

Who is a coal miner?

Workers compensation cover and entitlements for coal miners



Coal Mines Insurance

Coal Mines Insurance (CMI) is a specialised insurer responsible for managing and administering the workers compensation scheme for the NSW coal industry.

When CMI receives a new claim, we must determine whether:

- **The worker is a coal miner or a non-coal miner** as this will affect their entitlements under NSW workers compensation legislation
- **The injury is covered by CMI or another workers compensation insurer** as the employer may hold a policy with CMI to cover their risk as an employer in the coal industry and a second policy with icare to cover their non-coal industry risk

Entitlements for coal miners

A coal miner is defined under Schedule 6, Part 18 of the *Workers Compensation Act 1987* (1987 Act) as **‘a worker employed in or about a mine’**.

Under this definition, a worker does not need to be employed by a coal mine operator to be deemed a coal miner.

The primary considerations are the nature of the worker’s employment, the work actually performed by the worker and their physical proximity to a mine. The case of *Ellavale Engineering Pty Ltd v Pilgrim* [2005] NSWCA 272 is a leading authority on this issue.

If a worker is a coal miner for the purposes of NSW workers compensation legislation, they will be entitled to workers compensation in accordance with the *Workers Compensation Act 1926*, the *Workplace Injury Management and Workers Compensation Act 1998* and the 1987 Act **as they apply to coal miners**. They may also be entitled to compensation under an Industrial Agreement or Award.

A non-coal miner is a worker who is not considered a coal miner for the purposes of NSW workers compensation.

A guide to whether a worker is a coal miner or non-coal miner is overleaf.

Insurance coverage

Some employers may have a workers compensation policy with icare to cover their non-coal industry risk and a policy with CMI to cover their risk as an employer in the NSW coal industry.

Section 31 of the *Coal Industry Act 2001* (NSW) (CI Act) states:

“The workers compensation company [CMI] has the power to require any employer in the coal industry in the State to effect with or through that company all workers compensation insurance in respect of the employer’s employees in the industry.”

On 1 July 2018, the following definition was added into the CI Act:

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

The change was intended to restore the original intention of the CI Act to ensure that all coal industry workers are insured under the CMI Scheme.

Section 155(1AA) of the 1987 Act 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 CI Act. This provision has been in place since 2008.

In some instances, a worker may be considered a non-coal miner but their employer has a policy with CMI that covers that worker. For example, a mine operator may have a policy that covers workers in an office or warehouse located outside the mine site. In that instance, the worker is entitled to be paid by CMI in accordance with NSW workers compensation legislation as it applies to non-coal miners.

A worker does not need to be employed by a coal mine operator to be deemed a coal miner.

Who is a coal miner? Quick reference guide

| Type of employment | Normal place of work | Where the injury took place | Coal miner or Non-coal miner |
|--|---|-----------------------------|------------------------------|
| Administration staff of employers in the NSW coal industry | Not on a coal mine | On a coal mine | Coal miner |
| | | Not on a coal mine | Non-coal miner |
| Administration staff of employers in the NSW coal industry | On a coal mine | On a coal mine | Coal miner |
| | | Not on a coal mine | Coal miner |
| Any type of work where the worker's normal place of employment is on a coal mine site | On a coal mine | On a coal mine | Coal miner |
| | | Not on a coal mine | Coal miner |
| Contractor where work is directly related to operation of a coal mine e.g. tradesperson undertaking maintenance of mining equipment | Some work on a coal mine and some work not on a coal mine | On a coal mine | Coal miner |
| | | Not on a coal mine | Non-coal miner |
| Contractor where work undertaken is NOT related to a coal mine, but may be required to visit a coal mine in the course of their duties e.g. making deliveries | Some work on a coal mine and some work not on a coal mine | On a coal mine | Non-coal miner |
| | | Not on a coal mine | Non-coal miner |
| Contractor where work undertaken is directly related to the operation of a coal mine e.g. allied health professional | Some work on a coal mine and some work not on a coal mine | On a coal mine | Coal miner |
| | | Not on a coal mine | Non-coal miner |
| Mines Rescue employee | Mines Rescue station | On a coal mine | Coal miner |
| | | Not on a coal mine | Coal miner |

Further legislation and judgments

- Section 7A *Workers Compensation Act 1987*
- Section 9A *Workplace Injury Management and Workers Compensation Act 1998*
- *Central West Group Apprentices Ltd v Coal Mines Insurance Ltd* [2008] NSWCA 348
- *Kuypers v Ashton Coal Operations Pty Ltd* [2014] NSWSC 1276