



New South Wales

Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2018

under the

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

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

DONALD HARWIN, MLC
Minister for Resources

Explanatory note

The objects of this Regulation are as follows:

- (a) to require an opal mine operator to complete a course of training relating to health and safety at opal mines every 5 years,
- (b) to require the operator of a mine or petroleum site to notify the Secretary of the Department of Planning and Environment (the **regulator**) of any change to the operator's contact details within 28 days of the change,
- (c) to update the requirements for the use of explosion-protected electrical plant in a hazardous zone in an underground coal mine,
- (d) to remove provisions relating to a mine operator's obligations to monitor the health of mine workers and instead enable the regulator to direct persons conducting a business or undertaking at a mine or petroleum site to provide health monitoring to workers. (The health monitoring obligations under the *Work Health and Safety Act 2011* continue to apply),
- (e) to require the operator of a petroleum site to consult with workers at the site in relation to health and safety risks and management (as mine operators are currently required to do),
- (f) to include various events that occur at mines as high-potential incidents or notifiable incidents, which are required to be notified to the regulator by the mine operator,
- (g) to make it an offence for a person conducting a business or undertaking at an underground coal mine to use certain kinds of plant in the mine unless the person has taken all reasonable steps to ensure that the plant had been repaired under a licence,
- (h) to update the qualifications required by persons exercising statutory engineering functions at mines,
- (i) to prescribe certain offences against the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* as offences for which a penalty notice may be issued and to prescribe the amounts of the penalties payable,
- (j) to make other minor and miscellaneous amendments.

This Regulation is made under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*, including sections 4, 7A (1) (paragraph (b) of the definition of **mine operator**), 14 (c) and 76 (the general

regulation-making power) and Schedule 2. See also the *Work Health and Safety Act 2011*, including sections 243 and 276 (the general regulation-making power) and Schedule 3.

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

1 Name of Regulation

This Regulation is the *Work Health and Safety (Mines and Petroleum Sites) Amendment Regulation 2018*.

2 Commencement

- (1) This Regulation commences on 13 April 2018, except as provided by subclause (2), and is required to be published on the NSW legislation website.
- (2) Schedule 1 [1] and [27] commence on 1 October 2018.

Schedule 1 Amendment of Work Health and Safety (Mines and Petroleum Sites) Regulation 2014

[1] Clause 3 Definitions

Omit the definitions of *polymeric chemical product* and *polymeric process* from clause 3 (1).

[2] Clause 3 (1), definition of “secondary extraction”

Insert in alphabetical order:

secondary extraction includes pillar extraction, pillar splitting and pillar reduction.

[3] Part 1A

Omit the heading. Insert instead:

Part 1A Mine and petroleum site operators

[4] Clause 6 Appointment of mine operator (cll 613 (2) and 615 model WHS Regs)

Insert at the end of clause 6 (1):

Note. Clause 7B contains additional requirements that apply to the appointment of an opal mine operator.

[5] Clauses 7A and 7B

Insert after clause 7:

7A Mine operator to notify regulator of change to contact details

A mine operator must notify the regulator of any change to the mine operator’s contact details as soon as practicable (and no later than 28 days) after the change.

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
- (b) in the case of a body corporate—\$18,000.

7B Additional requirements for opal mine holders and operators

- (1) A person may be appointed to be a mine operator of an opal mine under clause 6 only if the person has, within the period of 5 years before the appointment, undertaken safety training.
- (2) A mine holder of an opal mine who is the mine operator of the mine must have undertaken safety training within the period of 5 years before carrying out mining operations as the mine operator of the mine.
- (3) Subclauses (1) and (2) do not apply to a person who, immediately before 13 April 2018, was the mine operator of an opal mine. However, such a person must undertake safety training before 13 April 2023.
- (4) A mine operator of an opal mine must undertake safety training at least once every 5 years after having completed the safety training referred to in subclause (1), (2) or (3).

- (5) A mine holder of an opal mine (who is not the mine operator of the mine) must ensure that a person appointed as the mine operator of the mine undertakes safety training as required under this clause.
Maximum penalty:
(a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.
- (6) A mine holder of an opal mine who is the mine operator of the mine must not carry out mining operations at the mine if the mine holder has not undertaken safety training as required under this clause.
Maximum penalty:
(a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.
- (7) If a person required to undertake safety training under this clause is a body corporate, the body corporate complies with the requirement if the individual responsible for supervising mining operations at the mine concerned undertakes the safety training.
- (8) In this clause:
safety training means a course of training relating to health and safety at opal mines specified by the regulator.

[6] Clause 8BA

Insert after clause 8B:

8BA Petroleum site operator to notify regulator of change to contact details

An operator of a petroleum site must notify the regulator of any change to the operator's contact details as soon as practicable (and no later than 28 days) after the change.

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.

[7] Clauses 11 (2) (b) and 12 (2) (b)

Omit "work health and safety issues" wherever occurring.

Insert instead "work health and safety matters".

[8] Clause 11 Record of certain reviews of control measures—operator (cl 619 model WHS Regs)

Omit clause 11 (2) (d). Insert instead:

- (d) the outcome of any review or revision of any control measures or any part of the safety management system,

[9] Clause 11 (3)

Insert after clause 11 (2):

- (3) The operator of a mine or petroleum site must, if required by the regulator by notice in writing, provide any records kept under this clause to the regulator, in the manner and within the time specified in the notice.

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
(b) in the case of a body corporate—\$30,000.

[10] Clause 12 Record of certain reviews of control measures—other persons conducting a business or undertaking (cl 620 model WHS Regs)

Omit clause 12 (2) (d). Insert instead:

- (d) the outcome of any review or revision of any control measures.

[11] Clause 12 (3)

Insert after clause 12 (2):

- (3) A person conducting a business or undertaking at a mine or petroleum site must, if required by the regulator by notice in writing, provide any records kept under this clause to the regulator, in the manner and within the time specified in the notice.

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
(b) in the case of a body corporate—\$30,000.

[12] Clause 36 Minimum age to work at mine or petroleum site (cl 634 model WHS Regs)

Insert at the end of clause 36 (1A):

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.

[13] Clause 71 Ventilation

Insert after clause 71 (2) (b):

- (b1) the volume of air passing through the area in which mining operations are taking place using a continuous miner must not be less than 0.3 cubic metres per second for each square metre of the average cross sectional area of the roadway in which the continuous miner is operating, and

[14] Clause 71 (2) (e) (ii)

Omit “clause 78 (4)”. Insert instead “clause 78 (2)”.

[15] Clause 73 Gas monitoring

Omit “clause 78 (4) (a)–(d)” from clause 73 (1) (k). Insert instead “clause 78 (2) (b) (i)–(v)”.

[16] Clause 78 Use of plant in hazardous zone (explosion-protection required)

Omit clause 78 (2)–(5). Insert instead:

- (2) Electrical plant has an explosion-protection level suitable for use in a hazardous zone at a coal mine if:

- (a) it has a valid certificate of conformity or is Departmental approved plant, and
 - (b) it meets at least 1 of the following requirements:
 - (i) intrinsically safe category 'Ex ia', as defined in Australian and New Zealand Standard AS/NZS 60079.11:2011 *Explosive atmospheres—Part 11: Equipment protection by intrinsic safety 'i'*,
 - (ii) encapsulated level of protection 'Ex ma', as defined in Australian and New Zealand Standard AS/NZS 60079.18:2011 *Explosive atmospheres—Part 18: Equipment protection by encapsulation 'm'*,
 - (iii) special protection 'Ex s' (Zone 0), as defined in Australian and New Zealand Standard AS/NZS 1826(Int):2006 *Electrical equipment for explosive gas atmospheres—Special protection—Type of protection 's'*,
 - (iv) special protection 'Ex sa', as defined in Australian and New Zealand Standard AS/NZS 60079.33:2012 *Explosive atmospheres—Part 33: Equipment protection by special protection 's'*,
 - (v) in the case of gas detectors and monitors using catalytic sensors—level of protection 'Ex da', as defined in Australian and New Zealand Standard AS/NZS 60079.1:2015 *Explosive atmospheres—Part 1: Equipment protection by flameproof enclosures 'd'*,
 - (vi) in the case of caplights (but only if the concentration of methane in the general body of the air in the hazardous zone is less than 2% by volume)—conformity with:
 - (A) Australian and New Zealand Standard AS/NZS 60079.35.1:2011 *Explosive atmospheres—Part 35.1: Caplights for use in mines susceptible to firedamp—General requirements—Construction and testing in relation to the risk of explosion*, or
 - (B) Australian and New Zealand Standard AS/NZS 62013.1:2001 *Caplights for use in mines susceptible to firedamp—Part 1: General requirements—Construction and testing in relation to the risk of explosion*.
- (3) Electrical plant has an explosion-protection level suitable for use in a hazardous zone at a coal mine (but only if the concentration of methane in the general body of the air in that zone is less than 1.25% by volume) if:
- (a) it has a valid certificate of conformity or is Departmental approved plant, and
 - (b) it meets at least 1 of the following requirements:
 - (i) equipment protection level 'Mb', as defined in Australian and New Zealand Standard AS/NZS 60079.0:2012 *Explosive atmospheres—Part 0: Equipment—General requirements*,
Note. See table 2.1 of Australian and New Zealand Standard AS/NZS 60079.14:2009 *Explosive atmospheres—Part 14: Electrical installations design, selection and erection* for the explosion protection techniques that achieve equipment protection level "Mb".
 - (ii) plant that is intrinsically safe, Group II associated apparatus, as defined in Australian and New Zealand Standard

AS/NZS 60079.0:2012 *Explosive atmospheres—Part 0: Equipment—General requirements.*

- (4) The mine operator of an underground coal mine must ensure that any electrical plant used in a hazardous zone is maintained and overhauled in accordance with Australian and New Zealand Standard AS/NZS 2290.1:2014 *Electrical equipment for coal mines—Introduction, inspection and maintenance—Part 1: For hazardous areas.*

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
(b) in the case of a body corporate—\$30,000.

[17] Clause 78 (7) (c)

Omit the paragraph. Insert instead:

- (c) if the plant is Departmental approved plant—evidence that it is approved and any documents and drawings identified on the website of the regulator in relation to the plant,

[18] Clause 78 (9)

Insert in alphabetical order:

Departmental approved plant means plant that:

- (a) was manufactured before 1 October 2015, and
(b) was specified in the *Explosion Protected Electrical Apparatus Approvals List* as issued by the Department of Trade and Investment, Regional Infrastructure and Services on 28 May 2012 and continues to be specified in that list as amended from time to time.

[19] Part 3

Omit the Part. Insert instead:

Part 3 Health monitoring

109 Regulator may direct health monitoring to be provided to workers

- (1) A person conducting a business or undertaking at a mine or petroleum site must provide health monitoring to workers at the mine or petroleum site if directed to do so by the regulator by notice published in the Gazette or by notice given to the person.

Note. The WHS Regulations contain provisions requiring health monitoring of workers working with hazardous chemicals, lead and asbestos. Those provisions continue to apply to mines and petroleum sites, in addition to any health monitoring required under this Part.

- (2) The regulator may give a direction under this clause (a ***health monitoring direction***) to:
- (a) a specified person or class of persons conducting a business or undertaking at a mine or petroleum site, or
(b) a person conducting a business or undertaking at a specified mine or petroleum site or at a mine or petroleum site of a specified class.
- (3) The regulator may give a health monitoring direction only if the regulator is satisfied that:
- (a) there is a significant risk of an adverse effect on the health of a worker at the mine or petroleum site concerned because of the worker's

- exposure to a hazard associated with mining operations or petroleum operations, and
- (b) valid techniques are available to detect that effect on the worker's health.
- (4) A health monitoring direction must specify the type of health monitoring that is to be provided.
 - (5) A health monitoring direction may contain any of the following:
 - (a) a requirement that the health monitoring be carried out by or under the supervision of a registered medical practitioner with experience in health monitoring,
 - (b) a requirement that the health monitoring be documented in a health monitoring report that is in a specified form and contains specified information,
 - (c) a requirement that a health monitoring report be provided to the worker concerned or the regulator,
 - (d) a requirement that the person to whom the direction applies pays all expenses relating to the health monitoring,
 - (e) a requirement that information about health monitoring be provided to workers at the mine or petroleum site concerned,
 - (f) such other requirements as the regulator considers reasonable in the circumstances.
 - (6) A person to whom a health monitoring direction applies must comply with the direction.
Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.

110 Person conducting business or undertaking to give health monitoring report to operator of mine or petroleum site (cl 675M model WHS Regs)

A person conducting a business or undertaking at a mine or petroleum site (other than the operator of the mine or petroleum site) who commissioned health monitoring for a worker at the mine or petroleum site (whether under this Part or the WHS Regulations) must, on request, give a copy of the health monitoring report to the operator of any mine or petroleum site at which the worker carries out work.

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
- (b) in the case of a body corporate—\$30,000.

[20] Clause 120 Safety role for workers in relation to principal hazards (cl 675Q model WHS Regs)

Omit “The mine operator of a mine”.

Insert instead “The operator of a mine or petroleum site”.

[21] Clause 120

Omit “at the mine” wherever occurring. Insert instead “at the mine or petroleum site”.

- [22] **Clause 121 Duty to consult with workers** (cl 675 model WHS Regs)
Omit “mine operator of a mine”. Insert instead “operator of a mine or petroleum site”.
- [23] **Clause 121**
Omit “at the mine” wherever occurring. Insert instead “at the mine or petroleum site”.
- [24] **Clause 121**
Omit “for the mine” wherever occurring. Insert instead “for the mine or petroleum site”.
- [25] **Clause 128 Duty to notify regulator of certain incidents** (cl 675 model WHS Regs)
Insert after paragraph (o) of the definition of *high-potential incident* in clause 128 (5):
- (p) the presence of energised electrical plant that is not explosion-protected in a hazardous zone at an underground coal mine (except where the use of the plant is permitted under clause 79),
 - (q) the detection of an atmospheric concentration of respirable dust that exceeds the level specified in clause 39 (1) (a),
 - (r) the detection of an atmospheric concentration of crystalline silica that exceeds the exposure standard specified in the *Workplace Exposure Standards for Airborne Contaminants*,
 - (s) electrical plant that is powered by an internal battery is lost or misplaced in an underground coal mine.
- [26] **Clause 129 Duty to notify regulator of other matters**
Insert after clause 129 (6):
- (6A) The operator of a mine must give notice of any proposed material change to any information provided under subclause (4) (g) as soon as is reasonably practicable after the mine operator becomes aware that the change is proposed to occur.
- [27] **Clause 152 Activities to which Part applies**
Insert after clause 152 (2):
- (3) In this clause:
 - polymeric chemical product* means any chemical product that is polymerised at a mine other than polyester resin capsules used for strata support.
 - polymeric process* means the injection or application of a polymeric chemical product.
- [28] **Clause 153A**
Insert after clause 153:
- 153A Plant not to be used unless repair work carried on under a licence**
- (1) A person conducting a business or undertaking at a mine must not use any explosion-protected plant in an underground coal mine or any flexible reeling, feeder or trailing cables in a hazardous zone of an underground coal mine unless the person has taken all reasonable steps to ensure that any repairing of the plant was carried out under, and in accordance with, a licence.
Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.

- (2) In this clause, *repairing* means any activities referred to in clause 152 (2) (b) or (c).

[29] Clause 175 Reviewable decisions

Omit clause 175 (d). Insert instead:

- (d) clause 109 (1) (a decision of the regulator to give a direction to a person conducting a business or undertaking at a mine or petroleum site to provide health monitoring to workers at the mine or petroleum site)—the person to whom the direction is given,

[30] Clause 179 Dangerous incidents

Insert after clause 179 (g):

- (h) spontaneous combustion at a coal mine,
(i) a gas outburst at an underground coal mine,
(j) a coal burst or rock burst at an underground mine.

[31] Schedule 1 Principal hazard management plans—additional matters to be considered

Insert after clause 1 (1) (v):

- (w) in the case of an underground coal mine—any proposed widening of an existing underground roadway to a width greater than 5.5 metres.

[32] Schedule 1, clause 1 (2A)

Insert after clause 1 (2):

- (2A) A principal hazard management plan for an underground coal mine that addresses the proposed widening of an existing underground roadway to a width greater than 5.5 metres is to include the following:
- (a) engineering drawings of the proposal endorsed by the individual nominated to exercise the statutory function of mining engineering manager at the mine,
(b) a geotechnical report on the proposal,
(c) details of relevant strata control in respect of the proposal.

[33] Schedule 2 Principal control plans—matters to be addressed

Omit “in accordance with Part 3” from clause 1 (d).

Insert instead “as may be required under Part 3 or the WHS Regulations”.

[34] Schedule 3 High risk activities

Omit clause 13.

[35] Schedule 3, clause 16 Secondary extraction

Omit clause 16 (1). Insert instead:

- (1) Secondary extraction is identified as a high risk activity.

[36] Schedule 3, clause 16 (2) and (3)

Omit “any such activity” wherever occurring. Insert instead “the activity”.

[37] Schedule 10 Statutory functions at mines

Omit clause 20 (2) (a) and (b). Insert instead:

- (a) hold an electrical engineer practising certificate (coal mines other than underground coal mines) or electrical engineering manager practising certificate (underground coal mines) that is in force, or
- (b) have evidence of compliance with Australian Engineering Competency Standards Stage 2 in respect of mining operations at a mine and be registered on the National Engineering Register as a professional electrical engineer, an electrical engineering technologist or an electrical engineering associate.

[38] Schedule 10, clause 21 Mechanical engineer

Omit clause 21 (2) (a) and (b). Insert instead:

- (a) hold a mechanical engineer practising certificate (coal mines other than underground coal mines) or mechanical engineering manager practising certificate (underground coal mines) that is in force, or
- (b) have evidence of compliance with Australian Engineering Competency Standards Stage 2 in respect of mining operations at a mine and be registered on the National Engineering Register as a professional mechanical engineer, a mechanical engineering technologist or a mechanical engineering associate.

[39] Schedule 10, clause 26 Underground mine supervisor

Omit “mining operations at the mine” from clause 26 (1).

Insert instead “workers and inspect work areas in a part of the mine”.

[40] Schedule 10, clause 28 Electrical engineer (only required if total connected power at mine is greater than 1,000 kilowatts or if high voltage is utilised)

Omit clause 28 (2) (a) and (b). Insert instead:

- (a) hold an electrical engineer manager practising certificate (underground coal mines) or electrical engineering manager practising certificate (coal mines other than underground coal mines) that is in force, or
- (b) have evidence of compliance with Australian Engineering Competency Standards Stage 2 in respect of mining operations at a mine and be registered on the National Engineering Register as a professional electrical engineer, an electrical engineering technologist or an electrical engineering associate.

[41] Schedule 10, clause 33 Electrical engineer (only required if total connected power at mine is greater than 1,000 kilowatts or if high voltage is utilised)

Omit clause 33 (2) (a) and (b). Insert instead:

- (a) hold an electrical engineer manager practising certificate (underground coal mines) or electrical engineering manager practising certificate (coal mines other than underground coal mines) that is in force, or
- (b) have evidence of compliance with Australian Engineering Competency Standards Stage 2 in respect of mining operations at a mine and be registered on the National Engineering Register as a professional electrical engineer, an electrical engineering technologist or an electrical engineering associate.

[42] Schedule 13

Insert after Schedule 12:

Schedule 13 Penalty notice offences

For the purposes of section 243 of the WHS Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is:
 - (i) in the case of an amount payable by an individual—the amount specified in relation to the offence in Column 2 of this Schedule, and
 - (ii) in the case of an amount payable by a corporation—the amount specified in relation to the offence in Column 3 of this Schedule.

Offences under the WHS (Mines and Petroleum Sites) Act

Column 1	Column 2	Column 3
Provision	Penalty—Individuals	Penalty—Corporations
Sections 15 (1), (1A) and (2), 16 (1), 17 (1), 30 (3) (b), 45 (2) and (3), 46 (2) and 47 (2)	\$600	\$3,000
Section 38 (5)	\$300	\$1,000

Offences under this Regulation

Column 1	Column 2	Column 3
Provision	Penalty—Individuals	Penalty—Corporations
Clauses 6 (4) and (5), 8 (2), 8A (4) and (5), 8C (2), 10 (3), 11 (2) and (3), 12 (2) and (3), 13 (1)–(3), 16, 17 (1) and (2), 20, 21, 22 (1), 23 (1) and (2), 24 (1) and (5), 25 (1) and (2), 26 (1), 27, 33 (3), 34, 35 (1), (2) and (4), 37 (1), 62 (1), 63, 64 (1) and (3), 65 (5), 71 (4) and (6), 73 (1), 75, 78 (1), 85 (1), (8), (9) and (11), 86, 88 (1), 94 (1) and (3), 95, 103 (1)–(4), 104 (2) and (3), 105, 109 (6), 110, 120, 121, 122 (2), (4) and (4A), 123 (2), 124 (1), 125 (2), 137 (4) and 153 (1) and (2)	\$600	\$3,000
Clauses 7 (1), 7B (5) and (6), 8B (1), 9 (2), 18 (1), 36 (1) and (1A), 58 (5), 91 (1) and (2), 106, 125 (1), 133 (1) and 170 (1) and (2)	\$432	\$2,160
Clauses 42, 98 and 99	\$180	\$900
Clause 58 (1) and (4), 60 (3), 134 (1)–(3), 144 (13) and 158 (4)	\$125	\$600
Clause 60 (4)	\$150	\$600
Clause 60 (5)	\$300	\$1,000
Clauses 127 (1), 127A, 128 (1), 129 (12), 130 (1), 131 (2) and 132	\$720	\$3,660