



Government of Western Australia
Department of Mines and Petroleum
Resources Safety

MINES SAFETY AND INSPECTION ACT
– WHAT EMPLOYEES AND EMPLOYERS
NEED TO KNOW

General duty of care – employees and employers

What is my duty of care as an employee?

All employees have a general duty of care to ensure their own safety and health at work.

They also have a general duty of care towards others, to ensure their own actions or inactions do not put others' safety or health at risk.

The duty of care applies to anyone who can reasonably be foreseen as likely to be injured by an act or omission.

This means you not only have to work safely yourself — you must also ensure that your actions do not affect the safety or health of others. You are also obliged to remove or report any unsafe conditions you see in the workplace.

Unsafe acts by others must also be stopped or reported if necessary.

How careful do I have to be?

You must take the amount of care a reasonable person would be expected to observe.

Basic principles are that, firstly, the standard of care required would rise with the seriousness of the injury that could result from carelessness.

Secondly, the greater the likelihood of injury, the greater the care that should be taken to avoid it.

And thirdly, the easier it is to avoid injury, the more reasonable it is to expect that appropriate

measures will be taken to ensure no injuries occur.

Note that unforeseen serious damage or injuries can happen through a series of minor careless mistakes.

Who do I have a duty of care towards?

The principle of having a duty of care applies to all workers (including those who are self-employed), supervisors, managers and employers at all levels including corporations. It is aimed at preventing anyone from being killed, injured or contracting an illness because of work activities or conditions in the minerals industry.

Under the legislation, gross negligence occurs if offenders knew their contravention of the Act was likely to cause death or serious harm to a person to whom they owed a duty of care, and they acted — or failed to act — in disregard of that likelihood, resulting in death or serious harm to that person.

What is my duty of care as an employer?

Employers are required to provide and maintain a working environment where, so far as is practicable, employees are not exposed to hazards.

This includes providing and maintaining safe workplaces, plant and systems of work at mine sites, as well as providing information, instruction, training and supervision so that employees can work without being exposed to hazards.

Necessary personal protective clothing and equipment must be provided at no cost to employees.

Provision must be made for first aid and emergency response to deal with accidents.

What about employing contractors?

Where a principal employer engages a contractor to carry out work, the principal has the duty of care responsibilities of an employer towards the contractor, any employees of the contractor, and all others engaged by the contractor on that particular contract.

This applies as if the contractor and employees were employees of the principal.

However, the principal's duty applies only in relation to matters over which the principal is able to exercise control.

In other words, the main employer is responsible for the safety and health of everyone at the mine site over whom they have a level of control.

The contractor is also responsible for its employees and others it has engaged to work on the contract, and has a duty of care as an employee of the principal.

What does the Act say about keeping mines safe?

The principal employer and the manager of the mine (both people who have the management or control of the mine) must ensure that, as much as practicable,

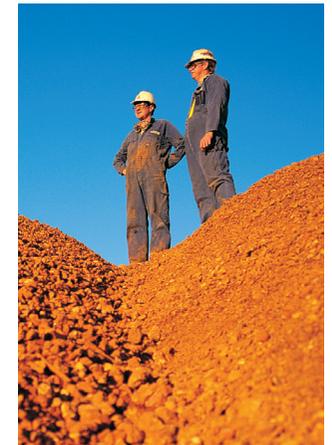
people who are at the mine or who are using the means of access to and egress from the mine are not causing or subject to hazards, whether or not they are employees.

Employees and contractors also have a responsibility to notify the principal employer or mine manager if they become aware of a hazard affecting the mine or access to and from parts of a mine.

This means that if there is a blockage or obstacle at or near a mine portal, in a decline or near an escape shaft that is caused by disabled plant, a rock fall, unstable ground or any other cause, action must be quickly taken to make the access safe.

Similarly, access roads in open cut mines must be kept clear.

This is necessary so that workers can get in and out of the mine without exposing themselves to hazards and, equally importantly, can exit the mine quickly if there is an incident where evacuation is needed.



What if there is a problem regarding health and safety?

Employers must consult and cooperate with their supervisors, any safety and health representatives and other employees regarding occupational safety and health at the mine.

The purchase, use, cleaning, maintenance, transportation and disposal of plant and substances must also be carried out in ways that ensure employees are not exposed to hazards.

This means all processes involved in the mining operation must be thought through and set up so that no one is exposed to foreseeable hazards.

What must I do if I see something wrong happening?

Every person working in a mine must immediately report to their supervisor any potentially serious occurrence that arises in connection with their work, as well as any situation in the mine they believe could be a hazard. In turn, the supervisor must immediately advise the manager (or delegate) of the report.

This includes reporting near-misses as well as actual hazards.

Any injury suffered on the mine must be reported to the mine manager immediately. This is to ensure action is taken to prevent further injury by similar hazards.

What happens if nothing is done about a hazard?

Within a reasonable time, the mine manager is required to investigate the situation, determine what action is to be taken, ensure it is completed, inform the relevant people of the result, and also notify the outcome to the person who made the report.

Naturally, the Act is not there to make life hard for people. Its aim is quite the opposite — it is there to make sure everyone is looked after. But at the same time, there are penalties to discourage anyone from taking shortcuts, failing to report incidents and injuries, and putting people at risk.

What if an employee fails to comply with safety instructions?

An employee breaches the Act if they fail to reasonably comply with the employer's safety instructions, fail to correctly use protective clothing and equipment provided by the employer after being properly instructed, or misuse or damage safety equipment provided at the site.

What responsibility does the manufacturer of mine equipment have?

Mining uses many items of large, heavy, complex and unforgiving plant.

It is therefore essential that all plant purchased, installed and used at a mine site is specified, designed and constructed so it is safe to use and maintain. This means all plant must be tested and examined to guarantee its use will not expose its users to foreseen hazards.

In addition, adequate information must be provided regarding any hazards that could be caused by misuse of the plant, how to properly use the plant and what maintenance regime must be implemented. This information must be provided by the manufacturer and be available whenever required to people installing, operating and maintaining the plant.



Want to know more?

For information on safety and health in the mining industry, look at the Resources Safety website at www.dmp.wa.gov.au/ResourcesSafety

The *Mines Safety and Inspection Act 1994* and Mines Safety and Inspection Regulations 1995 are available from the State Law Publisher's website at www.slp.wa.gov.au

The information in this brochure is intended as a general guide only. The relevant Acts and regulations should be consulted for detailed information, or contact your regional inspectorate.

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