

# Guide | WHS (Mines & Petroleum Sites) laws

## Understanding the term ‘mining operations’

February 2025



Published by the Department of Primary Industries and Regional Development

Title: Guide: Understanding the term 'mining operations'

First published: January 2018

Department reference number: RDOC22/189337 (archived) & RDOC24/187298

Amendment schedule		
Date	Version	Amendment
4 October 2018	2	Amended wording on page 4 following review by Inspector of Electrical Engineering
8 September 2022	3	Clarifications and update for WHS (MPS) Regulation 2022
February 2025	4	Periodic review and update to NSW Resources branding and minor editorial update

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# Introduction

This document provides guidance on what the Resources Regulator considers to be 'mining operations' for the purposes of the *Work Health and Safety (Mines and Petroleum Sites) Act 2013*.

The WHS (MPS) Act applies to all workplaces that are mines. The WHS (MPS) Act defines a mine by reference to the term mining operations. Many of the duties under the WHS (MPS) Act and the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 apply to mine operators. The objectives of the WHS (MPS) Act include to protect workers at mines and other people against harm to their health and safety through the elimination or minimisation of risks arising from mining (i.e., mining risks).

Section 7 of the WHS (MPS) Act sets out the definition of mining operations. It is important to note that while the definition of mining operations in section 7(1) includes mining activities as defined in Section 7 (1) (a) (i), (ii) and (iii), this section is broader than merely 'mining activities'. Section 7(1) of the WHS (MPS) Act is set out below.

## ***Work Health and Safety (Mines and Petroleum Sites) Act 2013***

### **7 Meaning of 'mining operations' and 'mining activities'**

(1) In this Act, **mining operations** means the following:

- (a) activities (referred to in this Act as **mining activities**) carried out for the purpose of:
  - (i) extracting minerals from the ground, or
  - (ii) 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
  - (iii) exploring for minerals,
- (b) activities (including the handling, preparing, processing or storing of extracted materials) carried out in connection with mining activities at a local site,
- (c) activities associated with constructing a site where a mining activity (or an activity referred to in paragraph (b)) is, or is to be, carried out,
- (d) activities associated with decommissioning, making safe or closure of a mineral extraction site or a mineral exploration site,
- (e) educational activities or tourist activities carried out in connection with:
  - (i) mining activities at a local site, or
  - (ii) former mining activities at the site at which those activities were carried out,
- (f) activities prescribed by the regulations,
- (g) an activity specified by the minister, by order published in the Gazette, that is carried on at a place identified in the order.

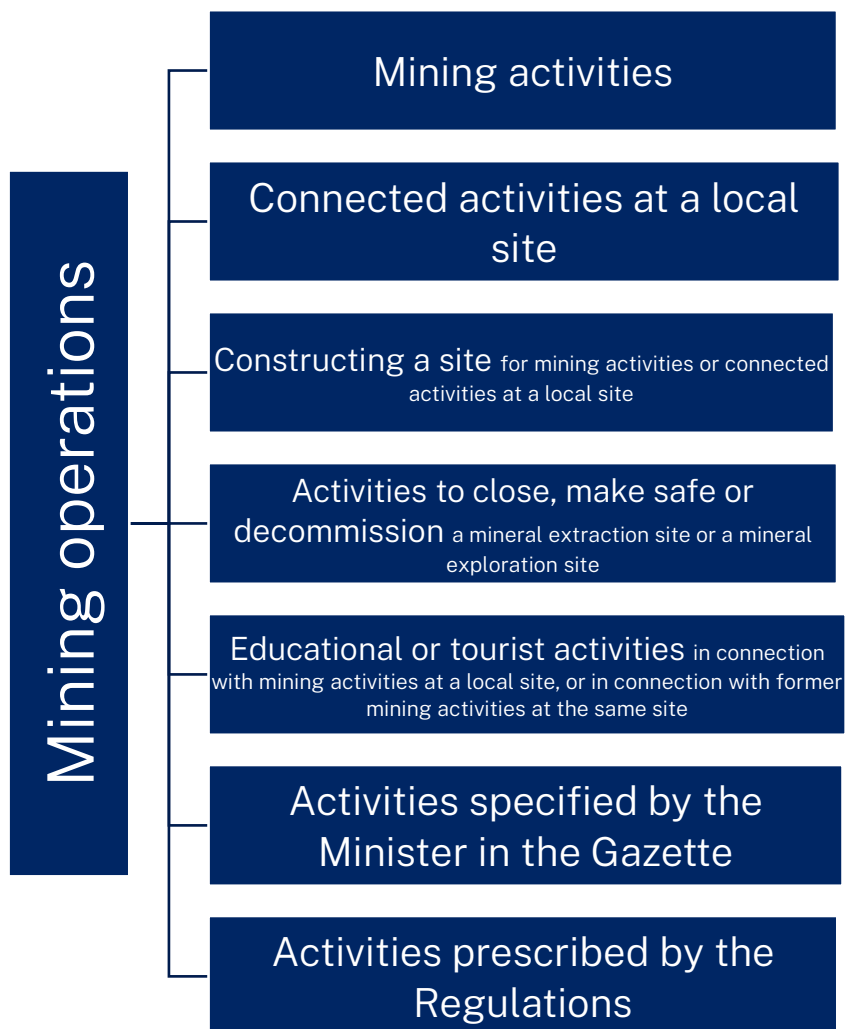
(2) The regulations may declare an activity not to be mining operations for the purposes of this Act.

(3) The regulations may create exceptions to or otherwise limit the operation of this section.

Mining operations is a broad term and comprises seven elements. Figure 1 provides an overview of these elements. The Resources Regulator will consider an operation a mine if any one of these elements apply. This guide discusses each element in detail.

In considering whether activities are mining operations, the Resources Regulator assesses each situation on its own circumstances and no individual factor will be determinative in all cases.

Figure 1: Overview of mining operations



## Mining activities

While the term mining activities is often used to describe all activities associated with mining, the WHS (MPS) Act (and this guide) defines mining activities more narrowly. Under the WHS (MPS) Act, only particular actions are defined as mining activities. Unless specifically defined as a mining activity, this guide uses alternate wording to clarify what is and is not considered mining operations for the purposes of the WHS (MPS) Act. Where possible, this guide principally uses the word 'action'.

Under the WHS (MPS) Act mining activities are actions carried out for the purpose of extracting minerals from the ground or exploring for minerals. Actions where the primary purpose is to inject a mineral into the ground or to return a mineral to the ground are also mining activities.

The word 'purpose' is not defined in the WHS (MPS) Act and must be given its ordinary meaning. This includes the reason for doing something.



## The purpose of exploring for or extracting minerals from the ground

Referring to the purpose of the action makes it clear that mining activities are not limited to the act of extracting a mineral. An activity may be carried out for the *purpose* of extraction even if extraction has not yet begun.

There must be some closeness or immediacy between the actions and the purpose for which they are carried out. Section 7(1)(c) of the WHS (MPS) Act specifically identifies actions associated with constructing a site where mining activities will take place as a mining operation.

For example, the WHS (MPS) Act considers construction works associated with building a coal mine as mining operations under section 7, though the legislation does not consider these construction works to be 'mining activities' carried out for the purpose of extracting minerals from the ground. Similarly, other activities that are removed from the immediate purpose of exploration or extraction will not be mining activities. Some examples of other actions that would not be considered mining activities are:

- the act of raising capital to buy land or land access in order to build a mine
- activities associated with securing a title or right to explore or mine
- engaging staff.

The primary purpose of an action does not need to be mineral exploration or extraction, or injecting minerals into the ground, though it must be for one of these purposes to be considered a mining activity.

Actions are not mining activities unless they involve at least some intent or aim to explore for or extract minerals.

Section 11(1)(c) of the WHS (MPS) Act clarifies that the Act does not apply to actions where the extraction of minerals or petroleum is incidental to another activity. For example, tunnelling to create a road.

## Primary purpose of injecting or returning minerals into the ground

Actions can also be mining activities where they are carried out with the primary purpose of injecting minerals into the ground. For example, some types of carbon sequestration. Returning minerals to the ground is not considered a mining activity where this is carried out primarily for some other purpose.

Examples of actions in which minerals might be injected into the ground for a primary purpose other than returning the minerals to the ground include:

- drilling a water bore using water or brine that contains minerals
- disposing of waste water that contains minerals
- using rock or soil containing minerals for fill.

## Suspension of extraction

Mining activities may still be carried out even if the extraction of minerals temporarily ceases. The critical factor is whether actions for the purpose of extraction are still being undertaken. For example, this would include an underground coal mine that temporarily ceases production due to a

change in economic conditions. In this scenario the mine is maintained (including operation of ventilation and dewatering) so that production can recommence when economic circumstances change. The site will still be considered a mine where actions are being undertaken for the purpose of extraction, as these actions will still be mining activities. Obligations relating to key statutory functions will also apply.

## **Suspension of mining activities**

Note that if there are no activities being undertaken for the purpose of extraction, obligations in relation to suspension and closure apply under section 37 of the WHS (MPS) Regulation 2022.

## **Intermittent operation distinguished from suspension**

Some mines, including many small quarries are only operated on an intermittent basis. Intermittent operations may take place at either regular or irregular intervals, for example:

- 2 days a week
- once a month
- once a quarter
- several times a year, subject to demand.

Such intermittent operations are not normally considered to be a suspension of mining activities as long as there are actions being undertaken for the purpose of extraction. For example, these actions might include maintaining the site or fences, periodic visits to the site, or removing trees that have fallen in a storm.

## **Actions in connection with mining activities at a local site**

Exploring for, injecting minerals into the ground and extracting minerals from the ground is normally conducted in association with a range of other actions. These types of actions will be mining operations where there is a sufficient relationship between the associated actions and mining activities. There must be an association or connection between the actions themselves and where they are being carried out.

Including such actions as part of the mining operation supports a holistic approach to the management of safety at the mine. It avoids the need to constantly distinguish between mining activities and other actions. It also avoids the need to apply arbitrary distinctions that may not reflect how mining businesses are organised. In addition, it recognises that some connected actions:

- involve high levels of risk, for example operating haul roads at an open cut mine
- intrinsically contribute to the safe conduct of mining activities, for example maintenance of mobile plant.

## What is meant by 'at a local site'?

Connected or associated actions will only form part of the mining operations if there is sufficient proximity between the connected action and the mining activity to which they relate. The WHS (MPS) Act uses the concept of 'local site' to identify what constitutes sufficient proximity. A local site is any of the following places:

- The site where mining activities are carried out.
- A site adjoining a place where mining activities are carried out.
- A site in the vicinity of the site where mining activities are carried out.

The term 'site' is not defined and must be given its ordinary meaning of 'the piece of land on which something is or will be built'. What is considered the site will depend on the circumstances rather than arbitrary distances or other boundaries. Some of the factors to consider in identifying a site include:

- Are there any natural or human-made features such as rivers or fences to distinguish the site from its environment?
- Are there roadways through the site and, if yes, are these roadways used for purposes other than extraction of minerals (mining activity) or connected actions (mining operations)?
- What other actions are occurring or proposed to occur in the area?

While the areas over which mining authorities or development consents are granted may be relevant in establishing what is considered the site, this is not necessarily definitive. For example, if extracted material is processed near the extraction areas, the processing area is likely to be part of the local site even if it is outside the boundaries of the mining lease.

Whether a site is considered adjoining or in the vicinity is also a matter of fact and will vary depending on the environment in which the mining operations are being undertaken. For example, in a remote location, a place 20 km away from the extraction point may be in the vicinity of (or in some cases at the site of) mining activities. However, this is unlikely to be the case in a built-up area where there are other actions and other parties between the two sites.

## What is meant by 'in connection with mining activities'?

The WHS (MPS) Act does not define what is meant by 'in connection with'. A common law definition is found in *Minister for Immigration and Multicultural Affairs v Singh and Others*. In this case the Full Federal Court of Australia confirmed that in connection with requires a relation between one thing and another and does not require a causal relationship between the matters said to be connected.

Whether actions are carried out in connection with another action is a question of fact that will depend on the circumstances. The same activity may be connected with mining activities at one mine but not at another. This approach provides flexibility to consider the circumstances of each mining enterprise so that all the actions that form the enterprise can be managed in an integrated manner.

There are many ways in which a connection between mining activities and other actions might exist. The following factors may be relevant to determining if actions are carried out in connection with mining activities:



- Risk.
- Continuity of process, support or infrastructure.
- Ownership, control and exclusivity.
- Relevance of time.

These factors are examined in more detail later in this document and there will typically be several relevant factors to consider in a given case. An action may be connected even though one or more of the criteria are absent or minor. Conversely factors that interfere with the connection should also be considered and may be sufficient to be seen as breaking the connection.

Section 7(1)(b) of the WHS (MPS) Act identifies several types of activities (actions) as examples of being activities (actions) carried out in connection with mining activities. These activities (actions) are handling, preparing, processing and storing extracted materials.

## The concept of risk is relevant to connection

As the objects of the WHS (MPS) Act relate to health and safety, an action may be seen as carried out in connection with mining activities if there is a connection of risk that extends to the other action. Conversely a change in the nature of the risks will often signify an absence of, or break in a connection between, mining activities and other actions.

The extent of integration, or conversely of separation, with activities involving a risk associated with mining activities is critical when considering activities being undertaken near mining activities.

## Integration or separation of risks of the mining activities

One of the key factors to determine whether plant is part of the mine is the extent to which operation of the plant is integrated with, or separated from, the risks of the mining activities and other actions at the mine.

### Example 1 – Breaking the connection relating to risk: A landfill activity that is not part of a mine

A local council operates a quarry to supply construction aggregates using drill and blast mining methods. As the area being mined progresses, the council uses the mined areas for landfill. The landfill area and the extraction area share the same entrance to the nearest public road but separate after 200 m, so there is no interaction between vehicles using the landfill area and those involved in mining. There is 100 m separation between the parts of the void being used for landfill and the areas where material is being extracted or stored. In this case, the physical separation between the two areas, together with the physical separation of vehicle operating areas, breaks the connection to the risk between the mining activity and the landfill activity, so the area used for landfill would not be part of the mine.

### Example 2 – Breaking the connection relating to risk: An asphalt plant that is not part of a mine

Construction Materials Limited operates an asphalt batching plant at a site adjoining its hard rock drill and blast operations. The asphalt plant uses crushed product from the mine as well as other materials. An on-site maintenance facility services both the asphalt plant operations and the mobile and fixed equipment used for extracting and carting the rock. Apart from sharing this maintenance facility there is generally no sharing of equipment or staff between the 2 operations and roadways are entirely separate with a link road

### **Example 2 – Breaking the connection relating to risk: An asphalt plant that is not part of a mine**

used to deliver processed materials to the asphalt plant. In this example the asphalt plant is not carried out in connection with mining activities because the mining risks do not extend or impact on the operation of the asphalt plant.

### **Example 3 – An asphalt plant that is part of a mine**

Construction Materials Limited also operates similar operations to Example 2 at a different location. At the second site, the asphalt plant is located alongside processing equipment such as crushers and screening plant. There is some plant and equipment being used for both the asphalt activities and the mining activities. The asphalt plant can only be accessed by using the same roads as are used by mine trucks. In this example, the asphalt plant is part of the mine as it is physically integrated with the mining activities and the risks associated with them.

### **Example 4 – Ventilation air methane (VAM) capture and enrichment unit that is part of a mine**

A VAM unit is used to directly abate ventilation air methane from the mine. In this example, the VAM unit is part of the mine as it is integrated with the mining activities and the risks associated with them.

## **Continuity of process, support or infrastructure**

One of the strongest indicators of connection is that the action is part of the same process. Section 7(1)(b) of the WHS (MPS) Act makes it clear that handling, processing or storing extracted materials are examples of activities (actions) that can be carried out in connection with mining activities. Other actions that are integral to the extraction of materials, such as the day-to-day treatment of waste, are also likely to be mining operations.

A causal relationship between the actions is not essential but is a strong indicator of connection. It is helpful to ask:

- Would the action be undertaken without extraction of the materials?
- Would the action be undertaken at this location without extraction of the materials?

Other actions that are integral to the mining activities will also form part of the mining operations unless there is some intervening factor that breaks the connection. Examples of such actions include:

- operating a generator or maintaining power or fuel supplies for equipment used for extraction
- a workshop exclusively servicing the mine mobile equipment
- administrative functions including human resources activities
- staff canteens and washrooms.

While the existence of continuous physical connections such as conveyor belts or pipelines will also be an indicator of connection, this is not definitive. There may be other factors that diminish or break the connection.

For example, conveyor belts have multiple applications that can be considered mining or not mining depending on location, purpose or ownership control. A conveyor belt transferring coal to a processing plant will be part of the mining operations and part of the mine. A conveyor belt transferring washed coal directly to a power station that has ownership of the coal will cease to be part of the mining operation at some point. This would depend on the specific arrangements between the parties. For example, it could be the point at which the mine operator ceases to have control or responsibility for the safe operation of the conveyor belt.

Physical integration of activities is also relevant. If there are activities conducted on the site that cannot practically be separated from other mining operations, then these will form part of the mining operations at the mine.

#### **Example 4 – Electricity generation that is part of a mine**

Methane gas is extracted from an underground coal mine for safety purposes. It is used to generate electricity for the mine. The electrical generation plant sits amongst other mine buildings and the mine uses the electricity generated exclusively. As the electricity generation process is highly integrated with activities at the mine the generation plant is likely to be part of the mine.

#### **Example 5 – Electricity generation that is not part of a mine**

Methane gas is extracted from an underground coal mine for safety purposes. It travels to an electrical generation plant just off the main entrance to the mine. Another business runs the electrical generation plant and they sell the electricity to the mine and to other users. In this example there is only a limited connection such as the supply of gas through a pipeline. Other factors, such as sale of the gas to a third party, also diminish the connection such that the power generation operations are not part of the mine.

#### **Example 6 – Electricity generation that is not part of a mine**

A solar farm is constructed adjacent or in close proximity to a mine to augment the existing electricity supply to the mining operations, primarily supplied by a diesel or gas generator. A specialist energy generation company runs the solar farm, though it is owned by the mine holder. While the generation of electricity for use at the mine site may be considered ancillary to a mining activity, it does not fall within the scope of a mining activity as the electricity that the solar farm produces is not integral to the mining activities. That is, the electricity that the solar farm produces is not directly supplying any equipment used in the extraction of material.

## **Ownership, control and exclusivity**

Whether an action is conducted by or services the same (or closely related) entity as the entity carrying out the mining activities can be an important indicator of connection. The connection of actions may be demonstrated because one entity has ownership and/or control of both actions. For example, the same staff undertake extraction of quarry materials and distribution to stockpiles.

Evidence of ownership, control and exclusivity may arise in different ways. For example, where methane gas is extracted from an underground coal mine for safety purposes and is then used to generate power that is used at the mine, the power generation may be a connected action. If the

mine operator exclusively uses the generated power there is a connection between the power generation and mining activity of extracting coal, even if a third party undertakes the power generation. However, if the methane is transferred to a different entity to generate power and sold to other buyers, the connection is significantly reduced. Other factors such as the degree of risk integration will be relevant in determining if the power generation activities are connected to the mining activities for WHS (MPS) Act purposes.

Despite ownership or control being an indicator of connection, it does not always follow that actions by an unrelated business will not be part of the mining activities. The critical factor is the nature of the action and connection.

It is common for some mining support services to be outsourced, for example the maintenance of the mine's mobile plant. Where these services are provided at a local site (as discussed earlier in this guide) the service facility may form part of the mining operations and the mine. A key factor in these cases is whether the services are provided exclusively to a particular mine or mining business or are available to a range of mines or other businesses. While some examples of the different situations are set out below, each situation must be considered on its own circumstances and no individual factor will be determinative in all cases.

Example	Explanation
A supplier of mining equipment provides plant maintenance and repair services to a variety of customers at a regional depot.	This is not likely to be connected as there is no connection between the maintenance services and mining activities at a particular mine site. In addition, the regional depot may not be at a local site.
A supplier of mining equipment leases an area at a large coal mine to provide services to several mines in the locality.	This is not likely to be connected as the service is provided by another entity providing services to other mines, which displaces the connection. Given the break in connection it would be difficult to distinguish activities at the service facility for any particular mine site.
An explosives supplier operates an explosives store on a mine site that supplies explosives to the mine and other businesses.	This is not likely to be connected due to the lack of ownership, control and exclusivity. However, a risk-based connection may exist by a physical relationship between the explosives store and the mining activity (e.g., if the explosives store was not safely located in relation to other activities at the site).
A business supplies plant maintenance and repair services from a location in the vicinity of the mine <b>exclusively</b> to that mine.	Likely to be connected due to exclusive relationship. Although conducted by a different business, the activities are integrally connected to the operations of the mine.

It is worth noting that the mine operator will still be responsible for ensuring the appropriateness of mobile plant maintenance arrangements regardless of whether the action is conducted in-house or outsourced. Where the service is outsourced the mine operator should ensure they achieve the necessary plant safety outcomes through its contractual relationship rather than directly.

## The relevance of time in establishing a connection

Section 7(1)(b) of the WHS (MPS) Act identifies the handling, preparing, processing and storing of extracted materials as examples of activities (in the terminology of this guide the word action has been used) that can be carried out in connection with mining activities. While all these actions occur after materials have been extracted, they will typically still occur while mineral extraction (mining activities) is ongoing. This indicates that it is not essential that the connected actions are occurring at the same time as the extraction or exploration actions (i.e. the mining activities).

The period between the extraction or exploration action and the other action will also be a determining factor as to their connection. The longer the period between the extraction or exploration action (mining activity) and the other actions the less likely there is to be a sufficient connection.

All extraction and exploration actions (mining activity) that disturb the ground by mechanical means will alter the land from its previous condition. Mining, planning and environmental legislation generally require that land be remediated or rehabilitated in some way after exploration or extraction (i.e. the mining activity) has ceased. The extent and timing of remediation works will vary depending on the type of operation and land use. Some mines remediate areas of the mine as production in that area ceases while in other cases remediation will only occur after the mining activities have ceased. Remediation works will generally not be activities in connection with mining activities under section 7(1)(b) but would still be considered mining operations in accordance with section 7(1)(d) even when they are carried out after mining activities have ceased. The area considered to constitute the mine may change from time to time as new areas are mined and remediated.

## Other considerations

Some factors that may indicate there is not a connection include:

- the action involves other materials that are mixed with the extracted materials and the extracted materials could easily be substituted with materials from another source
- a physical break in the connection such as transport by rail or public road
- economic discontinuity such as a change in the ownership of the extracted material.

## Actions associated with constructing a site

Mining operations also include actions (activities) associated with constructing a site where:

- mining activities are or will be carried out
- connected actions (as discussed in section 2 above) are being, or will be, carried out.

The term 'associated with' is quite broad and similar in meaning to 'in connection with' as discussed above.

## Construction work

Construction work is defined in clause 289 of the Work Health and Safety Regulation 2017 (WHS Regulation). Although not in identical terms, the description of construction work in SafeWork



NSW's *Construction work code of practice – August 2019* provides guidance as to activities that are associated with constructing a site.

Activities in connection with construction work will include all preparatory and excavation works associated with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure. According to the code of practice this will typically include work by architects or engineers in on-site offices or conducting on-site inspections, but not architects or engineers working in offices away from the construction site. The code of practice states, 'in connection with' does not include planning and design activities that were carried out before commencing the construction work.

## **A site where mining or connected activities will be carried out**

Actions associated with construction work will be mining operations where they are associated with constructing a site where mining activities will be carried out in accordance with section 7(1) (c). For example:

- undertaking preparatory site works to construct an underground coal mine
- constructing buildings for administration and staff facilities
- constructing plant maintenance facilities at the site where mining activities will take place or at a site in the vicinity or adjoining the extraction site
- constructing crushing and screening plant or coal washery plant at the site where mining activities will take place or at a site in the vicinity or adjoining the site where mining activities will take place
- constructing structures such as winders (winders are both a plant and structure).

While the construction work provisions of the WHS Regulation apply to construction work at mines, they do not apply to mining activities (in accordance with section 7(1)(a)) such as operating a longwall or drill and blast activities.

Activities (actions) associated with decommissioning, making safe or closing a mineral extraction site or a mineral exploration site are considered mining operations according to section 7(1)(d).

The terms 'decommissioning', 'making safe' or 'closure' are not defined and must be given their ordinary meaning. The Macquarie dictionary defines decommissioning as 'to close down (a facility, as a power station, sewerage plant, etc.).

What is required to decommission, make safe or close will vary depending on the circumstances. In most cases, it may require filling or reshaping voids but in other cases the void may not pose any safety risks. In considering decommissioning, making safe and closure it is helpful to consider whether the site has been made safe from mining hazards such as ground or strata failure or mine shafts although consideration needs to be given in terms of legislative requirements apart from mine safety that will determine when a mine has been fully decommissioned.

Decommissioning, making safe and closure are distinct from the suspension of extraction. The fundamental differences are whether there is an intent to recommence extraction, or if actions for the purpose of (future) extraction are taking place (for instance care and maintenance operations). Decommissioning, making safe and closure are mining operations even though no mining activities are taking place. The WHS (MPS) Act identifies these activities as mining operations independently of any potential connection to mining activities.

The WHS (MPS) Act defines a 'mineral exploration site' as a place where activities (actions) are carried out for the purpose of exploring for minerals by mechanical means that disturb the ground. While exploration activities can occur that do not disturb the ground (for instance using remote techniques) these actions would still constitute a 'mining activity' as they meet the criteria of section 7(1)(a)(iii).

The WHS (MPS) Act defines a mineral extraction site as a place where activities (actions) are carried out for the purpose of extracting minerals from the ground or injecting minerals into the ground. This does not include adjoining sites or sites in the vicinity. For example, demolishing structures at a site adjoining or in the vicinity of a site where mining activities are carried out is not mining operations.

Decommissioning, making safe and closure may involve such activities as:

- dismantling and disposing of winders and other structures such as workshops and administration buildings
- permanently sealing the entrance to underground workings
- making a quarry safe.

Because decommissioning, making safe and closure are mining operations, the site is still considered a mine for the purposes of the WHS (MPS) Act while these actions are being undertaken.

As mentioned earlier, some mines remediate land when production in the relevant area ceases, while in other cases remediation will only occur after the mine has closed. Remediation or rehabilitation works that extend beyond the decommissioning, making safe and closure phase are not part of mining operations, such as growing trees once mining authorisations have been relinquished.

## Educational or tourist activities

Educational or tourist activities will only form part of mining operations in 2 circumstances. First, where the activities are carried out in connection with mining activities at a local site. That is, at the same site, an adjoining site, or a site in the same vicinity where actions for the purpose of extracting minerals (mining activities) are taking place. For example, when a large open cut mine provides tours for schools and other visitors. The students and visitors attend a talk and video at the mine's administration centre and are taken to a viewing area adjacent to the mine site that gives them a good view of the mine but does not interfere with the mine work or put the visitors in any danger.

Second, educational or tourist activities will be mining operations if they are undertaken in connection with former mining activities at the same site. Typically, this will operate as a tourist mine. A tourist mine, as defined in the WHS (MPS) Act, is a mine at which:

- no mining operations are carried out other than those associated with educational, or tourism pursuits carried out in connection with former mining activities at the mine
- there is a principal hazard that was also present at the mine when former mining activities were carried out.

Examples of tourist mines include tours of opal mines or gold mines that are no longer being worked except to demonstrate mining techniques used when the mine was operating.

## Activities (actions) prescribed by the Regulations

The WHS (MPS) Act provides for the Regulations to prescribe activities (actions) as mining operations. Section 184 of the WHS (MPS) Regulation prescribes drilling from the surface to extract gas, and the subsequent extraction of that gas, from a coal seam and surrounding strata for the purposes of ensuring safety at an underground coal mine as mining operations. If there is uncertainty as to whether activities are mining operations these may be prescribed in the WHS (MPS) Regulation.

## Ministerial order published in the gazette

The WHS (MPS) Act also allows the Minister Natural Resources to specify operations at a particular place to be mining operations. This is done by publishing an order in the NSW Government Gazette. This might be done if there was uncertainty about whether a particular activity at a particular mine was or was not mining operations. At the time of writing there were no operations that were gazetted under this provision of the WHS (MPS) Act.

## Operations to which the legislation does not apply

The WHS (MPS) Act does not apply to fossicking, or an operation 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. The WHS (MPS) Act also excludes any operation where the extraction of minerals is incidental to the action. For example, civil works such as tunnelling to create a road. Further, the WHS (MPS) Act does not apply to some actions 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 *Commonwealth Civil Aviation Act 1988*, *Air Services Act 1995* or *Transport Safety Investigation Act 2003* (in so far as it applies to aircraft) applies.

The Regulations may also:

- prescribe or specify that certain activities are not mining operations, or
- specify the circumstances in which activities do not constitute mining operations.

## Managing the risks of actions that are not mining operations

The definition of mining operations is broad and supports a holistic approach to safety management at mines. It avoids the need to constantly distinguish between mining activities and other actions or to apply arbitrary distinctions that may not reflect how mining businesses are organised.

There may be some actions undertaken as part of the business of operating the mine that are not themselves part of the mining operations. For example, if drivers leave the mine to make deliveries or staff undertake work away from the mine. In such cases the mine operator will still have responsibilities under the *Work Health and Safety Act 2011*, including the primary duty of care.