

NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH AND SAFETY (NATIONAL UNIFORM LEGISLATION)
AMENDMENT REGULATIONS 2012

Subordinate Legislation No. 8 of 2012

Table of provisions

1	Citation	2
2	Commencement	2
3	Regulations amended.....	2
4	Regulation 5 amended	2
5	Regulation 21 amended	2
6	Chapter 10 replaced	3
	Chapter 10 Mines	
	Part 10.1 Preliminary matters	
	609 Definitions	
	610 Meaning of <i>mine operator</i>	
	Part 10.2 Mine operator's duty of care	
	611 Mine operator's duty of care	
	Part 10.3 Risk management plan	
	Division 1 Requirement for risk management plan	
	612 Requirement for risk management plan	
	613 Content of risk management plan	
	614 Certification of risk management plan	
	615 Review of risk management plan	
	616 Health monitoring program	
	Division 2 Duties relating to risk management plan	
	617 Duty to provide health monitoring for workers and former workers	
	618 Duty to offer health monitoring to former worker	
	619 How health monitoring to be provided	
	620 Duty to provide training	
	621 Duty to keep records	
7	Chapter 12 note inserted	13
8	Chapter 13 inserted	13
	Chapter 13 Transitional provisions for Work Health and Safety (National Uniform Legislation) Amendment Regulations 2012	
	830 Definitions	
	831 Application of Chapter 12 to mining operations	
	832 Continuation of existing risk management plans	
	833 Mine operator	
9	Schedule 2 amended.....	15

10	Regulations further amended	15
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Schedule Regulations further amended



NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 8 of 2012*

Work Health and Safety (National Uniform Legislation) Amendment Regulations 2012

I, Sally Gordon Thomas, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Work Health and Safety (National Uniform Legislation) Act*.

Dated 1 March 2012

S. G. THOMAS
Administrator

By Her Honour's Command

D. R. KNIGHT
Minister for Justice and Attorney-General

* Notified in the *Northern Territory Government Gazette* on 1 March 2012.

1 Citation

These Regulations may be cited as the *Work Health and Safety (National Uniform Legislation) Amendment Regulations 2012*.

2 Commencement

These Regulations commence on 1 March 2012.

3 Regulations amended

These Regulations amend the *Work Health and Safety (National Uniform Legislation) Regulations*.

4 Regulation 5 amended

- (1) Regulation 5(1), definition **health monitoring**

omit

- (2) Regulation 5(1)

insert (in alphabetical order)

current risk management plan, for Chapter 10, see regulation 609.

health monitoring, of a person, means monitoring the person to identify changes in the person's health status:

- (a) in Chapter 7 or 8 – because of exposure to certain substances; or
- (b) in Chapter 10 – because of exposure to a mine site hazard.

mine operator, for Chapter 10, see regulation 610.

mine site, for Chapter 10, see regulation 609.

mine site hazard, for Chapter 10, see regulation 609.

mining activity, for Chapter 10, see regulation 609.

mining authorisation, for Chapter 10, see regulation 609.

related activity, for Chapter 10, see regulation 609.

5 Regulation 21 amended

After regulation 21(1)

insert

- (1A) An application for approval of a course of training must:
- (a) be made in the manner and form required by the regulator;
and
 - (b) be accompanied by the relevant fee.

6 Chapter 10 replaced

Chapter 10

repeal, insert

Chapter 10 Mines

Part 10.1 Preliminary matters

609 Definitions

In this Chapter:

current risk management plan, for a mine site, means the last risk management plan for the mine site given to the regulator under regulation 612 or 615(2).

mine operator, see regulation 610.

mine site means:

- (a) in relation to mining activity for which a mining authorisation is required – the area of land to which the mining authorisation relates; or
- (b) in relation to any other mining activity – the area of land on which the mining activity is carried on.

mine site hazard, for a mine site, means a hazard relating to mining activity or a related activity carried on at the mine site that could give rise to risks to health and safety.

mining activity means exploration for, or mining of, minerals (as defined in section 4 of the *Mining Management Act*).

mining authorisation means one of the following:

- (a) a mineral title, as defined in section 11(1) of the *Mineral Titles Act*;

-
- (b) a non-compliant existing interest, as defined in section 204(1) of the *Mineral Titles Act*;
 - (c) an authority under section 41 of the *Atomic Energy Act 1953* (Cth).

related activity means any of the following:

- (a) processing of minerals, tailings, spoil heaps or waste dumps mined or created during the carrying on of mining activity;
- (b) decommissioning or rehabilitation of land, plant or a structure used in carrying on mining activity or an activity mentioned in paragraph (a);
- (c) an activity incidental or related to mining activity or an activity mentioned in paragraph (a) or (b);
- (d) the care and maintenance of land, plant and structures used in carrying on mining activity or an activity mentioned in paragraph (a), (b) or (c) during a suspension of that activity.

Examples for definition related activity, paragraph (c)

- 1 *Removal, handling, transport or storage of minerals or other material.*
- 2 *Construction, operation, maintenance or removal of plant or a structure.*

610 Meaning of *mine operator*

- (1) The ***mine operator*** for a mine site is:
 - (a) the person (the ***entitlement holder***) conducting the business or undertaking who:
 - (i) if a mining authorisation is required for the mining activity carried on at the mine site – holds the mining authorisation; or
 - (ii) otherwise – has a right or entitlement to carry on mining activity at the mine site; or
 - (b) the person conducting the business or undertaking who:
 - (i) has management and control of mining activity at the mine site; and
 - (ii) is appointed in writing by the entitlement holder to be the mine operator for the mine site.

-
- (2) An appointment for subregulation (1)(b)(ii) is of no effect unless:
- (a) the appointee consents in writing to the appointment; and
 - (b) copies of the appointment and consent have been given to the regulator.
- (3) The appointment ceases to have effect if written notice is given to the regulator:
- (a) by the entitlement holder that the appointment has been terminated; or
 - (b) by the appointee that it has withdrawn its consent.

Part 10.2 Mine operator's duty of care

611 Mine operator's duty of care

The mine operator for a mine site must manage risks to the health and safety of a worker at the mine site associated with mining activity or a related activity carried on at the mine site.

Note for regulation 611

WHS (NUL) Act – section 19 (see regulation 9).

Part 10.3 Risk management plan

Division 1 Requirement for risk management plan

612 Requirement for risk management plan

The mine operator for a mine site must not permit mining activity or a related activity to be carried on at the mine site unless the mine operator has given to the regulator a risk management plan for the mine site that has been certified in accordance with regulation 614.

Maximum penalty:

- (a) in the case of an individual – \$6 000.
- (b) in the case of a body corporate – \$30 000.

Note for regulation 612

Strict liability applies to each physical element of this offence. See section 12B of the Act.

613 Content of risk management plan

The risk management plan for a mine site must set out the following:

- (a) the mine site hazards identified by the mine operator under regulation 34, including high consequence, low probability events;
- (b) the risks to health and safety at the mine site that could arise from those mine site hazards, including for each risk:
 - (i) the nature of the risk; and
 - (ii) the likelihood of the risk arising; and
 - (iii) the likely seriousness of the consequences if it does arise;
- (c) the control measures to be implemented by the mine operator under regulations 35 and 36, including:
 - (i) what the measures are; and
 - (ii) how they will be implemented; and
 - (iii) how their effectiveness will be monitored and reviewed;
- (d) a fitness to work program for the mine site setting out how the mine operator will manage risks to health and safety at the mine site that could arise from fatigue or the consumption of alcohol or drugs;
- (e) a health monitoring program as mentioned in regulation 616;
- (f) the emergency plan prepared by the mine operator for the mine site under regulation 43;
- (g) the training to be provided to a worker at the mine site who may be exposed to a mine site hazard;
- (h) the records particular to the risk management plan that must be kept;
- (i) the management structure of the mine operator, including:
 - (i) the positions in the structure; and
 - (ii) the areas of responsibility and accountability of each position;

-
- (j) the name and qualifications of the person who prepared the risk management plan.

Note for regulation 613

A risk management plan for a mine site relates only to work health and safety matters. Management of risk relating to other matters, such as environmental risks, is regulated under other legislation.

614 Certification of risk management plan

- (1) A person must not certify a risk management plan for a mine site for regulation 612 or 615(2) unless the person is a competent person and is satisfied that:
 - (a) the mine operator has discharged its duty under regulation 34 to identify mine site hazards, including high consequence, low probability events; and
 - (b) the mine operator has identified the risks to health and safety at the mine site that could arise from those mine site hazards; and
 - (c) the mine site hazards and risks have been specified in accordance with regulation 613(a) and (b); and
 - (d) the specified control measures (including the fitness to work program), and specified method of monitoring and reviewing their effectiveness, are suitable and adequate to discharge the mine operator's duty under regulations 35 and 36; and
 - (e) the specified health monitoring program complies with regulation 616; and
 - (f) the specified training is suitable and adequate to discharge the mine operator's duties under regulation 39 to provide training to a worker who may be exposed to mine site hazards; and
 - (g) the specified records are suitable and adequate for the risk management plan; and
 - (h) the management structure of the mine operator is correctly specified in accordance with regulation 613(i).

Maximum penalty:

- (a) in the case of an individual – \$3 600.
- (b) in the case of a body corporate – \$18 000.

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) In this regulation:

specified means set out in the risk management plan.

615 Review of risk management plan

(1) The mine operator for a mine site must review and as necessary revise the current risk management plan for the mine site if either of the following occurs:

- (a) a new risk to health and safety at the mine site is identified;
- (b) there is a change in the mine operator's control measures for managing risks to health and safety at the mine site.

Maximum penalty:

- (a) in the case of an individual – \$3 600.
- (b) in the case of a body corporate – \$18 000.

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If the risk management plan is revised, the mine operator must give to the regulator as soon as practicable after the requirement to revise the plan arose a copy of the revised plan certified in accordance with regulation 614.

Maximum penalty:

- (a) in the case of an individual – \$3 600.
- (b) in the case of a body corporate – \$18 000.

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

616 Health monitoring program

(1) For regulation 613(e), a **health monitoring program** is a program setting out the health monitoring to be provided to a worker at the mine site:

- (a) who carries out work as part of mining activity or a related activity carried on at the mine site; and

-
- (b) whose normal work exposes the worker to a mine site hazard.
- (2) The health monitoring program must require the following health monitoring to be provided to a worker:
- (a) the worker's demographic, medical and occupational history;
 - (b) physical examination;
 - (c) audiometric testing (as defined in regulation 58(3));
 - (d) any other monitoring that forms part of the control measures to be implemented by the mine operator under regulations 35 and 36.
- (3) The health monitoring program must require the health monitoring to be provided:
- (a) for a worker:
 - (i) within 90 days after he or she becomes a worker at the mine site for whom monitoring is required to be provided; and
 - (ii) at least once every 2 years while the requirement for monitoring continues; and
 - (b) for a former worker who accepts an offer under regulation 618 – within 30 days after he or she ceases to be a worker at the mine site.
- (4) However, a health monitoring program need not require the provision of health monitoring in relation to a mine site hazard if health monitoring is required to be provided in relation to that hazard under Chapter 7 or 8.

Note for subregulation (4)

Chapters 7 and 8 require health monitoring to be provided in relation to exposure to hazardous chemicals or asbestos in certain circumstances.

Division 2 Duties relating to risk management plan

Note for Division 2

Duties requiring the mine operator to identify hazards, manage risks and implement control measures are imposed by the Act and Part 3.1 of these Regulations. This Division imposes some additional duties.

617 Duty to provide health monitoring for workers and former workers

A mine operator must ensure that health monitoring is provided to a worker or former worker in accordance with the health monitoring program in the current risk management plan for the mine site.

Maximum penalty:

- (a) in the case of an individual – \$6 000.
- (b) in the case of a body corporate – \$30 000.

Note for regulation 617

Strict liability applies to each physical element of this offence. See section 12B of the Act.

618 Duty to offer health monitoring to former worker

- (1) This regulation applies if:
 - (a) a person is a worker for whom the mine operator is required to provide health monitoring; and
 - (b) the person ceases to be a worker at the mine site; and
 - (c) more than 12 months has elapsed since the person was last provided with that health monitoring.
- (2) The mine operator must offer to provide health monitoring to the person.

Maximum penalty:

- (a) in the case of an individual – \$6 000.
- (b) in the case of a body corporate – \$30 000.

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

- (3) The offer by the mine operator must be made before or when the person ceases to be a worker at the mine site.
- (4) The offer may be accepted by the former worker no later than 7 days after he or she ceases to be a worker at the mine site.

619 How health monitoring to be provided

- (1) A mine operator must pay all expenses relating to the provision of health monitoring required by the health monitoring program.

Maximum penalty:

- (a) in the case of an individual – \$6 000.
(b) in the case of a body corporate – \$30 000.

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

- (2) A mine operator must ensure that health monitoring required by the health monitoring program is provided by a competent person.

Maximum penalty:

- (a) in the case of an individual – \$6 000.
(b) in the case of a body corporate – \$30 000.

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

- (3) The person who provides the health monitoring must, as soon as practicable after the monitoring is carried out:

- (a) give the results of the monitoring and an explanation of those results to the worker or former worker and the mine operator;
and
(b) advise the mine operator of any remedial action the person considers ought to be taken.

Maximum penalty:

- (a) in the case of an individual – \$6 000.
(b) in the case of a body corporate – \$30 000.

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

- (4) A mine operator must keep a health monitoring report for a worker until the worker ceases to be a worker at the mine site.

Maximum penalty:

- (a) in the case of an individual – \$6 000.
- (b) in the case of a body corporate – \$30 000.

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

- (5) The mine operator must ensure that information contained in a health monitoring report for a worker or former worker is not disclosed to another person without the written consent of the worker or former worker.

Maximum penalty:

- (a) in the case of an individual – \$1 250.
- (b) in the case of a body corporate – \$6 000.

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

620 Duty to provide training

Without limiting regulation 39, training required by the current risk management plan for a mine site to be provided to a worker at the mine site, as mentioned in regulation 613(g), is training that must be provided by the mine operator under regulation 39.

621 Duty to keep records

A mine operator must keep the records required by the current risk management plan for the mine site, as mentioned in regulation 613(h).

Maximum penalty:

- (a) in the case of an individual – \$6 000.
- (b) in the case of a body corporate – \$30 000.

Note for regulation 621

Strict liability applies to each physical element of this offence. See section 12B of the Act.

7 Chapter 12 note inserted

After Chapter 12, heading

insert

Note for Chapter 12

Chapter 12 applies in relation to mining operations with modification. See regulation 831.

8 Chapter 13 inserted

After regulation 829

insert

Chapter 13 Transitional provisions for Work Health and Safety (National Uniform Legislation) Amendment Regulations 2012

830 Definitions

(1) In this Chapter:

existing mine site means a mine site at which mining activity or a related activity was being carried out immediately before 1 March 2012.

old WHS followed by a provision designation, means the provision of that designation of the old WHS Regulations.

old WHS Act means the *Workplace Health and Safety Act* as in effect immediately before 1 March 2012 under section 33 of the *Work Health and Safety (National Uniform Legislation) Implementation Act*.

old WHS Authority means the Authority under the old WHS Act.

old WHS Regulations means the *Workplace Health and Safety Regulations* as in effect immediately before 1 March 2012 under section 33 of the *Work Health and Safety (National Uniform Legislation) Implementation Act*.

(2) Terms defined in Chapter 10 have the same meanings in this Chapter as in Chapter 10.

831 Application of Chapter 12 to mining operations

Chapter 12 applies in relation to mining operations (as defined in section 33(2) of the *Work Health and Safety (National Uniform Legislation) Implementation Act*) as if:

- (a) the definitions **old WHS Act** and **old WHS Regulations** in regulation 710 were replaced by the definitions of those terms in regulation 830(1); and
- (b) each other reference in Chapter 12 to 1 January 2012 were a reference to 1 March 2012.

832 Continuation of existing risk management plans

- (1) This regulation applies in relation to an existing mine site if:
 - (a) before 1 March 2012 a risk management plan for the mine site that complied with old WHS regulation 39B and Part 11A had been given to the old WHS Authority under section 58 of the old WHS Act; and
 - (b) as at 1 March 2012 no requirement to amend that plan had arisen under old WHS regulation 39B(3).
- (2) On 1 March 2012 the risk management plan mentioned in subregulation (1)(a) becomes the risk management plan for the mine site for Chapter 10.
- (3) The plan is taken to have been prepared, certified and given to the regulator in accordance with regulations 612 to 614.
- (4) Before 1 January 2014 the mine operator must review and as necessary revise the risk management plan under regulation 615 (even if an event mentioned in regulation 615(1)(a) or (b) has not occurred) to ensure that the plan complies with Chapter 10.

833 Mine operator

- (1) This regulation applies in relation to an existing mine site if:
 - (a) regulation 832 applies in relation to the mine site; and
 - (b) the person named as the mine operator in the risk management plan for the mine site is not the entitlement holder for the mine site (as defined in regulation 610(1)(a)).
- (2) On 1 March 2012 the person named as the mine operator becomes the mine operator for the mine site under regulation 610(1)(b) as if the person had been appointed in accordance with that regulation.

9 Schedule 2 amended

(1) Schedule 2, clause 1, Table 2.1, before **High risk work licence**

insert

Health and safety representative training

21(1A) Application for approval \$1 500

(2) Schedule 2, clause 1, Table 2.1

omit

Contrstruction

insert

Construction

(3) Schedule 2, clause 1, Table 2.1, entries for regulations 578(3) and 596(3)

omit

teir

insert

tier

10 Regulations further amended

The Schedule has effect.

Schedule Regulations further amended

regulation 10

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
regulation 5(1), definition <i>non-friable asbestos</i> , note	<i>non-friable</i>	<i>non-friable</i>
regulation 5(2)	contect	context
regulation 10(2)	quantitiy	quantity
Schedule 15, clause 1, definition <i>LD₅₀ for acute dermal toxicity</i>	miligrams	milligrams
