



New South Wales

Work Health and Safety (Mines) Amendment Bill 2014

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make minor amendments to the *Work Health and Safety (Mines) Act 2013* (**WHS (Mines) Act**), as follows:

- (a) by clarifying the relationship between the WHS (Mines) Act and the *Work Health and Safety Act 2011* (**WHS Act**) and the regulations made under those Acts,
- (b) by specifying that, in the case of a tourist mine, the **mine holder** is the person who is conducting the business or undertaking of the tourist mine,
- (c) by clarifying that the term **mining operations** includes injecting minerals into the ground only where the primary purpose is the injection or return of a mineral to the ground,
- (d) by providing for the regulations to prescribe how the mine operator of a mine is to be appointed, including by providing for the appointment of one or more mine operators for a mine or the appointment of one person as the mine operator for more than one mine,
- (e) by clarifying the activities to which the WHS (Mines) Act does not apply, including civil aviation, and providing for the regulations to modify those exclusions,
- (f) by providing for the WorkCover Authority, rather than the mines regulator, to exercise or perform powers and functions under the WHS Act in relation to mining workplaces,
- (g) by providing for the regulations to make savings and transitional provisions that amend the savings and transitional provisions in the WHS (Mines) Act,
- (h) by validating certain regulatory action taken in relation to coal mining lease areas that were not included in the register of colliery holdings.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Work Health and Safety (Mines) Act 2013 No 54

Schedule 1 [1] clarifies the relationship between the WHS (Mines) Act and the WHS Act and the regulations made under those Acts. The WHS (Mines) Act currently provides that it is to be read as if it formed part of the WHS Act but does not make provision for the regulations made under the latter Act. The amendment makes it clear that regulations under the WHS Act are included, so that references in both Acts include references to the other, and include references to both sets of regulations.

Schedule 1 [2] and [4] specify that, in the case of a tourist mine, the mine holder is the person who is conducting the business or undertaking of the tourist mine. This makes it clear that a person conducting a tourist mine is covered by the WHS (Mines) Act. (New South Wales currently has about 10 tourist mines).

Schedule 1 [3] and [6] provide for the regulations to direct that a mine holder appoint one or more mine operators of a mine or that one person be appointed as the mine operator for more than one mine. In the latter case, all of the relevant mines are, for the purposes of the WHS (Mines) Act, to be treated as one mine.

Schedule 1 [5] clarifies that the term *mining operations* includes injecting minerals into the ground only where the primary purpose is the injection of a mineral into, or the return of a mineral to, the ground. The current inclusion of “extracting minerals from the ground or injecting minerals into the ground” could be interpreted as including activities where the injection of minerals is incidental to the activity.

Schedule 1 [7] clarifies the activities to which the WHS (Mines) Act does not apply. The current exclusions with respect to railway or railway operations, roads and electricity infrastructure are reframed, activities relating to civil aviation are excluded and provision is made for the regulations to create exceptions to the operation of the exclusions as modified.

Schedule 1 [8] provides for the regulations to make savings and transitional provisions that amend the savings and transitional provisions in the WHS (Mines) Act. The amendment also removes the deadline for savings and transitional regulations to take effect (currently 31 March 2015).

Schedule 1 [9] validates certain regulatory action taken by the WorkCover Authority, rather than the regulator (that is, the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services), in the past in relation to workplaces to which the WHS (Mines) Act applies. The amendment also validates certain other regulatory action taken under the *Coal Mine Health and Safety Act 2002*, the *Occupational Health and Safety Act 2000* or the WHS Act in relation to coal mining lease areas that were not included in the register of colliery holdings.

Schedule 1 [10] omits amendments that have been superseded.

Schedule 2 Amendment of other Acts and instruments

Schedule 2.1–2.4 make consequential amendments to Acts and regulations that refer to the Acts proposed to be repealed by the WHS (Mines) Act (that is, the *Coal Mine Health and Safety Act 2002* and the *Mine Health and Safety Act 2004*).

Schedule 2.5 amends the definition of *regulator* in the WHS Act to allow for the WorkCover Authority to exercise or perform specific powers or functions on behalf of both the Authority and the mines regulator (currently the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services).

Schedule 2.6 prescribes the powers and functions that can be exercised or performed by the WorkCover Authority for both the Authority and the mines regulator.



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New South Wales

Work Health and Safety (Mines) Amendment Bill 2014

No. , 2014

A Bill for

An Act to amend the *Work Health and Safety (Mines) Act 2013* to make further provision with respect to securing the health and safety of persons who work at mines.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Work Health and Safety (Mines) Amendment Act 2014*.

3

2 Commencement

4

This Act commences on a day or days to be appointed by proclamation.

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Schedule 1	Amendment of Work Health and Safety (Mines) Act 2013 No 54	1
		2
[1] Section 4		3
	Omit the section. Insert instead:	4
	4 Relationship with WHS Act	5
	(1) This Act is to be construed with and as if it formed part of the WHS Act, and the regulations under this Act are to be construed with and as if they formed part of the WHS Regulations.	6 7 8
	(2) Accordingly (and without limiting subsection (1)), the following principles apply, unless the context or subject-matter otherwise indicates or requires:	9 10
	(a) words and expressions used in this Act or the regulations under this Act have the same meaning as in the WHS Act or the WHS Regulations,	11 12
	(b) a reference in the WHS Act or the WHS Regulations to the WHS Act (including by use of the expression “this Act” or “the Act”) includes a reference to the <i>Work Health and Safety (Mines) Act 2013</i> ,	13 14 15
	(c) a reference in the WHS Regulations to those regulations (including by use of the expression “this Regulation”) includes a reference to the regulations under the <i>Work Health and Safety (Mines) Act 2013</i> ,	16 17 18
	(d) the WHS Act applies to and in respect of regulations under this Act as if they were regulations under the WHS Act (which will require that a reference in the WHS Act to “the regulations” includes a reference to the regulations under the <i>Work Health and Safety (Mines) Act 2013</i>).	19 20 21 22
	Note. For example, section 191 of the WHS Act permits an inspector to issue an improvement notice in respect of a suspected contravention of the WHS Act. With the expanded meaning of “this Act” under subsection (2) above, a suspected breach of this Act (that is, the <i>Work Health and Safety (Mines) Act 2013</i>) is also a matter in respect of which an improvement notice can be issued under the WHS Act.	23 24 25 26 27
[2] Section 5 Definitions		28
	Insert at the end of the definition of <i>mine holder</i> in section 5 (1):	29
	, or	30
	(c) in the case of a tourist mine—the person who is conducting the business or undertaking of the tourist mine.	31 32
[3] Section 5 (1), definition of “mine operator”		33
	Omit the definition. Insert instead:	34
	<i>mine operator</i> —see section 7A.	35
[4] Section 5 (1)		36
	Insert in alphabetical order:	37
	<i>tourist mine</i> —see section 6 (2).	38
[5] Section 7 Meaning of “mining operations” and “mining activities”		39
	Omit section 7 (1) (a) (i). Insert instead:	40
	(i) extracting minerals from the ground, or	41
	(ia) injecting minerals into the ground, but only where the primary purpose of the injection is to inject a mineral into the ground or to return a mineral to the ground, or	42 43 44

[6] Section 7A	1
Insert after section 7:	2
7A Meaning of “mine operator”	3
(1) In this Act:	4
<i>mine operator</i> of a mine means:	5
(a) the mine holder, or	6
(b) if the mine holder has appointed, in accordance with the regulations, another person to be the mine operator, that other person.	7 8
(2) The regulations may provide for the appointment of more than one mine operator for a mine (so that there are different mine operators for different parts of a mine) and for that purpose:	9 10 11
(a) a reference in this Act or the regulations to the mine operator of a mine includes a reference to the mine operator of part of a mine, and	12 13
(b) the functions of a mine operator of a mine are, in the case of a mine operator of part of a mine, functions in respect of that part of the mine.	14 15
(3) The regulations may provide for the appointment of one person as the operator for more than one mine. In such a case all of the relevant mines are, for the purposes of this Act, to be treated as one mine.	16 17 18
[7] Section 11	19
Omit the section. Insert instead:	20
11 Activities to which Act does not apply	21
(1) The following activities are not mining operations for the purposes of this Act:	22
(a) an activity carried out in relation to the extraction of minerals on private land for the private and non-commercial use of the owner of the land,	23 24
(b) fossicking,	25
(c) any activity where the extraction of minerals is incidental to the activity,	26
Example. Civil works such as tunnelling to create a road.	27
(d) railway operations to which the <i>Rail Safety National Law (NSW)</i> applies,	28 29
(e) any activity on a public road or classified road within the meaning of the <i>Roads Act 1993</i> ,	30 31
(f) the construction, commissioning, operation or decommissioning of the distribution system or transmission system owned or controlled by a network operator under the <i>Electricity Supply Act 1995</i> ,	32 33 34
(g) any activity to which the <i>Civil Aviation Act 1988</i> of the Commonwealth, the <i>Air Services Act 1995</i> of the Commonwealth or the <i>Transport Safety Investigation Act 2003</i> of the Commonwealth (in so far as it applies to aircraft) applies.	35 36 37 38
(2) The regulations may create exceptions to or otherwise limit the operation of this section.	39 40
[8] Schedule 1 Savings, transitional and other provisions	41
Omit clause 1 (5). Insert instead:	42
(5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.	43 44

[9] Schedule 1, clauses 16 and 17	1
Insert after clause 15:	2
16 Validation of WorkCover regulatory action	3
(1) Any WorkCover regulatory action taken by the WorkCover Authority before the commencement of this clause is deemed (from the time it was taken by the WorkCover Authority) to have also been taken by the head of the Department as regulator in relation to matters or the exercise or performance of a power or function concerning a mining workplace or a coal workplace.	4 5 6 7 8
(2) In this clause:	9
<i>WHS Regulations</i> means the <i>Work Health and Safety Regulation 2011</i> .	10
<i>WorkCover regulatory action</i> means any of the following actions by the WorkCover Authority:	11 12
(a) the grant of a high risk work licence under Part 4.5 of the WHS Regulations and any amendment, renewal, suspension, cancellation, refusal or reassessment of such a licence,	13 14 15
(b) the registration of plant designs and items of plant under Part 5.3 of the WHS Regulations and any refusal, renewal, amendment or replacement of such registration,	16 17 18
(c) the issue of a general construction induction training card under Part 6.5 of the WHS Regulations and any replacement, refusal or cancellation of such a card,	19 20 21
(d) the grant of an asbestos removal licence or asbestos assessor licence under Part 8.10 of the WHS Regulations and any amendment, renewal, suspension or cancellation of, or register in respect of, such a licence,	22 23 24
(e) the grant of an exemption under Part 11.2 of the WHS Regulations from the obligation to hold a licence, registration or training card referred to in paragraphs (a)–(d) and any refusal, amendment or cancellation of such an exemption.	25 26 27 28
17 Validation of regulatory action under certain other Acts	29
(1) For the purposes of the exercise of any regulatory function under the CMHS Act, the OHS Act and the WHS Act, a coal mining lease area is taken to have been within a colliery holding at any time when it was not otherwise within a colliery holding.	30 31 32 33
(2) A regulatory function exercised or purportedly exercised before the commencement of this clause that would have been validly exercised had this clause been in force when the function was exercised is taken to have been (and always to have been) validly exercised.	34 35 36 37
(3) Anything done or omitted to be done by any person or court or other body in reliance on or as a consequence of the exercise or purported exercise of a function that is validated by this clause is validated.	38 39 40
(4) To remove doubt, this clause extends to:	41
(a) the conduct of any investigation and the gathering of evidence, and	42
(b) the commencement, maintenance and conclusion of criminal proceedings.	43 44
(5) This clause does not affect any decision made by a court before the commencement of this clause (other than a decision validated by this clause).	45 46

(6)	This clause applies in respect of a coal mining lease area whether or not an application to have the area registered as, or as part of, a colliery holding was made, refused or otherwise dealt with.	1 2 3
(7)	In this clause:	4
	CMHS official means any of the following officials under the CMHS Act:	5
(a)	the Chief Inspector,	6
(b)	an electrical check inspector,	7
(c)	an industry check inspector,	8
(d)	an inspector,	9
(e)	an investigator,	10
(f)	a mine safety officer,	11
(g)	a site check inspector.	12
	CMHS regulator means the Department or the Director-General under the CMHS Act.	13 14
	coal mining lease area means a mining area or sublease area (within the meaning of the <i>Mining Act 1992</i>) in relation to which a mining lease or registered mining sublease authorised the holder to mine for coal or to carry out mining purposes in connection with the mining of coal.	15 16 17 18
	colliery holding means a colliery holding under the <i>Mining Act 1992</i> .	19
	OHS Act means the <i>Occupational Health and Safety Act 2000</i> .	20
	OHS official means an inspector pursuant to section 47B of the OHS Act.	21
	OHS regulator means the Department and the Director-General under the OHS Act.	22 23
	regulatory function means:	24
(a)	any function of a CMHS official or CMHS regulator under the CMHS Act, or	25 26
(b)	any function of an OHS official or OHS regulator, in relation to a coal mining lease area, under the OHS Act, or	27 28
(c)	any function of a WHS official or WHS regulator, in relation to a coal mining lease area, under the WHS Act.	29 30
	WHS Act means the <i>Work Health and Safety Act 2011</i> .	31
	WHS official means an inspector pursuant to section 156A (3) of the WHS Act.	32 33
	WHS regulator means the Department and the Director-General under the WHS Act.	34 35
[10]	Schedule 3 Amendment of Acts	36
	Omit Schedule 3.10 [1], 3.11 and 3.12.	37

Schedule 2	Amendment of other Acts and instruments	1
2.1	Mining Regulation 2010	2
[1]	Clause 3 Definitions	3
	Omit the definition of <i>chief inspector</i> from clause 3 (1).	4
[2]	Clause 61 Use of information and protected documents	5
	Insert after clause 61 (1) (j):	6
	(j1) <i>Work Health and Safety (Mines) Act 2013</i> ,	7
2.2	Poisons and Therapeutic Goods Regulation 2008	8
	Appendix C Persons authorised to possess and use substances	9
	Omit clause 11. Insert instead:	10
11	First aid in mines	11
	A person who is trained and authorised to administer first aid at a mine (within the meaning of the <i>Work Health and Safety (Mines) Act 2013</i>) is authorised to possess and use methoxyflurane and nitrous oxide if required for use in connection with the carrying out of first aid at a mine.	12 13 14 15
2.3	Radiation Control Regulation 2013	16
[1]	Clause 47 Exercise of certain functions by the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services	17 18
	Omit clause 47 (2) (a) and (b). Insert instead:	19
	(a) at any workplace to which the <i>Work Health and Safety (Mines) Act 2013</i> applies, or	20 21
[2]	Clause 47 (3) (a) and (b)	22
	Omit the paragraphs. Insert instead:	23
	(a) at any workplace to which the <i>Work Health and Safety (Mines) Act 2013</i> applies, or	24 25
2.4	Uniform Civil Procedure Rules 2005	26
	Schedule 11 Provisions regarding procedure in certain lists in the District Court	27
	Omit the definition of <i>coal miner</i> from clause 1. Insert instead:	28
	<i>coal miner</i> means a worker employed in or about a mine to which the <i>Work Health and Safety (Mines) Act 2013</i> applies at which mining operations (within the meaning of that Act) are carried out with respect to coal.	29 30 31

2.5 Work Health and Safety Act 2011 No 10	1
[1] Section 4 Definitions	2
Omit the definition of <i>regulator</i> . Insert instead:	3
<i>regulator</i> —see section 4A.	4
[2] Section 4A	5
Insert before section 5:	6
4A Meaning of “regulator”	7
(1) In this Act:	8
<i>regulator</i> means:	9
(a) the WorkCover Authority constituted under the <i>Workplace Injury Management and Workers Compensation Act 1998</i> , unless paragraph (b) applies, or	10 11 12
(b) in relation to matters or the exercise of a power or the performance of a function concerning a mining workplace—the regulator under the <i>Work Health and Safety (Mines) Act 2013</i> (the <i>mines regulator</i>).	13 14 15
(2) The regulations may prescribe specified powers or functions as powers or functions that can be exercised or performed by the WorkCover Authority for both regulators.	16 17 18
(3) When such a power or function is exercised or performed by the WorkCover Authority it is deemed to have been exercised or performed by both the WorkCover Authority and the mines regulator.	19 20 21
(4) The mines regulator is not prevented from exercising or performing such a power or function in relation to matters concerning a mining workplace.	22 23
2.6 Work Health and Safety Regulation 2011	24
Clause 703	25
Insert after clause 702A:	26
703 Regulatory action where either WorkCover or mines regulator is the regulator	27
For the purposes of section 4A of the Act, the following powers and functions are prescribed:	28 29
(a) the grant of a high risk work licence under Part 4.5 and any amendment, renewal, suspension, cancellation, refusal or reassessment of such a licence,	30 31 32
(b) the registration of plant designs and items of plant under Part 5.3 (other than plant required to be registered under clause 177 of the <i>Work Health and Safety (Mines) Regulation 2014</i>) and any refusal, renewal, amendment or replacement of such registration,	33 34 35 36
(c) the issue of a general construction induction training card under Part 6.5 and any replacement, refusal or cancellation of such a card,	37 38
(d) the grant of an asbestos removal licence or asbestos assessor licence under Part 8.10 and any amendment, renewal, suspension or cancellation of, or register in respect of, such a licence,	39 40 41

- (e) the grant of an exemption under Part 11.2 from the obligation to hold a licence, registration or training card referred to in paragraphs (a)–(d) and any refusal, amendment or cancellation of such an exemption. 1
2
3