

Discussion paper

Evaluation of the NSW practising certificate maintenance of competence scheme requirements

Work Health and Safety (Mines and Petroleum Sites) Act 2013

November 2023

Published by the Department of Regional NSW

Title: Discussion paper
Subtitle: Evaluation of the NSW practising certificate maintenance of competence scheme requirements

First published: October 2023

Department reference number: RDOC23/89703

Amendment schedule		
Date	Version	Amendment
September 2023	1	First published

© State of New South Wales through Regional NSW 2023. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute Regional NSW as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a department website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing September 2023 and may not be accurate, current, or complete. The State of New South Wales (including Regional NSW), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability, or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Abbreviations and definitions

Abbreviation	Term
Certificate of competence	<p>A certificate of competence is a qualification issued by the Resources Regulator recognising competency to perform a particular statutory function.</p> <p>A holder of a certificate of competence (or equivalent) is eligible to apply for a practising certificate (where a practising certificate is required).</p>
Formal learning	Formal learning is organised and structured learning, usually with specific learning objectives. For example, seminars, training courses and studying for work, health and safety (WHS) mining-related courses. Note: all formal training courses must satisfy specified criteria.
Higher-level managers	Higher-level managers are statutory functions such as mining, electrical and mechanical engineering managers.
Informal learning	Informal learning is semi-organised and unstructured learning of a more ad hoc basis. This would typically be gained on-the-job, such as when exercising the statutory function.
Middle management/technical specialists	Middle management/technical specialists are statutory functions such as undermanager, ventilation officer, electrical engineer, and mechanical engineer.
MoC	Maintenance of competence is a condition placed on a practising certificate holder by the Regulator to undertake specified learning.
MPCB	The Mining and Petroleum Competence Board is established under the WHS (MPS) Act to recommend standards and requirements regarding statutory functions to the Minister, which the Regulator implements.
Practising certificate	A practising certificate is a licence issued to an individual by the Regulator to carry out a statutory function(s) for a period of up to 5 years
Statutory function	A statutory function is a safety critical role identified in Schedule 10 of the WHS (MPS) Regulation that a mine operator must fill with a competent person (or Schedule 11 of the WHS (MPS) Regulation in the case of a Petroleum site).
WHS	work health and safety
WHS Act	<i>Work Health and Safety Act 2011</i>
WHS Regulation	Work Health and Safety Regulation 2017
WHS (MPS) Act	<u><i>Work Health and Safety (Mines and Petroleum Sites) Act 2013</i></u>
WHS (MPS) Regulation	<u><i>Work Health and Safety (Mines and Petroleum Sites) Regulation 2022</i></u>
The Regulator	NSW Resources Regulator regulates the WHS Act and Regulation and the WHS (MPS) Act and Regulation in the NSW mining and petroleum industries.
Supervisor	Supervisors are statutory functions such as a deputy, open cut examiner and underground supervisor.

Table of Contents

1. Introduction.....	5
1.1. Executive summary	5
1.2. Purpose of this discussion paper	5
1.3. Scope.....	5
2. Have your say	6
2.1. How to have you say.....	6
2.2. Summary of questions we are seeking feedback on	6
3. Background.....	7
3.1. The Resources Regulator	7
3.2. Mining and Petroleum Competence Board.....	7
3.3. Statutory functions framework.....	8
3.3.1. Statutory functions	8
3.3.2. Certificates of competence.....	8
3.3.3. Practising certificates	8
3.3.4. Mutual recognition and consistency across jurisdictions (Q1).....	9
4. NSW practising certificate MoC scheme.....	10
4.1. What is the NSW practising certificate MoC scheme?	10
4.2. How does the NSW practising certificate MoC scheme compare with other schemes?.....	10
5. NSW practising certificate MoC scheme learning requirements.....	14
5.1. Hours of learning	14
5.2. When learning can take place	14
5.3. Areas of learning	15
5.4. Types of learning	15
5.4.1. Formal and informal learning	15
5.4.2. Recognised formal and informal learning activities.....	16
6. Regulation of the scheme.....	20
6.1. Guidance and support	20
6.2. Compliance.....	21
Appendix A – WHS statistics.....	22

1. Introduction

1.1. Executive summary

The NSW Government is committed to evaluating the statutory function practising certificate maintenance of competence scheme (the MoC scheme) for those performing statutory functions under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*. The MoC scheme has been in place since 2017. It sets out the learning that practising certificate holders must undertake over a five-year period in certain areas of competence. The MoC scheme details the types of recognised learning and the required number of hours of learning across statutory functions. The MoC requirements for each statutory function are published in the NSW Government Gazette.

The MoC scheme has not undergone any formal evaluation process involving stakeholders since its commencement. During this time, the Resources Regulator has received anecdotal feedback about the complexity of the MoC scheme requirements. In response to that feedback, the evaluation process aims to identify opportunities for streamlining and reducing administrative and regulatory burden for practising certificate holders and the Regulator.

This discussion paper provides an overview of how the MoC scheme works. This includes the criteria that practising certificate holders must satisfy to maintain their competency in the statutory function/s they are performing. The discussion paper also includes critical analysis of how elements of the MoC scheme operate and asks targeted questions of the reader to canvass their views. In addition, the discussion paper includes information about how members of the public and stakeholders can make a submission to the Regulator to inform the evaluation.

1.2. Purpose of this discussion paper

The purpose of this discussion paper is to canvass stakeholder feedback on the NSW MoC scheme requirements for practising certificate holders for statutory functions. This will form part of an evaluation of the operation of the MoC scheme. Statutory functions are safety critical roles under the WHS (M&PS) Act and the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 (WHS (MPS) Regulation).

This paper details the requirements of the MoC scheme and asks targeted questions about the MoC scheme's overall operation.

The Regulator is seeking public submissions and comment to assist and inform the evaluation process. Public submission and comment are an important part of the process. The discussion paper provides information about how members of the public can be involved by the preparation of a submission or comment. The paper is intended to stimulate discussion, rather than provide an exhaustive list of issues.

Submissions are welcome on any matter within the terms of reference.

1.3. Scope

The scope of the evaluation is limited to the requirements of the practising certificate MoC scheme for statutory functions administered by the Regulator as published in NSW Government Gazette "Notice pursuant to Practising Certificate 2022 (Maintenance of Competency)".

1.3.1. Terms of reference

The evaluation of the MoC scheme requirements for statutory functions is limited to the following:

- a. Identifying opportunities for streamlining and reducing administrative and regulatory burden for practising certificate holders and the Regulator.
- b. Consideration of the current requirements on areas, types, hours and frequency of learning and caps on learning.

- c. How practising certificate holders can fulfil their obligations.
- d. Consideration of comparative schemes for mining industry statutory functions.

The evaluation will not address the following, as it is outside the terms of reference:

- The criteria for an applicant to be issued a certificate of competence or a practising certificate.
- Statutory functions in the WHS (MPS) Regulation to which the scheme applies.
- The length of time that a practising certificate is valid.
- Tier II quarry managers practising certificates and MoC.

2. Have your say

2.1. How to have your say

On behalf of the Mining and Petroleum Competence Board (MPCB), the Regulator is seeking written submissions to this discussion paper from stakeholders and other interested parties. You can make an individual submission or contribute to a joint submission through your employer, union, professional association, work health and safety group or committee or another forum.

You are welcome to respond to some, or all of the questions in this paper. Please outline the reasons supporting your view, particularly where you identify issues and problems. You can use the downloadable fillable form, or the online submission form provided, make your own submission, or complete the online survey.

Please provide your submission to meg.policy@regional.nsw.gov.au by close of business 16 February 2023.

The MPCB will consider responses to questions set out in this discussion paper before making its recommendations. Submissions or summaries will be published on the Regulator's website. Please advise us if you believe there is a reason your name should not be published with your submission.

For further information visit the NSW Government "Have your say" web page.

2.2. Summary of questions we are seeking feedback on

A summary of all questions in the paper are below

1. How important is consistency in approaches to MoC criteria across relevant Australian jurisdictions?
2. To what extent is the current MoC scheme keeping practising certificate holders up to date with respect to their competencies?
3. Do you think the current MoC requirements strike the right balance between administrative requirements and the scheme's safety benefits?
4. Are the hours of learning over the five-year period attainable for each of the types of practising certificates?
5. Does the MoC scheme provide sufficient flexibility for practising certificate holders to achieve the scheme's objectives? For example, with respect to:
 - a. the number hours needed to meet MoC requirements
 - b. the staggered learning approach (i.e. the restrictions on the number of hours that can be claimed in a year and the requirement to undertake learning in at least three of the five years)

A summary of all questions in the paper are below

- c. the requirement to undertake learning in the three specified areas (eight sub areas), including the minimum/maximum hours for each area
 - d. the compulsory requirement to undertake a minimum of seven hours of learning from disasters
 - e. the proportions of formal and informal learning and the caps on the hours for each
 - f. the allowable types of learning activities
 - g. the caps on hours placed on types of learning activities each year.
6. Is it appropriate to not allow a carryover of excess hours from when a practising certificate is renewed after 5 years?
 7. How easy is it to access the formal and informal learning opportunities required to meet the learning hours?
 8. How easy and efficient is it to record your hours of learning?
 9. What further support, guidance and oversight should the Regulator provide?
 10. Do you have any suggestions that may improve the MoC Scheme?

3. Background

3.1. The Resources Regulator

The Regulator is NSW's work health and safety regulator for mines and petroleum sites. This includes open cut and underground mines, petroleum sites, quarries and extractive operations, tourist mines, opal and other small-scale mines and mining exploration activities.

Part of the Regulator's role is to issue certificates of competence and practising certificates for statutory functions under the WHS (MPS) Regulation to applicants that meet the requirements set by the MPCB.

The Regulator implements and administers these schemes as part of its approach to ensuring mine operators are aware of their obligations. This includes ensuring competent people are carrying out the safety critical roles identified as statutory functions in WHS (MPS) Regulation. The trends in fatality and injury rates have been declining since the commencement of the practising certificate MoC scheme in 2017. The safety performance of the industry over the last 10 years is shown in Appendix A of the discussion paper. Although the trend cannot be directly attributed to the MoC scheme it forms part of the Regulator's approach. Section 6 of this document provides detail on the regulation of the MoC scheme.

Further information about the Regulator can be found on its [website](#).

3.2. Mining and Petroleum Competence Board

The MPCB is a statutory board that advises the Minister and the Regulator on:

- setting competence standards
- standards for assessing competence
- requirements for the maintenance of competence for exercising functions at a mine that impact on the health and safety of any person.

The MPCB is established under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (WHS (MPS) Act).

The MPCB’s role includes setting the standards for attaining certificates of competence and practising certificates for statutory functions detailed in the WHS (MPS) Regulation. This also includes setting the MoC required for practising certificates issued by the Regulator.

Further information about the MPCB can be found on its [website](#).

3.3. Statutory functions framework

3.3.1. Statutory functions

There are certain functions at mines and petroleum sites that can only be performed by people who are both eligible and have been nominated by the operator of the mine or petroleum site.

These functions are called ‘statutory functions’ as they are listed in Schedule 10 of the WHS (MPS) Regulation. The Regulator developed the statutory functions framework in consultation with the MPCB.

The roles that are statutory functions requiring a practising certificate are listed in Table 1 below.

Details of the requirements for nomination are specified in [Schedule 10](#) of the WHS (MPS) Regulation and further information is also available in the [Guide: Statutory functions](#).

3.3.2. Certificates of competence

The Regulator grants certificates of competence for particular statutory functions under Section 149 of the WHS (MPS) Regulation. The Regulator maintains a register of certificates of competence that it has issued.

A person is eligible to be granted a certificate of competence for a statutory function once the Regulator has assessed and deemed them competent to exercise that function. A certificate of competence does not expire. The Regulator may impose conditions on a certificate of competence and may cancel it.

Further information about certificates of competence can be found on the Regulator’s [website](#).

3.3.3. Practising certificates

Most statutory functions require a practising certificate for a person to carry out that function. Some statutory functions do not require a practising certificate. Table 1 below shows the statutory functions that require a practising certificate.

The Regulator administers practising certificates to ensure NSW mining professionals in critical roles have the necessary competencies to carry out statutory functions.

Where applicable, a holder of a certificate of competence (or equivalent) for a statutory function is eligible to apply for a practising certificate for that function. The Regulator may issue a practising certificate under [Section 140 of the WHS \(MPS\) Regulation](#) for five years and may impose conditions on it (including in relation to undertaking education). All practising certificates currently include a condition requiring the holder to undertake ongoing learning as part of the MoC scheme as [gazetted under Section 142 of the WHS \(MPS\) Regulation](#).

Table 1 - statutory functions requiring a practising certificate

Statutory functions requiring a practising certificate	
Underground coal mines	
<ul style="list-style-type: none">• Mining engineering manager• Electrical engineering manager• Mechanical engineering manager• Undermanager	<ul style="list-style-type: none">• Deputy• Ventilation officer• Ventilation auditor• Dust explosion control measures auditor

Statutory functions requiring a practising certificate	
Coal mines other than underground mines	<ul style="list-style-type: none"> • Mining engineering manager • Open cut examiner • Electrical engineer • Mechanical engineer
Underground mines other than coal mines	<ul style="list-style-type: none"> • Mining engineering manager • Underground mine supervisor • Electrical engineer
Mines other than underground mines or coal mines	<ul style="list-style-type: none"> • Quarry manager (Tier-1 or Tier-2 quarries) • Electrical engineer

According to the Regulator, in March 2023 there were 3,794 practising certificate holders in NSW¹. Further information about practising certificates can be found on the Regulator’s [website](#).

3.3.4. Mutual recognition and consistency across jurisdictions (Q1)

A holder of a current valid certificate to exercise a statutory function required in another state or New Zealand can apply for mutual recognition to obtain a NSW practising certificate for an equivalent occupation(s).

The [National Mine Safety Framework](#) was implemented with the objective of achieving consistency in mine safety legislation across Australian jurisdictions. This provided the opportunity for NSW to introduce practising certificates as the licence to carry out a statutory function. It was also an opportunity to discuss competency standards with other jurisdictions, including introducing MoC.

In NSW, the practising certificate scheme was included in the WHS (MPS) Act and Regulation as part of the standardisation of work health and safety legislation under the National Mine Safety Framework. The Regulator discusses competency standards and requirements with other Australian jurisdictions (e.g., Queensland and New Zealand) to achieve consistency in practising certificate approaches.

Holders of South Australian certificates of competence may be eligible to apply for a practising certificate if they satisfy additional criteria as published in the NSW Government [gazette](#) .

¹ Source: Resources Regulator Competence Unit

4. NSW practising certificate MoC scheme

4.1. What is the NSW practising certificate MoC scheme?

Mine safety legislation in NSW and other jurisdictions has evolved over time to include new requirements for those performing safety critical functions. This is usually in response to past mining disasters. These safety critical functions are now known as statutory functions. The Regulator developed the MoC scheme to ensure the competency of people performing statutory functions on NSW mine sites.

Inquiries into underground mining disasters at Moura No.2 in Queensland and Pike River in New Zealand identified that otherwise experienced mine management were incompetent in managing the specific hazards leading to those disasters. Both inquiries recommended programs be implemented to support those carrying out statutory functions to maintain their competence.

The MoC scheme commenced as a condition on practising certificates in 2017.

The MoC scheme sets out:

- the learning that must be undertaken over a five-year period in certain areas of competence
- the types of recognised learning and the number of hours of learning.

Learning requirements such as the required number of hours varies between the types of practising certificates. There are also strict rules about claimable hours.

A summary of the requirements in NSW is shown in Table 2 below and discussed in detail in Section 5 of this discussion paper. Further detailed information on the MoC scheme can be found in the Guide to maintenance of competence for practising certificates.

Question 1

How important is consistency in approaches to MoC criteria across relevant Australian jurisdictions?

Question 2

To what extent is the current MoC scheme keeping practising certificate holders up to date with respect to their competencies ?

4.2. How does the NSW practising certificate MoC scheme compare with other schemes?

Table 2 below describes the primary features of the NSW MoC scheme , along with the Queensland and New Zealand schemes. The table also describes the primary features for the Engineers Australia professional engineers' scheme. The Queensland scheme is the most complex and rigid. While the Engineers Australia scheme is the most flexible, it requires more learning hours over a shorter period. Each scheme includes features that could improve the current NSW MoC scheme, if applied.

Table 2 – Comparison of similar maintenance of competence schemes for statutory functions in Queensland and New Zealand plus the Engineers Australia scheme

Learning	NSW	Queensland	New Zealand	Engineers Australia
Functions / roles it applies to	Statutory functions requiring a practising certificate.	Statutory functions requiring a practising certificate.	Statutory functions requiring a certificate of competence.	<ul style="list-style-type: none"> • Chartered Engineer • On the National Engineering Register.

Learning	NSW	Queensland	New Zealand	Engineers Australia
Number years	5 years Must do learning in at least 3 years and cannot do more than 1/3 of hours in any year.	5 years Must do 20% minimum hours of required learning each year in 1 st 4 years and 25% maximum hours per year.	5 years	3 years Can be over 5 years if there is a valid reason for a career break.
Hours of learning	Depending on the practising certificate either: <ul style="list-style-type: none"> • 120 hours • 90 hours • 60 hours. 	Depending on practising certificate: <ul style="list-style-type: none"> • 150 hours • 135 hours • 120 hours. 	Depending on the practising certificate either: <ul style="list-style-type: none"> • 120 hours • 60 hours • 40 hours • 30 hours. 	<ul style="list-style-type: none"> • 150 hours
Types of learning	<p>Formal minimum either 67%; 50% or 33%</p> <ul style="list-style-type: none"> • seminars, workshops conferences (less than 50% formal learning) • formal training courses • tertiary qualification (less than 50% formal hours) • equipment manufacturer’s training (4 hours/year) • Mines Rescue Brigade training (4 hours/year). <p>Informal maximum either 33%; 50% or 67%</p> <ul style="list-style-type: none"> • delivering seminars etc • industry representation activities 	<p>Formal learning either 67% or 50%</p> <ul style="list-style-type: none"> • organised structured learning with specific goals and objectives which are defined by someone other than the learner • specifies learning outcomes includes classroom instruction, study for WHS mining related courses, workshops, seminars, webinars, or e-learning. <p>Informal learning either 33% or 50%</p> <ul style="list-style-type: none"> • occurs away from a structured, formal classroom 	<p>Suitable types learning activities identified</p> <ul style="list-style-type: none"> • unrestricted <ul style="list-style-type: none"> — industry events — field trips — receiving training — delivering training — presentations and publications — improving equipment — critical WHS documents — formal activities. • restricted activities (see below). 	<ul style="list-style-type: none"> • any tertiary course post-graduate award • short courses, • workplace learning activities • private study • service to engineering • presentation of courses and conferences • tertiary teaching or academic research • structured activities that meet the objectives of the CPD policy.

Learning	NSW	Queensland	New Zealand	Engineers Australia
	<ul style="list-style-type: none"> capped informal activities. 	<ul style="list-style-type: none"> independent of an instructor is experiential, includes viewing videos, self-study, reading articles, participating in forums, mentoring, and coaching sessions. 		
Areas of learning	<ul style="list-style-type: none"> Minimum 33% Mining and work health and safety (WHS) systems, including hours in four compulsory subjects; Safety management system; Principal hazards; Principal control plans; Specific control measures. Minimum 33% Legislation; Emergency management; Leadership and management. Maximum 33% General work health and safety topics (including learning from disasters 7 hours compulsory). 	<ul style="list-style-type: none"> mining methods legislation, emergency management and leadership health and safety/risk management 	<ul style="list-style-type: none"> operating and safety systems legislation emergency management leadership 	<ul style="list-style-type: none"> 50 hours must relate to the relevant area of practice 10 hours must cover risk management 15 hours must be about business and management skills 75 hours must cover a range of activities relevant to career interests.

Learning	NSW	Queensland	New Zealand	Engineers Australia
Caps on learning	<p>Yes</p> <ul style="list-style-type: none"> for a number of recognised learning activities there are seminars and conference less than 50% of formal learning for some types of learning (see above) for most recognised learning activities there is a maximum of 4 hours per year cap. For formal activities such as Attending equipment manufacturer's formal training courses or Mines Rescue Brigades person formal training and informal learning. Such as reading; field trips; risk assessments; PHMP, Investigations; emergency response drills; mentoring; industry expos; regulator interactions, delivering inhouse training. 	<p>Yes – depending on practising certificate</p> <ul style="list-style-type: none"> specified conferences 15hr; 20hr or 15hr/year specified courses 20 hr or 30 hrs/year industry participation 10/year reading 10hr/year site visits 10hr/year. <p>Suitable learning activities specifically identified and approved in a table for each type of Practising Certificate in online system.</p>	<p>Yes</p> <ul style="list-style-type: none"> restricted activities <ul style="list-style-type: none"> mentoring WHS committees reading publications <p>and capped for each activity over 5 years for either</p> <ul style="list-style-type: none"> 20 hours 10 hours 5 hours <ul style="list-style-type: none"> 4 hours for conference with no restriction on the number of conferences 	<p>Yes</p> <p>Restricted activities over a 3-year period.</p> <ul style="list-style-type: none"> 75 hours, workplace learning activities 18 hours private study 50 hours service to engineering 45 hours per published paper 75 hours per peer reviewed paper 40 hours tertiary teaching.
Carry over of hours	No.	No.	No.	No.
Recording of hours	Logbook required and must have and retain evidence.	Online system required with evidence to be retained.	Official logbook required and must have and retain evidence.	On-line system required.

5. NSW practising certificate MoC scheme learning requirements

The MoC scheme's learning requirements are categorised across three levels according to the hours of learning required:

- Supervisors (deputy, open cut examiner, underground supervisor)
- Middle management/technical specialists (undermanager, ventilation officer, electrical engineer, mechanical engineer, tier-1 quarry manager – in this category because only 90 hours is required); and
- Higher-level managers (mining, electrical and mechanical engineering managers).

This section discusses the following:

- the number of hours required
- when learning should take place over the five-year period
- the areas and categories of learning
- the types of learning that can be undertaken including the caps and restrictions limiting the different types of learning during the five-year period.

The requirements are discussed in detail in the [Guide – Maintenance of competence for practising certificates](#).

5.1. Hours of learning

Over the five-year renewal period of the practising certificate the following total hours of learning are required depending on the respective statutory function:

- Higher level managers - 120 hours
- Middle managers / technical specialist - 90 hours
- Supervisors – 60 hours.

NOTE: For practising certificates issued for multiple statutory functions the holder must complete the highest requirement of hours in each discipline.

The hours of learning required over the five-year period are similar to other comparable schemes (See Table 2). Compared with the Engineers Australia scheme of 150 hours over a three-year period for professional engineers, the requirements are not considered onerous. For the supervisor level it is equivalent to two days (12 hours) training during each of the five years of the practising certificate. The MoC scheme also allows for a mix of formal and informal learning to be completed.

5.2. When learning can take place

Total learning hours need to be completed within the five-year period. While the Regulator encourages practising certificate holders to complete some learning each year, individual circumstances, such as career breaks may limit the amount of annual learning some practising certificate holders may be able to complete.

Learning hours must be;

- completed in a minimum of 3 years out of the five-year period; and
- no more than one-third of total learning hours in any one year.

These requirements are designed to promote progressive completion of required hours over the five-year period and allow flexibility for career breaks and other breaks in learning. The

requirements specifically prevent practising certificate holders from completing all the required learning hours in a single year or two.

5.3. Areas of learning

The MoC scheme requires practising certificate holders to complete their respective hours of learning in the following three areas of competence:

1. Mining and WHS systems:

- a minimum one-third of total hours that include:
 - safety management systems
 - principal hazard management plans
 - principal control plans
 - specific mining related technical issues.

2. WHS legislation/emergency planning and management/leadership and management skills:

- a minimum one-third total hours that include:
 - emergency planning and management
 - leadership skills
 - management skills.

3. General WHS topics:

- a maximum one-third of total hours that includes a mandatory seven hours of learning from disasters.

It is compulsory to complete the required hours of learning across all of the subcategories listed above. This ensures that practising certificate holders are exposed to learning across a broad range of critical mining related WHS topics relevant to the statutory function they carry out. It ensures completion of learning on important topics such as principal mining hazards and emergency management.

The Regulator acknowledges that planning to ensure the 8 compulsory sub areas within the 3 primary areas of learning and the maximums/minimums on hours for each area may be complex for the practising certificate holder.

There may be more flexible approaches that maintain the requirement to undertake learning in the critical areas currently required. A more flexible approach may make planning easier for practising certificate holders.

5.4. Types of learning

Practising certificate holders are required to carry out both formal and informal types of learning over the five-year period. There are also different types of acceptable formal and informal learning activities. Many of the learning activities have caps or restrictions on the hours of learning that can be included.

5.4.1. Formal and informal learning

Formal learning is organised, structured learning that can occur across all areas of learning. A practising certificate holder is required to complete different proportions of the required hours of learning depending on whether they are a supervisor, middle manager/technical specialist, or higher-level manager.

The learning ratios are founded on the principle that different mixes of learning types are required according to the level and type of statutory function. At higher levels there is a greater external focus outside of the mine with formal learning types better able to support learning to maintain competence. For example, seminars and conferences on innovative technologies and standards. At lower levels, there is a more internal focus within the mine and informal learning types are more available and suitable to achieve this. For example, investigations and principal hazards.

For a practising certificate holder, the proportion of the full learning hours required to be formal learning is:

- higher level manager two-thirds of total hours (i.e. 80 hours)
- middle manager / technical specialist 1/2 of total hours (i.e. 45 hours)
- supervisor one-third of total hours (i.e. 20 hours).

Informal learning is semi-organised, ad hoc, and unstructured learning. It is typically on the job when exercising the statutory function. Higher level managers may claim a maximum of one-third of their learning hours through informal learning. Middle managers and specialists may claim a maximum of half their learning hours as informal. Supervisors may claim a maximum of two-thirds of their learning hours through informal learning.

The Regulator acknowledges that making compulsory requirements for a mix of formal and informal learning adds another layer of complexity to the MoC scheme. However, it ensures there is a mix of formal and on the job learning for each level of practising certificate focusing on informal learning for supervisors and formal learning for higher level managers.

5.4.2. Recognised formal and informal learning activities

Recognised learning activities and restrictions (caps) placed on them are outlined below for both formal and informal learning activities. It must be remembered there are quotas for the mix of formal and informal learning activities outlined in the above section 5.4.1 of this paper. There are also Regulator-recognised² formal and informal learning activities.

Table 3 Recognised formal learning activities and rules

Recognised formal learning	Claimable hours formal learning
1. Attending industry seminars/webinars / workshops/conferences/forums with health and safety content, such as those run by industry or related organisations*.	Actual hours per seminar/workshop (excluding any hours not relating to safety and health of the relevant statutory function(s)). Rule: this type of learning cannot account for more than half (50%) of the total formal hours required over the 5 years or of the total formal hours the certificate holder can claim to satisfy the total hours required.
2. Successfully completing formal training courses delivered externally by an organisation.	Actual hours.
3. Completing study or training towards tertiary qualifications (That are part of the Australian Qualifications	Rule: this type of learning cannot account for more than half (50%) of the total formal hours required over the 5 years or of the total formal hours the certificate holder can claim to satisfy the total hours required. Restricted to courses relevant to WHS and the practising certificate face-to-face, electronic or other form of direct interaction between the certificate holder and the training

² Section 7.3 of the Regulator’s Guide – Maintenance of competence for practising certificates

Recognised formal learning	Claimable hours formal learning
Framework ³), including degrees and industry training qualifications that are pre-requisites for NSW certificates of competence examinations. *	institution; completing required assessments either individually or as a group that involve studying and application of learning; required reading of information or attending field excursions for the qualification.
4. Attending in-house formal training courses conducted within an organisation. Note: excludes meeting time for non-training content. *	Actual hours. Rule: this type of learning cannot account for more than half (50%) of the total formal learning hours required over the five years or of the total formal hours claimable to satisfy the total hours required.
5. Attending equipment manufacturer's formal training courses. *	Actual hours up to a maximum of 4 hours per year.
6. Attending Mines Rescue Brigades person formal training courses or similar. *	Actual hours up to a maximum of 4 hours per year

* Does not include time allocated to lunches and breaks at conferences, workshops, seminars, training courses

Table 4 Recognised informal learning activities and rules

Recognised informal learning	Claimable hours informal learning
1. Reading publications such as (but not limited to) technical articles; technical publications; conference papers; presentations.	Actual hours up to a maximum of 4 hours per year.
2. Relevant field trips to maintain competence for the relevant statutory function(s), e.g., visiting other mines to see alternative mining methods.	Actual hours up to a maximum of 2 hours per field trip. Up to a maximum of 2 field trips (four hours total) per year.
3. Delivering or participating in workplace mentoring related to health and safety topics that is recorded in training records for the worker(s) involved or reports.	Actual hours up to a maximum of 4 hours per year.
4. Participation in emergency response exercises or drills.	Actual hours up to a maximum of 4 hours per year.
5. Organised meetings / sessions between mines / mine operators to share learnings (e.g., incidents).	Actual hours up to a maximum of 4 hours per year for participating in or delivering.
6. Attending relevant industry expos, relevant to health and safety for the individual maintenance of competence.	Actual hours up to a maximum of 4 hours per year.
7. Mines Rescue Brigades person exercises.	Actual hours up to a maximum of 4 hours per year.

³ Australian Qualifications Framework - Second Edition January 2013 (<http://www.aqf.edu.au/wp-content/uploads/2013/05/AQF-2nd-Edition-January-2013.pdf>)

Recognised informal learning	Claimable hours informal learning
8. Participation in risk assessments (this does not include day to day activities such as task focused risk assessment such as Take 5, JSA).	Actual hours up to a maximum of 4 hours per year .
9. Development or review of principal hazard management plans, or principal control plans.	Actual hours up to a maximum of 4 hours per year .
10. Participation in conducting investigations into incidents reportable under WHS legislation.	Actual hours up to a maximum of 4 hours per year .
11. The delivery of in-house formal training courses.*	Actual hours up to a maximum of 4 hours per year .
12. Interactions between Regulator staff and individuals for information and education programs. For example: attendance at meetings or information sessions.	Actual hours up to a maximum of 4 hours per year .
13. Attending industry representative meetings, such as (but not limited to) advisory groups; industry or specialist boards; panels of examiners membership; technical committees.	Actual hours (excluding administration and travel time).
14. Delivering industry seminars/workshops.	Actual hours per seminar/workshop (excluding travelling time and any non-related activity).

5.5. Learning management

5.5.1. Carrying over hours

A practising certificate holder may complete more than the required number of hours during the five-year period. The holder of the practising certificate cannot carry-over excess learning hours above the total number required between renewal periods. Other comparable schemes do not allow carrying over hours into a new period.

It may provide more flexibility to enable a practising certificate holder to carry over a small amount of excess learning of total required hours for the five-year period.

5.5.2. Availability of learning opportunities

Learning opportunities for practising certificate holders can be accessed face-to-face, virtually and/or through on the job experience. Learning opportunities are provided by the Regulator, tertiary institutions, Registered training organisations, internal training groups, industry, professional organisations and on-the-job experience.

For example:

- **The Regulator** provides formal learning such as technical engineering seminars and informal learning opportunities such as engineering networks, being a member of a certificate of competence examination panel, participating in industry boards and committees (e.g., MSAC, MPCB or technical group) and information sessions.
- **Tertiary institutions** provide relevant degrees and short courses.
- **Registered training organisations** provide vocational education courses and units of competence relevant to managing mining hazards, safety management systems and specific WHS, emergency management and mines rescue issues, including mines rescue training.

- **Learning from disasters** approved organisations to deliver the Regulator's *Learning from Disasters* seven-hour training package.
- **Industry organisations** provide relevant seminars, mine site visits and industry forums where the certificate holder can deliver papers or be a participant; technical and/or WHS groups.
- **Professional organisations** provide relevant seminars, short courses, and forums that offer participant and presenter opportunities; technical and/or WHS groups.
- **In-house training** either formal and informal training on safe mining methods, emergency management and WHS.
- **On-the-job learning** such as reading articles, participating in risk assessments or incident investigations, developing, and reviewing documents for the safety management system (PHMP or PCP), mentoring others, mine visits to share learnings, visiting original equipment manufacturers and attending expos.

The Regulator received anecdotal feedback that access to face-to-face learning opportunities in regional areas was limited. For example, registered training organisations, industry groups and professional groups offer limited services. However, formal and informal virtual learning opportunities are available. These include conference webinars; and virtual seminars; and technical networks. Opportunities for developing and giving presentations and authoring papers for web cast conferences are also available.

5.5.3. Planning and recording learning activity and hours

A practising certificate holder should plan their learning in conjunction with their managers or supervisor to identify their recognised learning needs. The practising certificate holder should regularly review learning progress. The review could include hours completed over a one-year period of the practising certificate and relevant formal and informal learning activities in the prescribed areas of learning.

Practising certificate holders must record enough details as necessary in a logbook (or equivalent) to provide evidence of all learning undertaken and hours being claimed. Practising certificate holders are required to keep some type of verifiable evidence of learning.⁴ This could include certificates of participation, attendance records, payment receipts, emails, letters, and proof of attendance that can be made available.

An Excel logbook template is available on the Regulator's website and is a standard for alternative methods of recording equivalent hours. It is acknowledged there are a number of computer applications available for practising certificate holder to use for the recording of MoC learning.

⁴ For evidence see section 7.3 of the Regulator's [Guide – Maintenance of competence for practising certificates](#)

Question 3

Do you think the current MoC requirements strike the right balance between administrative requirements and the scheme's safety benefits?

Question 4

Are the hours of learning over the five-year period attainable for each of the types of practising certificates?

Question 5

Does the MoC scheme provide sufficient flexibility for practising certificate holders to achieve the scheme's objectives? For example, with respect to:

- a. the number hours needed to meet MoC requirements
- b. the staggered learning approach (i.e. the restrictions on the number of hours that can be claimed in a year and the requirement to undertake learning in at least three of the five years)
- c. the requirement to undertake learning in the three specified areas (eight sub areas), including the minimum/maximum hours for each area
- d. the compulsory requirement to undertake a minimum of seven hours of learning from disasters
- e. the proportions of formal and informal learning and the caps on the hours for each
- f. the allowable types of learning activities.

Question 6

Is it appropriate to not allow a carryover of excess hours from when a practising certificate is renewed after five years?

Question 7

How easy is it to access the formal and informal learning opportunities required to meet the learning hours?

Question 8

How easy and efficient is it to record hours of learning?

6. Regulation of the scheme

The Regulator is responsible for the administration of the MoC scheme established under the WHS (MPS) Regulation. The Regulator provides guidance and support to practising certificate holders and carries out compliance activities. These include inspection and monitoring of practising certificate holder compliance with completing recognised learning and recording of those hours.

6.1. Guidance and support

Since the implementation of the MoC scheme the Regulator has provided guidance, information and support to industry and practising certificate holders through:

- [web page](#) on practising certificate maintenance of competence
- guidance material – [Guide](#) Maintenance of competence for practising certificates

- information [Video on practising certificates](#)
- information sessions at commencement of the scheme and [webinar recordings ongoing](#)
- [FAQs](#) on maintenance of competence
- [Logbook](#) template and [sample logbook](#) for practising certificate holder
- regularly holding information sessions on statutory functions
- updates in Mine Safety News
- [Fact sheet](#) on logbook auditing.

The Regulator's Competencies and Authorisations Unit also provides specific one-on-one advice to industry and practising certificate holders via its email account and over the phone.

6.2. Compliance

Failure to comply with the MoC requirements on a practising certificate may lead to suspension or cancellation of the practising certificate.

The Regulator will conduct ongoing audits⁵ of logbooks and evidence to ensure compliance with the MoC scheme requirements. Practising certificate holders may be randomly selected to be audited at any time during the five-year period of their practising certificate.

In 2022 an audit program of 105 practising certificate holder logbooks found:

- practising certificate holders are acting to comply with their maintenance of competence condition by completing and recording their learning activities in appropriate logs
- the majority (81%) of the 105 practising certificate holders audited for compliance with the maintenance of competence scheme conditions were found to be substantially conforming
- the 19% of holders found to be substantially non-conforming were generally claiming far more hours than required, but were not ensuring they were claiming correctly
- the Regulator found that no further action was necessary to be taken against those found to be substantially non-conforming, given their level of overall compliance and other mitigating factors.

Recent industry and stakeholder feedback included the following suggestions for improvement:

- reducing the number of informal learning types and areas of competence, but retaining caps
- standardising and simplifying caps on types of learning
- summarising what can be claimed by function, like that provided in Qld
- recognition of audits (e.g., critical controls) and in house assessments
- clarifying whether in-house supervisor sessions and in house assessments of training can be claimed.

Question 9

What further support, guidance and oversight should the Regulator provide?

Question 10

Do you have any suggestions that may improve the MoC Scheme?

⁵ Section 8.2 of the Regulator's [Guide Maintenance of Competence for practising certificates](#)

Appendix A – WHS statistics

Source: www.resourcesregulator.nsw.gov.au/sites/default/files/2023-01/mine_safety_perf_report_2021-22.pdf

Figure 1 – Combined coal metals and extractives sectors Fatal Injury Frequency Rate

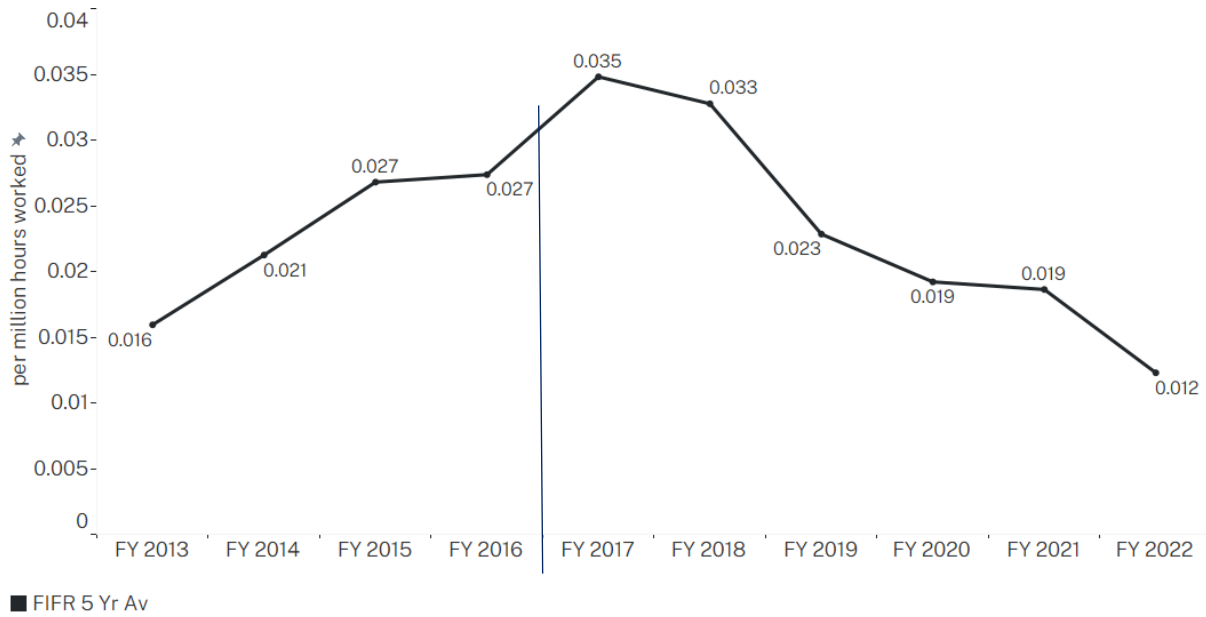


Figure 2 – Combined coal metals and extractives sectors lost time injury frequency rate

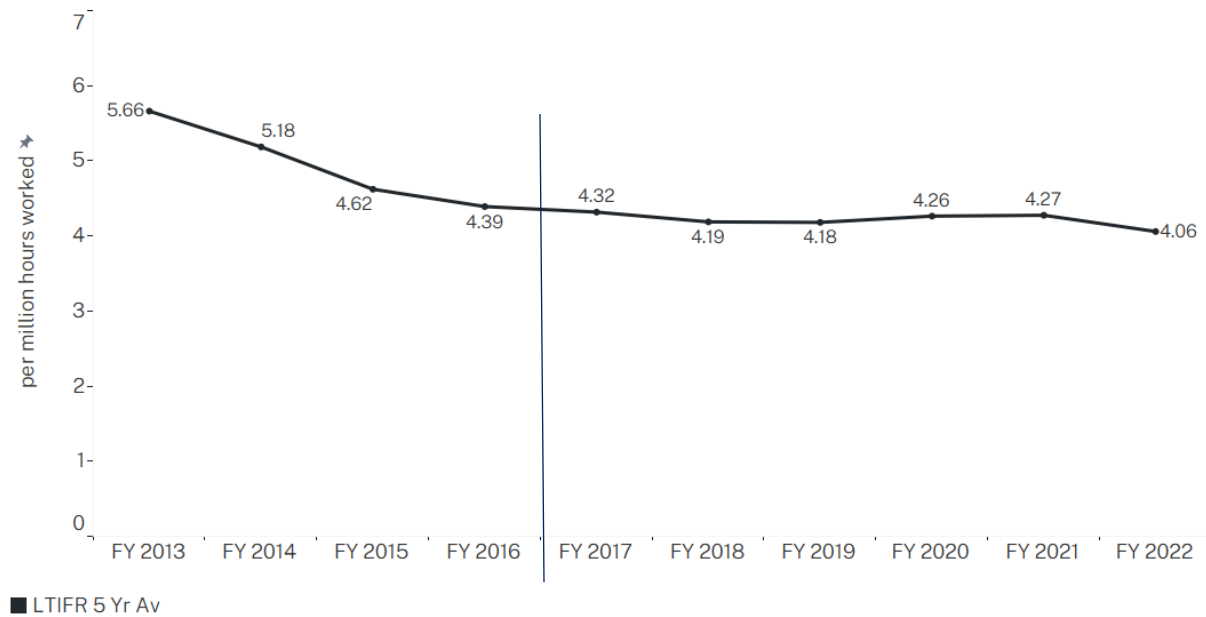


Figure 3 – Combined coal metals and extractives sectors serious injury frequency rate

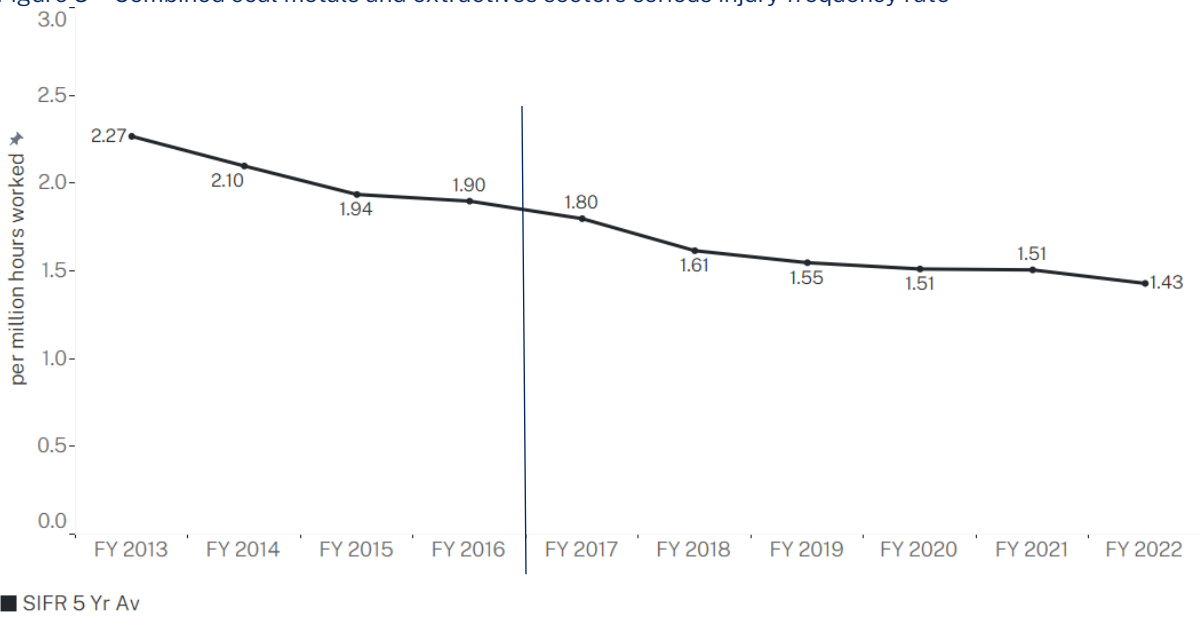


Figure 4 – Combined coal metals and extractives sectors total recordable injury frequency rate

