

Reprint  
as at 4 April 2016



## Mines Rescue Act 2013

Public Act      2013 No 96  
Date of assent      18 November 2013  
Commencement      see section 2

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Mines Rescue Act 2013.

**2 Commencement**

This Act comes into force on 16 December 2013.

**3 Purpose**

- (1) The purpose of Part 1 is to provide for the Mines Rescue Trust Board and its role in responding to, and in ensuring capacity and readiness to respond to, emergencies at certain mining operations.
- (2) The purpose of Part 2 is to provide for an effective and co-ordinated response in the event of an emergency at an underground mining operation.

**4 Interpretation**

- (1) In this Act, unless the context otherwise requires,—

**authorised person** means a person who is authorised by the chief executive to exercise the powers conferred by section 13

**board** means the board recognised under section 7

**chief executive** means the chief executive of the department

**coal** has the same meaning as in clause 1 of Schedule 3 of the Health and Safety at Work Act 2015

**department** means the department of State that, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**emergency response protocol** means the protocol issued by WorkSafe under section 19

**financial year** means a period of 12 months ending with 31 March

**GST** means goods and services tax under the Goods and Services Tax Act 1985

**incident controller** means an incident controller appointed under section 20(1)

**licence or other permission** means a lease, licence, or other instrument under which a person with an interest in land (including, for example, the owner of the land) permits another person to carry out a mining operation on the land

**mine operator** means,—

- (a) in respect of a mining operation carried out under a permit granted under the Crown Minerals Act 1991,—
  - (i) the person appointed by the permit operator to manage and control the mining operation; or
  - (ii) the permit operator, if no such person has been appointed:
- (b) in respect of a mining operation (not being a mining operation described in paragraph (a)) carried out under a licence or other permission,—
  - (i) the person appointed to manage and control the mining operation by the person who holds the licence or other permission to carry out mining operations; or
  - (ii) the person who holds the licence or other permission to carry out mining operations, if no such person has been appointed:
- (c) in any other case,—
  - (i) the person appointed to manage and control the mining operation by the owner of the land where the mining operation is being carried out; or
  - (ii) the owner of the land where the mining operation is being carried out, if no such person has been appointed

**mine worker** means a person who works in a mining operation, either as an employee or as a self-employed person

**mineral** has the same meaning as in clause 1 of Schedule 3 of the Health and Safety at Work Act 2015

**mines rescue brigade** means a group of persons organised by the board to provide rescue services during emergencies at mining operations

**Minister** means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**rescue station**—

- (a) means a site that serves as an operational base for the functions specified in section 8(a) to (c); and
- (b) includes a site for the management and administration of the board

**tourist mining operation** has the same meaning as in clause 1 of Schedule 3 of the Health and Safety at Work Act 2015

**WorkSafe** means WorkSafe New Zealand established by section 5 of the WorkSafe New Zealand Act 2013.

(2) In Part 1,—

**mining operation**—

- (a) means a mining operation (within the meaning of clause 2 of Schedule 3 of the Health and Safety at Work Act 2015) but only to the extent that the mining operation is—
  - (i) associated with the extraction of coal; or
  - (ii) associated with the extraction of minerals and where any person works below ground; but
- (b) only includes a tunnelling operation (within the meaning of clause 4 of Schedule 3 of that Act) to the extent that the tunnelling operation relates to a tunnel or shaft that is, or is intended to be, at least 150 metres long; and
- (c) does not include a tourist mining operation.

(3) In Part 2,—

**emergency** means an incident at a mining operation that has resulted, or may result, in the death of any person

**mining operation**—

- (a) means a mining operation (within the meaning of clause 2 of Schedule 3 of the Health and Safety at Work Act 2015) where any person works below ground; but
- (b) only includes a tunnelling operation (within the meaning of clause 4 of Schedule 3 of that Act) to the extent that the tunnelling operation relates to a tunnel or shaft that is, or is intended to be, at least 150 metres long; and
- (c) does not include a tourist mining operation.

Section 4(1) **coal**: amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(1) **mineral**: amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(1) **tourist mining operation**: amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(2) **mining operation** paragraph (a): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(2) **mining operation** paragraph (b): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(3) **mining operation** paragraph (a): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(3) **mining operation** paragraph (b): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

## 5 **Act binds the Crown**

This Act binds the Crown.

## 6 **Provisions affecting application of amendments to this Act**

The Schedule contains application, savings, and transitional provisions that affect other provisions of this Act as from time to time amended, repealed, or repealed and replaced (*see* section 25).

# Part 1

## Mines Rescue Trust Board

### 7 **Mines Rescue Trust Board**

- (1) Subject to sections 8 and 9, the Minister may, by notice in the *Gazette*, recognise a board incorporated under Part 2 of the Charitable Trusts Act 1957 for the purposes of this Act.
- (2) The notice must specify a day on which the recognition is to take effect (the **appointed day**).

### 8 **Functions of board**

The Minister must be satisfied that the board has the following functions:

- (a) providing training, equipment, and resources for mines rescue brigades to ensure that the brigades have the capacity and readiness to respond to emergencies in mining operations; and
- (b) assisting mine operators in emergency preparedness, including by developing, reviewing, and testing mine operators' emergency management plans in mining operations; and
- (c) deploying mines rescue brigades and other resources, and providing advice to mine operators, during emergencies; and
- (d) for the purposes of performing the functions in paragraphs (a) to (c),—
  - (i) establishing and maintaining rescue stations; and
  - (ii) purchasing real property, goods, and services for rescue stations; and

- (iii) employing or engaging staff for rescue stations.

## 9 Membership of board

The Minister must be satisfied that the board comprises—

- (a) 1 person appointed by WorkSafe (who has no voting rights and is not counted for the purposes of determining whether or not a quorum is present at a meeting of the board); and
- (b) 2 people who represent mine operators of underground coal mines; and
- (c) 1 person who represents mine operators of opencast coal mines; and
- (d) 1 person who represents mine operators of underground metalliferous mines; and
- (e) 1 person who represents tunnelling operators; and
- (f) 1 person appointed by a union (within the meaning of the Employment Relations Act 2000) whose members work in mining operations; and
- (g) any other person appointed by the board.

### *Cost recovery*

## 10 Regulations imposing levies

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations providing for the payment of a levy by mine operators to the board to enable the recovery of the direct and indirect costs of the board incurred in performing the functions specified in section 8(a), (b), and (d).
- (2) The regulations must—
  - (a) specify how the levy rate or rates are calculated;
  - (b) specify the mine operators or classes of mine operators responsible for paying the levy;
  - (c) specify, if the levy is to be paid at different rates, the mine operators, mining operations, thing being extracted, or other things or the classes of mine operators, mining operations, thing being extracted, or other things to which the different rates apply;
  - (d) specify when and how the levy is to be paid;
  - (e) specify the persons or classes of persons, if any, exempt from paying the levy.
- (3) The regulations may specify how the levy rate or rates are calculated by specifying a formula for the calculation of the levy rate or rates (a **levy formula**).
- (4) The levy formula may include a variable or variables based on the direct and indirect costs that the board expects to incur in performing the functions specified in section 8(a), (b), and (d) (the **expected costs**).

- (5) If the regulations specify a levy formula that includes a variable or variables based on the expected costs, the board must, before the start of each financial year,—
  - (a) determine the expected costs for that financial year; and
  - (b) notify the expected costs—
    - (i) in the *Gazette*; and
    - (ii) on an Internet site free of charge; and
    - (iii) directly to each mine operator known to the board (together with the levy rate payable by the mine operator for that financial year).
- (6) The regulations may—
  - (a) specify the returns to be made to the board or some other person or body for the purpose of enabling or assisting the determination of amounts of levy payable:
  - (b) specify the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for paying the levy:
  - (c) specify a method by which the levy may increase or decrease over time to reflect a relevant index published by Statistics New Zealand:
  - (d) for the purpose of ascertaining whether the regulations are being complied with,—
    - (i) require the keeping of accounts, statements, and records of a specified class or description by either or both of the board and the persons responsible for paying the levy; and
    - (ii) require the retention of the accounts, statements, and records for a specified period:
  - (e) provide for the establishment of a dispute resolution process for disputes relating to levies, including—
    - (i) the appointment of persons to resolve the disputes; and
    - (ii) the procedures to be followed by the persons; and
    - (iii) the remuneration of the persons.
- (7) If, for a financial year, the amount of levy that has been paid to the board exceeds the board's direct and indirect costs in performing the functions specified in section 8(a), (b), and (d), the surplus may be held by the board as a reserve to enable it to meet any immediate costs it incurs in performing the function specified in section 8(c).
- (8) Before making a recommendation under subsection (1), the Minister must consult the board and the persons responsible for paying the levy.
- (9) Before determining the expected costs under subsection (5)(a), the board must consult the persons responsible for paying the levy.

- (10) A notice under subsection (5)(b) is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Compare: 2012 No 2 s 62

## **11 Board to account for levy**

- (1) As soon as practicable after the end of a financial year in which a levy has been paid to the board, the board must prepare the following for the year:
- (a) a statement of the money paid to the board as levy in the year:
  - (b) a statement of the assets the board has at the end of the year as a result of money paid as levy in the year, including any reserve held under section 10(7):
  - (c) a statement of the board's receipt and expenditure of money paid as levy in the year, including expenditure of any reserve held under section 10(7):
  - (d) all other statements necessary to show fully—
    - (i) the board's financial position as a result of money paid as levy in the year; and
    - (ii) the financial results of all of the board's activities involving the use of the money paid as levy in the year or the use of assets the board has at the end of the year as a result of money paid as levy in the year.
- (2) If, under section 10(5)(a), the board is required to determine the expected costs for the financial year following the financial year to which the statements relate, the board must include, with the statements, all information necessary to show how the expected costs have been calculated.
- (3) On or before 1 July after the end of a financial year, the board must—
- (a) ensure that the statements are independently audited; and
  - (b) provide the audited statements to the chief executive and to levy payers.
- (4) The board may provide the audited statements to levy payers by making them available on an Internet site free of charge.

Compare: 2012 No 2 s 63

## **12 Failure to pay levy**

- (1) This section applies if a levy imposed by regulations made under section 10 (or GST payable on that amount) is wholly or partly unpaid by the close of the date for payment.
- (2) The person responsible for paying the levy is liable to pay an additional amount equal to 10% of the amount unpaid.

- (3) The board may waive all or part of the amount of the additional amount if it is satisfied that the failure or refusal of a person to pay the original debt is a result of a genuine dispute as to the person's liability to pay the debt.
- (4) The board may recover a levy, and any additional amount payable under subsection (2), as a debt due in a court of competent jurisdiction.

Compare: 2012 No 2 s 65

### **13 Power of inspection in relation to levy**

- (1) An authorised person may exercise the powers specified in this section, at any reasonable time within business hours, for the purpose of ascertaining whether the requirements of any regulations relating to the levy are being met.
- (2) For the purposes of subsection (1), an authorised person has the power to—
  - (a) enter any place that is not a dwelling house or marae—
    - (i) on reasonable notice to the occupier; or
    - (ii) without notice if giving notice would defeat the purpose of entry:
  - (b) inspect and examine any books, accounts, records, or documents:
  - (c) require any person to provide any information:
  - (d) require a person to produce any books, accounts, records, or documents in the person's possession or control and allow copies of or extracts from them to be made or taken:
  - (e) require a person to reproduce, or assist the authorised person to reproduce, in usable form any information recorded or stored electronically.
- (3) An authorised person exercising powers under this section in respect of a place must identify himself or herself as an authorised person—
  - (a) before or on entry to the place; and
  - (b) whenever reasonably required to do so by the apparent occupier after entry.

Compare: 1992 No 97 s 8

### **14 Offences**

- (1) Subsection (2) applies to—
  - (a) any requirement to make returns or to keep accounts, statements, or records imposed by regulations made under section 10:
  - (b) a requirement under section 13(2).
- (2) A person must not, in relation to the requirement,—
  - (a) without reasonable excuse, refuse or fail to comply with the requirement:
  - (b) provide any information that the person knows, or ought to know, is materially false or misleading.

- (3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$2,000.
- (4) If a person contravenes subsection (2) while acting as an agent (including a contractor) or employee of another person (the **principal**), and it is proved that the contravention took place with the principal's authority, permission, or consent, the principal commits an offence and is liable on conviction to a fine not exceeding \$2,000.

Compare: 1992 No 97 s 9

### **15 Recovery of costs incurred in emergency**

- (1) This section applies to direct and indirect costs incurred by the board in performing the function specified in section 8(c).
- (2) The costs are payable to the board by the mine operator of the mining operation where the emergency occurs and, if the mine operator fails to pay the costs, the board may recover the costs as a debt due in a court of competent jurisdiction.
- (3) Sections 10 to 14 do not apply to the costs.

#### *Miscellaneous provisions*

### **16 Appointment of commissioner**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
  - (a) appoint a commissioner to perform the functions specified in section 8:
  - (b) revoke the commissioner's appointment.
- (2) The Minister must not recommend the making of an order appointing a commissioner unless the Minister is satisfied, on reasonable grounds, that the board is not performing the functions specified in section 8.
- (3) The Minister may recommend the making of an order revoking the appointment of a commissioner only if satisfied, on reasonable grounds, that—
  - (a) the board is able to perform its functions without substantial difficulties;  
or
  - (b) it is necessary to appoint a new commissioner.
- (4) While an order is in force under subsection (1)(a),—
  - (a) the commissioner has the functions specified in section 8, and, in relation to the performance of those functions, has and may exercise the board's powers; and
  - (b) the board must not perform the functions.

Compare: 1992 No 97 s 6

### **17 Protection from civil and criminal liability**

- (1) This section applies to the following persons:

- (a) a member of a mines rescue brigade:
  - (b) a member of the board:
  - (c) an employee of the board:
  - (d) an agent of the board.
- (2) The person is protected from civil and criminal liability for any act done in good faith that the person does or omits to do in the course of—
- (a) providing rescue services during an emergency at a mining operation:
  - (b) providing advice to a mine operator during an emergency at a mining operation:
  - (c) testing a mine’s emergency management plan.

## **18 Regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations requiring mine operators to make mine workers available to be members of mines rescue brigades.
- (2) Regulations made under this section may specify—
- (a) the number of mine workers a mine operator must make available and the extent to which a mine operator must make mine workers available; and
  - (b) any other matter that is necessary to give effect to paragraph (a).
- (3) The number of mine workers a mine operator must make available and the extent to which the mine workers must be made available may be specified by a formula that takes into account the total number of mine workers working in the mining operation.

## **Part 2 Emergency response**

### **19 Emergency response protocol**

- (1) WorkSafe must issue an emergency response protocol that describes—
- (a) the persons and agencies that will respond to an emergency at a mining operation; and
  - (b) key functions, duties, and roles under the protocol.
- (2) WorkSafe may issue amendments to the emergency response protocol, following consultation with the persons and agencies that will have functions and duties under the protocol.
- (3) WorkSafe must ensure that the emergency response protocol is, at all reasonable times, made available to the public for inspection free of charge on an Internet site maintained by, or on behalf of, WorkSafe.

**20 Appointment of incident controller**

- (1) If an emergency occurs at a mining operation, WorkSafe may appoint an incident controller.
- (2) The incident controller may be any person that WorkSafe considers, having regard to the nature of the emergency, is capable of performing the functions described in subsection (3).
- (3) The functions of the incident controller are,—
  - (a) in accordance with the emergency response protocol, to lead decision making about the emergency response, including decision making about—
    - (i) whether any rescue operation should be undertaken and how the rescue operation should be undertaken:
    - (ii) whether any recovery operation should be undertaken and how the recovery operation should be undertaken:
    - (iii) the resources to be deployed to support rescue or recovery operations; and
  - (b) to give directions to persons and agencies in order to give effect to decisions made in accordance with the emergency response protocol about the emergency response; and
  - (c) in accordance with the emergency response protocol, to co-ordinate the activities of—
    - (i) persons and agencies undertaking or supporting any rescue or response operation:
    - (ii) other agencies providing emergency services, including, if relevant, fire and ambulance services, the New Zealand Police, and the board.
- (4) In performing his or her functions, the incident controller must consult other relevant persons or agencies, including the persons and agencies described in subsection (3)(c).

**21 Mine operator, site senior executive, and mine worker must comply with incident controller's directions**

- (1) The following persons must comply with any reasonable direction of the incident controller:
  - (a) a mine operator:
  - (b) a site senior executive:
  - (c) a mine worker.
- (2) Any person described in subsection (1) who, without reasonable excuse, fails or refuses to comply with a reasonable direction of the incident controller commits an offence and is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000:
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

## **22 Resisting or obstructing incident controller**

Any person who wilfully obstructs or resists the incident controller in the performance of the functions specified in section 20(3) commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$5,000:
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

## **23 Functions, duties, and powers of emergency services not affected**

- (1) Subsection (2) applies to the following agencies and services:
  - (a) fire and ambulance services:
  - (b) the New Zealand Police:
  - (c) the board:
  - (d) WorkSafe.
- (2) Nothing in this Part affects the functions, duties, or powers of an agency or service, or any person acting for or on behalf of an agency or service.

## **24 Protection from civil and criminal liability**

- (1) This section applies to the following persons:
  - (a) the incident controller:
  - (b) any person advising the incident controller:
  - (c) any person acting under the direction of the incident controller.
- (2) The person is protected from civil and criminal liability for any act done in good faith that the person does or omits to do in the course of responding to an emergency at a mining operation.

## **25 Application, savings, and transitional provisions**

The application, savings, and transitional provisions set out in the Schedule have effect for the purposes of this Act.

## **26 Repeal of Mines Rescue Trust Act 1992**

Repeal the Mines Rescue Trust Act 1992 (1992 No 97).

## Schedule

### Application, savings, and transitional provisions

s 25

#### 1 Interpretation

In this schedule, unless the context otherwise requires,—

**appointed day** means the date specified in the notice published in the *Gazette* under section 7

**Trust Board** means the Board approved under section 3 of the Mines Rescue Trust Act 1992.

#### *Transitional provisions*

#### 2 Trust Board continues until appointed day

- (1) Until the appointed day, the Trust Board and any other person has, and may perform or exercise, the functions, responsibilities, duties, and powers conferred by the Mines Rescue Trust Act 1992 and the provisions of that Act are deemed to continue in force to the extent necessary for the performance or exercise of those functions, responsibilities, duties, and powers.
- (2) On and from the appointed day, neither the Trust Board nor any other person has any functions, responsibilities, duties, or powers under the Mines Rescue Trust Act 1992.

#### 3 Money payable under Mines Rescue Trust Act 1992

- (1) Despite the repeal of the Mines Rescue Trust Act 1992 by section 26, sections 7, 8, and 9 of that Act are to be treated as continuing in force until the appointed day.
- (2) Any amount of money that immediately before the appointed day was payable to the Trust Board under section 7 of the Mines Rescue Trust Act 1992 is, on and after the appointed day, payable to the board as if it were a levy payable under regulations made under section 10.
- (3) Despite the repeal of the Mines Rescue Trust Act 1992, the Trust Board must, within three months of the appointed day, give the chief executive independently audited accounts of the Trust Board's income and expenditure under section 7 of the Mines Rescue Trust Act 1992 for the period beginning on the occurrence of 1 April immediately preceding the repeal of that Act and ending at the close of the day before the appointed day.

## Reprints notes

### **1**    *General*

This is a reprint of the Mines Rescue Act 2013 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### **2**    *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3**    *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4**    *Amendments incorporated in this reprint*

Health and Safety at Work Act 2015 (2015 No 70): section 232