

## LEGISLATION

# Application of WHSA & DGA to Mining Operations

This information bulletin provides a guide to the application of the [Workplace Health and Safety Act 2007](#) and the [Dangerous Goods Act 1998](#) which have effect on mining operations as of 1 July 2008.

In 2007 an external review of the *Work Health Act* and the *Mining Management Act* made recommendations for legislative changes to the regulatory functions of NT WorkSafe and the Department of Regional Development, Primary Industry, Fisheries and Resources (RDPIFR). As a result, the [Workplace Health and Safety Act 2007](#) (the Act) was enacted which has coverage over all Territory workplaces including mines and mining services.

In support of the new Act, a range of regulations have been developed together with new information bulletins to provide guidance around such requirements as mining activities, Work Groups, Health and Safety Representatives (HSRs), Union Right of Entry, Risk Management Plans and the application of the concept of "Reasonably Practicable".

## Notable changes for mining operations and petroleum activities

### Jurisdiction

As of 1 July 2008 the *Mining Management Act* (MMA) no longer applies to occupational health and safety on mine sites.

In addition, the *Dangerous Goods Act* now applies to mining operations.

In regards to activities regulated by the *Petroleum Act*, the *Workplace Health and Safety Act 2007* now applies to work under an exploration permit or a production licence. Further information regarding the application of NT occupational health and safety legislation regarding petroleum sites and pipelines can be found in NT WorkSafe bulletin [09.01.13](#).

### Staged compliance strategy

NT WorkSafe will work with stakeholders to achieve compliance with the new legislation, understanding that it may not be possible to achieve full compliance in the shorter term. Employers will still need to demonstrate compliance with the existing and continuing requirements as well as ensuring that any risks identified are appropriately addressed to ensure workers and others are not put at risk.

### This staged approach:

- Recognises that NT WorkSafe (NTWS) has a role beyond just compliance and has a key role in providing information and advice;
- aims to assist duty holders to achieve compliance over time through guidance and advice;
- requires duty holders to demonstrate clear steps and commitment toward achievement; and
- acknowledges that the timing to move through stages will depend on the capacity and capability of the duty holder.

If at any time circumstances dictate, stronger compliance action will be taken as appropriate. In the event of a major incident, investigation will be undertaken in accordance with usual protocols. Staged compliance does not remove the obligation on the duty holder to comply or the community expectation for enforcement.

## **Workplace Health and Safety Act**

A major change to the legislation was the inclusion of an Objects section. This clearly outlines what the objects of the Act are, and they should be taken into account when considering the requirements and intent of the Act.

These objects are:

- the Act aims for the highest standard of health and safety that is reasonably practicable;
- risks must be eliminated and only if they can't be eliminated, controlled or mitigated to the lowest level that is reasonably practicable;
- the legislation protects not just workers but others; and
- consultation is a cornerstone of the Act.

### **Reasonably practicable**

Another concept that has been introduced is a requirement to do what is reasonably practicable in eliminating or minimising a risk to health and safety in the workplace.

The test for what is reasonably practicable is an objective test; that is, a person is to be judged by the standard of behaviour expected of a reasonable person in the duty-holder's position who is required to comply with the same duty and is:

- committed to providing the highest level of protection for people against risks to their health and safety; and
- proactive in taking measures to protect the health and safety of people.

The test involves a careful weighing up of each of the matters in the context of the circumstances and facts of the particular case with a clear presumption in favour of safety.

“**Reasonably practicable**” is determined with regard to:

- the likelihood that the risk could result in injury; and
- the seriousness of any injury that could result from realisation of the risk; and
- the availability, suitability, effectiveness and cost of the measures; and
- any other relevant factors.

You should also use the **hierarchy of controls** to work out the most appropriate method to eliminate or minimize the risk and consider this in the context of what is reasonably practicable. Just because a solution is arguably not reasonably practicable does not mean no action is required. Doing nothing is not an option.

If it is determined that the best or highest order control is not reasonably practicable, the workplace may then implement lower order controls such as restricting the task to qualified and experienced workers, training, supervision, PPE etc. There are not either/or options; a combination of a number of them may be applicable and therefore required to reduce the risk.

In addition, just because the higher order control is not reasonably practicable at present doesn't mean that the workplace should not be working toward it – in new budget periods, when equipment is replaced or upgraded etc. and using lower order controls as interim measures only.

Please refer to NT WorkSafe information bulletin [09.01.14](#) - Reasonably practicable.

## Consultation

The Act has been developed to provide a real focus on consultation between the employer and workers on health and safety issues. It establishes the role of Health and Safety Representatives (HSRs) and Union right of entry for Authorised Union OHS Representatives to facilitate this objective. The Act recognises the important role HSRs play in the consultative process. HSRs can make a real difference in having safety issues addressed and can help achieve improved health and safety outcomes. Please see bulletins 18.01.02 Worker Representation and 18.01.04 HSR – Function, role and powers.

In order to elect a HSR, a work group must be formed. Please refer to NT WorkSafe information bulletins 18.01.03 - Work groups and 18.01.05 - Health and Safety Representative (HSR) election. The HSR must be a member of the work group. The term of office for a HSR is for two years, and a person may be re-elected for further terms. A person may not stand for election if they are disqualified from being an HSR by NT WorkSafe.

## Functions of the health and safety representative

The functions of the HSR are confined to health and safety issues that affect members of their workgroup. The HSR role is to:

- inquire into issues affecting workers;
- bring matters of concern to workers to the attention of management;
- assist workers in their dealings with management and workplace safety officers;
- mediate between workers and management and assist in the resolution of problems;
- issue a notice of safety hazard (NOSH) in appropriate circumstances;
- issue a stop work direction to a worker in a case of serious and immediate risk to the health or safety of the worker.

It is important to understand that an HSR is elected by his/her work colleagues to represent them on health and safety issues. While they have powers and functions they do not have any additional duties or responsibilities for health or safety above that of that any worker. An HSR does not require any qualifications to be elected but once elected they have a right to attend approved HSR training. In addition the employer must:

- provide HSRs with facilities in order to carry out their functions; and
- keep HSRs informed and consult on health and safety issues.

## Union right of entry

The Act allows for an authorized Union OH&S Representative to enter a workplace where there are members of their organisation or those who are eligible to be their members for an “authorised purpose”.

An authorized purpose is one of the following:

- to discuss health and safety issues during a meal break or other break in work with workers who are, or are eligible to become, members of the relevant employee organisation;

- to observe work practices at the workplace involving or affecting a member of the employee organization; or
- to investigate a suspected contravention of the Act involving a member of the employee organisation.

A person must not refuse or unduly delay entry to premises by an authorized union OH&S representative who is entitled to enter the premises.

Please refer to NT WorkSafe information bulletin [18.01.06](#) - Union right of entry.

## Employer's general statutory duty of care

An employer has a duty (the employer's general statutory duty of care) to ensure, as far as reasonably practicable, that workers and others are not exposed to risks to health or safety arising from the conduct of the employer's business.

An employer must carry out the general statutory duty of care by proceeding, in a systematic way, to:

- identify hazards; and
- identify, and assess the seriousness of, risks resulting from the hazards; and
- determine appropriate risk management measures:
- to eliminate, as far as reasonably practicable, avoidable risks; and
- to minimise, as far as reasonably practicable, unavoidable risks; and
- carry the risk management measures into effect; and monitor and review the effectiveness of the measures.

## Risk management plans

Each activity specified in Schedule 5 of the Workplace Health and Safety Regulations is classified as a hazardous activity for which a risk management plan is required.

**Note:** Mining operations are also classified as a hazardous activity for which a risk management plan is required by regulation 152B.

An employer who proposes to undertake a hazardous activity must prepare a risk management plan and have it certified by a person with qualifications or credentials acceptable to NT WorkSafe. A risk management plan must comply with any requirements imposed by the regulations. These plans will take the place of Mining Management Plans.

Please refer to Section 58 of the Act and Regulations 39A, 39B and Schedule 5 of the Workplace Health and Safety Regulations for more detail. NT WorkSafe information bulletin [09.01.11](#) Risk management plans also provides more information.

For mining activities a risk management plan must include;

- a fitness to work program; and
- set out of the management structure for the mining operation; and
- an emergency plan.

An employer must, before commencing a hazardous activity, lodge a copy of the relevant risk management plan with NT WorkSafe.

## Reporting incidents – Section 64 of the Act

If a reportable incident occurs, the employer must notify NT WorkSafe as soon as practicable of its occurrence (this would usually be by telephone on 1800 019 115) and provide NT WorkSafe with a written notification of the incident in an approved form [FM137](#) within 48 hours of its occurrence.

A reportable incident is:

- a work-related accident; or
- an incident at a workplace creating a risk of a work-related accident and consisting of:
  - a major structural failure or collapse; or
  - an explosion, implosion or fire; or
  - the escape, spillage or leakage of a harmful, or potentially harmful, substance; or
  - the fall of an object from a height; or
  - the failure of a system on which the health or safety of workers is dependent (such as a ventilation system in a mine); or
- an electric shock suffered at the workplace; or
- an incident classified by the regulations as a reportable incident.

In addition, Regulation 46 requires that an accident involving a hazardous activity for which a risk management plan is required is a reportable incident. This means that any accident arising from mining activity is reportable under the Act.

Please refer to NT WorkSafe information bulletin [09.01.04](#) Notification of incident.

## Workplace Health and Safety Regulations

The following are examples of elements of the new legislation that will impact on mines operation:

- Plant Registration and Design and Licensing Part 3, 6, 9 of the Regulations
- Mine Specific Regulations New Part 11A of the Regulations
- Risk Management Plans Section 58 of the Act
- Health surveillance Section 60 of the Act

## The role of registered licence assessors

### Licences

For a new licence or upgrade, applicants are required to be assessed by an approved assessor.

An 'approved assessor' means the Authority or a person or an organization registered by the Authority (NT WorkSafe). The original assessment report must be submitted with the application. Evidence of training will not be accepted as an assessment report. NT WorkSafe can provide a list of approved assessors.

(NOTE: an assessment report is usually not required where the applicant is applying for a reciprocal to a licence or certificate of competency issued by another regulatory body).

### Designated plant registration requirements

Designated plant is defined in Schedule 1 of the Workplace Health and Safety Regulations and generally means high hazard plant. Definitions of designated plant can be found under Part 1 of the Regulations.

All designated plant on mine sites must now be design registered, design verified, plant item registered by NT WorkSafe and inspected by Designated Plant Inspector.

For registration requirements please refer to NT WorkSafe information bulletins in the 12.02 series – in particular [12.02.01](#) What is Designated plant, and [12.02.04](#) Owner's responsibilities.

Every mining operator is required to have registered all of their plant items with NT WorkSafe by 30 June 2009. Plant not registered by this date must be taken out of service.

If at any time circumstances dictate, stronger compliance action will be taken as appropriate. Staged compliance does not remove the obligation on the duty holder to comply with legislation or the community expectation for enforcement.

### The role of third party plant inspectors

Regulation 100(1) of the Workplace Health and Safety Regulation 2007 places an obligation on owners of designated plant to ensure that their plant is inspected by an inspector of designated plant.

NT WorkSafe information bulletin [12.02.02](#) Plant – Designated Plant Inspectors provides information and a list of persons registered to inspect.

### The Dangerous Goods Act and Dangerous Goods Regulations

- The National Standard for the Storage and Handling of Workplace Dangerous Goods [[NOHSC:1015\(2001\)](#)] is incorporated into, and forms part of the Regulations
- The National Code of Practice for the Storage and Handling of Workplace Dangerous Goods [[NOHSC:2017\(2001\)](#)] provides guidelines on how to achieve compliance in this area
- The National Standard for the Control of Major Hazard Facilities [[NOHSC:1014\(2002\)](#)] is incorporated into, and forms part of the Regulations

### Licensing Part 1 Division 2 of the Regulations addresses the requirements of licensing

This legislation sets out safe working practices and standards that will ensure the minimum risk to people from the handling of dangerous goods. All persons coming into contact with dangerous goods should make themselves familiar with the legislation and be aware of their responsibilities.

The *Dangerous Goods Act* and Regulations provide for the regulation of the manufacture, packaging, labelling, import and export, sale, transport, storage, use and disposal of all classes of dangerous goods. Provisions are included for prompt and compulsory reporting of accidents involving dangerous goods.

### Storage of dangerous goods

Section 45 of the Standard states the actions required by an occupier to ensure that the Authority is notified in writing when premises are likely to contain a total quantity of any Class of dangerous goods that exceeds the Schedule 1 "Manifest Quantity". Where dangerous goods are stored in quantities greater than prescribed, the owner or occupier of a premise will need to ensure that they hold a licence and that the storage facilities comply with relevant regulations or standards for safe storage.

The following are examples of storage amounts in excess of which a Licence to Store is required:

- Flammable Liquids: Class 3 PG I and PG II (formerly Class 3.1 e.g., Petrol, Acetone) 100 litres; Class 3 PG III (formerly Class 3.2 e.g., Kerosene, Turpentine) 1,000 litres;
- Combustible liquids: (diesel fuel) 50,000 litres;
- Industrial Gases: Class 2.1 (e.g. Acetylene) 60m<sup>3</sup> (ie, 8 size G cylinders); Class 2.3 (eg, Chlorine, Ammonia) 50kg.

## Other Legislation

The following legislation is also applicable on mine sites:

- *DG Road and Rail Transport Act*
- *Radioactive Ores and Concentrates (Packaging and Transport) Act*
- *Electricity Reform Act*
- *Electrical Workers & Contractors Act*

## Information Bulletins

[12.02 Designated plant](#)

[04.01 Dangerous goods - explosives](#)

[04.07 Security sensitive substances](#)

For further information please contact NT Worksafe on 1800 019 115 or go to [worksafe.nt.gov.au](http://worksafe.nt.gov.au)