



FACTSHEET | WHS (MINES) LEGISLATION

Frequently asked questions (FAQS)

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Note: This document may be updated to include links to further information as it becomes available. Please check back regularly to make sure you have the most up-to-date version.

What are the new laws?

The new laws are the *Work Health and Safety (Mines) Act 2013* (WHS (Mines) Act) and the *Work Health and Safety (Mines) Regulation 2014* (WHS (Mines) Regulation) which, together with the *Work Health and Safety Act 2011* (WHS Act) and the *Work Health and Safety Regulation 2011* (WHS Regulation), provide for health and safety in mining in NSW. Collectively these Acts and Regulations are referred to as work health and safety laws, abbreviated to WHS laws. The mining-specific laws are abbreviated as the WHS (Mines) laws.

Why are the laws changing?

The new laws increase harmonisation between the different states and territories of Australia. They have been developed in consultation with other states, in particular the other major mining states of Western Australia and Queensland. The new mining-specific laws have also been developed to align with and build on the WHS Act and WHS Regulation. This will make it easier for businesses to use consistent approaches across mining and non-mining operations.

The new laws will repeal and replace the *Coal Mine Health and Safety Act 2002* and the *Mine Health and Safety Act 2004* and their supporting regulations.

Where do the mining-specific laws apply?

The WHS (Mines) laws apply to all workplaces that are mines. A mine is a workplace at which mining operations are carried out, or a tourist mine.

What are mining operations?

Mining operations are made up of two types of pursuits. Firstly, *mining activities*, which are activities carried out for the purpose of:

- extracting minerals from the ground
- injecting minerals into the ground, but only where the primary purpose of the injection is to inject a mineral into the ground or to return a mineral to the ground, or
- exploring for minerals.

Secondly, there are *activities carried out in connection with mining activities* provided they are carried out at a site where mining activities are carried out or in the vicinity of such a site, including at an adjoining location.

Mining operations includes such things as constructing a mine site, preparing or processing extracted materials, handling or storing extracted materials. It also includes activities associated with decommissioning, making safe or closing an extraction site or exploration site.

Mining operations also includes educational and tourist activities at or in the vicinity of a mine site, for example if tours of the site are provided at an operating mine.

Are there any exclusions?

The WHS (Mines) laws don't apply to fossicking or an activity 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.

Any activity where the extraction of minerals is incidental to the activity is also excluded, for example civil works such as tunneling to create a road.

The WHS (Mines) laws don't apply to some activities that are subject to regulation under separate safety laws namely:

- railway operations to which the Rail Safety National Law (NSW) applies,
- any activity on a public road or classified road within the meaning of the *Roads Act 1993*,
- the construction, commissioning, operation or decommissioning of the distribution system or transmission system owned or controlled by a network operator under the *Electricity Supply Act 1995*,
- any activity to which the *Civil Aviation Act 1988* of the Commonwealth, the *Air Services Act 1995* of the Commonwealth or the *Transport Safety Investigation Act 2003* of the Commonwealth (in so far as it applies to aircraft) applies.

What are tourist mines?

Tourist mines are workplaces previously used for mining operations that are now used *only* for tourism purposes. Such workplaces are only considered tourist mines if certain hazards existed at the site when it operated as a mine, and which remain present at the site. The relevant hazards are known as 'principal mining hazards', and are the type of hazards associated with mining which have potential to result in multiple fatalities in a single incident or series of recurring incidents. This includes hazards such as ground or strata failure, fire or explosion and spontaneous combustion, amongst others. See [tourist mines](#).

What are the obligations on exploration businesses?

If the only mining operation carried out at a mine is exploration (other than by mechanical means that disturb the ground), the mine will be exempt from many of the provisions in the WHS (Mines) Regulation. See [exploration](#).

What are the obligations on opal mines and underground small gemstone mines?

Opal mines and underground small gemstone mines are exempt from many of the provisions in the WHS (Mines) Regulation, and accordingly may prepare a more simplified safety management system.

See [opal and gemstone mining](#).

What are the key features of the new laws?

The WHS (Mines) laws, like previous mine and coal mine safety laws in NSW, maintain a strong focus on planning as a critical part of managing risk, as well as prescribing specific controls for some risks.

Under the WHS (Mines) laws mine operators must develop and implement a *safety management system* as the primary means of ensuring, so far as reasonably practicable, the health and safety of workers and that the health and safety of others is not put at risk from the mine or work carried out as part of mining operations. In most cases the safety management system will include specific plans for hazards and risks at the mine such as any *principal mining hazard management plans* and *principal controls plans* for matters such as emergencies, electricity, health, explosives, plant and other mechanical risks.

There are also specific controls for a wide range of matters such as:

- air quality, ventilation and dust
- electrical safety
- operation of belt conveyors
- coal dust explosion and spontaneous combustion
- operation of shaft conveyances.

The new legislation applies to all types of mining including opal mining, quarrying, metalliferous mining and coal mining. However, not all requirements apply to all mines. Specific controls are grouped by controls applying to:

- all mines
- underground mines
- underground coal mines
- all coal mines.

Who is the regulator?

The Secretary of the Department of Trade and Investment, Regional Infrastructure and Services is the regulator. The Secretary delegates specific functions of the regulator to various members of staff within the department (which is normally abbreviated to NSW Trade and Investment). The regulator has also appointed various officials (such as inspectors) to carry out compliance functions under the WHS laws in respect of mining workplaces.

The regulator has specified particular people, places or addresses (including e-mail addresses) where documents may be delivered to the regulator, and in some cases, the particular forms that are to be used. This ensures that matters such as notification of incidents can be received by appropriate staff to ensure a timely and appropriate response.

What has changed?

The fundamentals of mine safety have not changed. Some key changes in terminology include:

- health and safety management systems (coal mines) and mine safety management plans (metalliferous and extractive mines) are now the safety management system
- mechanical and electrical engineering management plans are now mechanical and electrical engineering control plans
- in the coal sector, check inspectors are now safety and health representatives.

Although the fundamental obligations to ensure health and safety remain and arrangements are broadly similar, they are not identical and changes will be required. Transitional arrangements will apply to allow mine operators and other persons conducting a business or undertaking at a mine to review and revise their arrangements made under current legislation. See [transitional arrangements](#) for more information

What are the key changes from commencement of the new laws?

- Some changes to requirements for notifying the regulator of incidents and injuries (guidance will be provided)
- Requirements to notify the regulator of high risk activities, rather than obtaining approval
- Changes to other information that must be provided to the regulator, such as the commencement of mining operations
- The change from check inspectors to safety and health representatives
- No approval of mine operators but mine holders must notify the regulator of the mine operator
- Keeping a mine record (see the [mine record fact sheet](#) for more information).

What other matters must be notified to the regulator?

The mine operator must notify the regulator of the following:

- commencement of mining operations
- any significant interruption to, or suspension of, mining activities at the mine
- recommencement of normal mining operations at the mine following any significant interruption or suspension of mining operations (as stated above)
- commencement of intermittent mining operations at the mine
- the connection of an electricity supply to the mine (but not if a person is nominated to exercise the statutory functions of electrical engineering manager or electrical engineer at the mine)
- closure of the mine.

In addition, the mine operator of a **coal mine** must give notice of any proposed material change to any information provided in relation to commencement of operations, such as changes in key personnel or changes in principal mining hazards.

See the [Notifying the regulator of reportable events factsheet](#).

How much notice must be given?

The mine operator must notify the regulator of these events no later than **one month before the event occurs** except:

- where the mine operator did not intend for the event to occur and could not have foreseen the event occurring, in which case notice must be given **as soon as practicable after the event occurs**
- in respect of the recommencement of normal mining operations at the mine (following a significant interruption to, or suspension of, mining activities), as soon as is reasonably practicable after the mine operator becomes aware that the mining operations are to recommence
- in relation to a **coal mine** providing updated details, as soon as is reasonably practicable after the mine operator becomes aware that the change is proposed to occur.

What are high risk activities?

High risk activities have the potential for major safety implications if not planned and carried out in a systematic and integrated manner taking into account the risks associated with the activity and the methods available to manage those risks. The high risk activities scheme under the WHS (Mines) Regulation allows the regulator to review the arrangements for the proposed activity to assess the adequacy of the planning and controls. Notice of proposed high risk activities must be given to the regulator before undertaking the activity, and 'waiting periods' are prescribed. The scheme does not require the regulator to approve activities and the responsibility for ensuring that activities are conducted safely remains with the mine operator.

- **All mines** must give 7 days' notice of electrical work on energised electrical equipment (this is consistent with similar requirements under the previous mine safety laws). **All underground mines** must give 12 months' notice of connecting electricity to the mine so that the total connected voltage underground is greater than 12,000 volts.
- **All underground mines (except opal mines)** must give 3 months' notice of development of a new mine entry (including by sinking a shaft or drift or raise boring). In this case, mine entry does not include a borehole of 500mm or less in diameter drilled to support a mining activity, such as for removing water from a mine. Note that non-coal underground mines are not required to notify of this activity for 9 months after the WHS (Mines) laws commence.
- **Coal mines** are required to notify of a range of other high risk activities, and have additional obligations to notify safety and health representatives. Where a coal mine had sought approval to undertake an activity under the *Coal Mine Health and Safety Act 2002*, transitional arrangements may apply.

More information is available in the [Notifying the regulator of high risk activities form](#), which includes a full list of high risk activities.

What transitional arrangements are there?

There are a range of transitional arrangements including:

- up to 2 years for the mine operator to comply with requirements for the safety management system, principal mining hazard management plans and principal control plans (including ventilation and emergency plans) provided the mine operator complies with specified provisions of the current legislation and certain other requirements during this period
- licences and certificates of competence granted under the previous mine safety laws are intended to be recognised as certificates of competence and practising certificates under the new laws
- certain prohibitions, restrictions, directions given, or exemptions granted under previous mine safety laws will continue to have effect under the new laws.

For details of these and other transitional arrangements see [transitional arrangements](#).

What about safety systems or plans developed under the current legislation?

Health and safety management systems or mine safety management plans that comply with specified requirements under current legislation can continue to be used for up to two years. This allows operators to make any changes needed when they review those plans. Similar transitional arrangements will apply to contractors.

See [transitional arrangements](#) for more information.

What changes were made to the draft WHS (Mines) Regulation that was released for public comment?

Fifty-eight public submissions from industry representative bodies, mining companies, unions and individuals on the public consultation draft WHS (Mines) Regulation were received. NSW Trade & Investment also held a round of face-to-face stakeholder consultation meetings at various regional locations throughout NSW with stakeholder groups. The WHS (Mines) Regulation incorporates amendments to the draft regulation identified through the public consultation process. These amendments include retaining NSW legislative requirements, under the current legislation that achieve consistent safety standards but do not increase regulatory cost. Key changes in response to public comment include:

- not adopting the site senior executive position
- retaining existing arrangements for hazardous zones, sealing of mines and atmospheric contaminants from sealed areas, electrical safety; minimum air velocity standards, provision of self-rescuers, emergency exits and inspection arrangements including in relation to belt conveyors
- clarifying contractor management requirements so that a contractor can work in compliance with the mine's safety management system rather than develop its own health and safety management plan
- clarifying that seismic activity is mining-induced seismic activity that presents a risk to health and safety
- clarifying that workers are to be trained and remain competent in basic risk management techniques used at the mine rather than a mandated requirement for training and assessment every five years
- making particular provision for opal mines and tourist mines.

See appendix C to the [Work Health and Safety \(Mines\) Regulation 2014 Regulatory Impact Statement](#) for more details.

What are the risk management obligations?

All persons conducting a business or undertaking at a mine must manage risks to health and safety associated with mining operations at the mine. A guide will be available to assist duty holders comply with their obligations to manage risks under the WHS (Mines) Regulation.

See the [Managing the risks in mines guide](#).

Who is a competent person?

The term 'competent person' is used throughout the WHS Regulation and WHS (Mines) Regulation. For some provisions, such as electrical work, particular qualifications or competencies are prescribed. Where particular requirements are not prescribed a person is a competent person to carry out a task if they have the knowledge and skills to carry out the task. It doesn't matter if they have acquired the skills through training, qualification or experience or a combination of them.

Consultation

The requirements for consultation are central to the WHS laws. The WHS (Mines) laws build on the general requirements for consultation with workers as well as the requirement for consultation, cooperation and coordination between persons conducting a business or undertaking. See [Consulting with workers](#) for details of requirements for consulting workers in the mining industry.

Contractors

The WHS (Mines) laws make particular provision for contractors at mines (which do not apply to certain types of contractors, such as office delivery, cleaning and catering services). See [Contractors and other businesses at mines](#).

Is my old certificate of competence still recognised?

Yes – it is intended that all certificates issued or recognised immediately before the repeal of the current laws, including interstate certificates will continue to be recognised as certificates of competence under the new laws. You do not have to apply for a new certificate. The [statutory functions guide](#) has more information.

How do I get a practising certificate?

Information about practising certificates will be provided later. You don't need to apply for a practising certificate straight away. NSW Trade & Investment will start to issue practising certificates in 18 to 24 months' after commencement of the new laws and different classes of practising certificate will be issued at different times. See the [statutory functions guide](#) for more information.

What happens to my exemption under the former laws?

An exemption under the *Coal Mine Health and Safety Regulation 2006* or the *Mine Health and Safety Regulation 2007* is taken to continue in force and to be an exemption on the same terms from the equivalent provision of the WHS (Mines) Regulation. A provision is an equivalent provision if it regulates similar activity in broadly the same manner or if the regulator declares it an equivalent provision by publishing in a notice in the *Government Gazette*.

Any such exemptions cease to have effect on whichever of the following occurs earlier:

- nine months after commencement of the regulation
- the regulator revokes the exemption (by notice in writing to the exempt person or notice in the gazette)
- if a period was specified for the exemption - the end of that period
- if no period was specified for the exemption - the end of five years from the date of grant.

Exemptions issued under the WHS Regulation continue to apply.

What is a safety and health representative?

Safety and health representative is the new name for check inspectors in coal mines. See the [Safety and health representatives: fact sheet](#) for more information.

Are there any changes for health and safety representatives?

With the commencement of the WHS (Mines) Act there will be a key change for health and safety representatives (HSRs) at coal mines. HSRs cannot issue a provisional improvement notice (PIN) while there is a site safety and health representative for the coal mine. Nor can a HSR issue a PIN if there is an electrical safety and health representative for the coal mine and the PIN relates only to electrical installations and electrical equipment and any issues and risks arising from their use.

There are no other changes in relation to HSRs at either coal mines or other mines.

How do I identify a return or a hazardous zone in a coal mine?

Operators of underground coal mines will need to identify 'returns' and 'hazardous zones' to comply with the new laws. A guide will be available shortly to assist mine operators identify returns and hazardous zones in underground coal mines.

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Disclaimer: This publication provides a general summary of some of the provisions under the Work Health and Safety Act 2011, Work Health and Safety Regulation 2011, Work Health and Safety (Mines) Act 2013 and Work Health and Safety (Mines) Regulation 2014 (WHS laws) as interpreted by the Department of Trade and Investment, Regional Infrastructure and Services at the time of writing (December 2014). Compliance with WHS laws is a legal requirement. This publication does not provide or purport to provide legal advice.

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