Work Health and Safety (Mines and Petroleum Sites) Act 2013 No 54

New South Wales

Status information

Currency of version
Current version for 5 December 2019 to date (accessed 12 April 2021 at 09:18)
Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force
The provisions displayed in this version of the legislation have all commenced. See Historical Notes

Formerly known as
Work Health and Safety (Mines) Act 2013

Editorial note
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-rules (em-dashes). Text of the legislation is not affected.

This version has been updated.

Responsible Minister
Deputy Premier, Minister for Regional New South Wales, Industry and Trade

Authorisation
This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the *Interpretation Act 1987*.

File last modified 5 December 2019.

Work Health and Safety (Mines and Petroleum Sites) Act 2013 No 54

New South Wales

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Work Health and Safety (Mines and Petroleum Sites) Act 2013 No 54

New South Wales

An Act to secure the health and safety of persons who work at mines and petroleum sites; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

2 Commencement

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

3 Objects of Act

The objects of this Act are as follows—

(a) to assist in securing the objects of the *Work Health and Safety Act 2011* at mines and petroleum sites, including the object of securing and promoting the health and safety of persons at work at mines, petroleum sites or related places,

(b) to protect workers at mines and petroleum sites and other persons against harm to their health and safety through the elimination or minimisation of risks arising from work or from specific types of substances or plant,

(c) to ensure that effective provisions for emergencies are developed and maintained at mines and petroleum sites,

(d) to establish a scheme for ensuring that persons exercising certain functions at mines and petroleum sites are competent to do so,

(e) to establish the Mine Safety Advisory Council,

(f) to provide for worker safety and health representatives in coal mines,

(g) to facilitate interstate regulatory co-operation,

(h) to establish Boards of Inquiry,

(i) to provide for enforcement powers that are in addition to those in the *Work Health and Safety Act 2011*.

4 Relationship with WHS Act

(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.

(2) Accordingly (and without limiting subsection (1)), the following principles apply, unless the context or subject-matter otherwise indicates or requires—

(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,

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

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

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

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 *Work Health and Safety (Mines and Petroleum Sites) Act 2013*) is also a matter in respect of which an improvement notice can be issued under the WHS Act.

5 Definitions

(1) In this Act—

Board means the Mining and Petroleum Competence Board constituted under Division 2 of Part 8.

coal includes oil shale and kerosene shale, but does not include peat.

coal mine means a mine where mining operations are carried out with respect to coal.

Department means the Department of Planning and Environment.

function includes a power, authority or duty, and ***exercise*** a function includes perform a duty.

government official—see section 18.

local site in relation to mining activities or petroleum activities means—

(a) the site at which those activities are carried out, or

(b) a site that adjoins, or is in the vicinity of, the site at which those activities are carried out.

mine—see section 6.

mine holder of a mine (other than a tourist mine) means—

(a) the person who is conducting a business or undertaking with control over a right or entitlement to carry out mining operations at the mine, or

(b) if there is no such person, the person conducting the business or undertaking that is carrying out mining operations at the mine.

mine holder of a tourist mine means the person who is conducting the business or undertaking of the tourist mine.

mine operator—see section 7A.

Mine Safety Advisory Council means the Mine Safety Advisory Council established under Division 1 of Part 8.

mineral means the following, but does not include water—

(a) a naturally occurring element or inorganic compound,

(b) coal, lignite or peat,

(c) rock, stone, gravel or sand.

mineral exploration site means a place where activities are carried out for the purpose of exploring for minerals by mechanical means that disturb the ground.

mineral extraction site means a place where activities are carried out for the purpose of extracting minerals from the ground or injecting minerals into the ground.

mining activities and ***mining operations***—see section 7.

Minister means the Minister administering this Act.

petroleum means—

(a) any naturally occurring hydrocarbon, whether in a gaseous, liquid or solid state, or

(b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state, or

(c) any naturally occurring mixture of one or more hydrocarbons, whether in a gaseous, liquid or solid state, and one or more of the following, that is to say, hydrogen sulphide, nitrogen, helium, carbon dioxide and water,

and includes any substance referred to in paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include a mineral.

petroleum activities and ***petroleum operations***—see section 7B.

petroleum exploration site means a place where activities are carried out for the purpose of exploring for petroleum by mechanical means that disturb the ground.

petroleum extraction site means a place where activities are carried out for the purpose of extracting petroleum from the ground or injecting petroleum into the ground.

petroleum site means a workplace at which petroleum operations are carried out and includes any fixtures, fittings, plant or structures at the workplace that are used or were formerly used for petroleum operations.

petroleum site holder of a petroleum site is—

(a) the person who is conducting a business or undertaking with control over a petroleum title that permits petroleum operations to be carried out at the petroleum site, or

(b) if there is no such person, the person who is conducting the business or undertaking carrying out petroleum operations at the petroleum site.

petroleum site operator—see section 7C.

petroleum title has the same meaning as in the *Petroleum (Onshore) Act 1991*.

provisional improvement notice means a provisional improvement notice issued under Division 7 of Part 5 of the WHS Act.

regulator means the head of the Department.

safety and health representative means an industry safety and health representative, site safety and health representative or electrical safety and health representative under Part 5.

stop work order has the same meaning as it has in section 51.

tourist mine—see section 6 (2).

WHS Act means the *Work Health and Safety Act 2011*.

WHS laws means this Act, the regulations, the WHS Act and the WHS Regulations.

WHS Regulations means regulations under the *Work Health and Safety Act 2011*.

(2) To avoid doubt, a reference in this Act to—

(a) a person conducting a business or undertaking at a mine includes a reference to the mine operator or mine holder of the mine, or

(b) a person conducting a business or undertaking at a petroleum site includes a reference to the petroleum site operator or petroleum site holder of the petroleum site.

6 Meaning of "mine"

(1) In this Act, a ***mine*** is a place that is a workplace at which mining operations are carried out and it includes any fixtures, fittings, plant or structures at the place that are used or were formerly used for mining operations.

(2) In this Act, a ***tourist mine*** means a mine—

(a) at which no mining operations are carried out other than educational activities or tourist activities carried out in connection with former mining activities at the mine, and

(b) at which there is a hazard prescribed by the regulations that was present at the mine when

former mining activities were carried out.

7 Meaning of "mining operations" and "mining activities"

(1) In this Act, ***mining operations*** means the following—

(a) activities (referred to in this Act as ***mining activities***) carried out for the purpose of—

(i) extracting minerals from the ground, or

(ii) 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

(iii) exploring for minerals,

(b) activities (including the handling, preparing, processing or storing of extracted materials) carried out in connection with mining activities at a local site,

(c) activities associated with constructing a site where a mining activity (or an activity referred to in paragraph (b)) is, or is to be, carried out,

(d) activities associated with decommissioning, making safe or closure of a mineral extraction site or a mineral exploration site,

(e) educational activities or tourist activities carried out in connection with—

(i) mining activities at a local site, or

(ii) former mining activities at the site at which those activities were carried out,

(f) activities prescribed by the regulations,

(g) an activity specified by the Minister, by order published in the Gazette, that is carried on at a place identified in the order.

(2) The regulations may declare an activity not to be mining operations for the purposes of this Act.

(3) The regulations may create exceptions to or otherwise limit the operation of this section.

7A Meaning of "mine operator"

(1) In this Act—

mine operator of a mine means—

(a) the mine holder, or

(b) if the mine holder has appointed, in accordance with the regulations, another person to be the mine operator, that other person.

(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—

(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

(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.

(3) The regulations may provide for the appointment of one person as the mine 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.

7B Meaning of "petroleum operations" and "petroleum activities"

(1) In this Act, ***petroleum operations*** means the following—

(a) activities (referred to in this Act as ***petroleum activities***) carried out for the purpose of—

(i) extracting petroleum from the ground, or

(ii) injecting petroleum into the ground, but only where the primary purpose of the injection is to inject petroleum into the ground or to return petroleum to the ground, or

(iii) exploring for petroleum,

(b) activities (including the handling, preparing, processing or storing of extracted materials) carried out in connection with petroleum activities at a local site,

(c) activities associated with constructing a site where a petroleum activity (or an activity referred to in paragraph (b)) is, or is to be, carried out,

(d) activities associated with decommissioning, making safe or closure of a petroleum extraction site or a petroleum exploration site,

(e) educational activities or tourist activities carried out in connection with petroleum activities at a local site,

(f) activities prescribed by the regulations,

(g) an activity specified by the Minister, by order published in the Gazette, that is carried on at a place identified in the order.

(2) The regulations may declare an activity not to be petroleum operations for the purposes of this Act.

(3) The regulations may create exceptions to or otherwise limit the operation of this section.

7C Meaning of "petroleum site operator"

(1) In this Act—

petroleum site operator of a petroleum site means—

(a) the petroleum site holder, or

(b) if the petroleum site holder has appointed, in accordance with the regulations, another person to be the petroleum site operator, that other person.

(2) The regulations may provide for the appointment of more than one petroleum site operator for a petroleum site (so that there are different petroleum site operators for different parts of a

petroleum site) and for that purpose—

(a) a reference in this Act or the regulations to the petroleum site operator of a petroleum site includes a reference to the petroleum site operator of part of a petroleum site, and

(b) the functions of a petroleum site operator of a petroleum site are, in the case of a petroleum site operator of part of a petroleum site, functions in respect of that part of the petroleum site.

(3) The regulations may provide for the appointment of one person as the petroleum site operator for more than one petroleum site. In such a case all of the relevant petroleum sites are, for the purposes of this Act, to be treated as one petroleum site.

8 Geothermal energy

This Act applies to and in respect of geothermal energy as if geothermal energy were petroleum.

Note. This means exploration for geothermal energy and the extraction of geothermal energy are petroleum operations.

9 Examples and notes

(1) An example at the foot of a provision forms part of this Act.

(2) A note at the foot of a provision forms part of this Act.

Part 2 Application of Act

10 Places to which Act does or does not apply

(1) This Act applies to all workplaces that are mines or petroleum sites.

(2) This Act does not apply to—

(a) any mine, petroleum site or place that is of a class prescribed by the regulations or in circumstances or during time periods prescribed by the regulations, or

(b) any mine, petroleum site or place specified by the Minister in a notice published in the Gazette, or

(c) a petroleum site in the adjacent area in respect of the State within the meaning of Part 10 of the *Interpretation Act 1987*.

(3) The Minister is to notify the Minister administering the WHS Act if any notice under subsection (2) (b) is published in the Gazette. However, failure to notify that other Minister does not affect the validity of the notice.

11 Activities to which Act does or does not apply

(1) The following activities are not mining operations or petroleum operations for the purposes of this Act—

(a) an activity carried out in relation to the extraction of minerals or petroleum on private land for the private and non-commercial use of the owner of the land,

(b) fossicking,

(c) any activity where the extraction of minerals or petroleum is incidental to the activity,

Example. Civil works such as tunnelling to create a road.

(d) railway operations to which the *Rail Safety National Law (NSW)* applies,

(e) any activity on a public road or classified road within the meaning of the *Roads Act 1993*,

(f) the construction, commissioning, operation or decommissioning of the distribution system or transmission system owned or controlled by a network operator under the *Electricity Supply Act 1995*,

(g) any activity to which the *Civil Aviation Act 1988* of the Commonwealth, the *Air Services Act 1995* of the Commonwealth or the *Transport Safety Investigation Act 2003* of the Commonwealth (in so far as it applies to aircraft) applies,

(h) an activity carried out in relation to the extraction of geothermal energy from a source that has a temperature of less than 70 degrees Celsius or that is situated less than one kilometre below the surface of the earth,

(i) any activity prescribed by the regulations.

(2) The regulations may create exceptions to or otherwise limit the operation of this section.

12 Decisions on jurisdictional questions

(1) The Minister may make a determination as to whether a particular place is or is not a place to which this Act applies. The determination may be of general application or be limited as to time or circumstances.

(2) The Minister's determination is conclusive for the purposes of deciding a jurisdictional question (including a jurisdictional question arising in court proceedings).

(3) A ***jurisdictional question*** is a question as to whether functions of a government official under this Act or of an inspector under the WHS Act were or can be validly exercised or a question as to whether proceedings for an offence under this Act or the WHS Act were or can be validly instituted.

(4) A determination under this section applies in respect of functions exercised or purportedly exercised before or after the determination was made but not so as to affect court proceedings commenced before the determination was made.

(5) A determination under this section does not operate to result in a person committing an offence that the person would not have committed had the determination not been made.

(6) A certificate of the Minister certifying as to a determination made by the Minister under this section is evidence of the Minister's determination and the date of the determination.

(7) The Minister is to notify the Minister administering the WHS Act of any determination made by the Minister under this section (but a failure to notify the other Minister does not affect the validity of the determination).

(8) As soon as practicable after making a determination, the Minister is to take reasonable steps to ensure that a copy of the determination—

(a) is served on each person conducting a business or undertaking at the place to which the determination relates, or

(b) is posted in a prominent position at the place, or

(c) is published in the Gazette.

12A Exercise of functions by regulators and other officials

(1) An official may exercise any function of the official in relation to any workplace regardless of whether the workplace is a mine, a petroleum site or any other workplace.

(2) The functions of an official include—

(a) in relation to the mining and petroleum regulator, the functions of the WHS regulator, and

(b) in relation to the WHS regulator, the functions of the mining and petroleum regulator, and

(c) in relation to a government official, the functions of an inspector, and

(d) in relation to an inspector, the functions of a government official.

(3) Any requirement in the WHS laws that an official produce an identity card in relation to the exercise of a function is satisfied if the official produces an identity card issued (or taken to be issued) to the official under any provision of the WHS laws.

(4) In this section—

inspector means an inspector appointed under section 156 of the WHS Act.

mining and petroleum regulator means the regulator within the meaning of this Act.

official means the WHS regulator, the mining and petroleum regulator, a government official or an inspector.

WHS regulator means SafeWork NSW as referred to in clause 1 of Schedule 2 to the WHS Act.

Note. Clause 1 of Schedule 2 to the WHS Act provides that (for the purposes of the WHS laws) a reference to the regulator in relation to a mine or petroleum site (or a workplace at which activities under the *Petroleum (Offshore) Act 1982* are carried out) means the mining and petroleum regulator and a reference to the regulator in relation to any other workplace means the WHS regulator. However, that clause does not limit this section which permits either regulator to exercise any function of either regulator in relation to any workplace.

13 Act binds the Crown

(1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament of this jurisdiction permits, the Crown in all its other capacities.

(2) The Crown is liable for an offence against this Act.

Part 3 Incident notification

14 What is a "notifiable incident"

In this Act, ***notifiable incident*** means—

(a) the death of a person, or

(b) a serious injury or illness of a person that is prescribed by the regulations, or

(c) a dangerous incident prescribed by the regulations.

15 Duty to notify of notifiable incidents

(1) A mine operator of a mine must ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the conduct of any business or undertaking at the mine has occurred.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(1A) A petroleum site operator of a petroleum site must ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the conduct of any business or undertaking at the petroleum site has occurred.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(2) A person conducting a business or undertaking at a mine or petroleum site must ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the conduct of the business or undertaking at the mine or petroleum site has occurred.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(3) Notice under this section must be given in accordance with this section and by the fastest possible means.

(4) The notice must be given—

(a) by telephone, or

(b) in writing.

Example. The written notice can be given by facsimile, email or other electronic means.

(5) A person giving notice by telephone must—

(a) give the details of the incident requested by the regulator, and

(b) give a written notice of the incident within 48 hours of giving the notice by telephone.

(6) A written notice must be in a form, or contain the details, approved by the regulator.

16 Notifiable incident at coal mine

(1) A person who is required to ensure that the regulator is notified of a notifiable incident at a coal mine to which Part 5 applies must also ensure that an industry safety and health representative is given notice of the incident in accordance with this section.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(2) Notice is to be given in the same manner and form as notice is given to the regulator and is to contain the same details as those required by the regulator in respect of telephone notice or written notice, as the case may be.

17 Duty to preserve incident sites

(1) When a notifiable incident has occurred at a mine or petroleum site each of the following persons must ensure, so far as is reasonably practicable, that the incident site is not disturbed until an inspector arrives at the incident site or any earlier time that a government official directs—

(a) any person who is required to ensure that the regulator is notified of the notifiable incident,

(b) each person with management or control of the incident site.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(2) (Repealed)

(3) Subsection (1) does not prevent any action—

(a) to assist an injured person, or

(b) to remove a deceased person, or

(c) that is essential to make the incident site safe or to minimise the risk of a further notifiable incident, or

(d) that is associated with a police investigation, or

(e) for which an inspector or the regulator has given permission.

(4) A government official must not direct an earlier time under subsection (1) in the case of a

notifiable incident at a coal mine to which Part 5 applies unless the government official has consulted with an industry safety and health representative.

(5) In this section—

incident site means the workplace (or part of the workplace) at which the notifiable incident occurred and includes any plant, substance, structure or thing associated with the notifiable incident.

Part 4 Oversight of mines by government officials

Division 1 Appointment of government officials

18 Appointment by regulator

(1) In this Act, ***government official*** means a person appointed under this section.

(2) The regulator may appoint a person as—

(a) an inspector, or

(b) a mine safety officer, or

(c) an investigator.

(3) A person is not eligible for appointment under subsection (2) unless the person is—

(a) an officer or employee of a public authority, or

(b) the holder of a statutory office, or

(c) a person who is appointed as an inspector under a corresponding WHS law, or

(d) a person who is a member of a prescribed class of persons.

(4) The regulator may also appoint a person as a government official if the person is a consultant engaged by a public authority.

(5) The regulator may appoint one or more inspectors as chief inspectors.

(6) An instrument appointing a person under this section may limit the functions that the person has as a government official under this Act or as an inspector under the WHS Act.

(7) A person's appointment under this section ends when the person ceases to be eligible for appointment.

(8) A person who is a government official is deemed to be an inspector for the purposes of the WHS Act.

Note. Section 47 of the *Interpretation Act 1987* provides incidental powers with respect to appointments including providing a power to suspend or revoke any such appointment.

19 Qualifications of inspectors

A person may be appointed as an inspector only if the regulator is satisfied that the person has—

(a) appropriate knowledge and skills, and adequate experience, in mining operations or petroleum operations to effectively exercise the functions of an inspector, and

(b) if qualifications are prescribed by the regulations for the purposes of this section, those qualifications or qualifications that the regulator determines to be equivalent to those qualifications.

20 Accountability of government officials

(1) A government official must give written notice to the regulator of all interests, pecuniary or otherwise, that the government official has, or acquires, that conflict or could conflict with the proper exercise of the government official's functions.

(2) The regulator must give a direction to a government official not to deal, or to no longer deal, with a matter if the regulator becomes aware that the government official has a potential conflict of interest in relation to a matter and the regulator considers that the government official should not deal, or should no longer deal, with the matter.

21 Identity cards

(1) The regulator must give each government official an identity card that states the person's name and the office to which the person has been appointed and includes any other matter prescribed by the regulations.

Note. Section 157 of the WHS Act requires a government official to produce his or her identity card on request when exercising compliance powers.

(2) If a person to whom an identity card has been issued ceases to be a government official, the person must return the identity card to the regulator as soon as practicable.

(3) A copy of the instrument of appointment of a person as a government official under section 18 (4) is taken to be the government official's identity card for the purposes of the WHS laws.

Division 2 Functions of government officials

22 Functions of government officials

The functions of a government official are any functions conferred on the government official by this Act or the regulations.

23 Notifying mine operator or petroleum site operator of concerns

A government official (other than an investigator) must give written notice to a mine operator or petroleum site operator of the following matters if the government official becomes aware of the matter in the exercise of his or her functions at the mine or petroleum site—

(a) any matter that the government official considers to be relevant to the continued safe operation of the mine or petroleum site,

(b) any matter that the government official considers to be relevant to the health and safety of workers at the mine or petroleum site.

24 Consideration and investigation of complaints

(1) The regulator is to ensure that if a complaint is made to the regulator or a government official by a safety and health representative concerning the health and safety of workers at a coal mine—

(a) the complaint is considered and, if the regulator considers it necessary, investigated, and

(b) the results of that consideration and any investigation are reported back to the safety and health representative.

(2) Nothing in this section prevents a safety and health representative from raising matters directly with the mine operator of a mine.

25 Offence of failing to comply with requirement of government official

A person must not, without reasonable excuse, refuse or fail to comply with a requirement made by a government official in accordance with this Act.

Maximum penalty—

(a) in the case of an individual—$6,000, or

(b) in the case of a body corporate—$36,000.

Note. The WHS Act also makes it an offence to hinder, impersonate or threaten a government official. See Division 6 of Part 9, which applies to government officials because they are inspectors under the WHS Act and the functions that they exercise under this Act are compliance powers under the WHS Act.

26 Government officials subject to regulator's direction

(1) A government official is subject to the regulator's directions in the exercise of the government official's compliance powers.

(2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

Part 5 Safety and health representatives for coal mines

Division 1 Preliminary

27 Part applies only to coal mines

(1) This Part applies only to coal mines.

(2) This Part does not apply to a coal mine if the only mining operation being carried out at the coal mine is exploring for coal.

(3) The regulations may exclude parts of a coal mine from the application of this Part or from specific provisions of this Part.

Division 2 Industry safety and health representatives

28 Appointment of industry safety and health representatives

(1) In this section—

eligible person means a person who—

(a) is a WHS entry permit holder, and

(b) has the qualifications (if any) prescribed by the regulations.

(2) The Minister may appoint a person as an industry safety and health representative if—

(a) the person is an eligible person, and

(b) the person is nominated by the Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division).

(2A) The Minister must appoint a person under subsection (2) if there are fewer than 4 persons currently appointed as industry safety and health representatives.

(3) An appointment of an industry safety and health representative must be in writing.

(4) A person's appointment as an industry safety and health representative is revoked if the person ceases to be an eligible person.

(5) The regulations may prescribe circumstances in which the Minister must suspend or revoke, or may not suspend or revoke, an appointment under this section.

Note. Section 47 of the *Interpretation Act 1987* provides incidental powers with respect to appointments including providing a power to suspend or revoke any such appointment.

(6) A person whose appointment is suspended or revoked by the Minister may apply for an external review under section 229 of the WHS Act as if the person were an eligible person and the decision of the Minister to suspend or revoke the appointment were a reviewable decision. For the purposes of the review any reference in that section to the regulator is taken to include a reference to the Minister.

29 Functions of industry safety and health representatives

(1) An industry safety and health representative has the functions of a health and safety representative under the WHS Act for a work group, as if the work group comprised all workers at all coal mines.

(2) An industry safety and health representative has the following additional functions—

(a) to review the content and implementation of any safety management system required by the regulations in respect of a coal mine,

(b) to participate in investigations of events, occurrences or notifiable incidents at coal mines,

(c) to assist in the training of site safety and health representatives and electrical safety and health representatives.

(3) For the purposes of exercising a function, an industry safety and health representative—

(a) may enter and inspect a workplace or any part of a workplace at a coal mine at any time—

(i) after giving reasonable notice to the mine operator of the coal mine, or

(ii) without notice in the event of an incident or any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard, and

(b) may accompany a government official when the government official is carrying out an inspection of a workplace or part of a workplace at a coal mine.

30 Suspending operations

(1) An industry safety and health representative may give a direction to the mine operator of a coal mine to suspend mining operations at the coal mine if the industry safety and health representative is of the opinion that—

(a) there has been a failure at the coal mine to comply with the WHS laws or with any safety management system required by the regulations in respect of the coal mine, and

(b) because of that failure there is a danger to the health or safety of workers at the coal mine.

(2) A direction under this section must—

(a) be in the form (if any) approved by the regulator, and

(b) state that the industry safety and health representative is of the opinion referred to in subsection (1), and

(c) give particulars of the industry safety and health representative's reasons for being of that opinion, and

(d) identify the mining operations that are to be suspended, and

(e) give particulars of any action that, in the industry safety and health representative's opinion, could be taken to remove the danger.

(3) A mine operator who is given a direction must immediately—

(a) comply with the direction, and

(b) notify the regulator of the giving of the direction.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(4) An industry safety and health representative must take all reasonable steps to notify the regulator that the industry safety and health representative proposes to give a direction to a mine operator before the direction is given.

(5) An industry safety and health representative may instead notify the regulator as soon as practicable after giving a direction if the direction is given in relation to any situation involving a serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard.

(6) Failure to notify the regulator does not affect the validity of a direction.

(7) An industry safety and health representative must, as soon as practicable after giving a direction to a mine operator, give a copy of the direction to the regulator.

(8) A direction ceases to have effect at such time as an inspector attends and assesses the matters to which the direction relates.

(9) A direction also ceases to have effect if it is withdrawn by the industry safety and health representative by giving notice in writing to the mine operator.

(10) A direction under this section does not prevent the carrying out of work for the purpose of preventing or mitigating any danger to which the direction relates.

31 Issue of provisional improvement notices

(1) An industry safety and health representative, in the exercise of the functions of a health and safety representative under the WHS Act, cannot issue a provisional improvement notice in relation to a matter if the regulator has already issued (or decided not to issue) a stop work order in relation to the same matter.

Note. Section 90 (5) of the WHS Act prevents an industry safety and health representative issuing a provisional improvement notice if a government official has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter.

(2) An industry safety and health representative must, as soon as practicable after issuing a provisional improvement notice and within the time (if any) prescribed by the regulations, give a copy of the notice to the regulator along with such other information in relation to the giving of the notice as may be prescribed by the regulations.

32 Delegation of functions to site safety and health representative

(1) An industry safety and health representative may delegate his or her functions under section 30 (Suspending operations) to a site safety and health representative.

(2) A delegation must be in writing and a copy must be given to the site safety and health representative, the mine operator of the relevant coal mine and the regulator.

(3) A site safety and health representative may only exercise delegated functions under this section if—

(a) the site safety and health representative has received any required training prescribed by the regulations, and

(b) the industry safety and health representative is not available or it is not practicable for him or her to attend at short notice.

33 Identification of industry safety and health representatives

(1) Every industry safety and health representative is to be issued with an identity card by the Minister.

(2) The identity card must—

(a) state that it is issued under this Act, and

(b) give the name of the person to whom it is issued, and

(c) state the date (if any) on which it expires, and

(d) include any other matter prescribed by the regulations.

34 Offence to hinder or obstruct

A person must not intentionally hinder or obstruct an industry safety and health representative in exercising his or her functions, or induce or attempt to induce any other person to do so.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

35 Offence to impersonate

A person who is not an industry safety and health representative must not, in any way, hold himself or herself out to be an industry safety and health representative.

Maximum penalty—$10,000.

36 Offence to assault, threaten or intimidate

A person must not directly or indirectly assault, threaten or intimidate, or attempt to assault, threaten or intimidate, an industry safety and health representative or a person assisting an industry safety and health representative.

Maximum penalty—

(a) in the case of an individual—$50,000 or imprisonment for 2 years or both, or

(b) in the case of a body corporate—$250,000.

Division 3 Mine safety and health representatives

37 Definition

In this Division—

mine safety and health representative means—

(a) a site safety and health representative, or

(b) an electrical safety and health representative.

38 Election of mine safety and health representatives

(1) An individual may be elected as a site safety and health representative for a coal mine if the individual has such qualifications and skills (if any) as may be prescribed by the regulations.

(2) An individual may be elected as an electrical safety and health representative for a coal mine if

the individual has such qualifications and skills (if any) as may be prescribed by the regulations.

(3) More than one individual may be elected under subsection (1) or (2) if the mine operator of the mine agrees or the regulator directs.

(4) The person conducting an election must inform the regulator and an industry safety and health representative as soon as reasonably practicable after an individual is elected.

(5) The mine operator of the mine must, as soon as reasonably practicable after an individual is elected, cause one or more prominent notices to be displayed at the mine that are reasonably likely to ensure that all workers at the mine will be notified in a timely manner about the election of the individual.

Maximum penalty—

(a) in the case of an individual—$3,600, or

(b) in the case of a body corporate—$18,000.

39 Election procedure

(1) The election of a mine safety and health representative is to be conducted in accordance with the regulations and for that purpose the regulations may make provision for or with respect to the election of mine safety and health representatives, including the following—

(a) eligibility for election,

(b) eligibility to vote at an election,

(c) the nomination of candidates for election,

(d) the conduct of an election.

(2) An election of a mine safety and health representative for a coal mine must be held if one or more positions are vacant and—

(a) a worker at the coal mine requests in writing that an election be held, or

(b) the regulator directs that an election be held.

(3) If the number of candidates for election as a site safety and health representative or an electrical safety and health representative for a coal mine equals the number of vacancies for the particular office, the election need not be conducted and each candidate is to be taken to have been elected.

40 Term of office

(1) A mine safety and health representative for a coal mine holds office for 3 years.

(2) However, a person ceases to hold office before that time if—

(a) the person resigns that office by written notice given to the mine operator, or

(b) the person ceases to be eligible for election to that office, or

(c) the person is disqualified under this Division from acting in that office, or

(d) the person is removed from that office by a majority of the workers at the coal mine in accordance with the regulations.

(3) A mine safety and health representative is eligible for re-election.

41 Disqualification

(1) An application may be made to the Industrial Relations Commission to disqualify a mine safety and health representative on the ground that the representative has—

(a) exercised a function as a mine safety and health representative for an improper purpose, or

(b) used or disclosed any information he or she acquired as a mine safety and health representative for a purpose other than in connection with the role of mine safety and health representative.

(2) The following persons may make an application under this section—

(a) any person adversely affected by any such exercise of a function or use or disclosure of information,

(b) the regulator.

(3) If the Industrial Relations Commission is satisfied that a ground in subsection (1) is made out, the Commission may disqualify the mine safety and health representative for a specified period or indefinitely.

42 Functions of mine safety and health representatives

(1) A mine safety and health representative for a coal mine has all the functions of a health and safety representative under the WHS Act for a work group at the mine, as if the work group comprised all the workers at the mine.

Example. The power to issue provisional improvement notices under the WHS Act.

(2) An electrical safety and health representative for a coal mine may only exercise his or her functions in relation to electrical installations and electrical equipment and any issues and risks arising from their use.

(3) A mine safety and health representative for a coal mine may observe any formal investigation conducted by or on behalf of the mine operator of an event or other occurrence at the coal mine that must be notified to the regulator.

(4) The fact that there may be one or more health and safety representatives under the WHS Act for workers at a coal mine does not limit the functions of a mine safety and health representative for the coal mine.

43 Issue of provisional improvement notices

(1) A health and safety representative under the WHS Act for a work group that comprises workers at a coal mine cannot issue a provisional improvement notice in relation to the coal mine while there is—

(a) a site safety and health representative for the coal mine, or

(b) an electrical safety and health representative for the coal mine, but only if—

(i) there is no site safety and health representative for the coal mine, and

(ii) the provisional improvement notice relates only to electrical installations and electrical equipment and any issues and risks arising from their use.

(2) A mine safety and health representative for a coal mine, in the exercise of the functions of a health and safety representative under the WHS Act, cannot issue a provisional improvement notice in relation to a matter if—

(a) the regulator has already issued (or decided not to issue) a stop work order in relation to the same matter, or

(b) an industry safety and health representative has already issued (or decided not to issue) a provisional improvement notice in relation to the same matter.

Note. Section 90 (5) of the WHS Act prevents a mine safety and health representative from issuing a provisional improvement notice if a government official has already issued (or decided not to issue) an improvement notice or prohibition notice in relation to the same matter.

(3) A mine safety and health representative for a coal mine must, before issuing a provisional improvement notice, take reasonable steps to consult with a health and safety representative under the WHS Act for a work group that comprises workers at the coal mine but only if workers in that work group will be affected by the notice.

(4) A failure to consult under subsection (3) does not affect the validity of the provisional improvement notice.

(5) A mine safety and health representative for a coal mine cannot issue a provisional improvement notice unless the person has completed the course of training required by section 45.

(6) A mine safety and health representative must, as soon as practicable after issuing a provisional improvement notice and before the time (if any) prescribed by the regulations, give a copy of the notice to the regulator.

44 Government officials to consult with mine safety and health representatives

(1) A government official who proposes to inspect a coal mine in connection with any matter that may affect the health and safety of workers at the mine must (if it is reasonably practicable to do so)—

(a) consult regarding the proposed inspection with—

(i) a site safety and health representative for the coal mine, and

(ii) an electrical safety and health representative for the coal mine, if the matter relates to electrical installations and electrical equipment and any issues and risks arising from their use, and

(b) permit each such mine safety and health representative to accompany the government official on the inspection.

(2) A failure by a government official to comply with this section does not affect the exercise of any

function by the government official.

45 Training of mine safety and health representatives

(1) A mine safety and health representative for a coal mine must undertake a course of training relating to work health and safety that is accredited by the regulator for the purposes of this section.

(2) The mine operator of a coal mine must ensure that a person who is elected to be a mine safety and health representative for the coal mine undertakes the course of training as soon as is reasonably practicable after the person is elected.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(3) The mine operator of a coal mine must ensure that a mine safety and health representative for the coal mine is permitted to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

46 Reports by mine safety and health representatives

(1) A mine safety and health representative for a coal mine must, within 7 days after making an inspection of the coal mine or of any part of the coal mine, give the mine operator of the coal mine a report of the results of the inspection.

Maximum penalty—$500.

(2) The mine operator of the coal mine must keep any such report at the mine for at least 12 months after it is made.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(3) The regulations may limit the kinds of inspection to which this section applies.

47 Reporting of dangers

(1) A mine safety and health representative who finds any of the following during an inspection of a coal mine must record the finding in a book or other form of record (to be kept at the coal mine by the mine operator for that purpose) on the day of the inspection and before the representative leaves the coal mine following the inspection—

(a) a danger in relation to noxious or flammable gas,

(b) a danger in relation to the existence of self-heating by coal or other material,

(c) any other condition from which danger to the coal mine or to the safety or health of persons employed at the coal mine may be apprehended.

(2) The mine operator of a coal mine must immediately inform the regulator of the contents of any record made as referred to in subsection (1) and must cause a copy of the record to be given to the regulator.

Maximum penalty—

(a) in the case of an individual—$10,000, or

(b) in the case of a body corporate—$50,000.

(3) The regulations may prescribe how the regulator is required to be informed under this section and what additional information (if any) must be given to the regulator.

48 No obligation to exercise function

Nothing in this Act, other than a provision creating an offence, imposes an obligation on a person to exercise any function because the person is a mine safety and health representative.

Part 6 Enforcement measures

Division 1 Improvement and prohibition notices

49 Improvement notices

(1) This section sets out additional circumstances in which an improvement notice may be given by a government official who is exercising the functions of an inspector under section 191 of the WHS Act.

(2) The government official may give an improvement notice under section 191 of the WHS Act if the government official reasonably believes that a person is likely to contravene a provision of the WHS laws.

(3) Any such improvement notice is not required to state the matters set out in section 192 (1) of the WHS Act but must instead state the following—

(a) that the person giving the notice believes that the person to whom the notice has been given is likely to contravene a provision of the WHS laws,

(b) the provision that is likely to be contravened,

(c) briefly, how the provision is likely to be contravened,

(d) the day by which the person is required to comply with the notice.

50 Prohibition notices

(1) This section sets out additional circumstances in which a direction or a prohibition notice may be given by a government official who is exercising the functions of an inspector under section 195 of the WHS Act.

(2) A government official may give a direction under section 195 of the WHS Act if the government official believes that—

(a) an activity is occurring at a workplace that involves a serious risk to the health or safety of a person, or

(b) an activity may occur at a workplace that, if it occurs, could involve a serious risk to the health or safety of a person, or

(c) an activity at a workplace has caused, or is causing, a contravention of a provision of the WHS laws, being a provision that is prescribed by the regulations.

(3) Section 196 (1) (c) of the WHS Act does not apply to a prohibition notice issued in relation to a direction referred to in subsection (2) (a) or (b).

(4) Section 196 (1) (b) of the WHS Act does not apply to a prohibition notice issued in relation to a direction referred to in subsection (2) (c).

Division 2 Stop work orders

51 Regulator may make stop work orders

(1) The regulator may make an order (a ***stop work order***) requiring a person conducting a business or undertaking at a mine or petroleum site to stop any activity at any place specified in the order.

(2) A stop work order may also require the person conducting the business or undertaking to carry out any activity that the regulator considers to be necessary to ensure that the place to which the order relates is made safe.

(3) The regulator may make a stop work order only if the regulator reasonably believes that the making of the order is necessary to prevent a serious risk to the health or safety of any person.

(4) If a stop work order requires an activity to be carried out it must specify a time within which the activity is to be carried out.

(5) The regulator is not required to notify any person before making a stop work order.

(6) A copy of the stop work order must be given to the person conducting the business or undertaking.

(7) The person conducting the business or undertaking must give a copy of the stop work order to the relevant mine operator or petroleum site operator (unless that person is the mine operator or petroleum site operator).

(8) A stop work order takes effect when the person conducting the business or undertaking is first notified by the regulator that the order has been made (whether under subsection (6) or otherwise).

(9) A stop work order remains in force for the time specified in the order, being no more than 28 days.

(10) The regulator may revoke a stop work order if the regulator is satisfied that the order is no longer necessary to prevent a serious risk to the health or safety of any person.

(11) The regulator must, immediately after making a stop work order, consult with the person conducting the business or undertaking to determine whether the person seeks any modifications to the order.

(12) A stop work order is modified by substituting a new order made in accordance with this section.

(13) More than one stop work order may be made under this section in relation to the same person and the same activity even if the orders together have effect for a period of more than 28 days.

52 Stop work order prevails over other instruments

Each of the following is inoperative to the extent, and during any period, that it is inconsistent with a stop work order regardless of whether it was made before or after the stop work order—

(a) a non-disturbance notice, improvement notice or prohibition notice issued under the WHS Act,

(b) an approval, notice, order or other instrument made or issued by or under any other Act that requires or permits an activity to which the stop work order applies.

53 Costs of enforcing stop work order

(1) If a person does not comply with a stop work order, the regulator may cause work to be carried out for the purposes of carrying out the requirements of the order.

(2) Reasonable costs and expenses incurred by or on behalf of the regulator under this section are recoverable by the regulator as a debt due to the Crown by the person.

(3) In any proceedings instituted for the recovery of any such debt, a certificate of the regulator specifying that an amount is the amount of the debt is evidence of that fact.

(4) Any such debt is recoverable whether or not a person is convicted of an offence under section 55 (Offence—failure to comply with stop work order).

(5) A court that finds a person guilty of an offence under that section may, on the application of the prosecutor, order the person to pay to the Crown any amount the Crown is entitled to recover from the person under this section.

54 Entry on land for purposes of carrying out order

A person may enter and remain on any land and may carry out works on the land if—

(a) the person is carrying out the works in accordance with a stop work order, and

(b) the person is the subject of the order or is a person carrying out the requirements of the order on behalf of that person or on behalf of the regulator, and

(c) the occupier of the land has been given reasonable notice of the proposed entry to the land.

55 Offence—failure to comply with stop work order

A person must comply with a stop work order.

Maximum penalty—

(a) in the case of an individual—$100,000 and in the case of a continuing offence, a further penalty not exceeding $10,000 for each day the offence continues, or

(b) in the case of a body corporate—$500,000 and in the case of a continuing offence, a further penalty not exceeding $50,000 for each day the offence continues.

Part 7 Inquiries

56 Boards of Inquiry

(1) The Minister may constitute a person as a Board of Inquiry to conduct an inquiry into any of the following—

(a) a notifiable incident,

(b) any event, occurrence, practice or matter that may affect the health and safety of workers or other persons at a mine or petroleum site,

(c) anything prescribed by the regulations.

(2) The Minister is to provide terms of reference for the inquiry when constituting the Board of Inquiry.

(3) In conducting an inquiry, a Board of Inquiry—

(a) is not bound to act in a formal manner, and

(b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.

(4) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at an inquiry.

(5) A Board of Inquiry is to determine its own procedure, except as provided by this Act.

(6) A Board of Inquiry conducting an inquiry may be assisted by a legal practitioner appointed by the Minister for the purposes of the inquiry.

(7) A court (which for the purposes of this subsection includes a person conducting coronial proceedings within the meaning of the *Coroners Act 2009*) may by order suspend an inquiry if the court is of the opinion that the inquiry may prejudice a matter before the court. An inquiry is suspended for the time specified in the order.

57 Assessors

(1) A Board of Inquiry, when conducting and making a determination in respect of an inquiry, is to sit with one or more assessors appointed by the Minister for the purposes of the inquiry.

(2) An assessor sitting with a Board of Inquiry has the power to advise the Board of Inquiry but not to adjudicate on any matter before the Board of Inquiry.

(3) A Board of Inquiry has the right to consult, either collectively or individually and either in public or in private, with assessors sitting with it.

58 Witnesses and evidence at inquiries

(1) A Board of Inquiry may by summons require a person to appear at an inquiry conducted by the Board to give evidence and to produce any documents that are specified in the summons.

(2) A Board of Inquiry may require a person appearing at an inquiry to do any one or more of the following—

(a) be sworn or affirmed,

(b) produce a document,

(c) answer a question.

(3) A Board of Inquiry may administer an oath to, or take an affirmation from, a person appearing at an inquiry.

(4) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.

(5) A person is not excused from a requirement under this section to answer a question on the ground that the answer might incriminate the person or make the person liable to a penalty.

(6) However, any answer given by a natural person in compliance with a requirement under this section is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this section) if—

(a) the person objected at the time to answering the question on the ground that it might incriminate the person, or

(b) the person was not warned on that occasion that the person may object to answering the question on the ground that it might incriminate the person.

(7) Further information obtained as a result of an answer given under this section is not inadmissible on the ground that the answer had to be given or that the answer might incriminate the person.

(8) A person must not, without reasonable excuse, fail to comply with a requirement made of the person under this section.

Maximum penalty—

(a) in the case of an individual—$25,000, or

(b) in the case of a body corporate—$50,000.

59 Report by Board of Inquiry

(1) A Board of Inquiry must, within the period required by the Minister, prepare and provide to the Minister a report as to its findings in accordance with its terms of reference.

(2) A Board of Inquiry may, if it is of the opinion that it is in the public interest to do so, recommend in its report that some or all of the report should not be made public.

(3) The Minister is to table a report in each House of Parliament within 28 days after being provided

with the report.

(4) Subsection (3) does not apply to a report or any part of a report that a Board of Inquiry has recommended should not be made public.

Part 8 Statutory bodies

Division 1 Mine Safety Advisory Council

60 Establishment of Council

The Minister is to establish a Mine Safety Advisory Council that includes representation from peak mine operator and mine worker organisations.

61 Functions of Council

The Mine Safety Advisory Council has the following functions—

(a) to provide advice to the Minister on any policy matter relating to work health and safety in mines,

(b) any other advisory function relating to work health and safety in mines that is prescribed by the regulations.

62 Regulations

The regulations may make provision for or with respect to the constitution, members and procedure of the Mine Safety Advisory Council.

Division 2 Mining and Petroleum Competence Board

63 Constitution of Mining and Petroleum Competence Board

(1) There is constituted by this Act a body corporate with the corporate name of the Mining and Petroleum Competence Board.

(2) The Board represents the Crown.

64 Ministerial control of Board

The Board is subject to the control and direction of the Minister.

65 Membership of Board

(1) The Board is made up of the following persons appointed by the Minister—

(a) the Chairperson of the Board (who is not to be an officer of the Department),

(b) such number of persons as the Minister determines, selected in accordance with the regulations, to represent the interests of employers in the mining industry,

(b1) such number of persons as the Minister determines, selected in accordance with the regulations, to represent the interests of employers in the petroleum industry,

(c) such number of persons as the Minister determines, selected in accordance with the

regulations, to represent the interests of workers in the mining industry,

(c1) such number of persons as the Minister determines, selected in accordance with the regulations, to represent the interests of workers in the petroleum industry,

(d) no more than 4 additional persons who have expertise in the development and assessment of competence of persons performing functions at mines or petroleum sites,

(e) 2 officers of the Department.

(2) The regulations may make provision for or with respect to the submission of representatives under this section and the appointment of members of the Board.

66 Procedure of Board

(1) The regulations may make provision for or with respect to the procedure of the Board.

(2) The Board may make rules about the procedure of the Board that are not inconsistent with this Act or the regulations. Those rules are subject to any direction of the Minister.

67 Functions of Board

(1) The Board has the following functions—

(a) to oversee the development of competence standards for persons exercising functions at a mine or petroleum site that may impact on the health and safety of any person,

(b) to undertake initial and ongoing assessments of the competence of persons exercising any such function,

(c) to advise the Minister on matters related to the competence required of persons to exercise any such function.

(2) The Board also has any function conferred or imposed on it by this Act, the regulations or the Minister.

(3) Without limiting subsection (1), the Board may do any or all of the following for the purpose of carrying out its functions—

(a) engage consultants,

(b) develop competence standards or cause competence standards to be developed,

(c) assess a person's competence, cause a person's competence to be assessed or accept an assessment of a person's competence.

68 Annual report

The Board must, within 6 months after the end of June each year, make an annual report of its activities during the preceding year to the Minister.

Part 9 Miscellaneous

69 Service of documents

(1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by—

(a) in the case of a natural person—

(i) delivering it to the person personally, or

(ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or

(iii) sending it by facsimile transmission to the facsimile number of the person, or

(iv) sending it by email to the email address of the person, or

(b) in the case of a body corporate—

(i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or

(ii) sending it by facsimile transmission to the facsimile number of the body corporate, or

(iii) sending it by email to the email address of the body corporate.

(2) A document that is authorised or required by this Act or the regulations to be served on—

(a) the petroleum site operator of a petroleum site, may also be served by leaving it with a worker at the petroleum site, or

(b) the mine operator of a mine, may also be served by leaving it with a worker at the mine, or

(c) an industry safety and health representative, may also be served by sending it to any district or national office of the Construction, Forestry, Maritime, Mining and Energy Union (Mining and Energy Division) or by leaving it with a person apparently of or above the age of 16 years at any such office.

(2A) If the regulator has specified, by order published in the Gazette, a person, place or address (including an email address) for the service of any document that is authorised or required by this Act or the regulations to be served on the regulator, the document may be served only by delivering it to that person, place or address.

(3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

(4) In this section, a reference to a document being served on a person includes a reference to any document being given to the person.

70 Publication of information by regulator

(1) The regulator may publish any information concerning any of the following matters—

(a) the conviction of a person for an offence against the WHS laws,

(b) any investigation conducted under the WHS laws of a possible contravention of the WHS laws,

(c) any action taken by the regulator under the WHS laws for the purpose of enforcing compliance with or preventing a contravention of the WHS laws (including the issue of any notice or the acceptance of any undertaking for that purpose),

(d) any incident or other matter that may be of relevance to mine operators, petroleum site operators, persons conducting businesses and undertakings or workers in connection with compliance by them with duties imposed by the WHS laws,

(e) any matter prescribed by the regulations.

(2) No liability is incurred by the State in respect of anything done in good faith for the purpose of publishing information under this section.

(3) No liability is incurred by a person publishing in good faith information that has been published under this section.

(4) In this section—

liability includes liability in defamation.

71 Sharing of information with corresponding regulator

(1) The regulator or a member of staff of the regulator is authorised to disclose information or give access to a document to a corresponding regulator or a member of staff of a corresponding regulator if the disclosure or giving of access is for the purpose of assisting the corresponding regulator to exercise the functions of the corresponding regulator under a corresponding WHS law.

(2) Section 271 of the WHS Act applies to the use of information or a document that a person obtains or gains access to as a result of the disclosure of the information or the giving of access to the document as authorised by a provision of a corresponding WHS law equivalent to this section, as if the person had obtained the information or gained access to the document in exercising a function under this Act or the WHS Act.

(3) Section 271 of the WHS Act does not apply to the disclosure of information or giving of access to a document as authorised by this section.

72 Mining and petroleum codes of practice

(1) A reference in section 274 of the WHS Act to the Minister is taken to include a reference to the Minister administering this Act if the code of practice is to be made in respect of mines, mining operations, petroleum sites or petroleum operations.

(2) In developing a code of practice that relates to a particular class of mine, mining operations,

petroleum site or petroleum operations, consultation is not required to take place under section 274 (2) (a) of the WHS Act with a jurisdiction if the Minister reasonably believes that the class of mine or petroleum site does not exist, or the class of mining operations or petroleum operations does not take place, in that jurisdiction.

73 Immunity from liability

For the avoidance of doubt, the following persons are persons engaged in the administration of this Act and the WHS Act for the purposes of section 270 of the WHS Act—

(a) a member of the Mine Safety Advisory Council,

(b) a member of the Mining and Petroleum Competence Board,

(c) a person who constitutes a Board of Inquiry,

(d) an assessor sitting with a Board of Inquiry,

(e) an industry safety and health representative.

74 Functions of regulator

The regulator, in addition to the functions set out in section 152 of the WHS Act, has the function of advising and making recommendations to the Minister and reporting on the operation and effectiveness of the WHS laws.

75 Delegation of functions by Minister

The Minister may, by instrument in writing, delegate to the head of the Department any of the functions conferred or imposed on the Minister by or under this Act (other than this power of delegation).

Note. The delegation of functions by the regulator is provided for by section 154 of the WHS Act.

76 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may make provision for or in relation to matters set out in Schedule 2.

(3) Without limiting subsection (1), the regulations under this Act may make provision for or in relation to any matter for or in relation to which regulations may be made under the WHS Act.

(4) Without limiting subsection (1), the regulations may be made in respect of an activity in relation to mining operations that takes place at a workplace other than a mine.

(4A) Without limiting subsection (1), the regulations may be made in respect of an activity in relation to petroleum operations that takes place at a workplace other than a petroleum site.

(5) A reference in the WHS Act to the WHS Act in or in connection with a power to make regulations under that Act is to be read as including a reference to this Act.

(6) The Minister is not to recommend the making of a regulation containing provisions that confer jurisdiction of the Civil and Administrative Tribunal to exercise functions unless the Minister certifies that the Minister administering the *Civil and Administrative Tribunal Act 2013* has agreed to the provisions.

77 Review of Act

(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

78 (Repealed)

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) A provision referred to in subclause (1) has effect, if the regulations so provide, despite any other clause of this Schedule.

(5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part—

CMHS Act means the *Coal Mine Health and Safety Act 2002*.

former Acts means the CMHS Act and the MHS Act.

MHS Act means the *Mine Health and Safety Act 2004*.

3 Jurisdictional questions under previous Acts

A reference to this Act in section 12 (Decisions on jurisdictional questions) includes a reference to the former Acts.

4 Notifiable incidents

Part 3 extends to an incident occurring before the commencement of that Part. However, notice is not required to be given in respect of such an incident if notice has already been given in accordance with a former Act in respect of the incident.

5 Inspectors, investigators and mine safety officers under former Acts

(1) A person holding office as Chief Inspector under a former Act immediately before the repeal of the Act is deemed to have been appointed as an inspector and as a chief inspector under this Act.

(2) A person holding office as an inspector under a former Act immediately before the repeal of the Act is deemed to have been appointed as an inspector under this Act.

(3) A person holding office as an investigator under a former Act immediately before the repeal of the Act is deemed to have been appointed as an investigator under this Act.

(4) A person holding office as a mine safety officer under a former Act immediately before the repeal of the Act is deemed to have been appointed as a mine safety officer under this Act.

(5) An identity card issued under the WHS Act to a person referred to in this clause is taken to be an identity card issued to the person under this Act.

6 Mining Competence Board

(1) The Mining Competence Board established under this Act is a continuation of and the same legal entity as the Mining Competence Board constituted under the MHS Act immediately before the repeal of that Act.

(2) Accordingly, a person holding office as a member of the Mining Competence Board under the MHS Act immediately before the repeal of that Act is taken to have been appointed as a member of the Mining Competence Board under this Act.

(3) Anything done by the Mining Competence Board before the repeal of the MHS Act does not cease to have force or effect merely because of that repeal.

7 Mine Safety Advisory Council

(1) The Mine Safety Advisory Council established under this Act is a continuation of and the same legal entity as the Mine Safety Advisory Council constituted under the *Mining Act 1992* immediately before the repeal of Part 16 of that Act.

(2) Accordingly, a person holding office as a member of the Mine Safety Advisory Council under the *Mining Act 1992* immediately before the repeal of Part 16 of that Act is taken to have been appointed as a member of the Mine Safety Advisory Council under this Act.

8 Industry safety and health representatives

(1) A person who, immediately before the repeal of the CMHS Act, holds the office of industry check inspector under that Act is, on the commencement of this Act, taken to hold the office of industry safety and health representative.

(2) An identification card issued under the CMHS Act to a person referred to in this clause is taken to be an identity card issued to the person under this Act.

9 Site safety and health representatives

(1) A person who, immediately before the repeal of the CMHS Act, holds the office of site check inspector under that Act in relation to a coal mine (referred to in that Act as a coal operation) is, on the commencement of this Act, taken to hold the office of site safety and health representative at the mine.

(2) In determining the term of office under this Act in relation to a person referred to in subclause (1), the period from the time the person was last elected to the office of site check inspector under the CMHS Act until the repeal of that Act is to be taken into account.

10 Electrical safety and health representatives

(1) A person who, immediately before the repeal of the CMHS Act, holds the office of electrical check inspector under that Act in relation to a coal mine (referred to in that Act as a coal operation) is, on the commencement of this Act, taken to hold the office of electrical safety and health representative at the mine.

(2) In determining the term of office under this Act in relation to a person referred to in subclause (1), the period from the time the person was last elected to the office of electrical check inspector under the CMHS Act until the repeal of that Act is to be taken into account.

11 Stop work orders under former Acts

A stop work order in force under the former Acts immediately before the repeal of those Acts is taken to be a stop work order in force under this Act.

12 Inquiries

A Board of Inquiry constituted under a former Act that has not reported to the Minister before the repeal of that Act is taken to be a Board of Inquiry constituted under this Act.

13 Amendment of Mine Safety (Cost Recovery) Act 2005

(1) A reference to this Act in the definition of ***mine and petroleum sites safety legislation*** in section 3 (1) of the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005* includes a reference to the former Acts, the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901*.

(2) A reference to a mine in paragraph (c) of the definition of ***mine and petroleum sites safety legislation*** in section 3 (1) of the *Mine and Petroleum Site Safety (Cost Recovery) Act 2005* includes a reference to the following—

(a) any place of work to which the CMHS Act applies,

(b) any place of work that is a mine within the meaning of the MHS Act,

(c) a mine within the meaning of the *Coal Mines Regulation Act 1982* or the *Mines Inspection Act 1901*,

(d) a coal preparation plant that is declared under Part 5A of the *Coal Mines Regulation Act 1982*.

14 Amendment of Mining Act 1992

A reference to this Act in section 378E of the *Mining Act 1992* includes a reference to the former Acts and the *Mines Inspection Act 1901* in relation to an order or direction given before the commencement of this Act.

15 Validation not affected by repeal

To avoid doubt, the repeal of the CMHS Act does not affect the operation of any validation, saving or other thing done by clause 24A of Schedule 3 to that Act.

16 Validation of WorkCover regulatory action

(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.

(2) In this clause—

WHS Regulations means the *Work Health and Safety Regulation 2011*.

WorkCover regulatory action means any of the following actions by the WorkCover Authority—

(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,

(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,

(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,

(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,

(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.

17 Validation of regulatory action under certain other Acts

(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.

(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.

(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.

(4) To remove doubt, this clause extends to—

(a) the conduct of any investigation and the gathering of evidence, and

(b) the commencement, maintenance and conclusion of criminal proceedings.

(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).

(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.

(7) In this clause—

CMHS official means any of the following officials under the CMHS Act—

(a) the Chief Inspector,

(b) an electrical check inspector,

(c) an industry check inspector,

(d) an inspector,

(e) an investigator,

(f) a mine safety officer,

(g) a site check inspector.

CMHS regulator means the Department or the Director-General under the CMHS Act.

coal mining lease area means a mining area or sublease area (within the meaning of the *Mining Act 1992*) 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.

colliery holding means a colliery holding under the *Mining Act 1992*.

OHS Act means the *Occupational Health and Safety Act 2000*.

OHS official means an inspector pursuant to section 47B of the OHS Act.

OHS regulator means the Department and the Director-General under the OHS Act.

regulatory function means—

(a) any function of a CMHS official or CMHS regulator under the CMHS Act, or

(b) any function of an OHS official or OHS regulator, in relation to a coal mining lease area, under the OHS Act, or

(c) any function of a WHS official or WHS regulator, in relation to a coal mining lease area, under the WHS Act.

WHS Act means the *Work Health and Safety Act 2011*.

WHS official means an inspector pursuant to section 156A (3) of the WHS Act.

WHS regulator means the Department and the Director-General under the WHS Act.

Part 3 Provisions consequent on enactment of Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Act 2015

18 Notifiable incidents

Part 3 of this Act extends to an incident occurring at a petroleum site before the commencement of section 15 (1A). However, notice is not required to be given in respect of such an incident if notice has already been given in accordance with the WHS Act in respect of the incident.

19 Notice of cause of danger

A notice that has effect under section 129 of the *Petroleum (Onshore) Act 1991* immediately before the repeal of that section, continues to have effect according to its tenor as if it were an improvement notice issued under the WHS Act.

Schedule 2 Regulation-making powers

(Section 76)

1 Construction of regulations

How regulations under this Act are to be construed in relation to the WHS Regulations.

2 Safety and health representatives

The functions of safety and health representatives and the circumstances in which a safety and health representative is taken to be a health and safety representative under the WHS Act.

3 Review of decisions

Conferring jurisdiction on the Civil and Administrative Tribunal to conduct administrative reviews under the *Administrative Decisions Review Act 1997*.

Note. Clause 14 of Schedule 3 to the WHS Act also provides for the regulations to confer jurisdiction on the Local Court or the Industrial Relations Commission.

Schedule 3 (Repealed)

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Work Health and Safety (Mines and Petroleum Sites) Act 2013 No 54 (formerly *Work Health and Safety (Mines) Act 2013*). Assented to 1.7.2013. Date of commencement, cll 2 and 17 of Sch 1 excepted, 1.2.2015, sec 2 and 2014 (786) LW 12.12.2014; date of commencement of cll 2 and 17 of Sch 1, 3.12.2014, sec 2 and 2014 (768) LW 3.12.2014. This Act has been amended as follows—

2013 No 84 *Coal Mine Health and Safety Amendment (Validation) Act 2013*. Assented to 31.10.2013. Date of commencement, assent, sec 2.

No 95 *Civil and Administrative Legislation (Repeal and Amendment) Act 2013*. Assented to 20.11.2013. Date of commencement, 1.1.2014, sec 2.

2014 No 71 *Work Health and Safety (Mines) Amendment Act 2014*. Assented to 11.11.2014. Date of commencement of Sch 1, 3.12.2014, sec 2 and 2014 (769) LW 3.12.2014.

2015 No 43 *Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Act 2015*. Assented to 2.11.2015. Date of commencement, 1.2.2016, sec 2 and 2016 (46) LW 29.1.2016.

2016 No 27 *Statute Law (Miscellaneous Provisions) Act 2016*. Assented to 7.6.2016. Date of commencement of Sch 2, 8.7.2016, sec 2 (1).

No 55 *Statute Law (Miscellaneous Provisions) Act (No 2) 2016*. Assented to 25.10.2016. Date of commencement of Sch 1.34, 6.1.2017, sec 2 (1).

2017 No 22 *Statute Law (Miscellaneous Provisions) Act 2017*. Assented to 1.6.2017. Date of commencement of Sch 4, 7 days after assent, sec 2 (1).

2019 No 1 *Statute Law (Miscellaneous Provisions) Act 2019*. Assented to 17.6.2019. Date of commencement of Sch 2.44, 14 days after assent, sec 2 (1).

No 14 *Statute Law (Miscellaneous Provisions) Act (No 2) 2019*. Assented to 21.11.2019. Date of commencement of Sch 2.25, 14 days after assent, sec 2(1).

This Act has been amended by sec 30C of the *Interpretation Act 1987* No 15.

Table of amendments

Long title	Am 2015 No 43, Sch 1 [1].
Sec 1	Am 2015 No 43, Sch 1 [2].
Sec 3	Am 2015 No 43, Sch 1 [3]–[5].
Sec 4	Subst 2014 No 71, Sch 1 [1]. Am 2015 No 43, Sch 1 [6].
Sec 5	Am 2014 No 71, Sch 1 [2]–[4]; 2015 No 43, Sch 1 [7]–[9]; 2017 No 22, Sch 4.53.

Sec 6	Subst 2015 No 43, Sch 1 [10].
Sec 7	Am 2014 No 71, Sch 1 [5]. Subst 2015 No 43, Sch 1 [10].
Sec 7A	Ins 2014 No 71, Sch 1 [6]. Am 2015 No 43, Sch 1 [11].
Secs 7B, 7C	Ins 2015 No 43, Sch 1 [12].
Sec 8	Am 2015 No 43, Sch 1 [13] [14].
Sec 10	Am 2015 No 43, Sch 1 [15]–[18].
Sec 11	Subst 2014 No 71, Sch 1 [7]. Am 2015 No 43, Sch 1 [19]–[21].
Sec 12A	Ins 2015 No 43, Sch 1 [22].
Sec 15	Am 2015 No 43, Sch 1 [23]–[25].
Sec 17	Am 2015 No 43, Sch 1 [26]–[34]; 2016 No 27, Sch 2.60.
Part 4, Div 1, note	Rep 2019 No 14, Sch 2.25.
Sec 18	Am 2015 No 43, Sch 1 [35] [36].
Sec 19	Am 2015 No 43, Sch 1 [37].
Sec 21	Am 2015 No 43, Sch 1 [38].
Sec 23	Am 2015 No 43, Sch 1 [39] [40].
Sec 28	Am 2016 No 55, Sch 1.34; 2019 No 1, Sch 2.44.
Sec 51	Am 2015 No 43, Sch 1 [41] [42].
Sec 56	Am 2015 No 43, Sch 1 [43].
Part 8, Div 2, heading	Am 2015 No 43, Sch 1 [44].
Sec 63	Am 2015 No 43, Sch 1 [45].
Sec 65	Am 2015 No 43, Sch 1 [46]–[48].
Sec 67	Am 2015 No 43, Sch 1 [49].
Sec 69	Am 2015 No 43, Sch 1 [50] [51]; 2019 No 1, Sch 2.44.
Sec 70	Am 2015 No 43, Sch 1 [52].
Sec 72	Am 2015 No 43, Sch 1 [53]–[56].
Sec 73	Am 2015 No 43, Sch 1 [57].
Sec 76	Am 2013 No 95, Sch 2.154 [1]; 2015 No 43, Sch 1 [58].
Sec 78	Rep 1987 No 15, sec 30C.
Sch 1	Am 2013 No 84, Sch 1.2; 2014 No 71, Sch 1 [8] [9]; 2015 No 43, Sch 1 [59]–[61].
Sch 2	Am 2013 No 95, Sch 2.154 [2].
Sch 3	Am 2014 No 71, Sch 1 [10]. Rep 1987 No 15, sec 30C.