



Department of **Local Government,**
Industry Regulation and Safety



GUIDE

Contractors engaged in mining operations

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Reference

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Foreword

This guide explains the health and safety obligations for mine operators and contractors at mines under the *Work Health and Safety Act 2020* (the WHS Act) and the Work Health and Safety (Mines) Regulations 2022 (WHS Mines Regulations), and how to fulfil these obligations.

The participation of contractors at a mine creates mutual obligations and mutual arrangements among the various duty holders for maintaining a safe workplace. Members of the mining company and the contractors share the workplace and therefore share the responsibility for the health and safety of everyone at the site.

This requires information, consultation, cooperation and coordination between duty holders. At the same time, duty holders cannot 'contract out' of health and safety responsibilities, no matter how long the chain of contracting and subcontracting is at a site.

This guide is intended to assist duty holders to understand these obligations and arrangements, and the actions they need to take to achieve compliance with legal requirements.

The term contractor is used throughout this guide in reference to a person conducting a business or undertaking that provides contracted services rather than to individual workers employed as contractors.

The scope of this guide excludes contractors carrying out construction work as defined in Chapter 6 of the WHS Mines Regulations.

How to use this Guide

References to the WHS Act and WHS Mines Regulations are included for convenience and are not to be relied on in place of the full text. Current versions of the Western Australian WHS legislation are available on www.legislation.wa.gov.au.

The words 'must', 'requires' or 'mandatory' indicate a legal requirement exists that must be complied with. The word 'should' indicates a recommended course of action, while 'may' is used to indicate an optional course of action.

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1. Legislative requirements and the mine safety management system

WHS Act 2020 s. 19

Primary duty of care

WHS Mines Regulations r. 621

Duty to establish and implement mine safety management system

WHS Mines Regulations r. 622

Content of the mine safety management system

WHS Mines Regulations r. 608A

Terms used

WHS Act 2020 Part 5, division 2

Consultation with workers

WHS Mines Regulations r. 625

Review

The *Work Health and Safety Act 2020* (WHS Act) requires a person conducting a business or undertaking (PCBU), which includes a mine operator or contractor, to ensure, so far as is reasonably practicable, that the health and safety of workers and other persons is not put at risk from any work carried out as part of the business or undertaking.

The Work Health and Safety (Mines) Regulations 2022 (WHS Mines Regulations) set out in detail how these requirements are to be met. The obligations and arrangements involving contractors are principally found in the section of the regulations for the mine safety management system (MSMS).

The MSMS is required to be implemented for all mining operations, including exploration operations, whether they are new or existing ones, and before any mining operations commence.

The MSMS for a mine must set out the measures that will be used to control risks to health and safety associated with a contractor's work at the mine, including:

- the process for assessing health and safety policies and procedures (including competency requirements) of a contractor and integrating them into the mine's MSMS
- the arrangements for monitoring and evaluating compliance by a contractor with health and safety requirements.

In this part of the WHS Mines Regulations, a contractor is defined as a person who conducts, or is to conduct, a business or undertaking at the mine, but excludes the mine operator of the mine. Also excluded from the definition of contractor is any person making occasional deliveries and any person or class of person the regulator declares not to be a contractor.

When establishing or reviewing the MSMS for the mine, a mine operator must consult with workers who are directly affected, or are likely to be directly affected. However, if the mine operator establishes the MSMS without the required consultation, the mine operator must ensure that the MSMS is reviewed and revised as necessary within 12 months and with consultation. This is not a requirement for a contractor's health and safety management plan if the contract work is less than one year.

2. Health and safety relationship between the mine operator and contractor

WHS Mines Regulations r. 625D

Contractor to be covered by health and safety plan or mine safety management system

WHS Mines Regulations r. 622

Content of mine safety management system

The mine operator and contractor have a choice between two health and safety management arrangements:

1. The contractor can operate under its own health and safety management plan if it is acceptable to the mine operator and is consistent with the mine's own MSMS, or
2. The contractor can operate under the relevant parts of the mine's MSMS.

The choice of arrangement is made by agreement between mine operator and contractor. In either case, the contractor must have the resources and capability to implement the chosen arrangement.

Arrangement 1: Contractor adopts its own health and safety management plan

Where this arrangement is in place, the mine operator and contractor agree that the contractor will operate under its own health and safety management plan.

If this is decided, the contractor must first prepare a health and safety management plan. This becomes the contractor's primary means of keeping a healthy and safe workplace not only for its own workers but also for any others at the site who may be affected by the contractor's activities.

The plan must also be consistent with the mine's MSMS and integrated with it. Details of what is to be included in the plan are in section 4 below.

The contractor must have the resources and capability to implement its plan, and the mine operator and contractor must put in place actions to ensure the plan is effective.

Once the contractor has prepared its health and safety management plan, the mine operator may accept it, if satisfied that:

- the plan meets all the above requirements
- the contractor is capable of fulfilling the plan.

The mine operator must not allow the contractor to start work if the health and safety management plan is not approved.

When accepting the contractor's health and safety management plan, the mine operator must give the contractor a notice of acceptance. This shows that the operator considers that the contractor's health and safety management plan is consistent with the MSMS at the mine.

An outcome of this arrangement is that there are cross-commitments between the contractor's plan and the mine's MSMS. The mine operator incorporates the contractor's plan into the MSMS, while the contractor agrees in writing to comply with the relevant parts of the MSMS.

It is acceptable for the contractor's health and safety management plan to specifically refer to parts of the MSMS of the mine where relevant. This is because there will always be aspects where the MSMS will apply even if a contractor has a comprehensive plan, such as for site access, inductions and emergency management on site.

Because the contractor will operate under its own health and safety management plan, the mine's MSMS must state how the contractor's plan will be integrated into the MSMS.

There should also be a process in the mine's MSMS for the mine operator to audit the contractor against both the plan, and those parts of the MSMS the contractor has agreed to comply with.

Arrangement 2: Contractor operates under the mine's MSMS

Where the mine operator and contractor agree that the contractor will operate under the relevant parts of the mine's MSMS, the arrangements are more straightforward for the contractor.

The contractor must adopt those parts of the mine's MSMS that apply to the mining operations that the contractor is to carry out.

To undertake this arrangement, the contractor must:

- review the relevant parts of the mine's MSMS
- accept them
- confirm that the MSMS is consistent with the contractor's system for managing the risks to health and safety from mining operations it is to carry out.

Adopting this arrangement does not reduce the contractor's primary duty of care under the work health and safety (WHS) legislation, that is to ensure the health and safety of workers engaged and others at the workplace is not put at risk from their work. The contractor cannot contract out of this responsibility.

If it is agreed that the contractor is to operate under the mine's own MSMS, the mine operator must put in place:

- a process for assessing the contractor's health and safety policies and procedures, including competency requirements, and how they are integrated into the mine's MSMS
- arrangements for consultation, cooperation and coordination of activities with the contractor at the mine to achieve compliance with their obligations
- a method of monitoring and evaluating the contractor's compliance with the mine's health and safety requirements.

3. Mutual exchange of information and access

WHS Mines Regulations r. 625B

Duty of the mine operator to provide information to contractor

WHS Mines Regulations r. 625C

Duty of the contractor to provide information to mine operator

A meaningful exchange of information is critical to ensuring all obligations, accountabilities and processes are understood by all parties. They are not treated as a paper-based exercise of information transfer. In this way, the obligations on the mine operator and contractor will be satisfied, starting when a contractor is at the preparatory stage for mining operations and regardless of whichever of the above arrangements they adopt.

The mine operator must ensure that the contractor is given all reasonable and relevant information, including access to the mine, to identify any risks associated with the proposed operations.

In turn, the contractor must ensure that the mine operator is given all reasonable and relevant information to enable the mine operator to identify any risks associated with the proposed operations.

4. Contents of the contractor's health and safety management plan

WHS Mines Regulations r. 625D

Contractor to be covered by health and safety plan or mine safety management system

The contents and features of the contractor's health and safety management plan are specific and detailed in the WHS Mines Regulations. The plan must:

- set out the means by which the contractor will manage the risks to health and safety from mining operations carried out by the contractor
- be used by the contractor as the primary means of ensuring, so far as is reasonably practicable, the health and safety of the contractor's workers at the mine, and ensuring that the health and safety of other persons is not put at risk from work carried out as part of the contractor's activities
- be set out and expressed in a way that is readily understandable by the people who use it.

5. Ensuring the effectiveness of contracting arrangements

WHS Mines Regulations r. 623

Performance standards and audit

The MSMS for a mine must contain performance standards for measuring the effectiveness of the contracting arrangement. This must be done in sufficient detail to show how the mine operator will ensure that the arrangements are effective. Essentially, the performance standards should ensure that the goods and services provided by contractors meet the obligations set out in the contracting arrangements, including health and safety related performance.

The process of continuous improvement of the contracting arrangements must be documented in the MSMS.

The contracting arrangements in the MSMS must include a system for auditing these arrangements against the performance standards, including the methods, frequency and results of the audits.

Factors in an effective relationship

Achieving an effective relationship between a PCBU and a contractor requires sharing information, consultation, coordination and cooperation. Several major factors affect how the relationship is best managed, including the:

- experience and size of the principal company, including experience in the management of contractors
- experience and size of the contracting company
- size and cost of the contract job
- size of the pool of qualified contractors available to tender for the job
- risk levels of the work to be undertaken by the contractor
- quality of the PCBU's MSMS and the contractor's health and safety management plan.

These factors affect all stages in the relationship, from the engagement of the contractor to the completion of the contract.

At the engagement stage, PCBUs should consider more than just the ability of the contractor to undertake the work. Other, safety-related metrics may be evaluated, including:

- recent safety performance statistics
- actual current workers' compensation premium rate being paid
- evidence of knowledge of WHS regulatory requirements of all workers, appropriate to their roles
- documentation of:
 - the appointment of elected health and safety representatives and their accredited training
 - a comprehensive health and safety management system that complies with legislation

- lines of responsibility for all WHS matters
- an induction procedure for all levels of personnel
- a competency-based training program for all workers and its outcomes
- duty statements for all positions of responsibility.

6. Considerations between operator and contractor

WHS Act s. 14

Duties not transferable

WHS Act s. 16

More than 1 person can have a duty

WHS Mines Regulations r. 675X

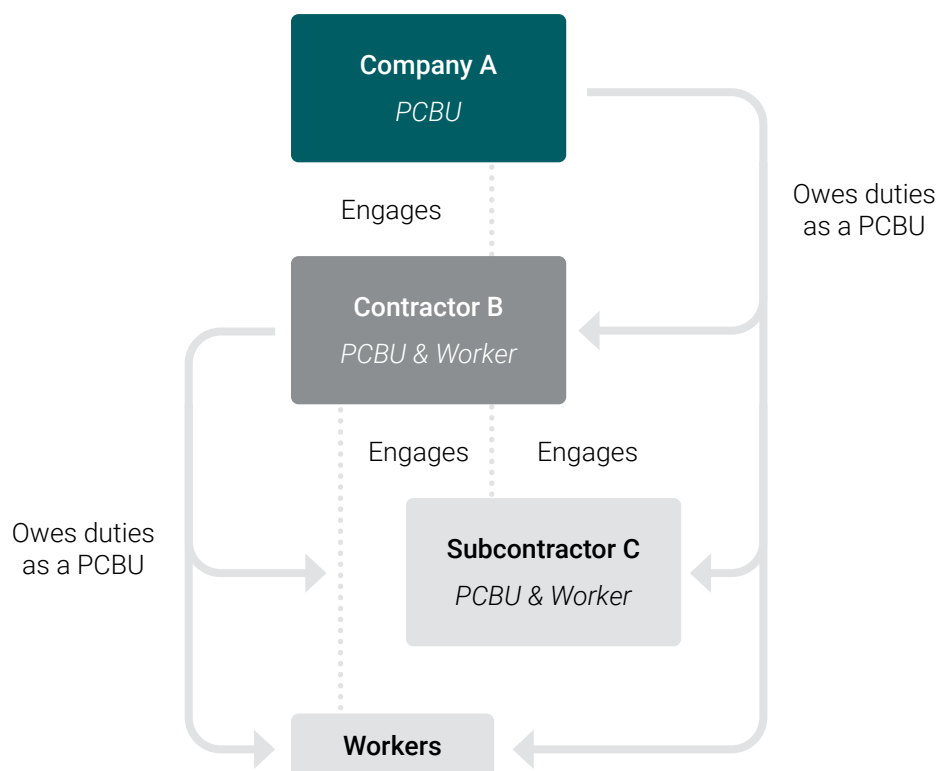
Duty to notify mine operator of incidents

Parties cannot contract out of their health and safety obligations.

As this guide explains, a PCBU providing services at a mine or exploration site has responsibility for the safety of workers it engages as well as others, including workers whose work it influences or directs.

Operators of mines or exploration sites and other PCBUs, such as contractors, also have a duty to ensure that their activities at the mine or exploration site do not put others at risk from work carried out as part of the business or undertaking.

Frequently, there is a chain of contracting and subcontracting at a location. This situation in no way lessens or delegates health and safety responsibilities of duty holders.



An individual contractor can be both a PCBU and a worker (e.g. a sole trader).

A WHS duty cannot be transferred to another person. As a consequence, more than one person can have the same duty for a matter at the same time.

In this circumstance, each duty holder must achieve the required level of compliance with their health and safety obligations to the extent that the duty holder:

- has the capacity to influence and control the matter, or
- would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

This underlines the principle that parties cannot contract out of their health and safety obligations.

Reporting notifiable incidents

As a PCBU at a mine, a contractor has the same legal obligation to report notifiable incidents as the mine operator. It is recommended that there is agreement between the mine operator and the contractor as to who will notify the regulator under section 38 of the WHS Act.

The contractor must ensure that the mine operator is notified as soon as practicable of any notifiable incident. This is to ensure that the mine operator is aware that the incident has been notified to the regulator, or to ensure that the mine operator can report the notifiable incident to the regulator, depending on what their agreement says.

The duty to preserve an incident scene at which a notifiable incident has occurred lies with the person with management or control of the workplace where the incident occurs. The mine or exploration site where the incident occurred must not be disturbed until an inspector arrives at the site or any earlier time that an inspector directs.

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