

Guideline

Exploration, prospecting and work health and safety

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Exploration, prospecting and the WHS laws

Exploration or prospecting in NSW is subject to the relevant requirements of the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*. Whenever exploration or prospecting is undertaken, the *Work Health and Safety Act 2011* and the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and their associated Regulations also apply. These laws set out requirements for ensuring the health and safety of workers and others affected by the undertaking of exploration or prospecting.

The Resources Regulator in NSW is the regulator for the work, health and safety laws applying to exploration or prospecting.

We have developed this guideline to help you, as an explorer or prospector, better understand your work, health and safety obligations. It will also explain how you can fulfil certain obligations under both the laws and the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991* in one step.

Key obligations

If you are undertaking exploration or prospecting you must, among other things:

- be authorised to explore or prospect (e.g., exploration licence (EL) or assessment lease (AL))
- have an exploration activity approval (unless you're undertaking exploration activities with minimal environmental impact identified as exempt development under the mining State Environment Planning Policy)
- appoint an operator for the exploration site (in most cases this would be the titleholder) and notify us
- notify us at the start of exploration.

The operator of the exploration site (either yourself or another person you have appointed) must:

- develop and implement a safety management system (SMS)
- notify us of any safety incidents
- notify us of the suspension of exploration or prospecting activities
- notify us if the operator changes
- notify us of closure of the exploration site.

This is not an exhaustive list of obligations for explorers but identifies the key requirements.

The titleholder and the operator

Companies or individuals wanting to explore (or prospect) for coal, minerals or petroleum in NSW must first obtain an authority under the *Mining Act 1992* or *Petroleum (Onshore) Act 1991* before undertaking any exploration activities. Exempt activities are not included in this requirement.

Note, the Work Health and Safety (Mines and Petroleum Sites) laws do not apply to:

- an activity carried out in relation to the extraction of minerals or petroleum on private land for the private and non-commercial use of the owner of the land
- fossicking.

The titleholder must notify us that they intend to be the operator before exploration begins at the exploration site. If the titleholder will not be undertaking the exploration personally, they must notify us that they have appointed another person as operator to:

- carry out exploration on behalf of the titleholder
- have management or control of the exploration site
- discharge the duties of the operator under WHS laws.

The requirements to notify us of the start of exploration and notification of operator can be done by submitting the Notification of other matters (including reportable events) for exploration only form (www.resourcesregulator.nsw.gov.au/sites/default/files/2022-01/form-exploration-notification-of-other-matters-including-reportable-events.docx)

Alternatively, this can be done via the Regulator Portal (detailed in the above form).

The extent of duties under the WHS laws depends on whether the exploration involves mechanical means of exploration that disturb the ground.

What are the WHS duties for exploration?

An exploration site under the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 is a place where activities are carried out for the purpose of exploring (prospecting) for minerals or petroleum by mechanical means that disturb the ground.

There are 2 types of exploration for the purposes of the WHS laws:

- mechanical-means exploration that disturb the ground
- non-mechanical exploration means.

Non-mechanical exploration or prospecting

Non-mechanical exploration is the exploration for minerals or petroleum, other than by mechanical-means that disturb the ground. Non-mechanical exploration includes:

- geological mapping
- sampling and coring using hand-held equipment
- geophysical surveying (but not seismic surveying) and borehole logging
- access by vehicle (not if access requires the construction of an access way, such as a track or road)
- shallow reconnaissance drilling involving no more than minimal site preparation
- excavations (but not costeaning or bulk sampling).

What provisions apply to non-mechanical exploration?

Clause 177 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 provides an exemption from several provisions of the Regulation for non-mechanical means exploration. However, a person conducting a business or undertaking (PCBU, see definitions) involving exploration by non-mechanical means must:

- comply with the Work Health and Safety Act 2011 and Work Health and Safety Regulation 2017, the Work Health and Safety (Mines and Petroleum Sites) Act 2013 and the relevant parts of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 (clause 177 specifies the provisions which do not apply)
- notify the Regulator of notifiable incidents
- keep a mine record.

Mechanical-means exploration or prospecting

Exploring for minerals by mechanical means that disturb the ground include:

- drilling (other than the use of hand-held augurs for sampling and coring or shallow reconnaissance drilling involving no more than minimal site preparation)
- seismic surveying
- costeaning or bulk sampling
- construction of access ways or roads.

What provisions apply to mechanical-means exploration?

All relevant provisions of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022* apply. Some provisions of the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022* will not be relevant to the exploration activities being undertaken and will not apply. For example, while exploring for coal, the specific provisions relating to underground coal will not apply if no underground mining is being undertaken.

Relevant provisions include:

- notifying the Regulator of the mine operator
- managing risks to health and safety associated with mining operations
- developing, implementing, maintaining and reviewing a safety management system
- developing and implementing relevant principal control plans and principal mining hazard management plans
- obligations in relation to contractors (i.e. if contractors provide drilling services)
- notifying the Regulator of certain incidents (including notifiable incidents and high potential incidents) and providing information to the Regulator.

Changing from non-mechanical to mechanical exploration

Changing from non-mechanical means exploration (or prospecting) to mechanical means exploration triggers a change in obligations, including some obligations prior to the change. This includes notification of the start of mechanical-means exploration and notification of the operator.

Safety management system

The operator must develop and implement a SMS if they intend to undertake mechanical-means exploration. The SMS should reflect the level of complexity and risk of the work being carried out

during the mining process. It is intended to manage the risks associated with the hazards of the site, in relation to the exploration activities being conducted there.

Explorers need to address the risks relevant to their size and complexity.

The SMS can be developed progressively, provided that no mechanical-means exploration activities take place while the part of the SMS, relevant to that part of the exploration, is not established and implemented at the exploration site. For example, if the SMS addresses the risks of drilling, then drilling work can be undertaken but roads could not be constructed until the SMS or relevant parts of it, have addressed the risks associated with constructing roads.

The [Health and Safety at Quarries](#) handbook is a useful guide for those just starting to develop their SMS. Part A in the publication is particularly useful for those having difficulty developing a SMS for their operation and activities. Although this guide does not use the terms exploration or prospecting, it offers very good advice on developing a safety management system.

There is also a [Safety management kit for small-scale mines, quarries and extractive industry operations](#), this contains fillable templates for the various parts that make up a SMS, most of which would be relevant to exploration operations.

Another resource available is the [Code of practice for safety management systems in mines](#). This details requirements for the content of a SMS as well as how to develop and maintain it.

Notification of incidents

What safety incidents must be reported?

There are 6 types of incidents that must be reported to the Regulator if they occur due to exploration:

- the death of a person
- a 'serious injury or illness'
- a 'dangerous incident', as defined in the regulations
- an incident that results in injury or illness requiring medical treatment
- a high potential incident
- certain incidents relating to explosives.

If there is a serious injury or illness, a death, or a dangerous incident, you must report it to us immediately by calling **1300 814 609** (24 hours a day, 7 days a week). You will then need to log in to the [Regulator Portal](#) to access the incident lodged and provide further information as required. Should you require a user account set up for the [portal](#), or need to add an exploration site you operate to your existing user account, please submit a request to add a PCBU or operator.

For other types of notifiable incidents, complete the Notify Resources Regulator form on the [Regulator Portal](#) as soon as possible (and within 48 hours for incidents that result in an injury or illness, or 7 days for all other incidents).

For more information, guidance and forms visit the [Exploration under the WHS \(Mines\) laws](#) webpage.