



New South Wales

# Work Health and Safety (Mines) Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

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

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

## Outline of provisions

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

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

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

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

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

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

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

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

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

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

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

### **Schedule 2      Amendment of other Acts and instruments**

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

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

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