

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Work Health and Safety Act 2011 (WHS Act)*, the *Mine Health and Safety Act 2004* and the *Coal Mine Health and Safety Act 2002* as follows:

(a) the WHS Act is amended as follows:

- (i) to alter the commencement provision of the Act to provide for an alternative arrangement of commencement by proclamation,
- (ii) to require the notification of an incident under the Act even if the incident has been notified under the *Workplace Injury Management and Workers Compensation Act 1998*,
- (iii) to provide for the division of the functions of the regulator under the Act between the WorkCover Authority and (for functions concerning mines and coal mines) the head of the Department of Trade and Investment, Regional Infrastructure and Services,
- (iv) to make minor amendments to the administrative arrangements for the appointment of inspectors,
- (v) to provide for the sharing of information between the regulators for the purpose of assisting in the exercise of functions under the WHS Act, the *Mine Health and Safety Act 2004* and the *Coal Mine Health and Safety Act 2002*,
- (vi) to expand the savings and transitional regulation-making power to authorise the making of savings and transitional regulations that can operate despite provisions of the WHS Act,
- (vii) to insert savings and transitional provisions that are consequent on amendments to be made by the Bill to other Acts,
- (viii) to make other amendments of a minor or consequential nature,

(b) the *Mine Health and Safety Act 2004* is amended as follows:

- (i) to abolish the Metalliferous Mines and Extractive Industries Competence Board and replace it with a newly constituted Mining Competence Board with the same functions as the abolished Board in relation to competence standards for persons working at mines and coal operations,
- (ii) to give the Mining Competence Board the power to make various orders in relation to certificates of competence for people working in mines subject to any orders of the Minister or provisions of the regulations,

(c) the *Coal Mine Health and Safety Act 2002* is amended to abolish the Coal Competence Board and transfer its functions to the Mining Competence Board to be established under the *Mine Health and Safety Act 2004* (as amended by Schedule 2 to the proposed Act).

The Bill also makes amendments to other Acts that are consequential on the enactment of the WHS Act and the proposed Act.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on 1 January 2012 or on a later date to be appointed by proclamation (except for the amendment to the commencement proclamation of the WHS Act and the insertion of savings and transitional provisions in the *Mine Health and Safety Act 2004*, which will commence on the date of assent to the proposed Act).

Schedule 1 Amendment of Work Health and Safety Act 2011 No 10 Commencement of Work Health and Safety Act 2011

The WHS Act is due to commence on 1 January 2012.

Schedule 1 [1] provides that it may commence on that date or on such later day as appointed by proclamation before that date.

Regulator

The regulator under the WHS Act is the WorkCover Authority.

Schedule 1 [4] amends the definition of *regulator* to make it clear that the head of the Department of Trade and Investment, Regional Infrastructure and Services is the regulator in relation to matters or the exercise of a power or function concerning a mining workplace or a coal workplace. Mining and coal workplaces are regulated under the *Mine Health and Safety Act 2004* and the *Coal Mine Health and Safety Act 2002*, respectively.

Schedule 1 [3] provides that the term *member of staff* of a regulator includes, in the case of the head of the Department of Trade and Investment, Regional Infrastructure and Services, a member of staff of that Department.

Schedule 1 [8], [10] and [14] are consequential amendments.

Schedule 1 [13] authorises the sharing of information between the two regulators and members of staff of the regulators in certain circumstances.

Schedule 1 [6] authorises the regulator to delegate powers and functions under the WHS Act to an authorised person (that is, a member of staff of the regulator or person of a class prescribed by the regulations or a class approved by the regulator).

Miscellaneous

Schedule 1 [2] updates the definition of *inspector* to include a person deemed to be an inspector under Part 9 of the WHS Act.

Schedule 1 [7] and [16] are consequential amendments.

Schedule 1 [12] provides that a Minister of a State or the Commonwealth who makes decisions that affect the business or undertaking of a public authority is not taken to be an officer of that public authority for the purposes of the WHS Act.

Schedule 1 [5] requires a person who conducts a business or undertaking to notify the regulator of a notifiable incident arising out of the conduct of the business or undertaking even if the person has complied with the notification requirements under the *Workplace Injury Management and Workers Compensation Act 1998* as an employer of an injured worker.

Schedule 1 [11] is consequential on an amendment to be made by Schedule 4 to the *Criminal Procedure Act 1986* that confers summary jurisdiction on the District Court in connection with proceedings for certain offences under the WHS Act.

Schedule 1 [9] and [18] are law revision amendments.

Savings and transitional provisions

Schedule 1 [15] makes further provision in relation to the power to make regulations of a savings or transitional nature consequent on the enactment of the WHS Act. The regulation-making power is expanded to authorise the making of regulations that can override provisions of the WHS Act.

Schedule 1 [17] enables regulations to be made in relation to the continued operation of regulations made under the *Occupational Health and Safety Act 2000* that will be repealed on the commencement of the WHS Act.

Schedule 1 [19] contains savings and transitional provisions consequent on the enactment of the WHS Act and amendments to be made to the WHS Act by the Bill.

Schedule 2 Amendment of Mine Health and Safety Act 2004 No 74

Schedule 2 [5] abolishes the Metalliferous Mines and Extractive Industries Competence Board and constitutes the Mining Competence Board as a body corporate with similar functions. The Mining Competence Board will also have functions under the *Coal Mine Health and Safety Act 2002* in relation to competence standards for persons working at coal operations.

Schedule 2 [6] provides for the membership of the Mining Competence Board.

Schedule 2 [1]–[4], [7] and [8] are consequential amendments.

Schedule 2 [9]–[13] give the Mining Competence Board the power to make various orders in relation to certificates of competence for people working in mines subject to any orders of the Minister or provisions of the regulations.

Schedule 2 [14] enables savings and transitional regulations to be made as a consequence of the amendments made by the proposed Act.

Schedule 2 [15] contains savings and transitional provisions in relation to the abolition of the Metalliferous Mines and Extractive Industries Competence Board and the creation of the Mining Competence Board.

Schedule 3 Amendment of Coal Mine Health and Safety Act 2002 No 129

Schedule 3 [2] abolishes the Coal Competence Board. The Mining Competence Board established under the *Mine Health and Safety Act 2004* (as amended by Schedule 2 to the proposed Act) will have functions similar to the abolished Board in relation to competence standards for persons working at coal operations.

Schedule 3 [1] and [3] are consequential amendments.

Schedule 3 [4] enables savings and transitional regulations to be made as a consequence of the amendments made by the proposed Act.

Schedule 3 [5] contains savings and transitional provisions relating to the abolition of the Coal Competence Board.

Schedule 4 Consequential amendments of Acts

Schedule 4 makes amendments to various Acts as a consequence of the enactment of the proposed Act and the WHS Act.