



New South Wales

Mining Legislation Amendment (Health and Safety) Bill 2002

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Occupational Health and Safety Act 2000* to enable the appointment of inspectors to perform functions under that Act solely in relation to mines, and
- (b) to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* to provide that the exercise of the functions referred to in paragraph (a) are subject to certain requirements that exist in relation to the exercise of inspection and investigation functions under the mining legislation, and
- (c) to amend the *Coal Mines Regulation Act 1982* to bring the definition of **owner** under that Act into line with the definition of **owner** under the *Mines Inspection Act 1901*, and

- (d) to amend the *Mining Act 1992* to provide for the establishment of a Mine Safety Advisory Council.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Coal Mines Regulation Act 1982* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Mines Inspection Act 1901* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment to the *Mining Act 1992* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the *Occupational Health and Safety Act 2000* set out in Schedule 4.

Schedule 1 Amendment of Coal Mines Regulation Act 1982

Schedule 1 [1] amends the definition of *owner* in the Act to provide that the owner of a mine or part of a mine that is being worked by a subcontractor includes the subcontractor. The amendment gives effect to provisions contained in International Labour Organisation Convention 176 (relating to health and safety in mines). It mirrors amendments already made to the definition of *owner* in the *Mines Inspection Act 1901*.

Schedule 1 [2] requires an inspector appointed in relation to a coal mine under the *Occupational Health and Safety Act 2000* to enable certain persons being questioned by the inspector to nominate another person to be present as is the case when inspectors under the *Coal Mines Regulation Act 1982* question persons. The provision also enables regulations to be made applying other such requirements to those inspectors appointed under the *Occupational Health and Safety Act 2000*.

Schedule 1 [3] enables savings and transitional regulations to be made in relation to the amendments to the Act outlined above.

Schedule 2 Amendment of Mines Inspection Act 1901

Schedule 2 [1] requires an inspector appointed in relation to a coal mine under the *Occupational Health and Safety Act 2000* to enable certain persons being questioned by the inspector to nominate another person to be present as is the case when inspectors under the *Mines Inspection Act 1901* question persons. The provision also enables regulations to be made applying other such requirements to those inspectors appointed under the *Occupational Health and Safety Act 2000*.

Schedule 2 [2] enables savings and transitional regulations to be made in relation to the amendments to the Act outlined above.

Schedule 3 Amendment of Mining Act 1992

Schedule 3 provides for the establishment of a Mine Safety Advisory Council by the Minister that includes representation from peak industry and employee organisations. The Advisory Council is to have the function of providing advice to the Minister on any policy matter relating to occupational health and safety in mines and any other advisory function relating to occupational health and safety in mines that is prescribed by the regulations.

Schedule 4 Amendment of Occupational Health and Safety Act 2000

Schedule 4 [4] enables the Minister to appoint inspectors to carry out functions under the Act in relation to mines. Those functions include powers of entry and inspection in relation to mines and the issue of improvement and prohibition notices in relation to mines.

Schedule 4 [5] requires those inspectors to be issued with identification cards.

Schedule 4 [1]–[3] and [6]–[8] contain consequential amendments.

Schedule 4 [9] enables the Minister and the Director-General of the Department of Mineral Resources to delegate certain functions under the Act relating to mines.

Schedule 4 [10] enables savings and transitional regulations to be made in relation to the amendments to the Act outlined above.



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New South Wales

Mining Legislation Amendment (Health and Safety) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Coal Mines Regulation Act 1982*, the *Mines Inspection Act 1901* and the *Occupational Health and Safety Act 2000* with respect to the appointment of inspectors in relation to mines; to amend the *Mining Act 1992* to provide for the establishment of a Mine Safety Advisory Council; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Mining Legislation Amendment (Health and Safety) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Coal Mines Regulation Act 1982 No 67	8
The <i>Coal Mines Regulation Act 1982</i> is amended as set out in Schedule 1.	9 10
4 Amendment of Mines Inspection Act 1901 No 75	11
The <i>Mines Inspection Act 1901</i> is amended as set out in Schedule 2.	12
5 Amendment of Mining Act 1992 No 29	13
The <i>Mining Act 1992</i> is amended as set out in Schedule 3.	14
6 Amendment of Occupational Health and Safety Act 2000 No 40	15
The <i>Occupational Health and Safety Act 2000</i> is amended as set out in Schedule 4.	16 17

Schedule 1	Amendment of Coal Mines Regulation Act 1982	1
		2
	(Section 3)	3
[1]	Section 5 Definitions	4
	Insert at the end of paragraph (c) of the definition of <i>owner</i> in section 5 (1):	5
	and	6
	(d) where the mine or the part of the mine is being worked	7
	by a subcontractor—the subcontractor,	8
[2]	Section 167B	9
	Insert after section 167A:	10
167B	Exercise of inspector's powers under Occupational Health and Safety Act 2000	11
		12
	(1) If an inspector appointed under section 47A of the	13
	<i>Occupational Health and Safety Act 2000</i> requires a person	14
	referred to in section 60 (1) (a) of this Act to answer questions	15
	in the course of the inspector exercising functions under that	16
	Act, the person is entitled to nominate another person to be	17
	present while being questioned.	18
	(2) The regulations may make provision for or with respect to the	19
	exercise of functions under the <i>Occupational Health and</i>	20
	<i>Safety Act 2000</i> in relation to a mine (within the meaning of	21
	this Act) by an inspector appointed under section 47A of that	22
	Act.	23
	(3) A reference in subsection (2) to the exercise of functions under	24
	the <i>Occupational Health and Safety Act 2000</i> in relation to a	25
	mine includes a reference to the exercise of functions under	26
	Division 2 of Part 5 of that Act in relation to premises other	27
	than a mine for the purpose of investigating any matter under	28
	that Act in relation to a mine.	29

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Schedule 1 Amendment of Coal Mines Regulation Act 1982

[3] Schedule 3 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>Mining Legislation Amendment (Health and Safety) Act 2002</i>	3

Schedule 2	Amendment of Mines Inspection Act 1901	1
	(Section 4)	2
[1]	Section 77A	3
	Insert after section 77:	4
	77A Exercise of inspector's powers under Occupational Health and Safety Act 2000	5
		6
	(1) If an inspector appointed under section 47A of the <i>Occupational Health and Safety Act 2000</i> requires a person referred to in section 36A (1) (a) of this Act to answer questions in the course of the inspector exercising functions under that Act, the person is entitled to nominate another person to be present while being questioned.	7
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		12
	(2) The regulations may make provision for or with respect to the exercise of functions under the <i>Occupational Health and Safety Act 2000</i> in relation to a mine (within the meaning of this Act) by an inspector appointed under section 47A of that Act.	13
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	(3) A reference in subsection (2) to the exercise of functions under the <i>Occupational Health and Safety Act 2000</i> in relation to a mine includes a reference to the exercise of functions under Division 2 of Part 5 of that Act in relation to premises other than a mine for the purpose of investigating any matter under that Act in relation to a mine.	17
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[2]	Schedule 3 Savings, transitional and other provisions	23
	Insert at the end of clause 1 (1):	24
	<i>Mining Legislation Amendment (Health and Safety) Act 2002</i>	25

Schedule 3	Amendment of Mining Act 1992	1
	(Section 5)	2
Part 16		3
Insert after Part 15:		4
Part 16	Mine Safety Advisory Council	5
341	Establishment of Mine Safety Advisory Council	6
(1)	The Minister is to establish a Mine Safety Advisory Council that includes representation from peak industry and employee organisations.	7 8 9
(2)	The Mine Safety Advisory Council has the following functions:	10
(a)	providing advice to the Minister on any policy matter relating to occupational health and safety in mines,	11 12
(b)	any other advisory function relating to occupational health and safety in mines that is prescribed by the regulations.	13 14 15
(3)	The regulations may make provision for or with respect to the constitution, members and procedure of the Mine Safety Advisory Council.	16 17 18

Schedule 4	Amendment of Occupational Health and Safety Act 2000	1
		2
	(Section 6)	3
[1]	Section 5 Application of Act	4
	Omit the notes to the section. Insert instead:	5
	Note.	6
	1 Section 86 (Notification of accidents and other matters) and section 87 (Non-disturbance of plant etc) do not apply to mines.	7
	2 This Act applies to the Crown—see section 118.	8
	3 This Act applies to prescribed plant affecting public safety even if it is not at a place of work or for use at work—see section 135.	9
		10
		11
[2]	Section 47 Appointment of inspectors (otherwise than in connection with mines)	12
		13
	Insert at the end of section 47:	14
	(2) A person appointed as an inspector under this section is not authorised to exercise functions under this Act in relation to a mine.	15
		16
		17
[3]	Section 47	18
	Omit the note to the section.	19
[4]	Section 47A	20
	Insert after section 47:	21
	47A Appointment of inspectors in connection with mines	22
	(1) The Minister may appoint as an inspector for the purposes of this Act and the regulations any person who is, or could be appointed or designated as, an inspector, mine safety officer or investigator under the <i>Coal Mines Regulation Act 1982</i> or the <i>Mines Inspection Act 1901</i> .	23
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	(2) An instrument appointing a person as an inspector under this section may limit the functions that the person has as such an inspector.	28
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(3) A person appointed as an inspector under this section is only authorised to exercise functions under this Act in relation to a mine, but may exercise functions under Division 2 in relation to premises other than a mine for the purpose of investigating any matter under this Act in relation to a mine.	1 2 3 4 5
[5] Section 48	6
Omit the section. Insert instead:	7
48 Identification of inspectors	8
(1) Every inspector appointed under section 47 or 47A is to be issued with an identification card as an inspector that complies with this section.	9 10 11
(2) The identification card must:	12
(a) state that it is issued under this Act, and	13
(b) give the name of the person to whom it is issued, and	14
(c) state the date (if any) on which it expires, and	15
(d) describe the kinds of premises to which the powers of the inspector extend, and	16 17
(e) state any limitations on the functions that the inspector is authorised to exercise under this Act that are imposed by the inspector's instrument of appointment, and	18 19 20
(f) bear the signature of:	21
(i) in the case of an inspector appointed under section 47, the General Manager of WorkCover or an officer approved by the General Manager of WorkCover for the purposes of this paragraph, or	22 23 24 25 26
(ii) in the case of an inspector appointed under section 47A, the Minister or a person authorised by the Minister.	27 28 29
(3) Nothing in this section prevents a single identification card being issued to a person in respect of functions to be exercised as an inspector under section 47A and functions to be exercised under the <i>Coal Mines Regulation Act 1982</i> or the <i>Mines Inspection Act 1901</i> , or both.	30 31 32 33 34

[6] Section 49 Division does not apply to mines	1
Omit the section.	2
[7] Section 104 Part does not apply to mines	3
Omit the section.	4
[8] Section 133 Application of Act to mines: references to WorkCover	5
Insert “, or to an officer of WorkCover” after “WorkCover”.	6
[9] Section 137A	7
Insert after section 137:	8
137A Delegation of functions in relation to mines by Minister	9
(1) The Minister may delegate to the Director-General any of the following functions of the Minister:	10
(a) any function under section 47A, or	11
(b) any function under this Act that is to be exercised by the Minister as a result of a regulation under section 133 that provides that a reference to WorkCover in a particular provision of this Act is to be read as a reference to the Minister.	12
(2) The Director-General may delegate to any authorised person any function of the Director-General under this Act, other than this power of delegation.	13
(3) The Director-General may subdelegate to any authorised person any function delegated to the Director-General by the Minister if the Director-General is authorised to do so by the Minister.	14
(4) In this section:	15
<i>authorised person</i> means a public servant, or any other person authorised by the regulations.	16
<i>Director-General</i> means the Director-General of the Department of Mineral Resources.	17
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Schedule 4 Amendment of Occupational Health and Safety Act 2000

[10] Schedule 3 Savings, transitional and other provisions	1
Insert at the end of clause 1 (1):	2
<i>Mining Legislation Amendment (Health and Safety) Act 2002</i>	3