



Department
of Industry
Resources Regulator

NSW Resources Regulator

Monthly business activity
report - August 2016



The NSW Resources Regulator, established on 1 July 2016, is responsible for the compliance and enforcement functions across mining and resources sectors, and for driving continuous improvement across all regulatory functions of the Department of Industry.

This includes working with industry, community, local councils and other state government agencies to provide a consistent and responsive regulatory approach to ensure compliance with the *Mining Act 1992* (Mining Act), *Work Health and Safety Act 2011* (WHS Act) and the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (WHS(M&PS) Act), other relevant legislation and associated regulations.

This report provides a summary of the activities of the NSW Resources Regulator for the month of August 2016.



The Department of Industry, Skills and Regional Development has taken all care to ensure the accuracy, completeness and reliability of the information provided in this report. Nothing in this report impacts any duties held by any person under legislation administered or enforced by the Department. Compliance with the legislation is a legal requirement. Some persons may have a right of internal or external review of decisions made under the legislation administered or enforced by the Department.

August 2016 was a significant month for the NSW Resources Regulator in relation to taking escalated enforcement action, including the commencement of prosecution proceedings for Category 1 (reckless conduct) charges under the WHS Act against two individuals and a corporation. Notably, the Category 1 proceedings are the first of their kind in NSW since their introduction under the new Act, which commenced on 1 January 2012.

Other significant enforcement actions included:

- finalisation of two other prosecution matters in relation to significant breaches of WHS laws, with both parties pleading guilty and receiving monetary penalties
- approval of the first enforceable undertakings under the Mining Act in relation to KEPCO Bylong Australia Pty Limited and WorleyParsons Services Pty Limited

- suspension of Young Mining's mining operations for failing to pay an outstanding environmental rehabilitation security deposit.

In proactive engagement activities, Mine Safety hosted the 26th annual Mechanical Engineering Safety Seminar at Sydney Olympic Park. It also participated in the NSW Minerals Council Health Safety Environment and Community Conference held in Polkobin by hosting a trade exhibit and taking part in keynote presentations and panel sessions. Mine Safety was also involved in a major rescue simulation event within The Big Opal underground tourist mine at Lightning Ridge.

Activities

Below is a snapshot of the NSW Resources Regulator's activities for August 2016.



An important role for the NSW Resources Regulator is ensuring all operators and title holders are aware of their obligations and how to meet them. Publishing information and guidelines that assist in identifying and managing obligations is a mechanism for achieving this. Training workshops and information sessions also provide a valuable way to engage with industry and assist them to maximise their compliance.

Workshops and information sessions

The 26th Mechanical Engineering Safety Seminar at Sydney Olympic Park was a highlight for Mine Safety during August. More than 200 participants attended this year's seminar to hear presentations from a range of experts on mechanical engineering topics, including a presentation on pattern causes of fatal incidents in mining by keynote speaker Professor Michael Quinlan. This annual event provides an opportunity for industry to hear about the latest advances in mechanical engineering and is an excellent forum for networking and sharing experiences.

more than

200 

participants attended the 26th Mechanical Engineering Safety Seminar this year

Mine Safety was also actively involved with the NSW Minerals Council Health Safety Environment and Community Conference in Pokolbin. The event featured presentations by Mine Safety on the progress of the [Incident Prevention Strategy](#) and on the maintenance of competence, and included a panel session with members of the Mine Safety Advisory Council. Mine Safety was also represented with an informative trade exhibit featuring information about the Incident Prevention Strategy and other key initiatives.

Workshops and information sessions include:

Date	What	Where	Detail
1 August	Meeting	Cobar	Cobar Local Emergency Management Committee agreed to a desktop exercise on mining emergencies at the next meeting. Hera Mine gave a presentation to the committee about its site emergency arrangements.
2 August	Workshop	Sydney	A meeting of Red Cross officials across NSW discussed how welfare support is delivered to remote areas (including mining regions) when major events occur, and how to assist when government agencies are unable to do so.
3-4 August	Seminar	Homebush, Sydney	A mechanical engineering safety seminar was held in Sydney.
4 August	Correspondence		A communication piece went to industry stakeholders, NSW Government cluster secretaries, titleholders, claimholders and mine operators regarding the establishment of the NSW Resources Regulator.
9 August	Lectures	UNSW Engineering School, Sydney	Two inspectors gave lectures in mining engineering.

Workshops and information sessions continued

Date	What	Where	Detail
9 August	Meeting	Broken Hill	Broken Hill Local Emergency Management Committee meeting included an after action review and actions subsequent to a major mining disaster exercise run earlier in the year. Implementation of recommendations was discussed.
9 August	Workshop	Lake Victoria	Mine Production Manager workshop held.
10-11 August	Industry training	Thornton	Training for prospective coal mine roadway dust samplers at Thornton MSTC laboratory.
16 August	Workshop	Broken Hill	Mine Production Manager workshop held.
16 August	Meeting	Bathurst	Bathurst Local Emergency Management Committee meeting was addressed by the Rescue sub-committee regarding creating a rescue exercise based on a person trapped in old mine workings. EMCT is assisting development.
18 August	Presentation	Singleton	A Senior Mine Safety Officer presented on tailings dam safety issues to the Australian Coal Preparation Plant Society.
18 August	Meeting	Newcastle	Lake Macquarie / Newcastle Local Emergency Management Committee requested that emergency services assist with another round of consultation with mining industry representatives before the end of 2016.
19 August	Workshop	Wentworth	Mine Production Manager workshop held.
19 August	Meeting	Marulan	A presentation was given on Incident Prevention Strategy and maintenance of competence at the Cement Concrete and Aggregates Australia WHS Committee meeting.
21 August	Exercise	Lightning Ridge	Mines rescue exercise involving a vertical shaft rescue scenario was conducted in Lightning Ridge with SES.
22 August	Workshop	Thornton	Subsidence Engineering Group conducted a workshop on contemporary technologies for detecting underground old mine workings.
23 August	Presentation	Mt Arthur Mine, Muswellbrook	Inspector Mechanical Engineering gave a presentation to mechanical supervisors on legislative requirements.
23 August	Meeting	Dareton (Wentworth)	Far West Regional Emergency Management Committee held its scheduled multi-agency regional emergency management committee meeting.
24 August	Meeting	Kurri Kurri	An update on the Incident Prevention Strategy and the NSW Resources Regulator was given to the Australian Explosives Industry Safety Group.
25 August	Quarterly Meeting	Penrith	Electrical Engineers held a full day of discussions with 40 industry participants.
29 August	Conference	Pokolbin	Presentations were given on Incident Prevention Strategy and maintenance of competence at a NSW Minerals Council Health Safety Environment and Community Conference.
30-31 August	Industry training	Abel Coal Mine and Thornton	Training for prospective coal mine roadway dust samplers at Thornton MSTC laboratory and Abel coal mine.

Mine Safety was involved in a major rescue simulation event from within The Big Opal underground tourist mine at Lightning Ridge. State Emergency Service vertical rescue teams from Lightning Ridge and Glengarry units completed a simulated casualty extraction from within the underground mine through a vertical air shaft over 20 metres below the surface. Mine Safety also attended various local and regional emergency management committee meetings across the state as part of ongoing work to discuss the development of mining emergency exercises.

Targeted assessments and audits

The Mine Safety Targeted Assessment Program (TAP) is a major component of the Mine Safety Regulatory Reform project. It involves an in-depth assessment of a safety aspect at a mine site, and is undertaken by a team of Mine Safety Inspectors, including specialist inspectors as required.

In addition to the safety focused TAPs, the NSW Resources Regulator also undertakes a program of compliance audits to assess compliance with the obligations of the Mining Act.



Mine Safety TAPs and audits for August include:

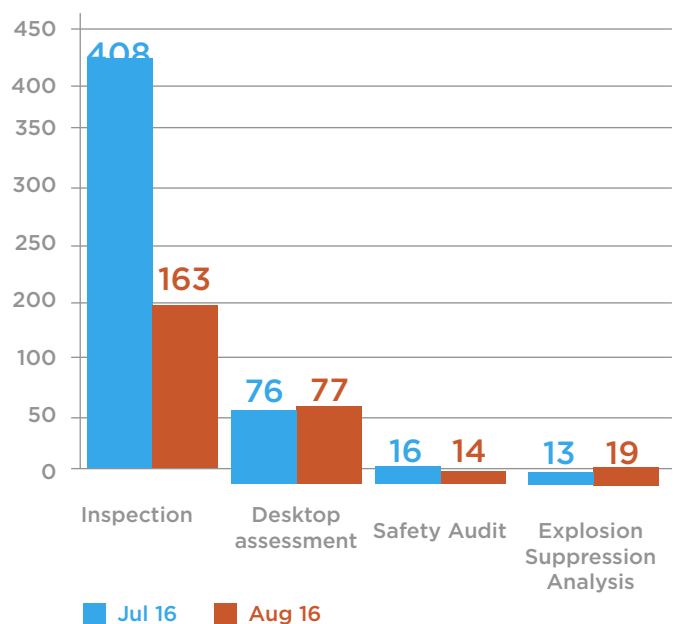
Mine	Program
Mandalong	Targeted assessment - Gas and Ventilation Management
Appin	Targeted assessment - Gas and Ventilation Management
Austar	Targeted assessment - Gas and Ventilation Management
Wongawilli	Targeted intervention - Change of Operator
Perilya South UG Mine	Targeted assessment - Ground / Strata
Potosi UG Mine	Targeted assessment - Ground / Strata
Cadia East UG Mine	Targeted assessment - Exposure to DPM
Endeavor Mine, Cobar Operations	Mining Act Audit
Broula King Gold Project, Broula King Joint Venture Pty Ltd	Mining Act Audit
Lachlan Metals Pty Ltd	Mining Act Audit
Duralie Coal (EPA, DPE, DISRD Joint Audit Program)	Mining Act Audit



A detailed report on the outcomes of targeted assessments and audits undertaken are published on the NSW Resources Regulator’s website on conclusion of the program.

In addition to the detailed TAPs and Mining Act audits outlined, NSW Mine Safety also undertakes a variety of inspections, audits and desktop assessments. Comparative numbers for July and August are shown in the graph opposite.

Mine safety compliance activity



*July saw a spike in inspection activity due to the Lightning Ridge compliance operation

The NSW Resources Regulator responds to incidents of non-compliance identified through proactive compliance programs such as inspections and audits, complaints and notifications received, and as a result of investigations.

As a result of the different legislation and their reporting requirements, the issues of non-compliance can be identified as being those associated with the obligations under the Mining Act, or those relating to mine safety.

Mining Act non-compliances

Incidents of non-compliance with the Mining Act may vary from a failure to submit a report on time or in accordance with a condition on title, to undertaking mining without authorisation.

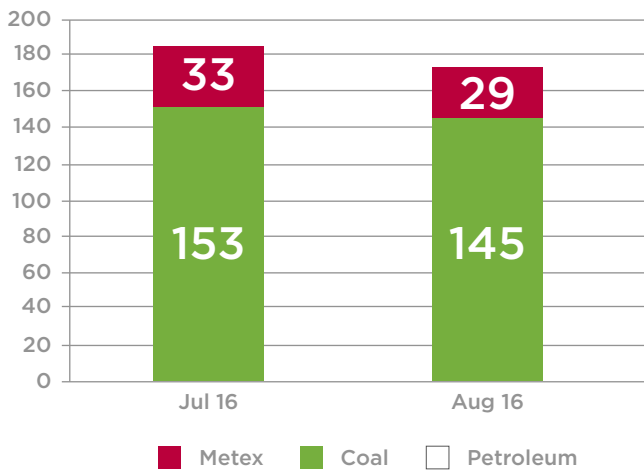


Number of incidents	Alleged non-compliance type
6	Failure to comply with conditions
2	Failure to report
1	Failure to comply with a direction*
1	Illegal mining or prospecting
2	Environmental incident

* Directions are issued under section 240 of the Mining Act and direct a responsible person to undertake or cease a particular activity.

Mine Safety incident notifications

The WHS (MP&S) Act requires duty holders to inform the NSW Resources Regulator of the occurrence of certain incidents. This includes the death of a person, a serious injury or illness, or other prescribed incidents. Notifications received in August are shown in the chart below.



High risk notifications

Under clause 33 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2014, operators of a mine or petroleum site are required to give notice of the intent to carry out an activity identified under schedule 3 of that regulation. High risk activities cover a variety of things such as electrical work on energised electrical equipment, the development of a new entry for an underground mine, driving or widening an underground roadway in a coal mine beyond 5.5m, or suspending a petroleum well. The NSW Resources Regulator does not have an approval function but must be given notification of the intent to undertake the activity, with a mandated period in which to respond to the notification. High risk notifications received in August are shown in the table on page 10.



Further information on safety incidents can be obtained by subscribing to NSW Mine Safety News via the [NSW Resources Regulator's website](#)



High risk notifications received in August include:

Mine	WHS (M&PS) Regs provision	Activity
Appin Colliery	Schedule 3, Clause 15	Formation of non-conforming pillars (2 notifications)
Appin Colliery	Schedule 3, Clause 08	Roadway or drift without intersection for 250 metres
Appin Colliery	Schedule 3, Clause 10	Sealing (1 month)
Chain Valley Colliery	Schedule 3, Clause 13	Widening underground roadway to more than 5.5 metres (2 notifications)
Clarence Colliery	Schedule 3, Clause 15	Formation of non-conforming pillars
Dendrobium Colliery	Schedule 3, Clause 13	Widening underground roadway to more than 5.5 metres
Mandalong Mine	Schedule 3, Clause 15	Formation of non-conforming pillars (3 notifications)
Mandalong Mine	Schedule 3, Clause 13	Widening underground roadway to more than 5.5 metres (2 notifications)
Metropolitan Colliery	Schedule 3, Clause 18	Mining in outburst control zones
Metropolitan Colliery	Schedule 3, Clause 13	Widening underground roadway to more than 5.5 metres
Moolarben Coal Operations - Underground	Schedule 3, Clause 13	Widening underground roadway to more than 5.5 metres (3 notifications)
Narrabri Colliery	Schedule 3, Clause 13	Widening underground roadway to more than 5.5 metres
Newstan Colliery	Schedule 3, Clause 10	Sealing
North Wambo Underground	Schedule 3, Clause 15	Formation of non-conforming pillars
Springvale Mine Underground Operation	Schedule 3, Clause 13	Widening underground roadway to more than 5.5 metres

Exemptions granted

Mine operators are able to apply for exemptions from provisions of the regulations, under clause 684 of the Work Health and Safety Regulation 2011. Exemptions granted in August are shown in the table below.

Mine or PCBU	WHS (M&PS) Regs provision	Activity
Sandvik Mining & Construction Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
UGM Engineers Diesel Services Division Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
VLI Diesel Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
Setco Australia Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
UGM Engineers Diesel Services Division Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
Hastings Deering Australia Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
Techserve Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
Cougar Mining Group Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
Triple Torque Services Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
Industrea Mining Equipment Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
VLI Diesel Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant
Westrac Pty Ltd	Clause 153	Overhauling or repairing activities that may affect the explosion-protection properties of explosion-protected plant

Investigations into major accidents and incidents

The NSW Resources Regulator adopted a new, proactive mechanism to help better manage risks to health and safety through the undertaking of a causal only investigation into a potential pressure burst incident at Austar Coal Mine.

The incident occurred on 16 August 2016 during nightshift operations and involved the ejection of coal from the long wall face. No person was injured as a result of this incident. The occurrence is significant because of the coal burst event that killed two workers at the Austar mine in April 2014 and because understanding the nature, cause and predictability of coal burst events is a priority area for the NSW Resources Regulator.

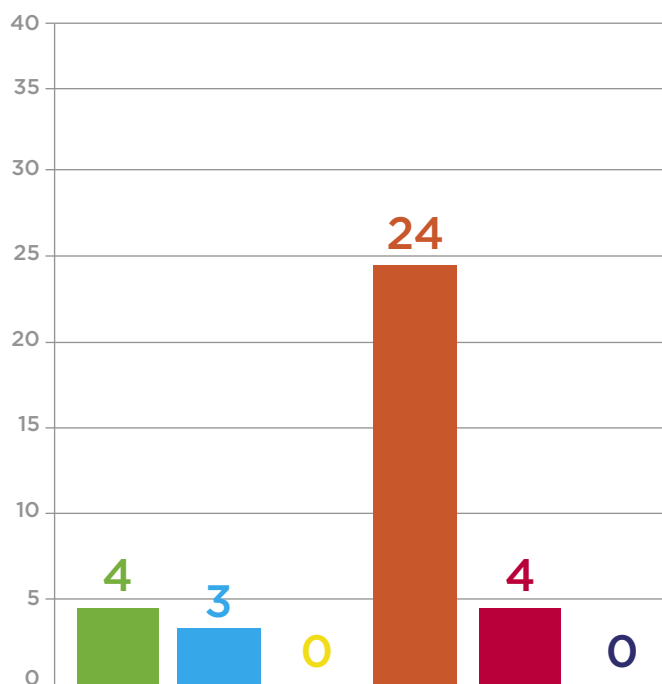
After undertaking a preliminary assessment of the incident, which did not identify any material breaches, the NSW Resources Regulator confirmed that it would not be undertaking any further investigation into any potential non-compliance issues or taking any criminal enforcement action. The investigation was able then to focus on identifying the causal factors associated with the event and what protections or controls needed to be put into place to protect the health and safety of workers. The NSW Resources Regulator believes that a collaborative approach between it and the industry to identify causal factors in a timely manner represents a positive, new, proactive mechanism to help better manage risks to health and safety.



When a duty holder fails to achieve compliance with the requirements of the legislation, the NSW Resources Regulator seeks to force them to comply with the obligations. The approach taken to do this will depend on the significance and impacts of the breach, the tools available under the relevant legislation, and any applicable compliance and enforcement or prosecution policy.



Mining Act enforcement action



Number	Action
4	Nil Action
3	Advisory letter
0	Corrective action request
24	Warning/official caution
4	Penalty infringement notice
0	Section 240 Direction

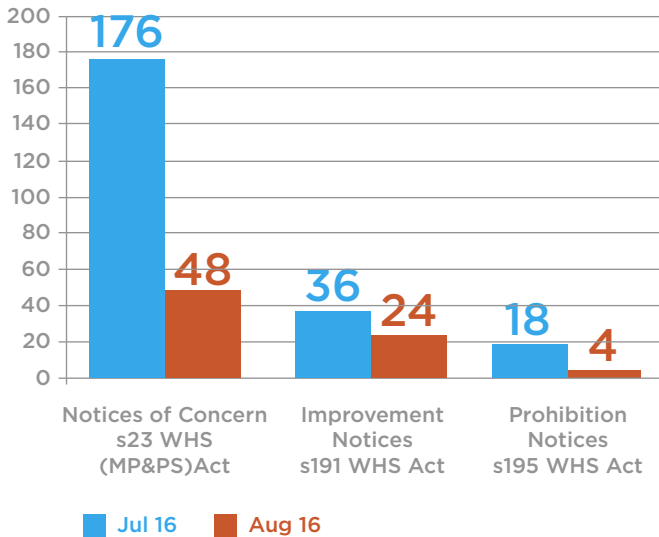
Prohibition notices

Under section 195 of the WHS Act, Mine Safety Inspectors are able to issue prohibition notices if they believe that an activity is occurring, or may occur, in a workplace that does or could pose a serious risk to the health or safety of a person. A prohibition notice outlines the matters which give rise to the risk, and may include directions on the measures to be taken to remedy the risk. Prohibition notices issued under this provision in August 2016 are shown in the table below.

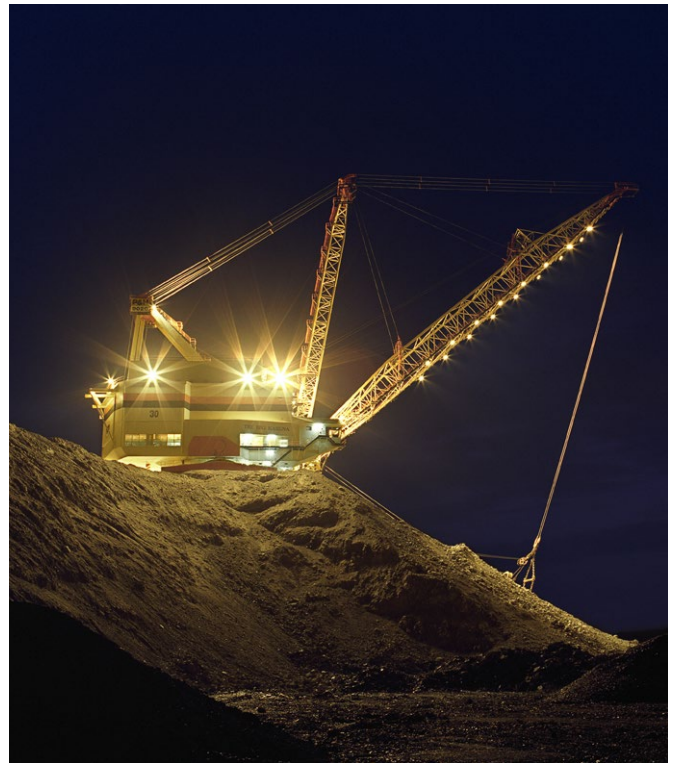
Prohibition notices issued under this provision in August 2016 include:

PCBU	Site	Trigger	Details	Prohibited activity
SBD Services Pty Ltd	Wongawilli Colliery	Planned assessment conducted	Two continuous miners identified without overhaul or alternatively, risk assessment and pre-overhaul inspections supporting continued safe operation.	Prohibited the electrical powering and operation of JOY continuous Miners 6752 and 6753 in hazardous zones
Moolarben Coal Operations	Moolarben Coal Operations - Underground	Planned inspection	Areas of the mine found unventilated	Areas of the mine are not to be allowed to be in an unventilated state and persons are not to enter an unventilated area unless as outlined in clause 59 ventilation system - further requirements
Yancoal Mining Services Pty Ltd	Austar Coal Mine - Underground Operations	Investigation	Incident where coal was ejected from the longwall face during production (coal burst)	Mining in Longwall B2 Production Area

Key notices issued under work health and safety legislation



Increased numbers for July are attributable to the Lightning Ridge compliance operation



Prosecutions

Prosecution can act both as an actual response to an incident of non-compliance, and also as a deterrent to the wider industry. The decision to prosecute is not taken lightly, but is determined in accordance with the [Prosecution Guidelines](#).

Information on previously finalised prosecutions is available on the [NSW Resource Regulator's website](#).

Prosecutions commenced

Prosecution proceedings were commenced against Cudal Lime Products Pty Ltd (Cudal) and two of its workers for alleged contraventions of the *Work Health and Safety Act 2011* resulting in the death of a local resident.

It will be alleged that on 27 August 2014, the deceased received a fatal electric shock whilst in the shower of a home near Cudal's limestone quarry, 35km west of Orange. The home's electricity supply was connected to the quarry's electrical infrastructure.

The NSW Resources Regulator will further allege that the incident was caused by non-compliant electrical work combined with the absence of critical electrical safety devices and damaged electrical plant and equipment.

Category 1 – Reckless Conduct proceedings have been commenced under section 31 of the WHS Act.

Category 1 offences are the most serious under the WHS Act and attract a maximum penalty of \$3 million for a corporation and \$600,000 for an individual and/or up to five years imprisonment.

These are the first Category 1 proceedings to be brought in NSW since their introduction in 2012.

Prosecutions finalised

Silver City Drilling

Silver City Drilling (NSW) Pty Ltd was successfully prosecuted for a breach of sections 32 and 19(1) of the WHS Act, with the company pleading guilty to the offence.

The charges relate to a 2012 incident where a 26-year old employee of Silver City Drilling suffered catastrophic and permanent injuries to his neck and spinal cord when he was knocked from a platform and struck by a pipe while operating a drill rig at Ashton Coal Mine near Singleton. The man is now a quadriplegic requiring full-time care.

Silver City Drilling pled guilty to the charge that the employee's health and safety was not reasonably and practically ensured. The maximum penalty for breaches of the WHS Act is \$1,500,000. The judge considered that an appropriate undiscounted penalty was \$150,000, but reduced the penalty to a \$112,000 fine because Silver City Drilling pled guilty.

Macmahon Mining Services

Macmahon Mining Services Pty Limited (Macmahon Mining) was successfully prosecuted for a breach of sections 32 and 19(1) of the WHS Act with the company pleading guilty to the offence.

The prosecution related to a 2013 incident where a shift supervisor working in the No 1 Shaft at CSA Mine near Cobar was fatally injured while using a kibble (a large bucket used to lift items or people in mines) as transport about one kilometre underground. The employee died of serious head injuries when his head collided with a working platform.

Macmahon Mining, a specialist mining contractor engaged by the CSA mine to undertake the No 1 shaft extension project, received a sentence in the Sydney District Court on Friday 19 August 2016 for failing to ensure, so far as was reasonably practicable, the employee's health and safety while at work. The offence carries a maximum penalty of \$1,500,000.

Macmahon Mining was convicted and fined \$100,000, less 25 per cent allowed by the Court for accepting responsibility for the incident and pleading guilty. The penalty amounted to \$75,000. The company was also ordered to pay the Prosecutor's costs in relation to the proceedings.

Penalty notices

Penalty notices, issued under section 378K of the Mining Act, make provision for a person to pay a penalty in relation to a particular offence. The offences and related penalties are prescribed by the regulations, and may include issues such as mining or prospecting without authorisation, and a failure to comply with a direction.

Penalty Infringement Notices issued in August are shown in the table on page 17.

Penalty Infringement Notices issued in August 2016 include:

Date	Entity - Authorisation	Penalty Notice amount	Details
1 August	KBL Mining - ML 337	\$1,000	Failure to pay annual rental fee or annual administration levy - corporation
8 August	CGNM Resources P/L - EL 7474	\$2,500	Breach condition of authorisation not otherwise referred to - corporation
18 August	Silver Mines Ltd - EL 5674	\$1,000	Failure to pay annual rental fee or annual administration levy - corporation
22 August	Fisher Resources P/L - EL 7715	\$1,500	Fail to prepare or lodge report as prescribed - corporation

Other significant enforcement actions

A number of other regulatory tools are available to the NSW Resources Regulator to address non-compliance issues. This includes imposing conditions on authorisations, or suspending or cancelling an authority.

The following key enforcement actions were undertaken in August.

Young Mining

Young Mining’s mining operations were suspended by the NSW Resources Regulator on 18 August 2016 due to a breach under the Mining Act related to the company’s failure to pay an additional \$540,000 in environmental rehabilitation security deposits.

Young Mining subsequently applied for an interlocutory injunction with the Land and Environment Court seeking to lift the suspension until 12 September 2016. The matter was heard in the Land and Environment Court on 19 August 2016 where an interim variation to the suspension notice was made for it to take effect after the court hearing on 23 August 2016. At the hearing on 23 August it was determined that the Land and Environment Court did not have the jurisdiction over the matter, which was instead referred to the NSW Supreme Court.

The NSW Supreme Court heard the matter on 23 August 2016 and dismissed Young Mining’s application with an order to pay the department’s costs. As a result, the company operations remained suspended.

On 31 August 2016 the suspension was lifted after Young Mining provided the required security in full.

Environmental rehabilitation security deposits and requirements for progressive rehabilitation during the life of a mine are part of the regulatory framework that ensures a viable and sustainable mining industry in NSW.

A security bond is required prior to the commencement of any activity on title and is continually reviewed and adjusted to reflect the actual rehabilitation liability throughout the life of a project.

Security bonds are only released when the Department of Resources & Energy is satisfied that the titleholder has met designated rehabilitation objectives and final land use completion criteria.

Media

The NSW Resources Regulator issues media releases on significant activities. These are published on the [NSW Resources Regulator's website](#).

Date	Details
9 August	First Enforceable Undertaking for NSW Resources Regulator
15 August	Silver City Drilling pleads guilty to work health safety charges
17 August	NSW Resources Regulator suspends Young Mining for breach of the Mining Act
19 August	NSW Resources Regulator's suspension of Young Mining varied in court
22 August	Macmahon Mining Services ordered to pay \$75,000 and costs for WHS failures
23 August	Supreme Court upholds NSW Resources Regulator's suspension of Young Mining
25 August	Investigation into potential pressure burst incident at Austar Coal Mine
30 August	NSW Resources Regulator announces prosecution proceedings against Cudal Lime Products
31 August	NSW Resources Regulator lifts Young Mining's suspension notice

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Department
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