

Practising certificates

Compliance audits of maintenance of competence

2023

January 2024

Published by the Department of Regional NSW

Title: Compliance audits of maintenance of competence

Department reference number: RDOC24/7376

More information

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Acknowledgements

Mines Rescue Pty Ltd and Core Mine Training Pty Ltd (auditing contractors)

Amendment schedule		
Date	Version	Amendment
25 January 2024	0.1	Draft outline
1 May 2024	0.2	Editorial and branding changes

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Executive summary

This is the report on the second year of compliance audits in 2023 for maintenance of competence of practising certificates.

A pilot of outsourcing audits of NSW practising certificate holders for their maintenance of competence was conducted from March to October 2022 by the NSW Resources Regulator and found to be successful.

Two suppliers (Mines Rescue Pty Ltd and Core Mine Training Pty Ltd) were again contracted under the Department of Regional NSW procurement framework to request and each complete 50 audits in accordance with the Regulators prescribed processes. The contractors satisfied their contracted requirements and liaised very effectively with the Resources Regulator to manage requests for extensions of time by holders to provide logs and evidence.

206 requests for 100 audits were completed from March to June 2023, 57 more than in 2022 which achieved 105 audits. Overall, the findings are the majority of holders (82%) were found to be substantially complying with the gazetted maintenance of competence requirements, with 4% totally conforming. This is almost the same as the auditing results from 2022. There was a difference in how the audits were conducted, where exceeding claiming in a year of the maximum of 1/3 of total hours were not to be found to be non-conforming.

Similarly to the 2022 audits, 14% of audits in 2023 found the holders substantially non-conforming, with 5 receiving a major non-conformance for not satisfying the total amount of hours for the function. The Resources Regulator is deliberating on its response to each of these audits. It is likely for the majority it will probably take no further action as the holders are demonstrating attempts to be compliant but are only deficient administratively.

The types of non-conformances found in audits for 2023 for a total 462 are improved to that in 2022 (498), with the top 3 frequent types remaining the same.

While the Resources Regulator notes there was no substantial improvement in the 2023 audit results, it is satisfied after the second year of auditing that holders are continuing to generally attempt to be compliant. Results from future auditing annually will be monitored for a general upward trend in compliance levels improving, to inform its engagement with stakeholders.

This report is to be published to share the learnings with stakeholders so going forward holders can benefit in applying them to be compliant for satisfying their maintenance of competence condition.

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1. Key findings

1.1. Audit outcomes

1. Overall practising certificate holders audited are acting to comply with their maintenance of competence condition by completing and recording their learning activities in appropriate logs.
2. The majority (82%) of the 100 practising certificate holders audited for compliance with the maintenance of competence scheme conditions were found to be substantially conforming (6 or less types of non-conformance with none being major)
3. The 14% of holders found to be substantially non-conforming (7 or more non-conformances or 1 or more major one) were generally claiming far more hours than required, but were not ensuring they were claiming correctly.
4. The types of non conformances against the gazetted scheme improved in frequencies and in total (462) to that found in the 2022 audits (498).

2. Actions noted arising for the Regulator

1. This report on the pilot be published on the Resources Regulator website once finalised and sent to stakeholders by first quarter 2024.
2. The Resources Regulator will be continuing the outsourcing of audits, possibly with procuring a panel of eligible contractors to complete a target number of audits annually from 2024 to 2025.

3. Background

3.1. Practising certificate scheme

NSW practising certificates are issued for a 5 year period to eligible individuals to exercise WHS statutory functions in classes of mines, when nominated by a mine operator.

The certificates have conditions, including standard ones for:

- maintaining their competence in accordance with the gazetted scheme.
- keeping their contact details up to date with the Regulator

Guidance is provided on the NSW Resources Regulator website, including the Guide to the maintenance of competence scheme for practising certificates.

3.2. Auditing of practising certificates

The Resources Regulator in the Guide: practising certificate holders for maintenance of competence' stated a minimum of 5% of holders to be audited for compliance annually with the aim of up to 10% to be audited. The minimum amount of 5% has not been achieved. Instead, a small number of voluntary audits were completed during 2019-2020 to assist practising certificate holders to comply. Learnings from these audits have been shared by the Regulator in presentations to industry and in revised guidance and templates.

In consultation with the Mining and Petroleum Competence Board, the Regulator decided to continue outsourcing of compliance audits for 100 audits annually to inform the level of compliance by a cross sample of practising certificate holders and plan future compliance auditing.

4. Introduction

4.1. Scope and objectives

4.1.1. Scope

The Resources Regulator to outsource to selected organisations from March to June 2023, 100 or more compliance audits for the maintenance of competence condition for a cross sample of practising certificate holders for different functions, who were due to renew their certificate from 1 July 2023 to 30 June 2024.

4.1.2. Objectives

1. inform practising certificate holders audited on their conformance with the maintenance of competence gazetted scheme prior to them possibly renewing their practising certificate
2. establish an indicative level of compliance to the maintenance of competence condition by practising certificate holders for each WHS statutory function and in total
3. identify what parts of the gazetted scheme holders are not conforming with to establish any themes that can be addressed by stakeholders, including future education engagement by the Regulator
4. outsource the audits to capable contractors to ensure they are carried out competently and fairly

4.2. Process

1. Contractors reviews list of practising certificate holders supplied by the Regulator to be audited and declare any conflicts of interest with any holder so they did not audit them.
2. Using standard templates, contractors email practising certificate holders on behalf of the Regulator to request a copy of a log of learning activities claimed for their current certificate with 14 days, with a reminder email after this for a further 7 days. A copy of a factsheet for Auditing of WHS practising certificate holders for MOC.
3. Non responses or responses from holders with reasons for not providing a log were referred to the Resources Regulator for follow up and resolution.
4. Contractor assessed each log and requested from holder a minimum of 4 items of evidence for different claims and types of learning to be supplied within 14 days.
5. From the initial draft audits conducted by the contractors with any new auditors, a sample of their audits were reviewed by the Resources Regulator and feedback provided on their suitability and accuracy.
6. Audit completed and notification letter emailed to holder informing them of the outcome which were categorised by the number of different type of non-conformances found for different requirements as either:
 - a. Substantially conforming: 6 or less
 - b. Substantially non-conforming: 7 or more

Note 1: categorisation is not based on total number of non-conformances, so holders were not penalised for recurring non-conformances of a certain type. For example, claiming in excess of 4 hours per year for a certain type of learning for 2 or more times only counted as 1 non-conformance.

Note 2: for this round of audits, exceeding claiming in a year of the maximum of 1/3 total hours was not found to be non-conforming. This was a result of consultation with the NSW Mining and Petroleum Board on audits outcomes from 2022.

7. All records of the contractor and holder returned to the Resources Regulator for storage in holder electronic files.
8. Resources Regulator reviews audits outcomes of substantially non conforming to determine whether any further compliance and enforcement action is to be undertaken.

4.3. Contractors

Mines Rescue Pty Ltd and Core Mine Training Pty Ltd were procured for the audits. Refer to 5. Contracting for more details.

4.4. Auditees

The contractors were provided with contact lists of certificate holders for statutory WHS functions for classes of mine they did not audit last time. It also reflects they are predominately most familiar with practising certificate holders at these classes of mines in providing training and maintenance of competence app services. Both contractors were required to declare any conflicts of interest with individuals and not audit them, which did occur.

Approximately 10% of each function for certificate holders, whose certificates expired between 1 July 2023 to 30 June 2024, were audited on a random basis across the lists provided. This meant a greater number of holders were audited for the larger numbers for functions (deputy, undermanager, open cut examiner).

Functions with a small number of holders (eg. ventilation auditor) were not audited, given the numbers of them audited in 2022.

Table 1 - Audits to be completed by contractor for class of mine and each function

Contractor	Class of mine	Functions	Target amount 2023	Target amount 2022
Core Mine	Surface - coal	Mining Engineering Manager	7	10
		Open Cut Examiner	19	10
		Electrical Engineer	2	10
		Mechanical Engineer	2	10
	Surface - mines	Quarry Manager (tier 1)	2	10
	Underground - coal	Ventilation Officer	4	3
		Ventilation Auditor	1	3
	Underground - metalliferous	Mining Engineering Manager	2	3
		Underground mine supervisor	11	10
	Mines Rescue	Underground - coal	Mining Engineering Manager	6
Undermanager			20	10
Deputy			20	10
Electrical Engineering Manager			2	3
Mechanical Engineering Manager			2	3
Total			100	101

5. Contracting

5.1. Project

The following activities formed the project for outsourcing of auditing:

Table 2 - High level project plan of activities by month

Month of 2022/23	Activities of Regulator and contractors
December 2022 to January 2023	Request and receive quotations for evaluation and selection from 2 selected organisations who previously audited.
February – March	Awarding contracts to organisations that quoted. Commenced sending requests from spreadsheets provided. Project kick off meeting.
May – June	Monthly meetings or upon completion of milestones between Regulator and contractors.
June	Project close out meetings.
July 2023 – ongoing	Regulator review of audit outcomes, in particular those holders substantially non-conforming to decide on any further action. Preparation of report on pilot and outcomes.

5.2. Procurement

Procurement was carried out by the Resources Regulator in accordance with the Department of Regional NSW framework for low value procurement up to \$150,000. This enables services to be obtained by requesting a quotation from selected organisations.

Mines Rescue Pty Ltd and Core Mine Training Pty Ltd were selected to quote because of their:

- Specialised expertise in maintenance of competence for NSW practising certificates and capacity to audit
- Size based on less than 200 employees means they are a Small to Medium Enterprise (SME)
- Core Mine Training was also eligible because they are a regional business (outside the Newcastle, Sydney and Wollongong metropolitan areas.
- Successful involvement in the pilot of outsourced audits

Quotes were received from both organisations and evaluated against the following criteria:

Table 3 - Evaluation criteria for quotes for auditing pilot

Evaluation	
Mandatory criteria	1. Organisation business processes shall ensure their adherence to <i>Privacy and Personal Information Protection Act 1998</i> and support the Resources Regulator to comply
Weighted criteria	2. Fixed price for: <ul style="list-style-type: none"> a. a minimum of 50 audits plus price for each audit in excess of this amount b. requests completed to obtain audit log from holder
	3. Previous experience and performance in meeting the requirements covered in the Statement of requirements, or related
	4. Working knowledge of WHS legislative requirements in Australia, relevant to authorising individuals to carry out statutory requirements
	5. Capability and capacity of the project team or individual to perform the Contract, using an auditing methodology of sufficient quality to achieve deliverables, citing any current qualifications or accreditation for auditing or related

Both quotes were evaluated and found to be satisfy the criteria to represent value for money to be recommended for a contract.

Contracts were executed to commence the project in March 2023 and completed in June with the invoicing of work.

5.3. Delivery

Each contractor completed the following activities as part of the contract:

Table 4 - Completed contracted activities

Evaluation	Request for log	Audits completed
Core Mine (surface mines functions mainly)	124	50
Mines Rescue (underground mine functions)	82	50
Total	206	100

The requests for logs have increased by 57 in 2023 compared to 149 in 2022 for slightly more audits completed (105). The increase was mainly due to surface mines holders. The Regulator is following up requests where a log was not supplied (refer 6.0 Audit outcomes).

The Resources Regulator reviewed a sample of audit assessments and outcome letters from each contractor with any new auditing staff members to provide feedback, which was actioned by them.

6. Audit outcomes

6.1. Responses to log requests

As stated in 5.3 Delivery, there was 206 requests from the contractors to holders to provide a log of claimed learning. These are broken down by function with number of logs not supplied for reasons given to contractor:

Table 5 – Responses or other from holders requested to provide log

Class of mine	Functions	Requests 2023	No. audit (non-response or response)	No. audit Percentage
Surface - coal	Mining Engineering Manager	9	3	33%
	Open Cut Examiner	54	36	67%
	Electrical Engineer	3	1	33%
	Mechanical Engineer	4	2	50%
Surface - mines	Quarry Manager (tier 1)	2	0	0%
Underground - coal	Ventilation Officer	6	2	33%
	Ventilation Auditor	1	1	0%
Underground - metalliferous	Mining Engineering Manager	11	8	73%
	Underground mine supervisor	33	22	67%
Underground - coal	Mining Engineering Manager	13	3	23%
	Undermanager	17	6	35%
	Deputy	35	12	34%
	Electrical Engineering Manager	11	8	73%
	Mechanical Engineering Manager	7	3	43%
	Total		206	106

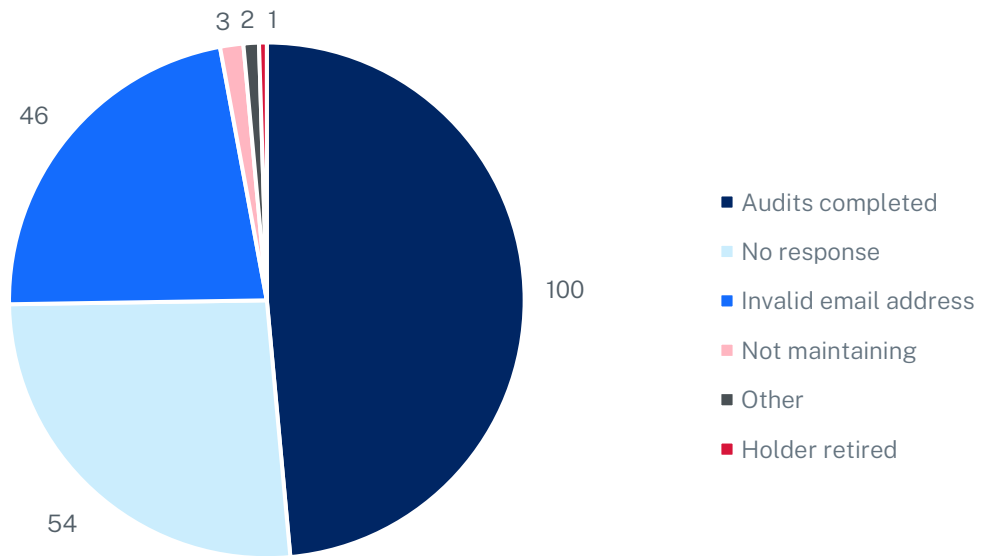
The high numbers of responses or non-responses for not providing a log were for the following functions:

1. Electrical engineering manager and mining engineering manager underground mines other than coal – 73%
2. Underground mine supervisor and open cut examiner – 67%
3. Mechanical engineering manager (43%) and mechanical engineer (50%)

The most problematic areas are metalliferous underground functions and coal surface.

In the figure below for all responses or non-response, for 51% of requests (106), there was no response (54 - 26%) or were invalid email address (46 - 22%) or the contractor was advised they no longer wanted to practise (not maintaining 3 - 1%) or holder retired (1 - 1%) or other (2 - 1%).

Figure 1 - Request for log responses



A further breakdown of responses to each contractor for request for logs which were not provided reveals the following (Mines Rescue – underground, Core Mine predominately surface) showing a greater number for surface functions, in particular invalid email addresses:

Figure 2 – MOC audits not carried out with reasons provided – Mines Rescue Pty Ltd

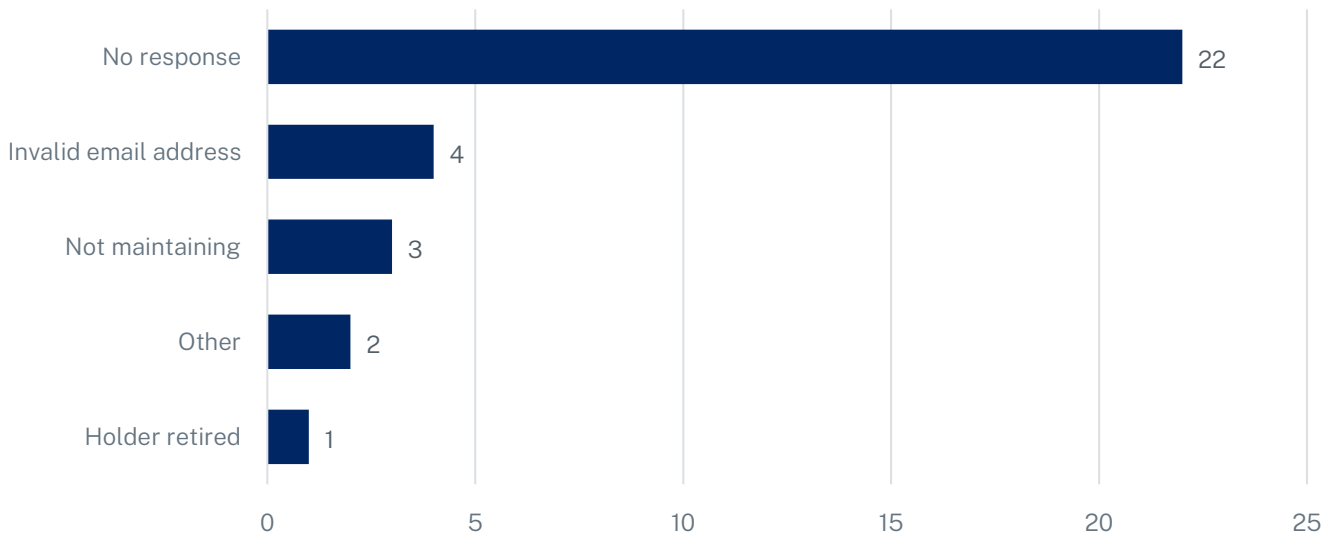
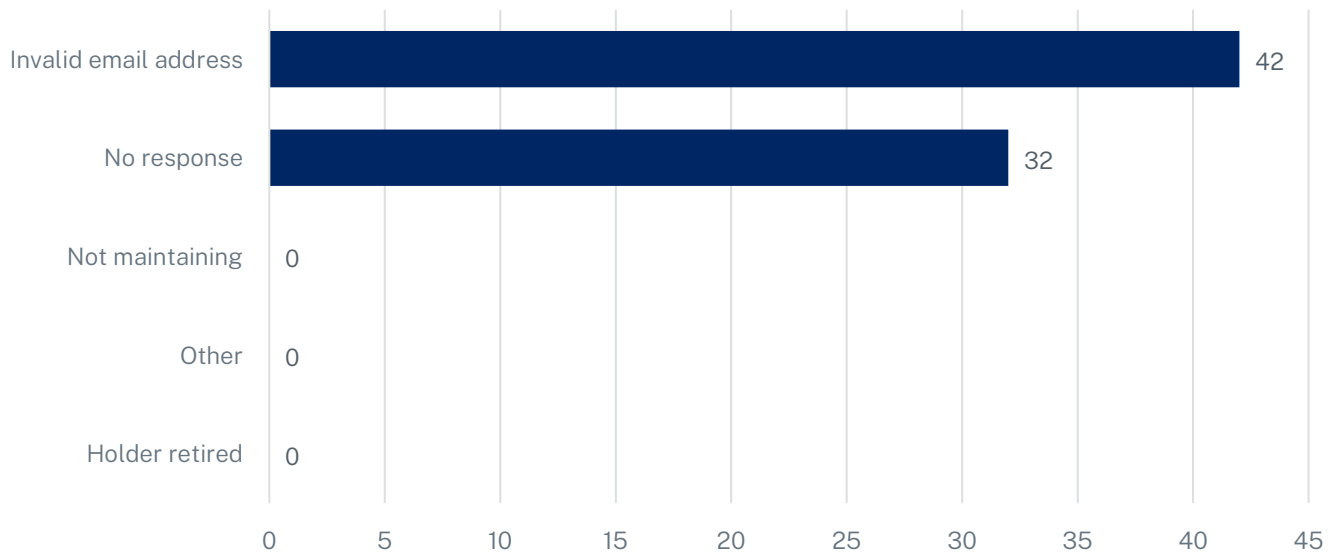


Figure 3 – MOC audits not carried out with reasons provided – Core Mine Pty Ltd



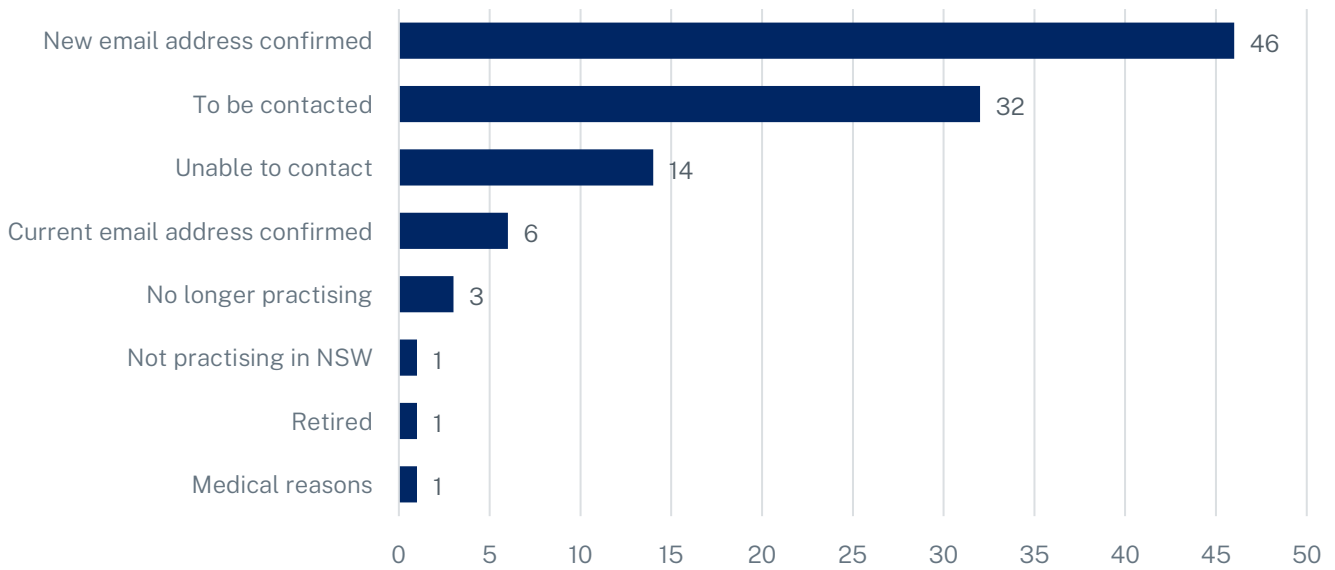
The requests where no log was provided for the various reasons are being investigated so as to resolve, with the focus on obtaining current contact details and/or a log for this round of audits or the next. A summary of the outcomes and any further action proposed is provided below.

Table 1 – Resources Regulator follow up of audits not carried out

Response	Number	Resolution – PC holder contacted	Follow up action (if any)
No response	54	25	PC holder informed to either update contact email, change spam setting or respond to auditors. Still being followed up to be audited next time or upon renewal. Non-responses for Mines Rescue still to be investigated and contacted (22)
Not delivered	46	35	As above, ‘Not delivered’ for Mines Rescue to be contacted (4)
Retired	1	0	Noted – allowing certificate to lapse shortly
Other	2	0	Noted – records to be updated & further action taken
Not maintaining their maintenance of competence with reasons stated	3	0	Noted – still to be follow up to confirm whether certificate is to be cancelled.
Total	106	60	Note: Mines Rescue Pty Ltd non-audited still to be contacted (32)

The chart below displays the above table values:

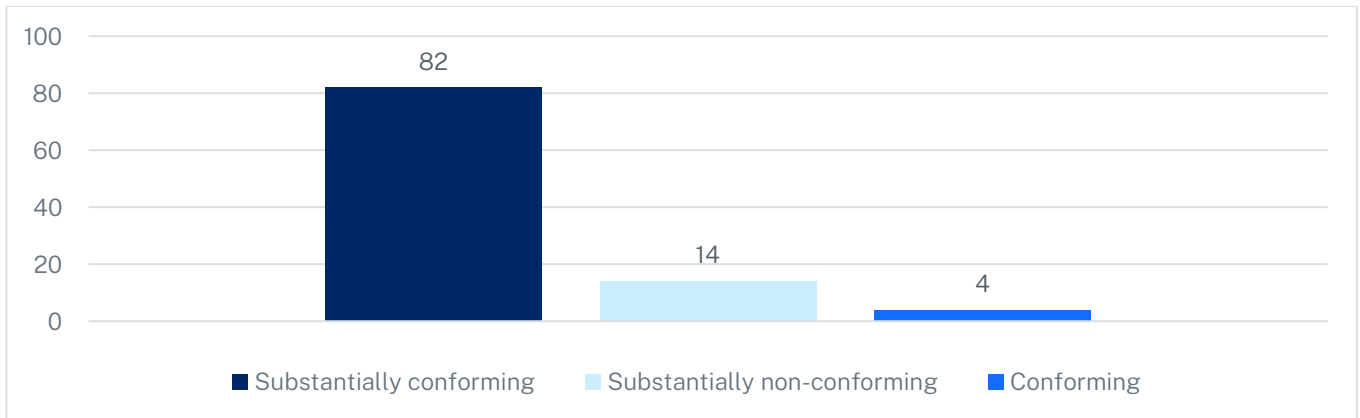
Figure 4 – MOC audits not carried out – Resources Regulator follow up and findings



6.2. Audits completed and conformance

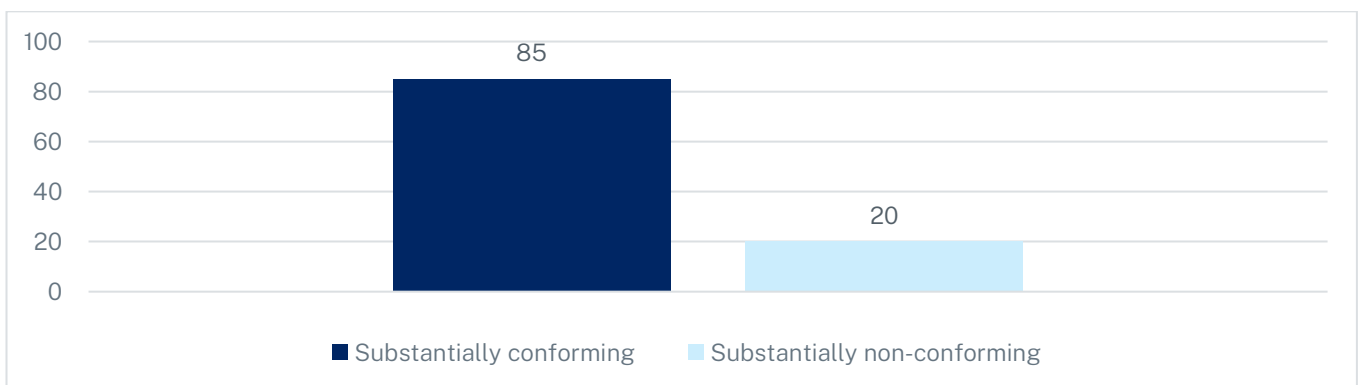
100 audits were completed with a breakdown of those found to be substantially conforming (6 or less types of non-conforming) to substantially non-conforming (7 or more):

Figure 5 – Breakdown of conformance levels for auditees 2023



Results are almost the same as those for 2022 as shown below, except 4 (4%) were found to be conforming in 2023 (no non-conformances):

Figure 6 – Breakdown of conformance levels for auditees 2022



In comparing outcomes between 2022 and 2023, a significant difference in how audits were conducted is noted in 4.2 Process. For this round of audits, exceeding claiming in a year of the maximum of 1/3 total hours was not found to be non-conforming. This was a result of consultation with the NSW Mining and Petroleum Board on audits outcomes from 2022 to not appear to be discouraging people to do more than required. Results for 2023 may have been worse if this requirement had not been waived.

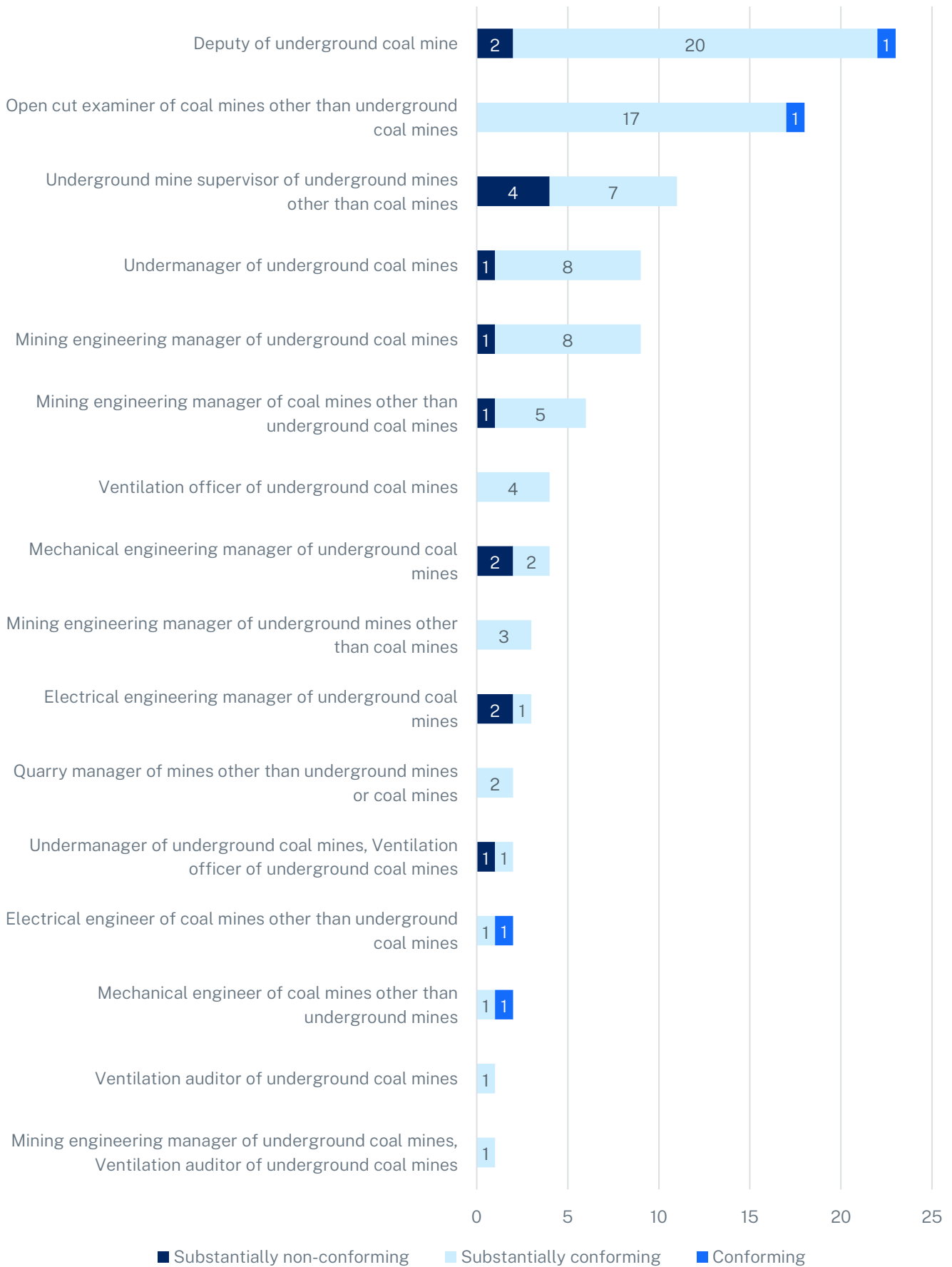
The number of audits completed versus planned is summarised below. The auditing process is to send out requests for log initially for the number planned. If this fails to obtain sufficient audits, further requests are sent out. Sometimes holders from the initial round of requests will respond later causing audits to be carried out then that planned.

Table 7 – Number of audits versus planned

Class of mine	Functions	Planned 2023	Actual
Surface - coal	Mining Engineering Manager	7	6
	Open Cut Examiner	19	18
	Electrical Engineer	2	2
	Mechanical Engineer	2	2
Surface - mines	Quarry Manager (tier 1)	2	2
Underground - coal	Ventilation Officer	4	4
	Ventilation Auditor	1	1
Underground - metalliferous	Mining Engineering Manager	2	3
	Underground mine supervisor	11	11
Underground - coal	Mining Engineering Manager	6	10
	Undermanager	20	11
	Deputy	20	23
	Electrical Engineering Manager	2	3
	Mechanical Engineering Manager	2	4
	Total	100	100

The breakdown of conformance by statutory functions for the highest function held by each holder:

Figure 7 - Conformance levels by highest statutory function held by each holder



Analysis of how well holders for functions conformed in audits against 2022 results reveals:

Table 8 – conformance by function 2022-2023

Functions performance	2023	2022	Comments
Best performing	Open cut examiner Deputy	Mining Engineering Manager of coal mines other than underground Mechanical Engineer of coal mines	2023 based on a larger number of audits completed for each function, even though a lot of non-responses/responses to log requests
Least performing	Underground Mine Supervisor Electrical and Mechanical Engineering Managers	Underground Mine Supervisor and Quarry Manager, then Electrical and Mining Engineering Managers ug coal	As above for supervisor. Smaller numbers of managers mean individual outcomes affect % more.

As noted in the 2022 audit report, first line supervisor functions (Deputy, Open Cut Examiner) conformed well given the larger numbers audited and expectations that these holders were not as used to initiating and recording maintenance of competence activities compared to Managers.

6.3. Non-conformances

The figure below shows the different types of audit findings for 2023 and are explained below:

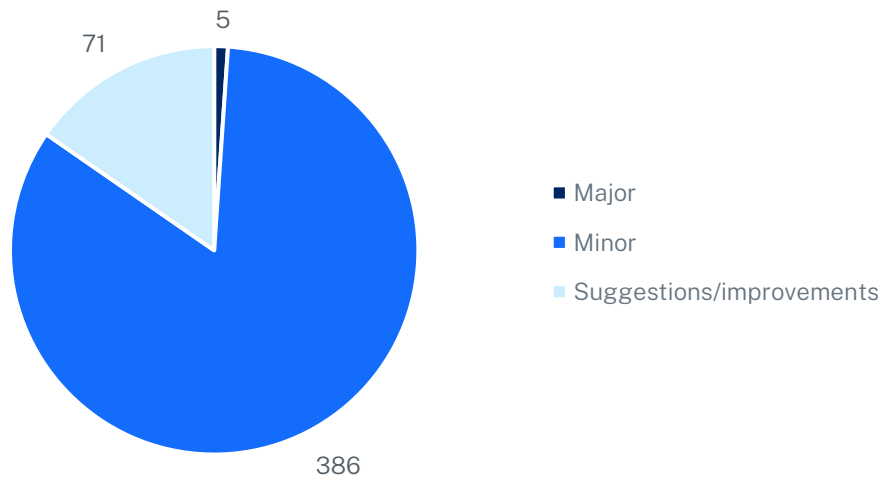
Major non-conformance: if total learning hours required for the function over the 5-year period of a certificate has not been satisfied or entries in the log are identifiable as fraudulent.

Minor non-conformance: audit finding that are not a major non-conformance, which can be any of the following types:

1. not recognised learning activity under gazettal
2. in excess of the capped annual amount for the learning type (e.g. reading)
3. not relevant to WHS (e.g. general environmental management), or
4. not supported by sufficient details to verify the activity is a valid activity that occurred and can be claimed.
5. Minimum total amount of hours required for an area or type of learning has not been satisfied or in the cases of maximums exceeded.
6. Other requirements of the gazetted scheme are not complied with eg. exceed 1/3 of your total hours claimed for a type of formal learning such as conferences.

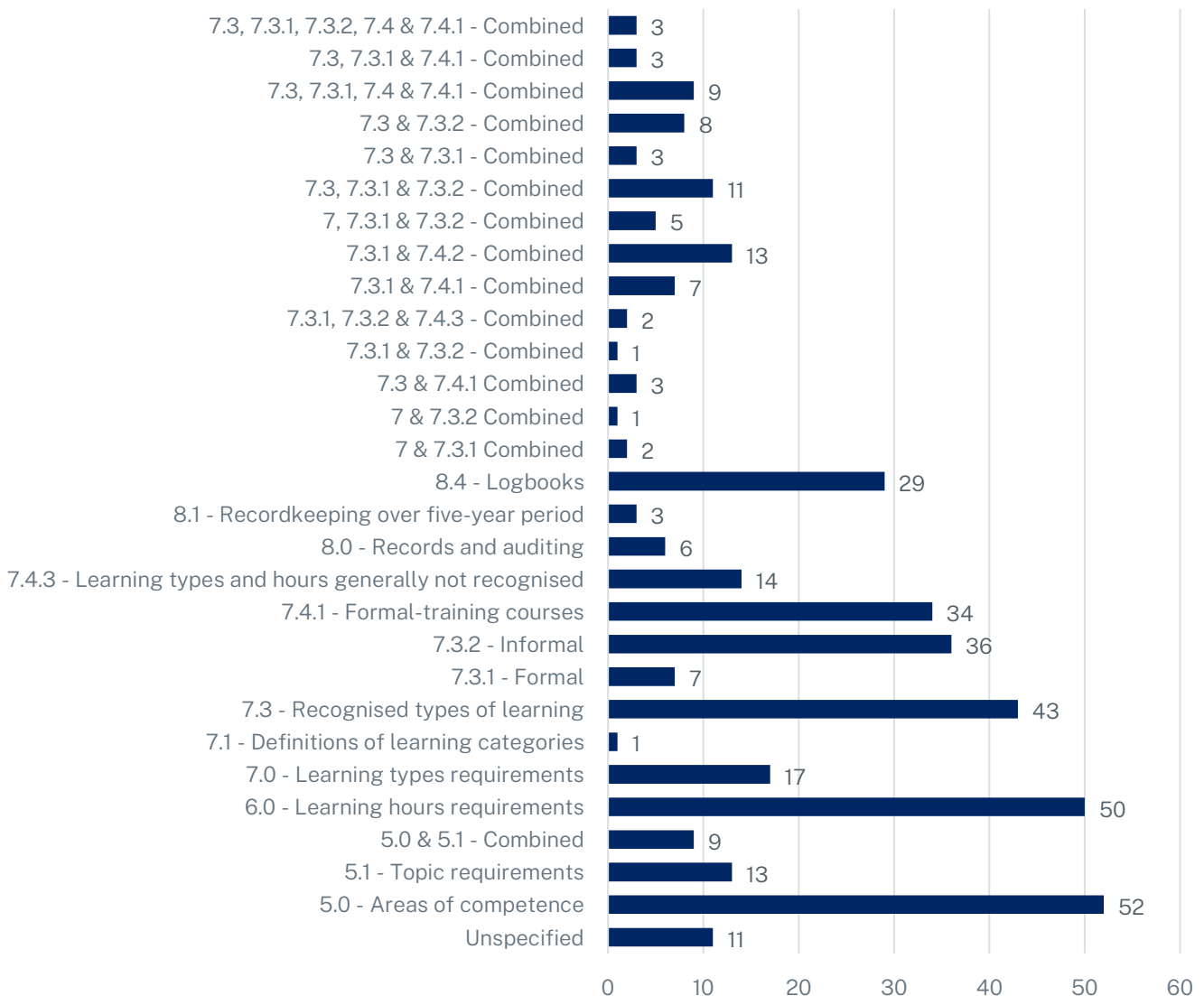
Note: as noted before, for the 2023 audits, exceeding the maximum of 1/3 of total hours in any one year was not applied, so as to not appear discouraging people to do more than required.

Figure 8 - Breakdown of conformance types for auditees



Analysis of different types of non conformance identified in audit outcome letters by referencing parts of the Guide: maintenance of competence for practising certificates reveals the following, noting some audit findings referenced more than one part of the guide:

Figure 9 - number of non-conformances for different requirements



The ranking by highest to lowest of the number of non-conformances for a section of the Guide is:

1. 7.0 Learning types requirements (17), with some auditors being more specific to reference a sub section or in combination with another section:
 - 7.3 Recognised types of learning (43)
 - 7.3.1 Formal learning types (7)
 - 7.3.2 Informal learning types (36)
 - 7.4.1 Formal training courses (34)
 - 7.4.3 Learning Types and Hours generally not accepted (14)

Various combinations of sub sections for 7.0(68)

A combined total for all of the above is 219.

2. 5.0 Areas of competence (52):

- 5.1 topic requirements (13)
- 5.0 and 5.1 combined (9)

Combined total 74

3. 6.0 Learning hour requirements (50):

Combined total 50

4. 8.0 Record and Auditing (6):

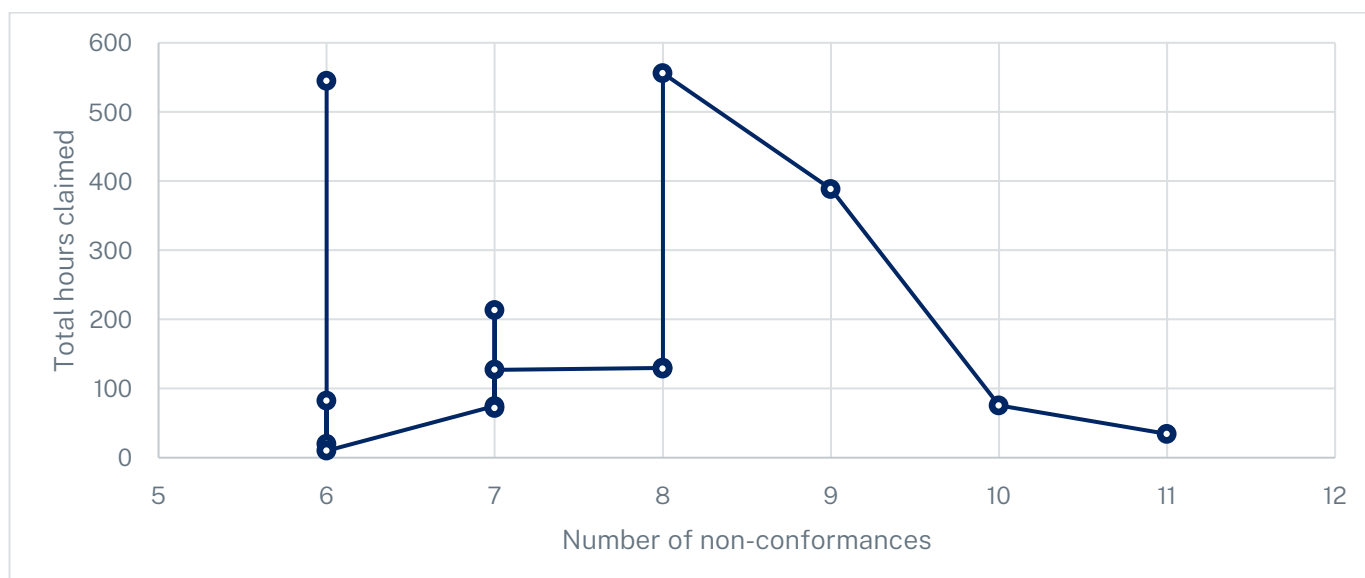
- 8.1 Record keeping over 5-year period (3)
- 8.4 Logbooks (29)

Combined total 38

6.4. Substantially non-conforming holders

The review of the 14 practising certificate holders found to be substantially non-conforming for number of non-conformances versus total hours claimed learning reveals:

Figure 10 - Substantially non-conforming holders analysis



Analysis of the audits for these holders reveals:

- 5 of the holders received a major non-conformance because they were not on track to satisfy the minimum total hours. So this means they were substantially non-conforming despite only receiving 5 or more minor non-conformances (total 6 or more)
- 4 holders for underground mine supervisor function had hours claimed ranging from 20 to 529. All were found not to be on track to satisfy the minimum total hours of 48 given covid dispensation of 20% from the normal 60 hours required.
- The remainder of the holders exceeded their total hours claimed by multiples of up to 11 times
- Majority had extensive detailed logs but did not:
 - a. apply requirements to what they were claiming eg. learning not eligible or
 - b. did not meet the requirements eg. 6 of the 14 holders have not completed the Learning from Disasters course or 7 hours of training in disasters.

Disappointingly these findings for substantially non-conforming are consistent with those found in the 2022 audits.

The Resources Regulator is yet to finalise its regulatory response to these substantially non-conforming holders, given some holders were well short of satisfying the requirements. For the majority it will probably take no action against them for the same reasons for those substantially conforming in 2022:

1. Most have demonstrated they had made a substantial effort to comply with the schemes requirements and were co-operative with the auditors.
2. Most still have time in which to rectify any non-conformances in the log before their certificate expires. If they choose to renew then they can declare they have satisfied the requirements as required in the application.
3. The Regulator has indicated that it would apply more leniency in this introductory five year period of the scheme.

All those with substantial non-compliances will be informed in writing of the requirement to correct the non-conformances in their log or evidence documents. They will not be asked to submit a copy of their corrected log with their application for renewal of their practising certificate, as they are required to declare they are complying with the maintenance of competence condition on their practising certificate.

7. Referencing

[NSW Guide to the maintenance of competence scheme for practising certificates \(March 2021\)](#)

[NSW gazette maintenance of competence requirements](#)