



New South Wales

Work Health and Safety (Mines) Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to assist in securing and promoting the health and safety of persons who work at mines and related places. This Bill, amongst other things:

- (a) provides that the proposed Act is to be read as if it formed part of the *Work Health and Safety Act 2011* (the *WHS Act*), and
- (b) establishes a notification scheme for serious incidents at mines, and
- (c) provides for oversight of mines and mining operations by appointed government officials, and
- (d) provides for safety and health representatives at coal mines, and
- (e) extends the circumstances in which improvement notices and prohibition notices may be given under the *WHS Act* in relation to mines, and
- (f) provides for stop work orders to prevent serious risks to health and safety, and
- (g) provides for the establishment of Boards of Inquiry, and
- (h) establishes the Mine Safety Advisory Council, and
- (i) constitutes the Mining Competence Board.

Outline of provisions

Part 1 Preliminary

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 sets out the objects of the proposed Act, which includes the object of assisting in securing the objects of the WHS Act at mines and the object of protecting workers at mines and other persons against harm to their health and safety.

Clause 4 specifies that the proposed Act is to be construed with, and as if it formed part of, the WHS Act.

Clause 5 defines certain words and expressions used in the proposed Act.

Clause 6 sets out a definition of *mine* for the purposes of the proposed Act. A mine is defined as a place that is a workplace at which mining operations are carried out or a place that is a tourist mine (being a workplace used only for tourism purposes but at which mining operations were formerly carried out and in which there is a hazard).

Clause 7 sets out a definition of *mining operations* for the purposes of the proposed Act. Mining operations are activities carried out for the purposes of exploring for minerals, extracting minerals from, or injecting minerals into, the ground. Mining operations also include other activities carried out in connection with, and in the vicinity of, those activities (such as storing or processing extracted materials).

Clause 8 provides for the proposed Act to apply to and in respect of geothermal energy as if geothermal energy were a mineral.

Clause 9 provides that an example or note at the foot of a provision forms part of the proposed Act.

Part 2 Application of Act

Clause 10 provides that the proposed Act applies to all workplaces that are mines but does not apply to any mine or place prescribed by the regulations or specified by the Minister for Resources and Energy (the *Minister*) in a notice published in the Gazette.

Clause 11 provides that the proposed Act does not apply to certain activities including fossicking, activities carried out in relation to the extraction of minerals on private land for the private and non-commercial use of the owner of the land and activities where the extraction of minerals is incidental to the activity (such as tunnelling to create a road).

Clause 12 permits the Minister to make a determination as to whether a particular place is or is not a place to which the proposed Act applies. The determination is conclusive for the purposes of deciding a jurisdictional question such as whether

functions of a government official under the proposed Act or of an inspector under the WHS Act were or can be validly exercised.

Clause 13 provides that the proposed Act binds the Crown and that the Crown is liable for an offence against the proposed Act.

Part 3 Incident notification

Clause 14 sets out a definition of *notifiable incident*, which means the death of a person or a serious injury or illness of a person, or a dangerous incident that is prescribed by the regulations.

Clause 15 requires the *mine operator* of a mine (being the person having control over the right or entitlement to carry out mining operations at the mine or a person appointed as mine operator by that person) to ensure that the head of the Department of Trade and Investment, Regional Infrastructure and Services (the *regulator*) is notified immediately after the mine operator becomes aware that a notifiable incident arising out of the conduct of any business or undertaking at the mine has occurred. Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate. A similar requirement applies to the person conducting the business or undertaking from which the notifiable incident arose. Notice must be given by the fastest means possible and if the notice is initially given by phone it must be followed within 48 hours by a written notice.

Clause 16 provides for an additional notification requirement in the case of a notifiable incident occurring at a coal mine. In such a case, each person who is required to ensure that the regulator is notified must ensure that an industry safety and health representative (appointed under Part 5 of the proposed Act) is also given notice of the incident. Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.

Clause 17 creates a duty on certain persons to ensure that the site where a notifiable incident has occurred is not disturbed until an inspector arrives or such earlier time that an inspector directs. The duty is on any person who is required to ensure that the regulator is notified of the notifiable incident and each person with management or control of the workplace (or part of the workplace) at which the notifiable incident has occurred. Failure to comply with the duty is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.

Part 4 Oversight of mines by government officials

Division 1 Appointment of government officials

Clause 18 permits the regulator to appoint *government officials* being inspectors, mine safety officers or investigators.

Clause 19 provides that a person may be appointed as an inspector only if the regulator is satisfied that the person has appropriate knowledge, skills and experience

and has any qualifications that may be prescribed by the regulations (or qualifications equivalent to those prescribed qualifications).

Clause 20 requires a government official to notify the regulator of interests that may conflict with the proper performance of his or her functions. The regulator must direct a government official not to deal with a matter if the regulator becomes aware of a potential conflict of interest and the regulator considers that the government official should not deal with the matter.

Clause 21 provides for the regulator to issue identity cards to government officials (section 157 of the WHS Act requires a government official to produce his or her identity card on request when exercising compliance powers).

Division 2 Functions of government officials

Clause 22 sets out the functions of a government official, which are any functions conferred on the government official by the proposed Act or the regulations.

Clause 23 requires a government official (other than an investigator) to give written notice to a mine operator if the government official becomes aware of any matter that the government official considers to be relevant to the continued safe operation of the mine or the health and safety of workers at the mine.

Clause 24 requires the regulator to consider (and if necessary, investigate) any complaint made concerning the health and safety of workers at a coal mine if the complaint is made by a safety and health representative (appointed or elected under Part 5 of the proposed Act).

Clause 25 creates an offence if a person refuses or fails to comply with a requirement made by a government official in accordance with the proposed Act. The maximum penalty is \$6,000 for an individual or \$36,000 for a body corporate.

Clause 26 provides that a government official is subject to the regulator's directions in the exercise of the government official's compliance functions.

Part 5 Safety and health representatives for coal mines

Division 1 Preliminary

Clause 27 provides that the proposed Part applies only to coal mines.

Division 2 Industry safety and health representatives

Clause 28 requires the Minister to appoint an eligible person as an industry safety and health representative if the person is nominated by the Construction, Forestry, Mining and Energy Union (Mining and Energy Division) and there are less than 4 persons currently appointed as industry safety and health representatives. A person is an eligible person if the person is a WHS entry permit holder and has the qualifications (if any) prescribed by the regulations.

Clause 29 sets out the functions of an industry safety and health representative. An industry safety and health representative has the functions of a health and safety representative under the WHS Act for a work group, as if the work group comprised all workers at all coal mines. In addition, an industry safety and health representative may review the content and implementation of a safety management system in respect of a coal mine, may participate in the investigation of an event, an occurrence or a notifiable incident at a coal mine and may assist in the training of site safety and health representatives and electrical safety and health representatives. An industry safety and health representative may enter and inspect a workplace at a coal mine and may accompany a government official during an inspection of a coal mine by the government official.

Clause 30 permits an industry safety and health representative to give a direction to the mining operator of a coal mine to suspend mining operations at the coal mine if the representative is of the opinion that there has been a failure to comply with the *WHS laws* (being the proposed Act, the WHS Act and the regulations under those Acts) or with the safety management system and because of that failure there is a danger to the health or safety of workers at the coal mine. Failure to comply with such a direction is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate. An industry safety and health representative is required to take all reasonable steps to notify the regulator that the representative proposes to give a direction under the proposed section. A direction ceases to have effect if an inspector attends and assesses the matters to which the direction relates or if the direction is withdrawn by the industry safety and health representative.

Clause 31 provides that an industry safety and health representative cannot issue a provisional improvement notice in relation to a matter if the regulator has already issued (or decided not to issue) a stop work order in relation to the same matter. An industry safety and health representative is required, as soon as practicable after issuing a provisional improvement notice, to give a copy of the notice to the regulator.

Clause 32 permits an industry safety and health representative to delegate his or her function of suspending operations to a site safety and health representative. However, a site safety and health representative may only exercise that function if he or she has received training prescribed by the regulations and the industry safety and health representative is not available or it is not practicable for him or her to attend at short notice.

Clause 33 requires an industry safety and health representative to be issued with an identity card by the Minister.

Clause 34 creates an offence if a person intentionally hinders or obstructs an industry safety and health representative in exercising his or her functions, or induces or attempts to induce any other person to do so. The maximum penalty is \$10,000 for an individual or \$50,000 for a body corporate.

Clause 35 creates an offence if a person who is not an industry safety and health representative holds himself or herself out to be an industry safety and health representative. The maximum penalty is \$10,000.

Clause 36 creates an offence if a person assaults, threatens or intimidates, or attempts to assault, threaten or intimidate, an industry safety and health representative or a person assisting an industry safety and health representative. The maximum penalty is \$50,000 or imprisonment for 2 years or both for an individual or \$250,000 for a body corporate.

Division 3 Mine safety and health representatives

Clause 37 sets out a definition of *mine safety and health representative* for the purposes of the proposed Division, which means a site safety and health representative or an electrical safety and health representative.

Clause 38 provides for the election of individuals as mine safety and health representatives for coal mines. A mine operator is required to ensure that workers at the mine are notified of the results of any such election. Failure to do so is an offence with a maximum penalty of \$3,600 for an individual or \$18,000 for a body corporate.

Clause 39 provides for an election to be conducted in accordance with the regulations.

Clause 40 provides that the term of office for a mine safety and health representative is 3 years and sets out the circumstances in which a person may cease to hold office before that 3 year period has expired.

Clause 41 permits the regulator or a person adversely affected to make an application to the Industrial Relations Commission to disqualify a mine safety and health representative on the ground that the representative has exercised a function, or used or disclosed information, for an improper purpose. The Industrial Relations Commission may disqualify the mine safety and health representative for a specified period or indefinitely.

Clause 42 sets out the functions of a mine safety and health representative. A mine safety and health representative for a coal mine has the functions of a health and safety representative under the WHS Act for a work group as if the work group comprised all workers at the coal mine. In addition, a mine safety and health representative may observe any formal investigation carried out by the mine operator of an event or other occurrence at the coal mine that must be notified to the regulator. The functions of an electrical safety and health representative for a coal mine may be exercised only in relation to electrical installations and electrical equipment and any issues and risks arising from their use.

Clause 43 provides that a health and safety representative under the WHS Act cannot issue a provisional improvement notice under the WHS Act in relation to a coal mine while there is a mine safety and health representative for the mine. Before issuing a provisional improvement notice, a mine safety and health representative must take reasonable steps to consult with any health and safety representative under the WHS Act for workers affected by the notice. A mine safety and health representative cannot issue a provisional improvement notice if the regulator or an industry safety and health representative has already issued (or decided not to issue) a stop work order or provisional improvement notice in relation to the same matter.

A mine safety and health representative also cannot issue a provisional improvement notice unless he or she has completed the relevant training. A mine safety and health representative must give a copy of any notice issued to the regulator.

Clause 44 provides for a government official who proposes to inspect a coal mine to consult with a mine safety and health representative regarding the inspection and to permit the representative to accompany the government official on the inspection.

Clause 45 requires a mine safety and health representative to undertake a course of training. A mine operator must ensure that any newly elected mine safety and health representative receives training as soon as practicable (and is permitted to take any time off for the training without loss of remuneration or entitlements). Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.

Clause 46 requires a mine safety and health representative to give a mine operator a report of any inspection that the representative makes of the mine. Failure to do so is an offence with a maximum penalty of \$500. The mine operator must keep the report for at least 12 months. Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.

Clause 47 provides that a mine safety and health representative who finds certain dangers during an inspection of a coal mine must record any such finding. The mine operator is then required give a copy of the record to the regulator. Failure to do so is an offence with a maximum penalty of \$10,000 for an individual or \$50,000 for a body corporate.

Clause 48 provides that a person is not required to exercise any function because the person is a mine safety and health representative.

Part 6 Enforcement measures

Division 1 Improvement and prohibition notices

Clause 49 permits a government official to give an improvement notice under section 191 of the WHS Act if the government official reasonably believes that a person is likely to contravene a provision of the WHS laws.

Clause 50 permits a government official to give a direction under section 195 of the WHS Act if the government official believes that activities at a workplace involve or could involve a serious risk to the health or safety of a person or contravene a prescribed provision of the WHS laws.

Division 2 Stop work orders

Clause 51 permits the regulator to make an order (a *stop work order*) requiring a person conducting a business or undertaking at a mine to stop any activity at any place specified in the order. The order may also require the person to carry out associated activities in order to make the place safe. A stop work order may be made if the regulator believes it to be necessary to prevent a serious risk to the health or

safety of any person. A stop work order remains in force for up to 28 days although more than one stop work order may be made in relation to the same person and same activity even if the orders together have effect for a period of more than 28 days.

Clause 52 provides that certain notices under the WHS Act and other approvals, notices, orders or instruments under other Acts are inoperative to the extent, and during any period, that they are inconsistent with a stop work order.

Clause 53 permits the regulator to cause work to be carried out for the purposes of carrying out the requirements of a stop work order if a person fails to comply with the order and provides that any reasonable cost of carrying out the work is recoverable from the person.

Clause 54 provides for persons to enter land for the purposes of complying with a stop work order.

Clause 55 creates an offence of failing to comply with a stop work order with a maximum penalty of \$100,000 for an individual (and a further \$10,000 for each day the offence continues) or \$500,000 for a body corporate (and a further \$50,000 for each day the offence continues).

Part 7 Inquiries

Clause 56 permits the Minister to constitute a person as a Board of Inquiry to conduct an inquiry into a notifiable incident at a mine, any other event, occurrence, practice or matter that may affect the health and safety of workers or other persons at a mine or anything prescribed by the regulations. A Board of Inquiry is not bound to act in a formal manner or to follow the rules of evidence and may determine its own procedures.

Clause 57 provides that a Board of Inquiry is to sit with one or more assessors appointed by the Minister.

Clause 58 provides that a Board of Inquiry may require persons to appear at an inquiry and may require persons to answer questions and produce documents. Failure to comply with a requirement is an offence with a maximum penalty of \$25,000 for an individual or \$50,000 for a body corporate.

Clause 59 provides that a Board of Inquiry must prepare and provide to the Minister a report as to its findings in accordance with its terms of reference. The Minister is to table the report in each House of Parliament unless the Board of Inquiry has recommended that the report should not be made public.

Part 8 Statutory bodies

Division 1 Mine Safety Advisory Council

Clause 60 requires the Minister to establish a Mine Safety Advisory Council that includes representation from peak mine operator and mine worker organisations.

Clause 61 sets out the functions of the Mine Safety Advisory Council, which are to provide advice to the Minister on any policy matter relating to work health and safety in mines and other advisory functions that are prescribed by the regulations.

Clause 62 provides for the regulations to make provision for or with respect to the constitution, members and procedure of the Mine Safety Advisory Council.

Division 2 Mining Competence Board

Clause 63 constitutes the Mining Competence Board.

Clause 64 provides that the Board is subject to the control and direction of the Minister.

Clause 65 provides for the membership of the Board.

Clause 66 provides for the procedure of the Board.

Clause 67 sets out the functions of the Board, which are to oversee the development of competence standards for persons exercising functions at a mine that may impact on the health and safety of any person and to undertake initial and ongoing assessments of the competence of persons exercising any such functions. The Board also has the function of advising the Minister on matters related to the competence required of persons to exercise any such function.

Clause 68 provides that the Board must, within 6 months after the end of June each year, make an annual report of its activities during the preceding year to the Minister.

Part 9 Miscellaneous

Clause 69 provides for the service of documents under the proposed Act.

Clause 70 permits the regulator to publish information concerning the conviction of a person, any investigation conducted under the WHS laws, action taken by the regulator under the WHS laws, any incident or other matter that may be of relevance to certain persons at mines and any matter prescribed by the regulations.

Clause 71 provides for the sharing of information with a corresponding regulator (being a public official or a public authority responsible for administering a corresponding WHS law in another Australian jurisdiction).

Clause 72 provides that the reference to the Minister in section 274 (Approved codes of practice) of the WHS Act is taken to include a reference to the Minister administering the proposed Act if the code of practice is to be made in respect of mines or mining operations. The requirement in section 274 of the WHS Act that each Australian jurisdiction be consulted before a code of practice is made is modified so that a code relating to a particular class of mine or mining operations does not require consultation with a jurisdiction in which the class of mine does not exist, or the class of mining operations does not take place.

Clause 73 makes it clear that certain persons under the proposed Act are protected from personal liability when acting in good faith for the purpose of executing the WHS laws.

Clause 74 provides that the regulator has the additional function of advising and making recommendations to the Minister and reporting on the operation and effectiveness of the WHS laws.

Clause 75 permits the Minister to delegate functions under the proposed Act to the head of the Department of Trade and Investment, Regional Infrastructure and Services.

Clause 76 permits the Governor to make regulations for the purposes of the proposed Act or the WHS Act.

Clause 77 provides for a 5-year review of the proposed Act to determine whether the policy objectives of the proposed Act remain valid and whether the terms of the proposed Act remain appropriate for securing those objectives.

Clause 78 repeals a number of Acts and regulations.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 2 Regulation-making powers

Schedule 2 provides for matters for or in relation to which regulations may be made.

Schedule 3 Amendment of Acts

Schedule 3 amends the Acts specified in the Schedule.