



**NSW
Resources
Regulator**

DISCUSSION PAPER

**STATUTORY REVIEW OF THE
WORK HEALTH AND SAFETY (MINES AND
PETROLEUM SITES) ACT 2013 AND REGULATION**

INDEPENDENT REVIEWER: KYM BILLS

Call for submissions extended to Friday 1 May 2020

Document control

Published by NSW Resources Regulator

Title: Statutory review of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and Regulation

First published: March 2020

Authorised by: Executive Director Resources Regulator

CM9 reference: DOC19/1113317

AMENDMENT SCHEDULE

Date	Version	Amendment
March 2020	V1	Public consultation version
March 2020	V2	Amended Lead Reviewer title
April 2020	V3	Extended submission closing date from 17 April 2020 to 1 May 2020

© State of New South Wales through Department of Planning, Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing March 2020 and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Foreword

I am honoured to have been chosen as the independent reviewer for the statutory review into the NSW *Work Health and Safety (Mines and Petroleum Sites) Act 2013* and *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (the WHS (MPS) laws). I would like to encourage all stakeholders and interested parties to be involved in this review by reading this discussion paper, attending forums across the State, completing an online survey and/or making a formal submission.

NSW led the nation in implementing the outcomes of a lengthy tripartite National Mine Safety Framework (NMSF) process under the Council of Australian Government Work Health and Safety umbrella and is reviewing its laws that have now been operative for five years.

I am passionate about work health and safety in mining and petroleum and minimising the risk of harm to workers and others who may be impacted by daily operations or a major incident. While not a technical specialist, since 1994, I have managed and worked with many specialists and delivered independent investigation and analysis reports, including as foundation head of the Australian Transport Safety Bureau (ATSB) and lead investigator for the Varanus Island Western Australia gas pipelines explosions. I am currently Chair of the College of Fellows for the Australian Institute of Health & Safety.

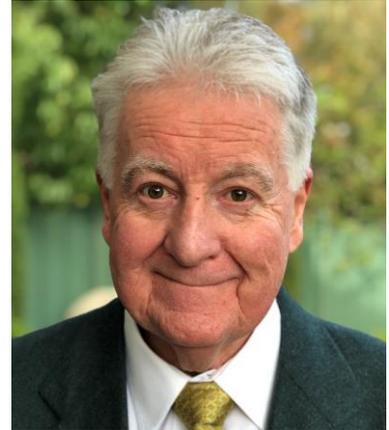
The focus of this review is on the WHS (MPS) laws, not the general *Work Health and Safety Act 2011*, or on the operations of the NSW Resources Regulator, or on the merits of mining and petroleum production. Regardless of whether you are a mine worker, WHS professional, engineer, manager, union representative or other stakeholder, your input is welcome. Please be assured that all input that addresses the WHS (MPS) Laws and how they might potentially be improved to reduce risk and minimise harm, will be considered seriously. Submissions close on 1 May 2020.

For further information visit the NSW Government's "Have your say" web page:

<https://www.resourcesregulator.nsw.gov.au/about-us/have-your-say/work-health-safety-mines-and-petroleum-sites-act-and-regulation-review/>



Kym Bills
Independent Reviewer



Contents

ABBREVIATIONS.....	4
1. Introduction.....	6
1.1. Purpose of this discussion paper.....	6
1.2. Scope of review.....	6
2. Terms of reference.....	7
3. Statutory review process.....	8
4. National context.....	11
4.1. Harmonisation of WHS laws.....	11
4.2. National Mine Safety Framework.....	12
4.3. Additional tri-state WHS (MPS) provisions.....	12
4.4. Scope extended to onshore petroleum.....	13
5. Overview of WHS Act.....	14
6. Work Health and Safety (Mines and Petroleum Sites) Act 2013.....	16
6.1. Application of the WHS (MPS) laws in NSW.....	16
6.2. Incident notification.....	17
6.3. Functions of government officials.....	17
6.4. Worker representation in coal mines.....	18
6.5. Enforcement measures.....	20
6.6. Boards of Inquiry.....	20
6.7. Statutory bodies.....	21
7. Work Health and Safety (Mines and Petroleum Sites) Regulation 2014.....	22
7.1. Mine operator and petroleum site operator.....	22
7.2. Duty to manage risk.....	23
7.3. Safety management system, principal hazard management plans and principal control plans.....	23
7.4. Contractor management.....	25
7.5. Specific control measures.....	26
7.6. Emergency management.....	29

7.7. Information training and instruction 30

7.8. Health monitoring 31

7.9. Consultation and workers safety role..... 31

7.10. Survey plans 32

7.11. Notifications and information provided to the regulator 32

7.12. Statutory functions..... 35

7.13. Authorisations 36

ABBREVIATIONS

Abbreviation	Description
COAG	Council of Australian Governments
HSR	a health and safety representative provided for under Part 5 of the WHS Act
Model Act	model WHS Act as developed and published by Safe Work Australia
Model Regulations	model WHS Regulations as developed and published by Safe Work Australia
NCDI	non-core drafting instructions
NMSF	National Mine Safety Framework
NSW WHS laws	<p>when used in relation to mines and petroleum sites in NSW, is a reference to the WHS (MPS) Act, the WHS (MPS) Regulation, the WHS Act and the WHS Regulation.</p> <p>Note: This is defined in the WHS (MPS) Act. This definition contrasts with references to the model WHS laws that may be referred to in relation to NSW workplaces other than mines and petroleum sites, which is a reference to the WHS Act, WHS Regulation and Codes of Practice.</p>
Operator	a general term used to mean both a mine operator and a petroleum operator who may be the mine or petroleum site holder themselves or another person conducting a business or undertaking appointed by the mine or petroleum site holder to operate the mine or petroleum site.
PCBU	a person conducting a business or undertaking with primary duties under the WHS Act.
SHR	safety and health representative for a coal mine
WHS	work health and safety

WHS Act	<i>Work Health and Safety Act 2011</i>
WHS Regulation	<i>Work Health and Safety Regulation 2017</i>
WHS (MPS) Act	<u>Work Health and Safety (Mines and Petroleum Sites) Act 2013</u>
WHS (MPS) laws	WHS (MPS) Act and WHS (MPS) Regulation
WHS (MPS) Regulation	<u>Work Health and Safety (Mines and Petroleum Sites) Regulation 2014</u>

1. Introduction

1.1. Purpose of this discussion paper

The purpose of this discussion paper is to provide important background information about the *Work Health and Safety (Mines and Petroleum Sites) Act 2013* (the WHS (MPS) Act) and the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2014* (the WHS (MPS) Regulation) – collectively referred to as the WHS (MPS) laws.

The paper explains and discusses the objectives of the WHS (MPS) Act, provisions and associated issues to ensure that everybody in New South Wales, and the mining and petroleum industries in particular, has the opportunity to contribute to the review of the WHS (MPS) laws.

The independent reviewer is seeking public submissions and comment to assist and inform his review process. Public submission and comment are an important part of the review process. The discussion paper provides information about how members of the public can be involved by the preparation of a submission or comment. The paper is intended to stimulate discussion, rather than a compilation of an exhaustive list of issues. Submissions are welcome on any matter within the terms of reference.

1.2. Scope of review

The NSW Resources Regulator has responsibility for administering the *Work Health and Safety Act 2011* (WHS Act) and the WHS (MPS) Act for ensuring compliance with work health and safety legislation in relation to mines and petroleum sites. The Regulator's role is complemented by SafeWork NSW which administers the WHS Act in all workplaces other than health and safety at mining and petroleum operations. The Deputy Premier and Minister for Regional New South Wales, Industry and Trade, the Hon. John Barilaro, MP is the Minister responsible for mine and petroleum safety.

Legislation can be in the form of an Act or a regulation made under an Act. An Act is a law made by the Parliament and known as an Act of Parliament. A regulation is subordinate legislation that is made by a person or body other than the Parliament by virtue of powers conferred on that person or body and contained in an Act.

The WHS (MPS) Act and WHS (MPS) Regulation form only a part of the WHS legislative scheme applying to mines and petroleum sites and must be read together with more general provisions in:

- the WHS Act
- the WHS Regulation.

Why do the WHS (MPS) laws exist?

In July 2008, the Council of Australian Governments (COAG) committed to the harmonisation of work health and safety (WHS) laws to apply to all workplaces. This led to the development of a national Model Act and Model Regulations supported by Codes of Practice, for adoption by the States and Territories. Jurisdictional variations were allowed in limited circumstances.

In NSW, the WHS Act and the *Work Health and Safety Regulation 2011* (WHS Regulation) commenced on 1 January 2012. This applied to all workplaces, including those where mining and petroleum activities were carried out.

Historically, NSW has maintained mine safety legislation separate to general occupational health and safety legislation applying to other industries due to the significant risks associated with mining operations. To some extent this has also been the case with petroleum operations, as additional safety-related requirements were applied through non-safety legislation. Following the Gretley incident (1996) and subsequent to a 2005 Mine Safety Review (and as a means to implement NSW's commitment to adoption of International Labour Organization conventions), the legislation has become more integrated with other WHS legislation within NSW as many hazards are common across industries and the approaches to management of occupational health and safety has evolved and merged.

The COAG agreement provided the next step to enable better integration of WHS-related legislation within NSW as well as nationally, but with sufficient flexibility to not reduce the high standards that specific mine safety legislation has established, particularly for major mining states like NSW.

2. Terms of reference

The terms of reference of the review are to:

1. Examine and report on the operation of the WHS (MPS) laws by considering whether the objectives of the WHS (MPS) laws (Section 3 of the WHS (MPS) Act 2013) are valid and whether the terms of the Act remain appropriate for securing those objectives and consider whether:
 - (a) the WHS (MPS) laws assist in securing the objectives of the WHS Act 2011 for the protection from harm of workers and other persons on mine and petroleum sites from health and safety risks
 - (b) there are any areas of the WHS (MPS) laws that have had unintended outcomes
 - (c) the WHS (MPS) laws remain consistent with the National Mine Safety Framework principles.
2. Consider whether the following provisions are appropriate:

- (a) the framework of duties to protect workers including safety management systems, principal hazard management plans, control and other plans and specific controls
 - (b) specific emergency management provisions
 - (c) worker representation provisions in coal mines
 - (d) the additional compliance and enforcement measures for a high-hazard industry
 - (e) licensing, authorisations and statutory functions provisions
 - (f) Mining and Petroleum Competence Board as an oversight mechanism
 - (g) Mine Safety Advisory Council in providing advice to the Minister
 - (h) Board of Inquiry provisions
 - (i) notifications required to be provided to the regulator
 - (j) the framework has facilitated effective interstate regulatory cooperation.
3. As required by section 77 of the WHS (MPS) Act, undertake a review as soon as possible after the period of five years from the commencement of the Act to enable the Minister to report on the outcomes of the review tabled in each House of Parliament within 12 months after the period of five years.

3. Statutory review process

In accordance with section 77 of the WHS (MPS) Act, the Minister is to review the Act to determine whether:

- the policy objectives of the WHS (MPS) Act remain valid
- the terms of the WHS (MPS) Act remain appropriate for securing those objectives.

Upon completion of the review, a report on the outcome of the review is to be tabled in both houses of Parliament.

The WHS (MPS) Regulation is also due for staged repeal under the *Subordinate Legislation Act 1989*. This means the WHS (MPS) Regulation will need to be either remade or allow to lapse.

Role of independent reviewer

With the guidance of a departmental steering committee and assistance of a departmental secretariat, the independent reviewer will lead the public consultation process. He will identify, through analysis of the information and data received, the major themes and issues arising from that consultation and seek clarification of issues where required. Following full consideration of the issues and discussions, the independent reviewer will prepare a report for the Deputy Premier to table in Parliament.

Have your say

On behalf of the independent reviewer, the Resources Regulator is seeking written submissions in relation to this discussion paper from stakeholders and other interested parties. You can make an individual submission or contribute to a joint submission through your employer, union, professional association, work health and safety group or committee or another forum.

You are invited to respond to some or all the questions asked in this paper. Please outline the reasons supporting your view, particularly where you identify issues and problems. You can use the downloadable fillable form, or the online submission form provided, make your own submission, participate in face to face forums or complete the online survey.

Please provide your submission to rr.feedback@planning.nsw.gov.au by close of business 1 May 2020.

Submissions on this discussion paper will be considered by the independent reviewer before making final recommendations in his report to the Deputy Premier. Submissions or summaries will be published on the Resources Regulator's website. Please advise us if you believe there is a reason why your name should not be published with your submission.

For further information visit the NSW Government "[Have your say](#)"¹ web page.

A summary of all questions in this paper are below:

National Context

1. Do the WHS (MPS) laws remain consistent with the National Mine Safety Framework principles?
2. Is the objective of seeking national consistency relating to WHS in relation to mines and petroleum sites still valid?
3. Has the WHS (MPS) framework facilitated effective interstate regulatory cooperation?
4. Are there any developments in mine and petroleum safety laws in the major mining states that could improve safety regulation and outcomes in NSW?

¹ <https://www.nsw.gov.au/improving-nsw/have-your-say/>

WHS (MPS) Act

5. Are the objects of the WHS (MPS) Act still valid, appropriate and working as intended? ([Part 1 of Act](#))
6. Are there any areas **arising from application** of the WHS (MPS) laws that have had unintended outcomes? ([Part 1 of Act](#))
7. Are the provisions under the WHS (MPS) laws **for incident notification** still valid, appropriate and working as intended? ([Part 3 of the Act](#))
8. Are the provisions **functions of government officials** still valid, appropriate and working as intended? ([Part 4 of the Act](#))
9. Are the provisions **for worker representation** in coal mines still valid, appropriate and working as intended? ([Part 5 of the Act](#))
10. Are the provisions **for enforcement measures** still valid, appropriate and working as intended? ([Part 6 of the Act](#))
11. Are the provisions **for a Board of Inquiry** still valid, appropriate and working as intended? ([Part 7 of the Act](#))
12. Are the provisions **for statutory bodies** still valid, appropriate and working as intended? ([Part 8 of the Act](#))
13. Do the provisions **for statutory bodies** ensure adequate representation in the provision of advice in relation to health and safety and competence? ([Part 8 of the Act](#))

WHS (MPS) Regulation

14. Are the provisions **for nomination and appointment of operators** still valid, appropriate and working as intended? ([Part 1A of the Regulation](#))
15. Are the provisions **for managing risk** in addition to the WHS Regulation still valid, appropriate and working as intended? ([Part 2, Div 1, Subdivision 1 of the Regulation](#))
16. Are the provisions **for SMS, including PHMP & PCP**, still valid, appropriate and working as intended? ([Part 2, Div 1, Subdiv 2-4 and Div 2 and 3 of the Regulation](#))
17. Are the provisions **specific control measures** still valid, appropriate and working as intended? ([Part 2, Div 4-5 of the Regulation](#))
18. Are the provisions **for emergency management** still valid, appropriate and working as intended? ([Part 2, Div 6 of the Regulation](#))

19. Are the provisions **for information, instruction and training** still valid, appropriate and working as intended? ([Part 2](#), [Div 7 of the Regulation](#))
20. Are the provisions for **health monitoring** still valid, appropriate and working as intended? ([Part 3 of the Regulation](#))
21. Are the provisions **for consultation and worker safety role** still valid, appropriate and working as intended? ([Part 4 of the Regulation](#))
22. Are the provisions **for survey plans and mine plans** still valid, appropriate and working as intended? ([Part 5 of the Regulation](#))
23. Are the provisions **for notifications and information to be provided to the regulator and information to be kept by the operator** still valid, appropriate and working as intended ([Part 6](#) and [Part 7 of the Regulation](#))
24. Are provisions for **statutory functions** still valid, appropriate and working as intended? ([Part 8 of the Regulation](#))
25. Are provisions **for licensed activities and registration of plant** still valid, appropriate and working as intended? ([Part 9](#) and [cl 177 of the Regulation](#))

4. National context

4.1. Harmonisation of WHS laws

In July 2008, the Council of Australia Governments formally committed to the harmonisation of work health and safety (WHS) laws by signing an Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (the IGA).

The intention of the WHS harmonisation process was to make the WHS laws of the Commonwealth and all the states and territories consistent, so that workers could have the same degree of protection in the conduct of their work, regardless of which part of Australia they were working in. Under the IGA, all Australian jurisdictions committed to adopting the model work health and safety legislation, with minor variations as necessary, to ensure it is consistent with relevant drafting protocols and to achieve consistency with other laws and processes operating within the jurisdiction. The model WHS laws were finalised during 2011 and consisted of an integrated package of a model Work Health and Safety Act, model Work Health and Safety Regulations, model codes of practice and a National Compliance and Enforcement Policy. On 1 January 2012, the Work Health and Safety Act 2011 (WHS Act) and Work Health and Safety Regulation 2011 (WHS Regulation) and supporting approved codes of practice

commenced in NSW. The WHS Act, WHS Regulation and approved codes of practice apply to all workplaces, including mines and petroleum sites.

4.2. National Mine Safety Framework

Finalised in 2011, the package of model WHS laws did not contain provisions for mines, as the national WHS laws harmonisation process for mines progressed under the National Mine Safety Framework (NMSF). The NMSF was made up of seven strategies, focused on key areas where consistency across jurisdictions would be most beneficial to the industry, namely:

- nationally consistent legislation
- competency support
- compliance support
- a nationally coordinated protocol on enforcement
- consistent and reliable data collection and analysis
- effective consultation mechanisms
- a collaborative approach to research.

The NMSF was an initiative of the Standing Council on Energy and Resources (SCER), formerly referred to as the Ministerial Council on Mineral and Petroleum Resources. The development of nationally consistent mine safety legislation was the primary focus of the NMSF Steering Group work, including its integration with the development of national model (WHS) laws by Safe Work Australia, to ensure a consistent and collaborative approach to WHS reform. The NMSF Steering Group had tripartite representation from regulators, business groups and employee groups. The group had the role of guiding the development and drafting the model WHS (MPS) Regulation to be made as chapter 10 under the model WHS Regulation. A number of supporting mining codes of practice to the model have also been developed through these processes.

4.3. Additional tri-state WHS (MPS) provisions

The SCER also agreed that additional tri-state provisions were required to address high-risk mining activities, such as underground coal mining. In parallel to the development of the model WHS (MPS) Regulation by the NMSF Steering Group, NSW, Queensland and Western Australia formed a tri-state Legislative Working Group (LWG) and have met in a tripartite capacity in order to create a set of drafting

instructions as the basis for the additional tri-state legislation, known as the Non-Core Drafting Instructions (NCDIs). These NCDIs were agreed to by the mining Ministers of each of the three states in July 2011. To reconcile the agreed NCDIs with the model WHS (MPS) Regulation, the tri-state Legislative Working Group developed an annotation to the model WHS (MPS) Regulation, wherein the 'non-core' enhancements from the NCDIs were built onto the model provisions. It was this outcome that gave rise to the form and content of the NSW draft WHS (MPS) Regulation.

As part of this process some issues with the NCDIs were identified, such as apparent overlap and duplication between instructions, as well as questions as to whether a matter could be best addressed in a code of practice rather than in regulation. For example, if a hazard in mining can be controlled in several different ways, it is generally preferable to develop a code of practice addressing the matter. This is because a code of practice can include the different options available and a court may:

- have regard to the code as evidence of what is known about a hazard or risk, risk assessment or risk control to which the code relates
- rely on the code in determining what is reasonably practicable in the circumstances to which the code relates.

1. Do the WHS (MPS) laws remain consistent with the National Mine Safety Framework principles?
2. Is the objective of seeking national consistency relating to WHS in relation to mines and petroleum sites still valid?
3. Has the WHS (MPS) framework facilitated effective interstate regulatory cooperation?
4. Are there any developments in mine and petroleum safety laws in the major mining states that could improve safety regulation and outcomes in NSW?

4.4. Scope extended to onshore petroleum

In October 2015, the NSW Government introduced a suite of reforms for harmonisation of resources legislation involving amendment of the *Mining Act 1992*, *Petroleum (Onshore) Act 1991* and the then *Work Health and Safety (Mines) Act 2013*. All provisions relating to WHS in the petroleum onshore legislation were removed and the WHS regulatory provisions applying to mines were applied to petroleum sites. These are NSW-specific provisions, as the national process did not explicitly address provisions specific to petroleum sites under the model WHS Act and model WHS Regulation or the NCDIs.

5. Overview of WHS Act

The WHS (MPS) Act and WHS (MPS) Regulations form only a part of the WHS legislative scheme applying to mines and petroleum sites. The WHS (MPS) laws must be read together with:

- the WHS Act
- the WHS Regulation.

Collectively, we refer to these two Acts and two Regulations as the WHS laws. To fully understand the scope and operation of the WHS (MPS) Regulation it is necessary to consider the WHS (MPS) laws in the broader context of the WHS laws.

Section 4 of the WHS (MPS) Act provides that the WHS (MPS) Act and the WHS (MPS) Regulation are to be construed with, and as if they formed part of, the WHS Act and the WHS Regulation. A reference to 'this Act' in the WHS Act includes a reference to the WHS (MPS) Act and the draft WHS (MPS) Regulation.

Words and expressions used in the WHS (MPS) laws have the same meaning as in the WHS Act and WHS Regulation unless they are specifically defined in WHS (MPS) Act or WHS (MPS) Regulation.

The WHS legislative framework applying to mines and petroleum sites improves clarity around the health and safety provisions that apply for those who provide services to, or contract to, the mining industry and other sectors.

The WHS Act includes the following key elements²:

- a primary duty of care requiring persons conducting a business or undertaking (PCBUs) to, so far as is reasonably practicable, ensure the health and safety of workers and others who may be affected by the carrying out of work
- duties of care for persons who influence the way work is carried out, as well as the integrity of products used for work
- a requirement that 'officers' exercise 'due diligence' to ensure compliance
- reporting requirements for 'notifiable incidents' such as the serious illness, injury or death of persons and dangerous incidents arising out of the conduct of a business or undertaking

² These are as listed in the *Explanatory Memorandum – Model Work Health and Safety Bill*, as published by Safe Work Australia and can be found at <https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws>

- a framework to establish a general scheme for authorisations such as licences, permits and registrations (e.g. for persons engaged in high risk work or users of certain plant or substances)
- provision for consultation on work health and safety matters, participation and representation provisions
- provision for the resolution of work health and safety issues
- protection against discrimination for those who exercise or perform, or seek to exercise or perform powers, functions or rights under the Bill
- an entry permit scheme that allows authorised permit holders to:
 - inquire into suspected contraventions of work health and safety laws affecting workers who are members, or eligible to be members of the relevant union, and whose interests the union is entitled to represent
 - consult and advise such workers about work health and safety matters.
- provision for enforcement and compliance including a compliance role for work health and safety inspectors
- regulation-making powers and administrative processes, including mechanisms for improving cross-jurisdictional cooperation.

The regulations are made under clause 276 of Schedule 3 to the WHS Act and cover a wide range of matters relating to work health and safety, including³:

- representation and participation (Chapter 2)
- general risk and workplace management (Chapter 3)
- hazardous work involving noise, hazardous manual tasks, confined spaces, falls, work requiring a high risk work licence, demolition work, electrical safety and energised electrical work and diving work (Chapter 4)
- plant and structures (Chapter 5)

³ These are as listed in the Explanatory Memorandum for the Model Work Health and Safety Regulations, as published by Safe Work Australia and can be found at <https://www.safeworkaustralia.gov.au/law-and-regulation/model-whs-laws>

- construction work (Chapter 6)
- hazardous chemicals (Chapter 7)
- asbestos (Chapter 8)
- major hazard facilities (Chapter 9)
- mines (Chapter 10) [optional]
- general (Chapter 11).

6. Work Health and Safety (Mines and Petroleum Sites) Act 2013

6.1. Application of the WHS (MPS) laws in NSW

The WHS (MPS) Act assists in meeting the objectives of the WHS Act and how the WHS (MPS) Act applies to mine and petroleum sites to protect from health and safety risks and establish other mine and petroleum site specific requirements.

The WHS (MPS) Act gets its application through key definitions and includes in its scope:

- mine and petroleum operations and activities
- mine or petroleum site operator as the primary duty holder
- geothermal power
- where the Act applies and does not apply
- jurisdictional decisions
- exercise of functions by the regulator and other officials.

The WHS (MPS) Act establishes a primary duty holder through the definition of mine or petroleum site holder behind the operator, unless an entity is appointed under the regulation to be the operator.

The WHS Act 2011 includes the primary duties of PCBUs and covers all workplaces and all hazards. The WHS (MPS) Act 2013 prescribes additional duties on an operator as the main coordinating PCBU in relation to a mine or petroleum site. The mine operator or petroleum site operator is the primary duty holder.

The Secretary of the Department of Planning, Industry and Environment is the regulator of the WHS Act and WHS (MPS) Act in relation to mines and petroleum sites.

5. Are the objects of the WHS (MPS) Act still valid, appropriate and working as intended?

[\(Part 1 of Act\)](#)

6. Are there any areas **arising from application** of the WHS (MPS) laws that have had unintended outcomes? [\(Part 1 of Act\)](#)

6.2. Incident notification

All workplace deaths, serious injuries, illnesses and dangerous incidents that happen as a result of work activities at a mine or petroleum site need to be notified to the Regulator. The serious injuries, illnesses and dangerous incidents are prescribed in the WHS (MPS) Regulation.

The operator of the mine or petroleum site must ensure notification is made immediately after becoming aware of the incident.

Businesses must keep a record of each notifiable incident for at least five years. The person in charge of a workplace where a notifiable incident has occurred, must make the site of the incident secure, so it is not disturbed until an inspector arrives, or advises the scene can be disturbed.

The requirement to preserve the scene does not stop a person taking action to prevent further injuries, or to help a person who is injured.

Incident notification provisions mirror those in the WHS Act, with the incidents to be notified expanded to cover events relevant to mining and petroleum extraction and production.

7. Are the provisions under the WHS (MPS) laws **for incident notification** still valid, appropriate and working as intended? [\(Part 3 of the Act\)](#)

6.3. Functions of government officials

A person who is appointed a government official under the WHS (MPS) Act is deemed to be an inspector for the purposes of the WHS Act. Government officials are categorised as inspectors, mine safety officers and investigators to reflect particular skills, knowledge and experience required to exercise compliance and enforcement functions at mines and petroleum sites. The functions and appointment of government officials include:

- who can be appointed a government official

- qualifications of inspectors
- accountability of government officials.

8. Are the provisions **functions of government officials** still valid, appropriate and working as intended? ([Part 4 of the Act](#))

6.4. Worker representation in coal mines

Under the WHS (MPS) Act, safety and health representatives (SHRs) are representatives of workers' health and safety interests in the coal industry. They were traditionally known as check inspectors. SHR arrangements only apply to coal mines, but do not apply where the only mining operation is exploring for coal.

There are two types of SHRs:

- mine SHRs – elected by workers for a particular coal mine
- industry SHRs – appointed by the Minister in respect of all coal mines in NSW.

A mine SHR fulfils all the functions of a health and safety representative (HSR) under the WHS Act for all workers at the mine. In addition, they may observe any formal investigation conducted by or on behalf of the mine operator of an event or other occurrence at the coal mine that must be notified to the Regulator. In addition, more than one individual may be elected as a mine SHR, if the mine operator of the mine agrees or the Regulator directs.

Despite this, the provisions for HSRs in the WHS Act still apply in relation to coal mines. The fact that there may be one or more health and safety representatives under the WHS Act for workers at a coal mine does not limit the functions of a mine safety and health representative for the coal mine. However, a HSR, under the WHS Act for a work group that comprises workers at a coal mine, cannot issue a provisional improvement notice in relation to the coal mine under certain circumstances (e.g. when there is a site SHR elected at the coal mine).

Industry SHRs are appointed by the Minister and must be nominated by the Construction Forestry, Maritime, Mining and Energy Union (Mining and Energy Division). To be eligible for appointment as an industry SHR, the person must be a WHS entry permit holder under the WHS Act and have the qualifications (if any) prescribed by the regulations⁴.

⁴ Clause 168 of the WHS (MPS) Regulation requires a person nominated to be an industry SHR to hold the qualifications required to be nominated to exercise the statutory function of deputy or open cut examiner, and to have completed a course of training that is accredited by the regulator for the purposes of section 45 of the WHS (MPS) Act.

In effect, the industry SHRs must complete the same training as mine SHRs before they can be appointed.

Industry SHRs have all the functions of health and safety representatives under the WHS Act for all workers of coal mines in NSW, as well as the following additional powers and functions⁵:

- to review the content and implementation of the safety management systems at coal mines
- to participate in the investigation of events, occurrences and notifiable incidents at coal mines
- to assist in the training of site SHRs and electrical SHRs.

In exercising a power or performing a function, industry SHRs may:

- enter and inspect any part of a workplace at a coal mine
- accompany an inspector during an inspection of any part of the coal mine where people work
- suspend operations in certain circumstances
- direct a worker to cease unsafe work or issue a provisional improvement notice (PIN) but only after completing the required training.

A provisional improvement notice (PIN) is a notice provided for under the Part 5 of the WHS Act that can be issued by an HSR, if there is a reasonable belief that a person is contravening a provision of the WHS (MPS) laws or has contravened a provision of this Act in circumstances that make it likely that the contravention will continue or be repeated.

A PIN can be issued if the SHR reasonably believes that a person is breaching or has breached the WHS legislation, in circumstances that make it likely the breach will continue or be repeated. A PIN may require the person to:

- remedy the breach
- prevent a likely breach from occurring
- remedy the things or operations causing the breach or likely breach.

A PIN can be issued to any person, including a PCBU (either organisation or individual), or any other duty holder such as workers, officers, or other persons at the workplace.

⁵ Section 29 of the WHS (MPS) Act

9. Are the provisions **for worker representation** in coal mines still valid, appropriate and working as intended? ([Part 5 of the Act](#))

6.5. Enforcement measures

Additional circumstances are provided for a government official issuing an improvement notice under section 191 of the WHS Act, where the official reasonably believes there has been a contravention of the WHS Act or there is likely to be a contravention.

There is also provision for additional circumstances for a government official issuing prohibition notices under section 195 of the WHS Act, for example an activity:

- is occurring, or may occur, at a workplace that involves a serious risk to the health or safety of a person
- has caused, or is causing, a contravention of a provision of the WHS laws prescribed by the regulations.

There is also a provision for the Regulator to issue a stop work order requiring a PCBU to stop any activity to prevent a serious risk to health and safety. The Regulator may also require a PCBU to carry out any activity the Regulator reasonably believes will make the workplace safe.

10. Are the provisions **for enforcement measures** still valid, appropriate and working as intended? ([Part 6 of the Act](#))

6.6. Boards of Inquiry

The establishment of a Board of Inquiry allows for an assessment of industry performance and compliance via formal inquiries.

Boards of Inquiry were introduced into NSW mine safety legislation⁶ in 1998 in response to the Mine Safety Review and Gretley Inquiry to provide a middle tier of government response following an investigation by an inspector as an alternative to a Judicial Inquiry or a Royal Commission.

The NCDIs allowed for mine safety regulations to provide for the establishment of a board of inquiry in the event that a serious incident or notifiable incident occurs, or when the Minister reaches the conclusion that an investigation of a safety matter is necessary.

⁶ The *Coal Mines Regulation Act 1982* and *Mines Inspection Act 1901* were amended to introduce Boards of Inquiry via the *Mines Legislation Amendment (Mines Safety) Act 1998 No 122*.

Under the WHS (MPS) Act, the Minister has the power to establish a Board of Inquiry. A Board of Inquiry may be set up to inquire into a notifiable incident, any event, occurrence, practice or matter that may affect the health and safety of workers or other people at a mine or petroleum site and its causes and circumstances.

A Board of Inquiry is not bound to act in a formal manner, or by the rules of evidence, and may inform itself on any matter, in any way that it considers appropriate. A Board of Inquiry has the right to consult, either collectively or individually and either in public or in private, with assessors sitting with it.

A person must answer a question even if it might incriminate him/her or make him/her liable to a penalty. However, any answer, or further information obtained on the basis of an answer, given by a natural person in compliance with this requirement is not admissible in evidence against the individual in other criminal proceedings under prescribed circumstances.

Given this, a court (including coronial proceedings) may by order suspend an inquiry, if the court is of the opinion that the inquiry may prejudice a matter before the court.

Therefore, these types of investigations are confined to the more major end of the incident and issue spectrum and start at the level of Boards of Inquiry. No Board of Inquiry has been established in relation to mines or petroleum sites since the WHS (MPS) laws came into effect in 2015.

11. Are the provisions **for a Board of Inquiry** still valid, appropriate and working as intended? ([Part 7 of the Act](#))

6.7. Statutory bodies

There are two statutory bodies established by the WHS (MPS) laws. These bodies are the Mine Safety Advisory Council and Mining and Petroleum Competence Board.

NSW Mine Safety Advisory Council

The NSW Mines Safety Council provides strategic advice to the Minister on ways to improve health and safety in the mining industry that it considers relevant or is referred to by the Minister. It is a single, peak advisory body covering the entire mining industry. Its membership includes representatives from the peak mine operator and mine worker organisations prescribed in the WHS (MPS) Regulation.

Specifically, the key industry stakeholders directly represented are the NSW Minerals Council, the Cement Concrete & Aggregates Australia, the Construction Forestry Marine Mining and Energy Union (CFMMEU) and the Australian Workers Union. These are joined by at least one or more individuals who, in the Minister's opinion, are independent of these bodies but have expertise that would be of assistance to the Council, and a representative of the Department of Planning, Industry and Environment.

Mining and Petroleum Competence Board

The Mining and Petroleum Competence Board determines competence standards for safety-critical roles and undertakes the assessment of people to perform those roles, which will be identified in the regulation. It also provides advice to the Minister and the Regulator on competence issues.

The Board's membership includes representatives from the peak mine operator and mine worker organisations prescribed in the WHS (MPS) Regulation, as well as people with expertise in the development of competence standards and assessment of competence. It covers a wide range of issues relating to statutory functions and maintenance of competence.

12. Are the provisions **for statutory bodies** still valid, appropriate and working as intended? ([Part 8 of the Act](#))

13. Do the provisions **for statutory bodies** ensure adequate representation in the provision of advice in relation to health and safety and competence? ([Part 8 of the Act](#))

7. Work Health and Safety (Mines and Petroleum Sites) Regulation 2014

The power to make the WHS (MPS) Regulation is provided under section 76 of the WHS (MPS) Act. Regulations may make provision for, or in relation to, any matter for, or in relation to, which regulations may be made under the WHS Act. The regulations may also be made in respect of an activity in relation to mining operations or petroleum operations that takes place at a workplace other than a mine or petroleum site.

7.1. Mine operator and petroleum site operator

The WHS (MPS) Regulation places the majority of duties on a mine or petroleum site operator. An operator is the PCBU with management or control of the mine or petroleum site.

An operator under the WHS (MPS) Act is the mine holder or the petroleum site holder unless they have appointed another person as the operator. A mine holder or petroleum site holder is a PCBU in control of a right or entitlement permitting mining operations or petroleum operations to be carried out.

The Regulator does not approve the appointment of a mine operator or petroleum operator. However, the Regulator (and an industry safety and health representative, when dealing with coal mines) must be notified by the operator of any change to the operator's contact details as soon as practicable after the change and the commencement of mining operations or petroleum operations at a site.

However, to ensure that a mine operator has the requisite capacity to control and manage mining operations or petroleum operations, the Regulator may require a mine holder to appoint more than one mine operator, or only one mine operator, to conduct mining operations on their behalf in relation to a mine.

Mine operators and other PCBUs at mines and petroleum sites may also have duties under the WHS Act and WHS Regulation. Further, a duty on a PCBU under the WHS (MPS) Act or WHS (MPS) Regulation at a mine or petroleum sites also applies to the mine operator or mine holder of the mine, or to the petroleum site operator or petroleum site holder of the petroleum site respectively.

14. Are the provisions **for nomination and appointment of operators** still valid, appropriate and working as intended? ([Part 1A of the Regulation](#))

7.2. Duty to manage risk

Under the WHS Act, a PCBU has a primary duty of care to ensure the health and safety of workers, so far as reasonably practicable, by managing risk. This requires that risks to health and safety be eliminated, and where this is not reasonably practicable, that they be minimised so far as is reasonably practicable.

Some risks must be managed in accordance with the requirements of Part 3.1 of the WHS Regulation. It requires duty holders to identify hazards and apply a hierarchy of risk control measures to eliminate or minimise risks. It also requires a review of those risk control measures in specified circumstances.

The WHS (MPS) Regulation applies Part 3.1 to the management of risks to health and safety associated with mining operations. It also provides a general requirement for the conduct of risk assessments when managing risks and to keep records of compliance with Part 3.1. The WHS (MPS) Regulation also specifies some additional circumstances that trigger a requirement to review control measures.

15. Are the provisions **for managing risk** in addition to the WHS Regulation still valid, appropriate and working as intended? ([Part 2, Div 1, Subdivision 1 of the Regulation](#))

7.3. Safety management system, principal hazard management plans and principal control plans

Safety management system

The WHS (MPS) Regulation establishes the requirements for a safety management system (SMS) for mines and petroleum sites. Together, these SMS provisions place a general requirement on operators to document and follow their plans for implementing measures to control risks associated with operations at their mine or petroleum site. The SMS must provide a comprehensive and integrated system for the

management of all aspects of risk control in relation to the operation of the mine or petroleum and describe the systems and procedures and other risk control measures that will be used to control risks to health and safety associated with mining or petroleum operations at the mine or petroleum site. Also, the SMS must form part of any overall management system that is in place at the mine or petroleum site. The SMS is to contain an appropriate level of detail having regard to all relevant matters including the nature and complexity of the mining operations and the risks associated with those operations.

The WHS (MPS) Regulation lists the kinds of things that are captured as part of the SMS (i.e. principal hazard management plans (PHMPs) and principal control plans (PCPs)). The SMS is not required to be set out in a particular way as long as the required content is included. For example, PHMPs and PCPs, or part thereof, may be integrated with one another and/or include other matters required by the SMS, such as the required information training and instruction for the matter dealt with under the PHMP or PCP. The Regulator and an industry safety and health representative (in respect of coal mines) must be notified of any changes to an established SMS.

Principal mining hazard management plans

A PHMP is required for each principal hazard at the mine or petroleum site. If the principal hazard does not exist, then the PHMP is not required. Principal mining hazards are hazards that present a reasonable potential to result in multiple deaths in a single incident or a series of recurring incidents, in relation to any of the following:

- ground or strata instability
- inundation and inrush
- mine shafts and winding operations
- roads and other vehicle operating areas
- air quality, dust and other airborne contaminants
- fire or explosion
- gas outbursts
- spontaneous combustion
- subsidence

- any other hazard identified by the mine operator that meets the definition of a principal mining hazard.

The WHS (MPS) Regulation sets out the content requirements for the PHMPs and the considerations to be taken into account in developing the control measures to manage the risks of the principal hazard. A PHMP must address all aspects of risks associated with the principal mining hazard.

Principal control plans

The WHS (MPS) Regulation includes requirements for PCPs. It also sets out content requirements for PCPs and the considerations to be taken into account when developing control measures to manage risks associated with PCPs. The prescribed PCPs are for:

- electrical engineering
- mechanical engineering
- explosives
- health
- ventilation (underground)
- emergency response
- well integrity.

The emergency response and health control plans are mandatory for all mines and petroleum sites. The electrical and mechanical engineering control plans are required where there are risks associated with electricity or the mechanical aspects of plant and structures. The ventilation control plan is required for all underground mines and the explosives control plan is required where there are risks associated with the use of explosives and explosive precursors at the mine. Each PCP should provide for the management of the risks associated with the relevant hazard. A range of matters are specified that must be addressed in the PCP or taken into account when developing it.

16. Are the provisions for SMS, including PHMP & PCP, still valid, appropriate and working as intended? ([Part 2, Div 1, Subdiv 2-4 and Div 2 and 3 of the Regulation](#))

7.4. Contractor management

The WHS (MPS) Regulation sets out a process for consultation between operators and other PCBU's carrying out operations at mines and petroleum sites that are defined as contractors.

The process builds on the consultation, co-operation and co-ordination duty between PCBUs under the WHS Act and requires contractors to prepare a management plan (the contractor health and safety management plan) for the work to be undertaken by them, including how it will be incorporated into the operator's SMS. A contractor cannot commence operations until the mine or petroleum site operator has given the contractor written notice that the contractor health and safety management plan is consistent with the SMS for the mine or petroleum site.

7.5. Specific control measures

The WHS (MPS) Regulation outlines specific control measure where some apply to all mines, some solely to all underground mines, and some solely to underground coal mines, while opal mines are exempt.

Specific control measures – all mines and petroleum sites

The WHS (MPS) Regulation requires certain risks to be managed by using specific control measures. There are duties on operators to use specific control measures in relation to aspects of operational controls, air quality and air monitoring, as well as fitness for work. The operational controls for all mines and petroleum sites are in relation to:

- communication between outgoing and incoming shifts
- movement of mobile plant
- operation of belt conveyors
- ground or strata failure
- seismic activity
- explosives and explosive precursors
- electrical safety
- notification of high risk activities
- prohibited uses
- closure suspension or abandonment of a mine
- minimum age to work in a mine
- inspections

- fitness for work.

There are also air quality and monitoring provisions in the WHS (MPS) Regulation in relation to temperature and moisture content of air, exposure to dust, air monitoring, signage relating to air monitoring and warnings and records of air monitoring. As well, fitness for work requirements are in relation to fatigue, alcohol and drugs.

Air quality – exposure to dust

NSW has a rigorous regulatory regime backed by frequent testing and tripartite analysis of issues relating to dust.

The WHS (MPS) Regulation requires a mine operator to at least meet the Workplace Exposure Standard for Airborne Contaminants (WESFAC) standard, which mandates a maximum level of 3mg of respirable dust per cubic metre of air. In coal mines the exposure standard is 2.5 milligram per cubic metre of air. Schedule 6 of the WHS (MPS) Regulation sets minimum requirements for worker exposure monitoring in coal mines.

An exposure standard for diesel particulate matter of 0.1 milligram of elemental carbon per cubic metre of air has also been included in the WHS (MPS) Regulation and commenced on 1 February 2021.

Specific control measures – underground mines

The WHS (MPS) Regulation imposes an additional set of duties on mine operators of underground mines. The specific control measures for underground mines are in relation to operational controls, air quality and ventilation. The mine operators of underground mines must control the risks addressed by these specific control measure set out by the regulation. The operational controls for underground mines relate to:

- inrush hazards
- connecting workings
- winding systems
- ropes
- operation of shaft conveyances
- communication systems
- ground and strata support
- exhaust emissions and fuel standards.

For underground coal mines there are specific requirements, including:

- coal dust explosions
- spontaneous combustion
- subsidence
- sealing
- light metal alloys
- goaf areas and abandoned or sealed workings
- ventilation
- control of methane levels and gas monitoring
- sampling and analysis of exhaust emissions
- post incident monitoring
- use of plant in the hazardous zone
- use of cables in the hazardous zone
- electrical safety
- persons required to be on duty.

All coal mines are also required to:

- have an inspection plan
- sampling and analysis of airborne dust carried out by an independent person
- have ventilation and belt conveyor components to be fire resistant anti-static (FRAS).

The air quality and ventilation provisions in the WHS (MPS) Regulation relate to:

- air quality – general and minimum standards and airborne contaminants (including Schedule 6 of the WHS (MPS) Regulation that applies to coal mines)
- requirements if air quality and air safety standards are not met
- ventilation requirements – outcomes and controls

- monitoring and testing of ventilation
- duty to prepare and review a ventilation control plan
- modelling to take place before making changes to the system
- ventilation control plan
- review of ventilation control plan.

17. Are the provisions **specific control measures** still valid, appropriate and working as intended? ([Part 2, Div 4-5 of the Regulation](#))

7.6. Emergency management

The WHS (MPS) Regulation imposes duties on all mine and petroleum site operators in relation to emergency management. Operators are required to prepare emergency plans. This requirement builds on the duty in the WHS Regulation to prepare an emergency plan. Operators are to address all aspects of emergency response in control plans including:

- arrangements for locating, communicating with and evacuating people in an emergency
- the provision of adequate resources and equipment
- the provision of information, training and instruction to workers in order to implement the plan
- triggers for activation of the plan
- the testing of the plan
- site and hazard detail of the mine
- the command structure and site personnel
- consultation with emergency service organisations
- test and review the emergency plan
- provide resources
- training workers in the plan.

Additional duties are imposed for emergency management in relation to underground mines. Those duties include:

- emergency exits
- safe escape and refuge
- signage for emergency refuge, caches, refill stations and changeover stations
- self-rescuers
- personal protective equipment in emergencies
- competent people at the surface of the mine.

The detail to be included in emergency plans will vary but must be appropriate in regard to the nature and complexity of the mining operation and the associated risks.

18. Are the provisions **for emergency management** still valid, appropriate and working as intended?
([Part 2](#), [Div 6 of the Regulation](#))

7.7. Information training and instruction

The WHS (MPS) Regulation imposes duties on operators in relation to the provision of information, training and instruction to workers. There are specific requirements, both before and after a worker commence work at the mine, and include duties to give informational training and instruction to workers in relation to:

- the content and implementation of the SMS
- the hazards and controls associated with the work carried out by the worker
- Induction
- the emergency plan
- the safety role of workers.
- information to visitors
- training records.

19. Are the provisions **for information, instruction and training** still valid, appropriate and working as intended? ([Part 2](#), Div 7 of the Regulation)

7.8. Health monitoring

The WHS (MPS) Regulation provides for the Regulator to direct a mine or petroleum site operator in relation to the provision of health monitoring to workers engaged to carry out work at mines where there is a significant risk of an adverse effect [from] an exposure to a hazard associated with mining or petroleum operations and valid techniques are available to detect the effect on the worker's health. Supplements requirements under the WHS Regulation (e.g. Hazardous chemicals)

Note the WHS Regulations contain provisions requiring health monitoring of workers working with hazardous chemicals, lead and asbestos. Those provisions continue to apply to mines and petroleum sites, in addition to any health monitoring required under this part.

20. Are the provisions for **health monitoring** still valid, appropriate and working as intended? ([Part 3](#) of the Regulation)

7.9. Consultation and workers safety role

The WHS (MPS) Regulation imposes duties on mine and petroleum site operators in relation to consultation with workers and enabling them to have a safety role. Operators have a duty to consult with workers in relation to SMSs, risk assessments for PHMPs and PCPs, emergency response control plans, the implementation of the safety role for workers and fitness for work. This duty to consult is in addition to the duty under the WHS Act and WHS Regulation to consult.

The safety role for workers, that the operator has a duty to implement, must enable workers to contribute to the:

- identification of principal hazards and the need for PCPs
- consideration of the controls for principal hazards and PCPs
- the conduct of reviews of PHMPs and PCPs.

21. Are the provisions **for consultation and worker safety role** still valid, appropriate and working as intended? ([Part 4](#) of the Regulation)

7.10. Survey plans

The WHS (MPS) Regulation imposes a duty on mine operators of all coal mines, underground mines or a mine where a risk assessment has been conducted (and it is determined a plan is required) is to prepare mine survey plans. The survey plans must be prepared and certified by competent people, who will be registered mining surveyors. There are requirements in relation to:

- the details to be included on the survey plan
- verification of the survey plan
- variations between the mine workings and the survey plans
- review of the survey plan
- the availability of the survey plan
- the security of survey data
- the provision of the survey plan to the Regulator.

Note: Opal mines and tourist mines are exempted from this requirement.

The operator of a petroleum site must ensure that a detailed plan of the petroleum site is prepared and that the plan is certified by a registered surveyor.

22. Are the provisions **for survey plans and mine plans** still valid, appropriate and working as intended? ([Part 5 of the Regulation](#))

7.11. Notifications and information provided to the regulator

In addition to the duty in the WHS (MPS) Act to notify the Regulator of notifiable incidents, the WHS (MPS) Regulation imposes additional duties on mine operators in relation to the provision of information to the Regulator about:

- safety critical activities covered by the HRA notifications
- incident notified to the Regulator including dangerous incidents and high potential incidents
- other matters to be reported
- work health and safety reports
- ancillary reports.

Operators have a duty to notify the Regulator as soon as possible about certain incidents, including high potential incidents and where incidents results in illness or injury. Details about incidents must be provided to the Regulator no more than 48 hours after the incident. Operators must also provide quarterly reports to the Regulator in relation to incidents occurring at mines, containing information as specified in the WHS (MPS) Regulation.

Dangerous incidents are defined as those that will expose a worker or any other person to a serious risk to their health and safety from immediate or imminent exposure to incidents such as:

- an uncontrolled escape, spillage or leakage of a substance
- an uncontrolled implosion, explosion or fire
- an uncontrolled escape of gas or steam
- an uncontrolled escape of a pressurised substance
- the fall or release from a height of any plant, substance or thing
- the collapse, overturning, failure or malfunction of, or damage to, any plant that is required to be authorised.
- the collapse or partial collapse of a structure
- the collapse or failure of an excavation or of any shoring supporting an excavation
- the inrush of water, mud or gas in workings at an underground excavation or tunnel
- the unintended interruption of the main system of ventilation at an underground excavation or tunnel
- the loss of control of heavy earthmoving machinery (including any failure of braking or steering)
- the unintended activation, movement, or failure to stop vehicles or machinery
- a collision involving a vehicle or mobile plant
- damage to, or failure of, any part of a powered winding system or a shaft or shaft equipment
- damage to any plant or structure
- a failure of ground, or of slope stability control measures

- rock falls, instability of cliffs, steep slopes or natural dams, occurrence of sinkholes, development of surface cracking or deformations or release of gas at the surface, due to subsidence
- a vehicle or plant making contact with an energised source having a voltage greater than 1,200 volts (other than testing equipment applied to energised equipment in accordance with the WHS Regulations)
- spontaneous combustion at a coal mine.

The following events are to be treated as dangerous incidents regardless of the existence of an exposure of a worker or any other person to a serious risk to their health and safety because of the incident occurring:

- a fire in the underground parts of a mine, including where the fire is in the form of an oxidation that releases heat and light
- an electric shock to a person (other than a shock from an extra low voltage source)
- any initial indication that any underground part of a coal mine is subject to windblast, outbursts or spontaneous combustion
- the unintended overturning of any vehicle or of plant weighing more than 1,000 kilograms
- ejection of rock from blasting that falls outside the blast exclusion zone (being the area from which persons are excluded during the blasting)
- any initial indication that there may be a fault in the cementing of a casing string forming part of the cement casing of a well
- a gas outburst at an underground coal mine
- a coal burst or rock burst at an underground mine.

The WHS (MPS) Regulation also details 23 other specific matters that are to be notified as high potential incidents.

Further to this, other matters are required to be reported by the operator to the Regulator relating to the commencement or cessation of operations, the management structure of the persons exercising key statutory functions at the operation and a summary of the SMS.

23. Are the provisions for notifications and information to be provided to the regulator and information to be kept by the operator still valid, appropriate and working as intended? ([Part 6](#) and [Part 7](#) of the Regulation)

7.12. Statutory functions

The operator of a mine or petroleum site must ensure that a statutory function is exercised by a person who meets the requirements for nomination. These are specified in Part 8 and Schedule 10 and 10A.

The operator must nominate a person who meets the requirements to exercise a key statutory function. Only one person can exercise a key statutory function and mining activity cannot take place if a qualified person is not nominated for more than seven days. Key statutory functions are:

- Mining engineering manager
- Electrical engineering manager
- Mechanical engineering manager
- Electrical engineer
- Mechanical engineer
- Quarry manager
- Ventilation officer.

Competence to exercise statutory functions may be through an individual:

- holding a practising certificate granted based on an individual meeting the qualifications (either a certificate of competence or other qualifications determined by the Regulator). A practising certificate lasts five years
- meeting other criteria or qualifications specified in the regulation.

A practising certificate holder must comply with the conditions placed on that practising certificate. Conditions may include participating in a maintenance of competence scheme or restrict the holder to exercising the statutory function to a specific site.

The Regulator may suspend or cancel a certificate of competence or a practising certificate under certain circumstances provided in the WHS (MPS) Regulation.

24. Are provisions for **statutory functions** still valid, appropriate and working as intended? ([Part 8 of the Regulation](#))

7.13. Authorisations

Licences for certain high-risk work in coal mining in the previous *Coal Mine Health and Safety Act 2002* and regulation have been retained in the WHS (MPS) Regulation and are in addition to authorisations required under the WHS Act (e.g. high risk work licences).

Activities requiring a licence

The WHS (MPS) Regulation sets out a scheme for the licensing of PCBUs to conduct certain activities at coal mines. The following activities will require a licence when undertaken in relation to the respective mine type:

- the overhaul, repair or modification of explosion protected plant (underground coal)
- the repair of flexible reeling, feeder and trailing cables for use in hazardous zones (underground coal)
- the undertaking of polymeric processes (underground coal)
- the sampling and analysis of airborne dust (coal Schedule 6 WHSMPS Regulation)
- the sampling and analysis of diesel engine exhaust (underground coal mines).

Eligibility for a licence is determined on the basis of the applicant having staff with the relevant qualifications, skills, knowledge and experience, as well as having arrangements to ensure adequate supervision and training of workers performing the work for which licences are required. Provision is made for the suspension or cancellation of licences (i.e. if the licence holder is no longer eligible, they breach a licence condition).

Registration of plant designs and items of plant

The WHS (MPS) Regulation has requirements for the registration of certain plant designs and items of plant for use in mines. Unless otherwise specified, the registration requirement only applies to their use in underground coal mines. The following plant designs require design registration:

- diesel engine systems
- powered winding systems (all underground mines)

- booster fans
- braking systems on plant used in underground transport
- canopies on continuous miners
- plant or items used to determine or monitor the presence of gases
- breathing apparatus to assist escape, including self-rescuers
- shot-firing apparatus
- detonators
- explosive-powered tools
- conveyor belts.

The design of plant requiring design registration must comply with the design and performance standards determined and published by the Regulator and verified by a competent person.

The following items of plant require item registration every five years:

- diesel engine systems
- powered winding systems (all underground mines)
- booster fans.

25. Are provisions for **licensed activities and registration of plant** still valid, appropriate and working as intended? ([Part 9](#) and [cl 177](#) of the Regulation)