



New South Wales

Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015

Explanatory note

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

This Bill is cognate with the *Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015*.

Overview of Bill

The objects of this Bill are as follows:

- (a) to regulate work health and safety at workplaces at which petroleum operations occur (***petroleum sites***) under the *Work Health and Safety (Mines) Act 2013* (the ***principal Act***) rather than under the *Petroleum (Onshore) Act 1991* and to make the work health and safety regime at petroleum sites consistent with the work health and safety regime at mines,
- (b) to clarify and simplify the interaction between the principal Act and the *Work Health and Safety Act 2011* and to provide that officials under each of those Acts can exercise functions at any workplace,
- (c) to exclude certain activities from the principal Act,
- (d) to provide that geothermal energy is to be treated as if it were petroleum for the purposes of the principal Act,
- (e) to permit consultants to be appointed as government officials for the purposes of the principal Act,
- (f) to make further provision with respect to notifiable incidents,
- (g) to permit the regulator to specify where documents are to be served for the purposes of the principal Act,

- (h) to make consequential and related amendments to other Acts and instruments,
- (i) to make statute law revision amendments.

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 [2] renames the principal Act as the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*. **Schedule 1 [6]** makes a consequential amendment.

Schedule 1 [1], [3]–[5], [7], [9], [15], [16], [19], [20], [23], [24], [26], [37], [39]–[50] and [52]–[58] apply provisions of the principal Act to petroleum sites consistently with how those provisions currently apply to mines. **Schedule 1 [11]** makes a consequential amendment.

Schedule 1 [8] updates certain definitions used in the principal Act and adds a number of new definitions including ***petroleum site*** and ***petroleum site holder***. Petroleum site means a workplace at which petroleum operations are carried out and petroleum site holder means the person who is conducting a business or undertaking with control over a petroleum title (under the *Petroleum (Onshore) Act 1991*) that permits petroleum operations to be carried out at the petroleum site or if there is no such person, the person who is conducting the business or undertaking carrying out petroleum operations at the petroleum site. **Schedule 1 [12]** inserts proposed sections 7B and 7C into the principal Act. Proposed section 7B sets out what is meant by ***petroleum operations*** and ***petroleum activities***. Petroleum activities are activities carried out for the purpose of extracting petroleum from, or injecting petroleum into, the ground or exploring for petroleum. Petroleum operations includes petroleum activities and associated activities such as constructing a site for petroleum activities or decommissioning a site or activities carried out in connection with petroleum activities at a local site such as processing and storing extracted material and educational or tourist activities. Proposed section 7C sets out what is meant by ***petroleum site operator***. A petroleum site operator means the petroleum site holder or a person appointed by the petroleum site holder.

Schedule 1 [10] substitutes provisions that defined ***mine***, ***mining operations*** and ***mining activities*** for the purposes of the principal Act to simplify those definitions and to make them consistent with the new (and equivalent) definitions of ***petroleum site***, ***petroleum operations*** and ***petroleum activities***. The revised definition of ***mining operations*** also permits the regulations to modify the activities that are mining operations and create exceptions to or otherwise limit the operation of the proposed section.

Schedule 1 [13] and [14] provide that geothermal energy is taken to be petroleum rather than a mineral which means that a site at which exploration for, or extraction of, geothermal energy occurs will be taken to be a petroleum site rather than a mine.

Schedule 1 [18] provides that the principal Act does not apply to a petroleum site in the adjacent area in respect of the State (which is generally that part of the territorial sea of Australia that is within 3 nautical miles of the coast of the State including the coast of any island forming part of the State). **Schedule 1 [17]** makes a consequential amendment.

Schedule 1 [21] provides that certain activities are not mining operations or petroleum operations for the purposes of the principal Act.

Schedule 1 [22] inserts proposed section 12A into the principal Act. The proposed section identifies officials under the *Work Health and Safety Act 2011* (the ***WHS Act***), which are the regulator (the ***WHS regulator***) and inspectors under that Act, and officials under the principal Act,

which are the regulator (the *mining and petroleum regulator*) and government officials. The proposed section provides that those officials may exercise their functions at any workplace regardless of whether the workplace is a mine, a petroleum site or any other workplace. The proposed section also provides that the mining and petroleum regulator has all the functions of the WHS regulator and vice versa and that a government official has all the functions of an inspector and vice versa.

Schedule 1 [25] provides that if the requirement to give immediate notice to the regulator about a notifiable incident is met by giving the notice by telephone, written notice is required to be given to the regulator within 48 hours after the notice by telephone.

Schedule 1 [29] modifies the requirement that the site at which a notifiable incident occurred must not be disturbed until an inspector arrives at the site. The proposed amendment allows any government official (rather than an inspector as is currently the case) to direct that the site can be disturbed before an inspector arrives. **Schedule 1 [33]** makes consequential amendments.

Schedule 1 [34] inserts a definition of *incident site* in section 17 (Duty to preserve incident sites) of the principal Act. The definition is inserted to clarify any potential ambiguity around the word “site” that may be caused because the section is to now apply to petroleum sites. **Schedule 1 [27], [28] and [30]–[32]** make consequential amendments.

Schedule 1 [35] permits a consultant engaged by a public authority to be appointed as a government official for the purposes of the principal Act. **Schedule 1 [38]** provides that the instrument appointing any such consultant is taken to be the consultant’s identity card as a government official.

Schedule 1 [36] provides that a government official is deemed to be an inspector for the purposes of the WHS Act.

Schedule 1 [51] permits the regulator, by order published in the Gazette, to specify a person, place or address for the service of documents under the principal Act.

Schedule 1 [59] and [60] are consequential on the amendments made by Schedule 3.

Schedule 1 [61] inserts transitional provisions in relation to notifiable incidents that occur at petroleum sites and in relation to notices under section 129 of the *Petroleum (Onshore) Act 1991*.

Schedule 2 Amendment of Work Health and Safety Act 2011 No 10

Schedule 2 [5] omits provisions of the *Work Health and Safety Act 2011* dealing with the functions of inspectors. Those provisions are made redundant by proposed section 12A of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* to be inserted by Schedule 1. **Schedule 2 [1], [2] and [4]** make consequential amendments.

Schedule 2 [3] updates references to the renamed *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

Schedule 2 [7] omits provisions dealing with the functions of regulators that are made redundant by proposed section 12A of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*. **Schedule 2 [8]** provides that the definition of *regulator* set out in Schedule 2 to the *Work Health and Safety Act 2011* does not limit proposed section 12A.

Schedule 2 [6] updates the definition of *regulator* to take account of the renaming of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and the application of that Act to petroleum.

Schedule 3 Amendment of Mine Safety (Cost Recovery) Act 2005 No 116

Schedule 3 updates provisions of the *Mine Safety (Cost Recovery) Act 2005* to extend the application of that Act in respect of petroleum sites in the same way as that Act applies in respect of mines.

Schedule 4 Consequential amendment of other Acts and instruments

Schedule 4 omits provisions from the *Petroleum (Onshore) Act 1991* that provide for safe work practices in relation to petroleum operations and the giving of notices where an inspector finds a matter, thing or practice to be dangerous or defective as these matters are now to be dealt with under the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*. The Schedule also makes amendments to a number of other Acts and instruments consequential on that amendment and on the amendments made by Schedules 1–3.