

LEGISLATION UPDATE

No. 4/2004

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APPOINTMENT OF INSPECTORS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

As indicated in Legislation Update 1/2004 of 4 June 2004, the *Mining Legislation Amendment (Health and Safety) Act 2002* has fully commenced.

The main effect is to enable the Minister for Mineral Resources to appoint officers of the then Department of Mineral Resources (DMR) as inspectors under the *Occupational Health and Safety Act 2000* (OHS Act). The Minister has recently appointed officers of the now Department of Primary Industries (DPI) as OHS Act inspectors.

The relevant officers are those who are also inspectors, mine safety officers and investigators under the *Coal Mines Regulation Act 1982* (CMRA) and the *Mines Inspection Act 1901* (MIA). These officers now hold dual appointments

In the near future they will move to using functions and powers under the OHS Act. The principal noticeable difference will be that where they issue a notice it will be a prohibition, improvement or investigation notice under the OHS Act rather than a notice under the dedicated mining legislation.

In line with current policy, DPI officers will not have a power to issue penalty notices under section 108 of the OHS Act.

This change is being made in anticipation of the new mine health and safety legislation under which government officials will use functions and powers in the OHS Act. It provides an opportunity for the Department and industry to become familiar prior to the full change.

The current distinction between inspectors, mine safety officers and investigators will remain in terms of notice issuing powers. The separation of the 'mining' jurisdiction from that of WorkCover will also remain.

The *Occupational Health and Safety Amendment (Mines) Regulation 2004* put in place an administrative arrangement whereby review of notices will be by the Minister for Mineral Resources rather than WorkCover in relation to the mining jurisdiction. This is likely to be delegated to officers within DPI and, if so, advice will be forthcoming.

DPI officers will continue to provide advice of concerns under section 61 of the CMRA and section 36B of the MIA. These duties will be replaced by equivalent provisions when the new mining legislation comes into force.

**FURTHER INFORMATION CAN BE OBTAINED FROM MR CHRIS ELLICOTT - (02) 4931 6623
OR YOUR LOCAL DEPARTMENT OF PRIMARY INDUSTRIES' OFFICE:**

Maitland: 1300 736 122 Armidale: 6776 0300 Broken Hill: (08) 8088 9300 Cobar: 6836 4392
Lightning Ridge: 6829 0678 Lithgow: 6351 3052 Orange: 6392 6333 Singleton: 6572 1899 Wollongong: 4227 1699
Visit the DPI website www.dpi.nsw.gov.au