

Fact sheet

Auditing of WHS practising certificate holders for MOC

March 2023

Inform holders on what to expect and prepare for being audited

Purpose

Inform on how the Resources Regulator will conduct auditing of practising certificate holders through contractors, so holders can be prepared and respond as required to complete an audit.

Relevant legislative provisions

Part 9 Statutory functions Division 4 Practising certificates, section 142 Conditions of practising certificates

Background to practising certificates

Practising certificates are issued to eligible persons for 5 years. A certificate condition is the holder must comply with the gazetted MOC scheme. The holder must keep a record of all learning and hours, including evidence for their current and previous certificate, and be able to provide it to the Resources Regulator when required.

Holders apply to renew their practising certificate, which requires them to declare they have met the MOC requirements. They must also declare they have maintained their contact details with the Resources Regulator as per that condition on their certificate.

Regulatory approach to auditing maintenance of competence

The Resources Regulator seeks to ensure practising certificate holders are complying with the standard condition on their certificates to maintain their competence as gazetted.

An audit determines whether the holder is **conforming** to the gazetted MOC scheme.

Holders may be requested to submit a log to a contractor, as part of ongoing random auditing across classes of mines and statutory functions, to ensure a sufficient cross sample is achieved annually. The number of audits conducted is proportional to the number of certificate holders for the various functions eg. more Deputies will be audited than Ventilation Officers.

Audits may also be undertaken directly by the regulator as part of broader regulatory activity:

1. If the ability of an individual (or a class of certificate holders) to exercise a statutory function is called into question through regulatory action, such as the investigation of a complaint or incident, or the identification of adverse trends in any review of incident causation.
2. Prior to a holders current certificate expiring to inform them whether they have met the gazetted requirements
3. Where routine random audits identify systemic or recurring issues with certificate holders not meeting (or not being able to meet) the gazetted requirements

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Process and outcomes

The following points provide an overview of the random audit process (and is also summarised in the email request from the auditing contractor to the holder):

- a. Resources Regulator provides certificate holder details to the contractor undertaking the audits so they can declare any conflicts of interest before requesting the log
- b. Upon receiving a request from the contractor, the holder emails log within 14 calendar days to contractor
- c. Contractor audits log and requests a minimum of 4 items of evidence for different claims from the holder
- d. Holder provides evidence within 7 calendar days
- e. Contractor completes audit and notifies outcome in a letter to the holder listing each type of non-conformance (only once regardless how many times they claimed incorrectly). The number of non-conformances informs whether the holder is substantially conforming (6 or less) or non-conforming (more than 6).
- f. Holder may seek clarification from the contractor on the audit outcomes (but not for general guidance on how the MOC scheme works).
- g. The Resources Regulator will review a cross sample of audits, including all those where the submitted log was identified as substantially non-conforming.
- h. Enforcement action will not be taken in relation to a certificate holder with substantial non-conformances, however they will be followed up when the holder renews their practising certificate, and they will be required to submit their corrected log. If the previously identified non-conformances have not been addressed, the regulator may consider enforcement action.
- i. Where a holder fails to submit a log within the specified timeframe, without a reasonable excuse, this may also result in enforcement action for failing to comply with section 142(2)(a) of the NSW WHS (Mines and Petroleum Sites) Regulation 2022.

How to be ready for an audit

- Have a working knowledge to apply the gazetted MOC Scheme requirements, with our [website guidance](#), including samples and log template (not mandatory)
- Maintain your log so you can provide within 14 days if requested, and subsequently evidence. If you are using an app, ensure you know how to download it and check it regularly.
- Ensure you update your contact details if they change (including your email address) by accessing the form on the Resources Regulator portal (mining workers)
- Ensure the settings on your email inbox do not prevent a contractor email from being delivered (including checking your spam folder)

Further information

General: Mining Competence team: mca@regional.nsw.gov.au 1300 814 609 (option 2 then 3)

Auditor contractors to June 2023: info@coremine.com.au pcaudits@coalservices.com.au

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