



Change to the Coal Industry Act 2001

Frequently asked questions

What the change to the Coal Industry Act means Requirements to insure with Coal Mines Insurance Insuring with Coal Mines Insurance

What the change to the Coal Industry Act means

What did the change do?

The change inserts a definition of “employer in the coal industry” to the Coal Industry Act:

*“**employer in the coal industry means any employer whose employees work in or about a coal mine”***

The change is intended to restore the original intention of the Coal Industry Act to ensure **all coal industry workers** are required to be insured under the Coal Mines Insurance Scheme.

When does an employer need to hold a policy with CMI?

Employers whose employees work in or about a coal mine **and** are engaged in mining activities in the coal industry are required to have a policy with CMI for those workers.

For example:

- You have employees that work in or about a coal mine for all or only part of a year
- You have employees that work some of the time in or about a coal mine and elsewhere for the rest of the time
- You have some employees that only work in or about a coal mine and some employees that never work in or about a coal mine
- You provide services ancillary to coal mining, for example, mining equipment maintenance and repairs, and construction.

Employers with workers who are engaged in mining activities in the coal industry but do not work in or about a coal mine should have a policy with CMI to cover those workers.

For example:

- Offsite coal washery and preparation plants
- Mine operator workshops
- Certain contractor workshops
- Mine operator administration offices.

Where not all your work is undertaken in the coal mining industry you will require a policy with another workers compensation insurer to cover wages for workers who work outside the coal industry (for all or part of the time). For most employers in New South Wales that will be under an iCare workers compensation insurance policy.

When doesn't an employer need to hold a policy with CMI?

Employers whose employees work in or about a coal mine **making deliveries** do not require a policy with CMI. For example:

- Fuel deliveries
- Equipment deliveries
- General deliveries.

I have workers on a coal mine – what does the change mean for me?

- Employers required to hold a policy with CMI who already have a policy of insurance with CMI to cover those workers don't need to do anything.
- Employers required to hold a policy with CMI but don't yet have one can discuss their workers compensation insurance arrangements and how to obtain a policy by **contacting the Insurance Services team on (02) 8270 3257 or at polycyservices@coalservices.com.au**

When does the change come into effect?

The change to the Act commenced on 1 July 2018.

However, a transition period is in place to give affected employers time to comply with the change to the Act and to ensure that there will be no undue impact on coal mining operations.

The transition period runs from 1 July 2018 to 30 September 2018.

During the transition period employers required to hold a policy with CMI will only need to ensure that they have a current Certificate of Currency from a workers compensation insurer to cover those workers.

From 1 October 2018, after the expiry of the transition period, employers required to hold a policy with CMI will need to ensure they have a Certificate of Currency from CMI for a policy that covers those workers.

What does "working in or about a coal mine" mean?

Work undertaken at any pit or other place where coal mining is carried on or which is being developed for coal mining to be carried on, including any place located at or in the vicinity of the mine, where material extracted from the coal mine is processed.

Why should all coal industry workers be insured under CMI?

The Coal Industry Act provides for approved companies to carry out statutory functions, which include delivering workers compensation insurance, health surveillance, occupational health and rehabilitation services, collection of statistics, monitoring of dust and other airborne contaminants, as well as supplying mines rescue emergency services and training to the New South Wales coal industry.

The companies approved to conduct these functions under the Coal Industry Act are Coal Services, Coal Mines Insurance and Mines Rescue. Together with the work health and safety legislation administered by the Resources Regulator the approved companies provide a holistic health and safety scheme for the coal mining industry in New South Wales.

Coal Services and its subsidiaries, Coal Mines Insurance and Mines Rescue, are industry-owned organisations jointly owned by the New South Wales Minerals Council and the Construction, Forestry, Mining and Energy Union.

Coal Services provides a specialist health and safety scheme for the New South Wales coal industry with robust controls and monitoring. This enables employers, who insure through the approved company, to access health monitoring for their workers. Monitoring, in turn, assists mine operators to identify high-risk areas and activities, and helps drive further improvements to workplace health and safety in coal mines.

The work of Coal Services, including the cost of health and dust monitoring under this specialist scheme, is met by funds generated through workers compensation premiums that are paid to Coal Mines Insurance, the Mines Rescue Levy, investment returns and commercial revenue. Coal Services does not receive funding from the New South Wales Government.

This scheme is unique to New South Wales.

Why was the change necessary?

The Coal Industry Act requires any employer in the coal industry to take out workers compensation insurance with the approved workers compensation company – currently Coal Mines Insurance.

The concept of "employer in the industry" was examined in the Supreme Court case of *Kuypers v Ashton Coal Operations Pty Ltd* in 2014 with the court concluding that:

In order for the specialised insurer [CMI] of employers in the coal industry to be liable for an injured employee's claim, the employer must be an employer "in" the coal industry.

This meant that even though an entity provides services which are integral to a particular industry that does not mean it is an entity "in" that industry. The question of whether an employer is "in" the coal mining industry requires an assessment of the substantive character of the industrial enterprise in which the employer is engaged and its connection with the coal industry. The decision in the *Kuypers* case meant that labour hire companies – or service providers to the coal industry – might not be considered "an employer in the coal industry" depending on the substantive character of the business carried out by that company or service provider. That is, despite its employees working in coal mines the company may not be required to insure their workers with Coal Mines Insurance.

Employers with employees working on a coal mine who are not using the Coal Mines Insurance scheme do not contribute funds to support the Coal Services health and safety monitoring of workers or the monitoring of dust and airborne contaminants. This puts coal mine workers at risk because of the difficulty in tracking health records and monitoring results over time.

I am a coal mine operator – what are my responsibilities regarding whether a contractor with workers in or about the mine has a policy with Coal Mines Insurance?

Under New South Wales workers compensation legislation, each employer is individually responsible for ensuring that they carry appropriate workers compensation insurance.

However, [S20\(1\) Workers Compensation Act 1987](#) also makes provision in certain cases for principals in a contracting arrangement to be liable to pay compensation to workers employed by contractors, where a contractor does not have a policy of workers compensation insurance and a worker employed by the contractor receives a work-related injury.

A principal may have many contractors sitting beneath them in the sub-contracting arrangements common to the coal mining (and other) industries. Depending on the case, the operator of a mine could be considered the principal even though the contractor in question may be several layers down the sub-contracting chain. It is, in part, to mitigate this risk that principals require contractors to provide evidence of a current workers compensation insurance policy (via a Certificate of Currency) before allowing them to commence the work for which they are contracted.

What does the change mean for workers compensation benefits payable to workers injured when employed in or about a coal mine?

The change to the Coal Industry Act has no effect on the workers compensation benefits payable to an injured worker. Benefits payable are determined on whether the injured worker meets the definition of coal miner for workers compensation purposes.

The definition of coal miner for workers compensation purposes can be found in [Schedule 6 Part 18 of the Workers Compensation Act 1987](#). It states that: *coal miners means workers employed in or about a mine.*

Will Order 43 (health surveillance) apply to contractors who work in or about a coal mine?

Any worker who works in an underground mine or open cut mine, and that is involved in the production, processing or maintenance of coal will require an Order 43 pre-placement medical and periodic health surveillance check every three years thereafter. All other workers in or about a coal mine are only required to have an Order 43 pre-placement medical.

Please contact CS Health or email partnership_innovation@coalservices.com.au for further information about Order 43.

See also:

[Requirements to insure with Coal Mines Insurance](#)
[Insuring with Coal Mines Insurance](#)

[Requirements to insure with Coal Mines Insurance](#)

How do I know if I need a policy with Coal Mines Insurance?

The change to the Coal Industry Act provides for a holistic and fit-for-purpose workers compensation scheme for workers in coalmines.

It will also improve equity of workers by **mandating coverage for all workers who engage in mining activities in the coal industry**, whether they are employed directly by the mine operator or by a contractor or labour hire firm.

Employers who do require a policy with Coal Mines Insurance

Employers whose employees work in or about a coal mine **and** are engaged in mining activities in the coal industry are required to have a policy with CMI for those workers.

For example:

- You have employees that work in or about a coal mine for all or only part of a year
- You have employees that work some of the time in or about a coal mine and elsewhere for the rest of the time
- You have some employees that only work in or about a coal mine and some employees that never work in or about a coal mine
- You provide services ancillary to coal mining, for example, mining equipment maintenance and repairs, and construction.

Employers with workers who are engaged in mining-related activities in the coal industry but do not work in or about a coal mine should have a policy with CMI to cover those workers.

For example:

- Offsite coal washery and preparation plants
- Mine operator workshops
- Certain contractor workshops
- Mine operator administration offices.

Employers whose employees work in or about a coal mine **making deliveries** do not require a policy with CMI. For example:

Employers who don't require a policy with Coal Mines Insurance

- Fuel deliveries
- Equipment deliveries
- General deliveries.

Does the change mean I might need two workers compensation policies?
Yes.

If a percentage of your workforce are employees that work in or about a coal mine you are required to have workers compensation insurance for those workers with Coal Mines Insurance. The percentage of your workforce that does not work in or about a coal mine will need to be covered for workers compensation insurance elsewhere, for example, with iCare.

If all your employees spend some time working in or about a coal mine and the balance of their time working elsewhere then you are required to have workers compensation insurance to cover those workers with Coal Mines Insurance to the extent they work in or about a coal

mine (based on a breakdown of wages declared to CMI and your other workers compensation insurer).

Isn't an employer only supposed to hold one workers compensation policy? Generally, that is true. However, [S155\(1AA\) of the Workers Compensation Act 1987](#) enables an employer to maintain more than one workers compensation insurance policy in circumstances where a policy is required to be held in accordance with the Coal Industry Act.

Therefore, an employer with employees that work in or about a coal mine may hold one policy of insurance with Coal Mines Insurance for those employees and a second policy for those employees who do not fall within the new definition.

This provision has been in place since 2008.

If I have two policies doesn't that mean I am paying twice to cover my workers?

No. Where you are required to have one policy with Coal Mines Insurance and one with another workers compensation insurer you only declare the wages relevant to each policy.

For example, if 50% of your employees [worked in or about a coal mine](#) you would declare the wages for those employees to Coal Mines Insurance. The wages for those employees that don't work in or about a coal mine would be declared to the other insurer.

In a different example, where all or some of your employees only work in or about a coal mine for a percentage of their total work activity, you would split and declare the wages between the two insurance policies based on the breakdown of those wages.

For more information please [contact the CMI Insurance Services team on \(02\) 8270 3257 or at \[polycyservices@coalservices.com.au\]\(mailto:polycyservices@coalservices.com.au\)](#)

Can I choose to cover all my employees with Coal Mines Insurance even if they do not all work in or about a coal mine?

No – only those employees that meet the requirements for having to be covered by a Coal Mines Insurance workers compensation insurance policy.

I'm a sole trader – do I need a policy with Coal Mines Insurance?

Sole traders / proprietors, or members of a partnership are not able to take out workers compensation insurance to cover themselves for injuries.

Sole traders and partnerships with employees are required to take out a workers compensation insurance policy that covers those employees.

Resulting from the change to the Coal Industry Act, sole traders and partnerships with employees that work in or about a coal mine are required to take out a workers compensation insurance policy with Coal Mines Insurance that covers those employees.

Do the workers compensation cross border arrangements still apply for interstate employers or do I need to take out a CMI policy?

The cross border arrangements still apply.

For more information on the cross border arrangements please visit the State Insurance Regulatory Authority's website: sira@nsw.gov.au

Does Coal Mines Insurance provide public liability insurance?

No. Coal Mines Insurance only provides one line of insurance, specifically workers compensation insurance for employers in the New South Wales Coal Industry.

See also:

[What the change to the Coal Industry Act means Insuring with Coal Mines Insurance](#)

Insuring with Coal Mines Insurance

How do I take out a policy with Coal Mines Insurance?

You can obtain an insurance proposal for Coal Mines Insurance either by [contacting the CMI Insurance Services team on \(02\) 8270 3257 or at \[polycyservices@coalservices.com.au\]\(mailto:polycyservices@coalservices.com.au\)](#) or by [downloading the form](#) from the Workers Compensation Services section of the Coal Services website www.coalservices.com.au.

Complete the insurance proposal to the best of your knowledge, sign and return it to Coal Mines Insurance. We will contact you as soon as possible to complete your policy application.

I have gone through the Coal Mines Insurance risk categories and descriptions and do not think I fit in any of them – what should I do?

The Coal Mines Insurance proposal form asks for a detailed description of the work you perform in or about a coal mine. Please be as specific as possible when completing the form.

The Insurance Services team will review and assess the information you provide and will contact you to discuss the risk category that is most relevant to you.

Coal Mines Insurance is currently reviewing the activities covered in its risk categories.

How do I declare my wages?

At the beginning of a policy period you will be required to provide an estimate of your wages for those employees that should be covered by Coal Mines Insurance. Those wages are allocated among one of several risk categories based on the type of work being undertaken. You will pay an initial premium based on those wages and their risk classification.

At the end of the policy period you will complete a second wage declaration providing actual wages and risk category allocation. Any adjustments to the year's premium will then be made.

The CMI Insurance Services team can assist you with completing your wages declarations.

Can I pay my premium in instalments?

Yes. If your annual base premium is over \$3,000 you can pay quarterly and if it is over \$10,000 you can pay monthly (but with administration conditions).

See also:

[What the change to the Coal Industry Act means Requirements to insure with Coal Mines Insurance](#)

