GUIDE | WHS (MINES) REGULATION 2014

Quick guide: What you need to know about the new laws

December 2014

Overview

The Work Health and Safety (Mines) Act 2013 (the WHS Mines Act) and the Work Health and Safety (Mines) Regulation 2014 (the WHS (Mines) Regulation) will commence on 1 February 2015.

The new laws increase harmonisation between the different states and territories of Australia. They have been developed in consultation with other states, in particular the other major mining states of Western Australia and Queensland. The new-mining specific laws have also been developed to align with and build on the Work Health and Safety Act 2011 (the WHS Act) and Work Health and Safety Regulation 2011 (the WHS Regulation). This will make it easier for businesses to use consistent approaches across mining and non-mining operations.


Generous transitional arrangements have been put in place to give duty holders time to understand and make any changes needed to comply with their obligations. Many of the transitional arrangements permit the mine operator to comply with specified provisions of the former legislation and certain other requirements, instead of the new requirements, during the transitional period. For details of these conditions and other transitional arrangements see Transitional arrangements.

Key transitional arrangements include:

- up to two years for the mine operator to comply with requirements for the safety management system, principal mining hazard management plans and principal control plans (including ventilation and emergency plans)
- up to nine months to comply with requirements for many specific controls
- up to two years to comply with new ventilation requirements in clause 59(3) for underground mines (other than coal mines)
- up to two years for existing tourist mines to comply with certain new obligations and a two-year transitional period for health monitoring requirements
- licences and certificates of competence granted under the previous mine safety laws are intended to be recognised as certificates of competence and practising certificates under the new laws
- certain prohibitions, restrictions, directions given, or exemptions granted under previous mine safety laws will continue to have effect under the new laws.

The regulator’s transitional approach

Mine Safety staff including inspectors and Mine Safety officers will support industry in understanding and complying with the new laws. The fundamentals of mine safety have not changed and duty holders who were complying with the former legislation will be well on the way to complying with the new requirements.

However, providing assistance to duty holders does not mean that action can’t be taken against duty holders who are not keeping their workers safe.
Key concepts

The concept of the regulator, rather than the Chief Inspector, is central to the WHS (Mines) scheme. The regulator is the Secretary of the Department of Trade and Investment, Regional Infrastructure and Services. It is intended that the Secretary will delegate specific functions of the regulator to various members of staff within the department. Appointed officials (such as inspectors) will carry out the compliance functions under the WHS laws in respect of mining workplaces.

The WHS (Mines) Act applies to all workplaces that are mines. A mine is a workplace at which mining operations are carried out, or a tourist mine. Mining operations are made up of two types of pursuits. Firstly mining activities, which are activities carried out for the purpose of:

- extracting minerals from the ground
- 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
- exploring for minerals.

Secondly there are activities carried out in connection with mining activities provided they are carried out at a site where mining activities are carried out or in the vicinity of such a site, including at an adjoining location. Mining operations includes such things as constructing a mine site, preparing or processing extracted materials, handling or storing extracted materials. It also includes activities associated with decommissioning, making safe or closing an extraction site or exploration site.

Mining operations also includes educational and tourist activities at or in the vicinity of a mine site, for example if tours of the site are provided at an operating mine.

There are some exclusions. The WHS (Mines) Act does not apply to fossicking or 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. Any activity where the extraction of minerals is incidental to the activity is also excluded, for example, civil works such as tunnelling to create a road.

The Act does not apply to certain activities that are subject to regulation under separate safety laws, such as activities in relation to railway operations covered under the Rail Safety National Law (NSW), certain roads under the Roads Act 1993, distribution/transmission systems under the Electricity Supply Act 1995 and several aspects of air safety.

What provisions will apply from commencement?

<table>
<thead>
<tr>
<th>Topic</th>
<th>Key changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Managing risk (clause 9)</td>
<td>The WHS (Mines) Regulation builds on the risk management requirements of the Work Health and Safety Regulation 2011. A guide will be prepared to assist duty holders understand what is required.</td>
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<tr>
<td>Notification of incident and injury</td>
<td>More types of incidents are required to be notified to the regulator, including ‘near miss’ type incidents called high potential incidents. New forms and new e-mail addresses apply. For more information see the Notification of incident and injury guide</td>
</tr>
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<td>Notification of mine operator</td>
<td>This is no longer an approval. The mine holder has the duty to notify the regulator if a mine operator has been appointed, and must attach a copy of the appointment. The mine holder may only appoint a person to be the mine operator if they have the necessary skills, knowledge, resources, etc, to operate the mine.</td>
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<td>Notification of reportable events</td>
<td>The mine operator must notify the regulator of the following: • commencement of mining operations • any significant interruption to, or suspension of, mining activities at the mine • recommencement of normal mining operations at the mine following any significant interruption or suspension of mining operations (as stated above)</td>
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Quick guide: new work health and safety (mines) laws

• commencement of intermittent mining operations at the mine
• the connection of an electricity supply to the mine (but not if a person is nominated to exercise the statutory functions of electrical engineering manager or electrical engineer at the mine)
• closure of the mine.

In addition, the mine operator of a coal mine (except where only exploration takes place) must give notice of any proposed material change to any information provided in relation to commencement of operations, such as changes in key personnel or changes in principal mining hazards.

### Notification of proposed high risk activities

This is a notification process, not an approval process. Guidance material is included in the notification form. For more information see Notifying the Regulator of high risk activities: Form

### Practising certificates

These are new and will be granted for a maximum of a five-year term. Although a person will be required to hold a practising certificate from commencement, it is intended to have transitional arrangements in place so that licences and certificates of competence granted under the previous mine safety laws will be recognised as certificates of competence and practising certificates under the new laws.

It is intended that the practising certificate scheme will be implemented approximately 18 to 24 months after commencement. To stagger issue and renewal workloads they will be rolled out progressively.

**Note:** The production manager permit scheme will continue for two years from commencement of the regulation and will then be transferred to the practising scheme certificate. It is also intended that certain licences under Part 5 of the Coal Mine Health and Safety Regulation 2006 will continue to be issued and recognised for up to two years from commencement.

### Certificates of competence

Substantially the same. It is intended that existing certificates will be recognised under the new laws.

### Safety and Health Representatives (SHRs) in the coal industry

No longer called check inspectors but the same categories of industry, site and electrical SHRs apply. Site and electrical SHRs are collectively termed mine SHRs. SHRs have existing functions together with functions of HSRs under the WHS Regulation.

Training or gap training will be required before SHRs can exercise the power to issue provisional improvement notices or directions to cease work (stop work direction may be issued by Industry SHRs or by Mine SHRs in certain circumstances).

For more information see the Safety and health representative fact sheet.

### Information to adjoining mine operators

There is a new duty on mine operators to, on request, exchange information with other mine operators at adjoining mines about any activities that could create a risk to health and safety of workers at the adjoining mine.

### Quarterly reports

In response to industry requests to reduce the frequency of reporting, quarterly reports may be submitted every six months rather than quarterly. Information in the reports will still need to be set out by quarter.

### What are the key changes since public comment?

Fifty-eight public submissions from industry representative bodies, mining companies, unions and individuals were received on the public consultation draft of the WHS (Mines) Regulation. NSW Trade & Investment also held a round of face-to-face stakeholder consultation meetings at various regional locations throughout NSW with stakeholder groups.

The WHS (Mines) Regulation incorporates amendments to the draft regulation identified through the public consultation process. These amendments include retaining NSW legislative requirements, under the former legislation that achieve consistent safety standards but do not increase regulatory cost.
Key changes in response to public comment include:

- not adopting the site senior executive position
- retaining existing arrangements for hazardous zones, sealing of mines and atmospheric contaminants from sealed areas, electrical safety, minimum air velocity standards, provision of self-rescuers, emergency exits and inspection arrangements including in relation to belt conveyors
- clarifying contractor management requirements so that a contractor can work in compliance with the mine’s safety management system rather than develop its own health and safety management plan. (However there is still a requirement for written acknowledgment that the arrangements are consistent with either the safety management system for the mine or the contractor’s health and safety management plan to manage the risks to health and safety)
- clarifying that seismic activity is mining-induced seismic activity that presents a risk to health and safety
- clarifying that workers are to be trained and remain competent in basic risk management techniques used at the mine rather than a mandated requirement for training and assessment every five years
- making particular provision for opal mines and tourist mines.

See appendix C to the *Work Health and Safety (Mines) Regulation 2014 Regulatory Impact Statement* for more details.

**What about exemptions?**

An exemption under the *Coal Mine Health and Safety Regulation 2006* or the *Mine Health and Safety Regulation 2007* is taken to continue in force and to be an exemption on the same terms from the equivalent provision of the WHS (Mines) Regulation. A provision is an equivalent provision if it regulates similar activity in broadly the same manner or if the regulator declares it an equivalent provision by publishing in a notice in the *Government Gazette*.

Any such exemptions cease to have effect on whichever of the following occurs earlier:

- nine months after commencement of the regulation
- the regulator revokes the exemption (by notice in writing to the exempt person or notice in the gazette)
- if a period was specified for the exemption - the end of that period.
- If no period was specified for the exemption - the end of five years from the date of grant changes in mine safety jurisdiction.

In most cases there is no change in the application of the legislation (and NSW Trade and Investment as regulator). However, the basis of applying the legislation is now based largely on activity and proximity so there may be some changes in particular situations. Detailed guidance for industry will be provided later.

In the meantime if you have particular issues please contact your local Mine Safety office to discuss your situation.