECK ON PROGRESS

As the implementation period is complete, holders and mine operators should be checking their progress with having current practising certificates (PCs) and satisfying the conditions to continue being nominated to exercise the functions:



# Practising certificate holders best practise

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- 1) Have their own personal system to note their expiry date upon receipt of new certificate and reminders to renew it (compliment any employers system and possibly a second control for the risk of failing to renew)
- 2) Maintain current contact and work details on the Resources Regulator portal AND add its email address 'nswresourcesregulator@service-now.com' and [mca@regional.nsw.gov.au](mailto:mca@regional.nsw.gov.au) to your email software safe senders list
- 3) Plan their maintenance of competence learning so it meets their needs and requirements (again in tandem with any employer system)
- 4) Regularly download and/or check their log of learning from an app, employer or their own (don't wait until an audit!). Keep a back up copy!
- 5) Do a self assessment of conformance to the maintenance of competence scheme using the Regulator recommended spreadsheet to check progress so to be confident in the event of an audit
- 6) Be a subscriber to the [Regulator Mine Safety News](#) to receive any updates on any changes and new guidance
- 7) If in doubt, refer first to our website guidance and then email your query to [mca@regional.nsw.gov.au](mailto:mca@regional.nsw.gov.au) and we will give you a response in writing to refer to (with a phone call if necessary).

<https://www.resourcesregulator.nsw.gov.au/safety/certification/practising-certificates>,

# Conclusion (this almost identical to 2023 webinar except that denoted in red)

- The Resources Regulator is overall satisfied with the current levels of compliance being demonstrated from the majority of individuals and mine operators for practising certificates and maintenance of competence.

The exceptions are individuals NOT:

- keeping their contact and work details current with us via the portal (critical for renewal reminders and audits), and
  - renewing their practising certificate until just before the expiry date or after because they (and possibly their mine operator nominating them) don't have a system to ensure this occurs so the holder can practise continuously.
  - Individuals practising without a current certificate, because in those instances the mine operator system also failed to prevent it.
- The Evaluation of the gazetted maintenance of competence public consultation and response is being progressed by the Regulator through the NSW Mining and Petroleum Competence Board, as part of their 2024-2026 Strategic Plan, and may yield improvements to benefit holders and stakeholders. The ongoing requirement to complete learning from disasters training is being considered.
  - Holders and stakeholders are encouraged to continue engaging with the Resources Regulator in a timely manner to resolve issues arising for them or clarifying requirements with the contact details below:

[mca@regional.nsw.gov.au](mailto:mca@regional.nsw.gov.au)

1300 814 609 (options 2 then 3)

Thanks for attending

You may now ask a question by:

-raising hand via Zoom function or

-placing question in the chat