

COAL MINES REGULATION (AMENDMENT) ACT 1989 No. 216

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Coal Mines Regulation Act 1982 No. 67
4. Transitional provision

SCHEDULE 1 - AMENDMENTS RELATING TO ADMINISTRATION

SCHEDULE 2 - AMENDMENTS RELATING TO MINE MANAGEMENT

SCHEDULE 3 - AMENDMENTS RELATING TO COAL PREPARATION
PLANTS

COAL MINES REGULATION (AMENDMENT) ACT 1989 No. 216

NEW SOUTH WALES



Act No. 216, 1989

An Act to amend the Coal Mines Regulation Act 1982 with respect to the functions of owners, managers and others in relation to coal mines; to provide for the separate management of certain coal preparation plants; and for other purposes. [Assented to 21 December 1989]

Coal Mines Regulation (Amendment) 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Coal Mines Regulation (Amendment) Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Coal Mines Regulation Act 1982 No. 67

3. The Coal Mines Regulation Act 1982 is amended as set out in Schedules 1 - 3.

Transitional provision

4. A reference in section 48 of the Coal Mines Regulation Act 1982, as amended by this Act, to a period of 2 months or a longer period allowed by the Chief Inspector of Coal Mines is to be taken to include a reference to a corresponding period that:

- (a) was referred to in that section immediately before its repeal by this Act; and
- (b) had not expired before that repeal.

**SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION**

(Sec. 3)

(1) Section 3 (**Arrangement**):

Omit the section.

(2) Section 5 (**Definitions**):

(a) Section 5 (1):

Omit the definition of "Department", insert instead:

"Department" means the Department of Minerals and Energy;

Coal Mines Regulation (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued*

- (b) Section 5 (1):
Omit the definition of "Deputy Chief Inspector", insert instead:
 "Deputy Chief Inspector (Engineering)" means the person appointed under section 7 as deputy chief inspector (engineering);
 "Deputy Chief Inspector of Coal Mines" means the person appointed under section 7 as deputy chief inspector of coal mines;
- (c) Section 5 (1):
After the definition of "direction", insert:
 "Director-General" means the Director-General, Department of Minerals and Energy;
- (d) Section 5 (1):
After the definition of "electrical check inspector", insert:
 "engineering inspector" means a person appointed under section 7 as:
 (a) the deputy chief inspector (engineering); or
 (b) the senior inspector of electrical engineering; or
 (c) an inspector of electrical engineering; or
 (d) the senior inspector of mechanical engineering; or
 (e) an inspector of mechanical engineering;
- (e) Section 5 (1), definition of "inspector":
After "Inspector" where secondly occurring, insert "of Coal Mines".
- (f) Section 5 (1), definition of "mine", when used as a verb:
Omit "include the act of exploring for coal by drilling from the surface;", insert instead:
 include:
 (a) the act of exploring for coal by drilling from the surface; or

SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued*

- (b) the act of loading coal for dispatch from a mine;
- (g) Section 5 (1), definition of "Under Secretary":
Omit the definition.
- (3) Section 7 (**Appointment of inspectors**):
 - (a) Section 7 (1) (b):
After "mines", insert "and a deputy chief inspector (engineering)".
 - (b) Omit section 7 (2), insert instead:
 - (2) The Chief Inspector, or a person authorised by the Chief Inspector, may:
 - (a) appoint an inspector of coal mines as the district inspector for a mine; or
 - (b) appoint an inspector of electrical engineering as the inspector of electrical engineering for a mine; or
 - (c) appoint an inspector of mechanical engineering as the inspector of mechanical engineering for a mine.
- (4) Section 9 (**Disclosure of financial interests by inspectors**):
Omit "Under Secretary" wherever occurring, insert instead "Director-General".
- (5) Section 10 (**Functions of inspectors**):
 - (a) Section 10 (2):
Omit "has", insert instead "of Coal Mines has the functions of the Chief Inspector if the Chief Inspector is absent from duty, or on duty but outside the State, and also has".
 - (b) After section 10 (2), insert:
 - (2A) The Deputy Chief Inspector (Engineering) has:
 - (a) such of the functions of the Chief Inspector (being functions relating to electrical and mechanical engineering) as are delegated to the Deputy Chief Inspector (Engineering) under this Act to the extent that those functions are delegated; and

Coal Mines Regulation (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued*

- (b) the functions relating to electrical and mechanical engineering that are assigned to the Deputy Chief Inspector (Engineering) by the Minister in connection with the administration of this Act.
- (c) At the end of section 10 (4) (b), insert:
 - ; and
 - (c) in relation to the functions imposed by paragraph (b), the same duty as is imposed by section 61 on an inspector of coal mines in relation to the powers conferred by section 59 or 60.
- (d) At the end of section 10 (5) (b), insert:
 - ; and
 - (c) in relation to the functions imposed by paragraph (b), the same duty as is imposed by section 61 on an inspector of coal mines in relation to the powers conferred by sections 59 and 60.
- (6) **Section 11 (Absence of Chief Inspector and Deputy Chief Inspector of Coal Mines):**

After "Deputy Chief Inspector", insert "of Coal Mines".
- (7) **Section 13 (Constitution of Board):**
 - (a) Section 13 (2) (b), (5):

After "Deputy Chief Inspector" wherever occurring, insert "of Coal Mines".
 - (b) Omit section 13 (4).
- (8) **Section 19 (Certificates that may be granted):**
 - (a) Section 19 (1) (h):

Omit "or".

SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued*

- (b) At the end of section 19 (1) (i), insert:
 - ; or
 - (j) a mine mechanical engineer of an open cut mine.
- (9) Section 33 (**Officials, order of seniority of mining officials and appointments**):
 - (a) Section 33 (1):

Omit "person is appointed as a mining official in accordance with this Part", insert instead:

person:

 - (a) is appointed as a mining official in accordance with this Part; or
 - (b) is appointed by the manager as a person believed by the manager on reasonable grounds to be technically qualified to issue the instructions.
 - (b) After section 33 (1), insert:

(1A) The manager may appoint a person under subsection (1) (b) only if satisfied that the person has the knowledge and experience to recognise any present or potential danger associated with the operations to be carried out at the mine.
- (10) Section 44 (**Surveyors, mine electrical engineers and mine mechanical engineers**):
 - (a) Section 44 (1):

Omit "appointed as the surveyor for the mine", insert instead:

appointed as:

 - (a) surveyor for the mine; or
 - (b) mine electrical engineer for the mine; or
 - (c) mine mechanical engineer for the mine.
 - (b) Section 44 (2):

Omit "the office of a surveyor for a mine", insert instead "an office referred to in subsection (1)".

Coal Mines Regulation (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued*

- (c) Section 44 (3), (4):
Omit "as the surveyor for the mine" wherever occurring,
insert instead "to an office referred to in subsection (1)".
- (d) Section 44 (5):
Omit "surveyor for a mine", insert instead "person to an
office referred to in subsection (1)".
- (11) Section 49 (**Working of mines where limited operations being
undertaken**):
Section 49 (3) (b):
Omit "10", insert instead "15".
- (12) Section 51 (**Person qualified to be an under-manager to be in
charge on any shift**):
 - (a) Section 51 (1):
Omit "On and from the date that is 5 years after the day
appointed and notified under section 2 (2), the", insert
instead "The".
 - (b) Section 51 (2) (b):
Omit "no mining is taking place at the mine and any
operations underground", insert instead "operations taking
place".
 - (c) At the end of section 51 (2) (b), insert:
; or
 - (c) no more than 15 persons are underground at any
one time and, with the prior approval of the Chief
Inspector, coal is being extracted by the longwall or
shortwall method of mining or pillars are being
removed.

SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued*

(13) Section 61A:

After section 61, insert:

Accident investigation reports

61A. (1) The manager of a mine may require a person employed in or about the mine to make a report on the working of the mine in relation to an accident at the mine.

(2) The manager of a mine must not require a person to make an oral report under this section in the presence of any other persons except:

- (a) a person nominated to be present by the person required to make the report; and
- (b) any persons allowed by the manager to be present.

(3) The manager of a mine must not require a person to make a written report under this section unless:

- (a) with the consent of the person required to make the report, subsection (2) is complied with as if the report were an oral statement; or
- (b) if that consent is refused, a reasonable time is allowed for the preparation of the report otherwise than in the presence of the manager.

(4) A person required to make a report in accordance with this section must not fail or refuse to make the report but it is not admissible in evidence in any proceedings except proceedings for an offence under section 62 (e) in relation to the report.

(14) Section 62 (**Offences**):

Section 62 (e):

After "60 (1) (a)", insert ", or in complying with a requirement to make a report under section 61A in relation to an accident,".

Coal Mines Regulation (Amendment) 1989

SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued*

(15) Section 63A:

After section 63, insert:

Engineering inspector may act to preserve health or safety

63A. (1) If an engineering inspector is of the opinion, in relation to functions conferred or imposed on the engineering inspector by section 10 (4) or (5), that a matter, thing or practice at a mine is, or is liable shortly to become, dangerous to the safety or health of any persons employed at the mine, the engineering inspector may serve on the owner or the manager of the mine a notice:

- (a) stating that opinion; and
- (b) giving particulars of the reasons for that opinion; and may, by way of that notice,
 - (c) impose on that owner or manager such prohibitions and restrictions, and require that owner or manager to carry out such works or do such things:
 - (i) as appear to the engineering inspector to be necessary for the purpose of safeguarding the safety or health of the persons employed at the mine; and
 - (ii) as are set out in the notice; or
 - (d) direct that owner or manager to suspend operations involving the matter, thing or practice,

or the engineering inspector may both impose prohibitions and restrictions under paragraph (c) and give a direction under paragraph (d).

(2) A prohibition, restriction or requirement imposed, or a direction given, by way of a notice served under subsection (1) may:

- (a) be subject to such exemptions as are set out in the notice; and
- (b) operate either indefinitely or for a period set out in the notice.

SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued*

(3) An engineering inspector may, in a notice served under subsection (1), require the notice to be complied with immediately or within a period specified in the notice.

(4) If a notice under subsection (1) cannot be readily served on the owner or the manager of a mine and the circumstances necessitate that the action required by the notice be taken immediately, it may be served on the next senior mining official at the mine.

(5) If a notice is served by an engineering inspector on the next senior mining official at a mine in accordance with subsection (4), the engineering inspector serving the notice must, as soon as practicable, serve on the owner or the manager of the mine a signed copy of the notice.

(6) An engineering inspector who serves a notice under subsection (1) or (5) must at once:

- (a) inform the district inspector of the service of the notice; and
- (b) send a copy of the notice to the Chief Inspector.

(7) A notice served under this section remains in force until:

- (a) it is varied or revoked under section 65 by the Chief Inspector or a court; or
- (b) it sooner expires.

(16) Sections 64 - 66:

After "63" wherever occurring, insert "or 63A".

(17) Section 65 (**Objections to notices, directions etc.**):

Section 65 (1):

Omit "(1) or (4)".

Coal Mines Regulation (Amendment) 1989

**SCHEDULE 1 - AMENDMENTS RELATING TO
ADMINISTRATION - *continued***

- (18) **Section 136 (Cores and samples):**
 - Section 136 (2):
 - Omit "of Mineral Resources".
- (19) **Section 167 (Delegation of functions by the Minister or the Chief Inspector):**
 - Section 167 (1) (b):
 - After "Deputy Chief Inspector", insert "of Coal Mines".
- (20) **Schedule 2, clause 3 (Term of office of members):**
 - Omit clause 3 (2) (b).

**SCHEDULE 2 - AMENDMENTS RELATING TO MINE
MANAGEMENT**

(Sec. 3)

- (1) **Section 38 (Deputy managers):**
 - After section 38 (3), insert:
 - (4) If a deputy manager of a mine is present at the mine while the manager of the mine is absent, the deputy manager:
 - (a) has full charge and control of all persons employed at the mine and of all operations at the mine; and
 - (b) must enforce the observance, by all persons employed at the mine, of this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder; and
 - (c) has such other functions as may be conferred or imposed by this Act on a deputy manager of a mine.

SCHEDULE 2 - AMENDMENTS RELATING TO MINE
MANAGEMENT - *continued*

(2) Section 39 (**Under-managers in charge**):

After section 39 (4), insert:

(5) If an under-manager in charge of an underground mine is present at the mine while the manager of the mine is absent and while there is no deputy manager of the mine present, the under-manager in charge:

- (a) has full charge and control of all persons employed at the mine and of all operations at the mine; and
- (b) must enforce the observance, by all persons employed at the mine, of this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder; and
- (c) has such other functions as may be conferred or imposed by this Act on an under-manager in charge of an underground mine.

(3) Section 40 (**Under-managers**):

After section 40 (4), insert:

(5) If an under-manager of an underground mine is present at the mine while the manager of the mine is absent and while there is no deputy manager, or under-manager in charge, of the mine present, an under-manager previously nominated by the manager:

- (a) has full charge and control of all persons employed at the mine and of all operations at the mine; and
- (b) must enforce the observance, by all persons employed at the mine, of this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder; and
- (c) has such other functions as may be conferred or imposed by this Act on an under-manager of an underground mine.

Coal Mines Regulation (Amendment) 1989

SCHEDULE 2 - AMENDMENTS RELATING TO MINE
MANAGEMENT - *continued*

(4) Section 42A:

After section 42, insert:

Senior examiners of open cut mines

42A. (1) The manager of an open cut mine may appoint as a senior examiner of the open cut mine a person who:

- (a) is the holder of a certificate of competency to be an examiner of an open cut mine; and
- (b) has at least 2 years' experience as an examiner of an open cut mine.

(2) A senior examiner of an open cut mine may have jurisdiction in respect of the whole of the mine or jurisdiction limited to a part of the mine.

(3) A senior examiner of an open cut mine must enforce the observance by all persons employed:

- (a) if the whole of the mine is under the jurisdiction of that senior examiner - in the mine; or
- (b) if the whole of the mine is not under the jurisdiction of that senior examiner - in the part of the mine which is under the jurisdiction of that senior examiner,

of this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder in working the mine or that part of the mine, as the case may be.

(4) Subsection (3) does not apply to a senior examiner of an open cut mine during a period when the senior examiner is not on duty at the mine.

(5) For the purposes of this section, if a part of an open cut mine is to be under the separate jurisdiction of a senior examiner, the manager of the mine must cause:

- (a) that part of the mine to be identified by a distinguishing name or number; and

SCHEDULE 2 - AMENDMENTS RELATING TO MINE
MANAGEMENT - *continued*

- (b) the boundaries of that part of the mine to be:
 - (i) clearly marked in a manner approved by the district inspector; and
 - (ii) shown on a plan prepared, and displayed at the mine, as prescribed.

(6) No person, other than a manager of an open cut mine, may appoint a person as a senior examiner of an open cut mine.

(7) The manager of an open cut mine must retain at the office of the mine a record of the starting and finishing times of the shifts of each senior examiner of the mine or a part of the mine.

(8) If a senior examiner of an open cut mine is present at the mine while the manager of the mine is absent and while there is no deputy manager of the mine present, the senior examiner:

- (a) has full charge and control of all persons employed at the mine and of all operations at the mine; and
- (b) must enforce the observance, by all persons employed at the mine, of this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder; and
- (c) has such other functions as may be conferred or imposed by this Act on a senior examiner of an open cut mine.

(5) Section 43 (**Examiners of open cut mines**):

After section 43 (3), insert:

(4) If an examiner of an open cut mine is present at the mine while the manager of the mine is absent and while there is no deputy manager, or senior examiner, of the mine present, the examiner:

- (a) has full charge and control of all persons employed at the mine and of all operations at the mine; and

Coal Mines Regulation (Amendment) 1989

SCHEDULE 2 - AMENDMENTS RELATING TO MINE
MANAGEMENT - *continued*

- (b) must enforce the observance, by all persons employed at the mine, of this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder; and
- (c) has such other functions as may be conferred or imposed by this Act on an examiner of an open cut mine.

(6) Section 47 (**Definitions**):

Section 47 (1):

Omit the subsection, insert instead:

(1) In this Division, a reference to a mine being worked is to be taken to be:

- (a) in the case of an underground mine, a reference to anyone other than a mining official being lawfully underground at the mine; or
- (b) in the case of an open cut mine, a reference to anyone other than a mining official being lawfully in or about the excavation.

(7) Sections 48, 48A:

Omit section 48, insert instead:

Manager or other official to attend mine being worked

48. (1) Except as provided by subsection (5) and section 49, the owner of an underground mine must ensure that the mine is not worked on any day unless:

- (a) the manager of the mine attends the mine on that day and exercises the functions of manager of the mine; or
- (b) if the manager of the mine is absent from the mine at any time on that day - a deputy manager of the mine attends the mine and exercises the functions of a deputy manager of the mine during the absence of the manager; or

SCHEDULE 2 - AMENDMENTS RELATING TO MINE
MANAGEMENT - *continued*

- (c) if the manager of the mine is absent at any time on that day and a deputy manager of the mine does not attend the mine during the absence of the manager - an under-manager in charge attends the mine and exercises the functions of an under-manager in charge of the mine during the absence of the manager; or
 - (d) if the manager of the mine is absent at any time on that day and a deputy manager of the mine or an under-manager in charge of the mine does not attend the mine during the absence of the manager - an under-manager attends the mine, or each part of the mine which is being worked and for which there is an under-manager, during the absence of the manager.
- (2) The owner of an open cut mine must ensure that the mine is not worked on any day unless:
- (a) the manager of the mine attends the mine on that day and exercises the functions of manager of the mine; or
 - (b) if the manager of the mine is absent from the mine at any time on that day - a deputy manager of the mine attends the mine and exercises the functions of a deputy manager of the mine during the absence of the manager; or
 - (c) if the manager of the mine is absent at any time on that day and a deputy manager of the mine does not attend the mine during the absence of the manager a senior examiner of the mine attends the mine and exercises the functions of a senior examiner of the mine during the absence of the manager; or
 - (d) if the manager of the mine is absent at any time on that day and a deputy manager of the mine or a senior examiner of the mine does not attend the mine during the absence of the manager - an examiner of the mine attends the mine and

Coal Mines Regulation (Amendment) 1989

SCHEDULE 2 - AMENDMENTS RELATING TO MINE
MANAGEMENT - *continued*

exercises the functions of an examiner of the mine during the absence of the manager.

(3) Nothing in subsection (1) or (2) is to be construed as divesting a manager of a mine of any function conferred or imposed on the manager by this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder.

(4) The owner of a mine who is informed that the manager of the mine will not be attending the mine and exercising the functions of the manager for a period of 7 or more consecutive days must, as soon as practicable after receiving the information:

- (a) give the district inspector written notice of the anticipated absence of the manager; and
- (b) include in the notice the name, residential address and title of the person who, during the absence of the manager, will be attending the mine and exercising the functions of the manager.

(5) If a manager of a mine does not attend the mine and exercise the functions of the manager:

- (a) for a period of 2 months and the Chief Inspector has not allowed a longer period under paragraph (b); or
- (b) for a period longer than 2 months that is allowed by the Chief Inspector,

the owner of the mine must ensure that the mine is not worked on any day until another person is appointed or nominated under section 36 as the manager of the mine.

Irregular attendance by manager

48A (1) If the district inspector is of the opinion that attendance by the manager at a mine is so irregular as to be inadequate for the effective exercise of the functions of the manager, the district inspector may serve on the owner of the mine a written notice:

**SCHEDULE 2 - AMENDMENTS RELATING TO MINE
MANAGEMENT - *continued***

- (a) expressing that opinion; and
 - (b) requiring the owner to take such remedial action as is specified in the notice.
 - (2) The owner of a mine may:
 - (a) within 14 days after being served with a notice under subsection (1), appeal to the Chief Inspector against the requirement in the notice; and
 - (b) if dissatisfied with the decision of the Chief Inspector may, within 14 days after being notified of the decision, appeal to a court against the decision.
 - (3) Unless a notice under subsection (1) is the subject of an appeal under subsection (2), the owner served with the notice must comply with the requirement of the notice within such time after the expiration of the time for lodging such an appeal as may be allowed by the Chief Inspector.
- (8) **Schedule 1 (Mining Officials and Order of Seniority of Mining Officials):**
- Schedule 1, Part B:
After "Deputy Manager", insert:
Senior Examiner of an open cut mine

**SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS**

(Sec. 3)

- (1) **Section 5 (Definitions):**
- (a) Section 5 (1):
Omit the definition of "check inspector", insert instead:
"check inspector", in relation to a mine, means a person elected under section 71 in respect of the mine;

Coal Mines Regulation (Amendment) 1989

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

- (b) Section 5 (1):
After the definition of "coal", insert:
 "coal preparation plant" means land, buildings and
 works that are, or may be, used for or in connection
 with:
 (a) the treatment of coal to improve it as a
 marketable product; and
 (b) the dispatch of the coal after it has been so
 treated;
- (c) Section 5 (1), definition of "mine", when used as a noun:
After "stone", insert ", but does not include a coal
preparation plant that is a declared plant under Part 5A";
- (d) Section 5 (1), definition of "mine", when used as a verb:
At the end of paragraph (b), insert:
 or
 (c) any act involved in the operation of a coal
 preparation plant that is a declared plant under
 Part 5A;

- (2) Section 125 (Definitions):
Section 125 (1), definition of "reject":
After "plant", insert "(whether or not it is a declared plant
under Part 5A)".

- (3) Part 5A:

After Part 5, insert:

**PART 5A - DECLARED COAL PREPARATION
PLANTS**

Definitions

145A. (1) In this Part:

"check inspector", in relation to a declared plant, means
a person elected in respect of the plant under Division
4 of Part 4 as applied by section 145M;

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

"declared plant" means a coal preparation plant declared by an order in force under section 145B to be suitable for management separately from a mine;

"inspector", in relation to a declared plant, means the district inspector of coal mines appointed under section 145B as inspector for the plant;

"owner", in relation to a declared plant, means any person who is the immediate proprietor, the lessee or the occupier of the plant, and includes:

- (a) if the plant is being worked by a person who is an official liquidator, receiver, manager or other person authorised by law (other than a provision of this Act) to carry on the business of working the plant - that person; or
- (b) if the plant belongs to, or is held in trust for, the Crown or a statutory authority - the Crown or the authority, as the case may be; or
- (c) if the plant is being worked by a contractor - the contractor,

but does not include a person who merely receives a royalty, rent or fine from the plant or is merely holding the property on which the plant is situated subject to any lease, grant or licence to, or contract with, another person for the working of the plant;

"plant manager", in relation to a declared plant, means a person appointed under section 145E as manager of the plant.

(2) The provisions of section 5 (3) - (16) apply in relation to a coal preparation plant that is a declared plant in the same way as they apply in relation to a mine and so apply as if the reference in section 5 (10) to section 134 were a reference to section 145K.

Declared plant

145B. (1) At the request of the owner of a coal preparation plant, the Minister may, by order published in

Coal Mines Regulation (Amendment) 1989

**SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued***

the Gazette, declare the plant to be suitable for management separately from a mine.

(2) The Chief Inspector, or a person authorised by the Chief Inspector to do so, may appoint:

- (a) a district inspector of coal mines as the inspector for a declared plant or declared plants; or
- (b) an inspector of electrical engineering as the inspector of electrical engineering for a declared plant or declared plants; or
- (c) an inspector of mechanical engineering as the inspector of mechanical engineering for a declared plant or declared plants.

Instructions relating to safety and health

145C. (1) If the duties of a position at or in respect of a declared plant:

- (a) would involve the issue of instructions that relate to the management or working of the plant; and
- (b) those instructions could relate, directly or indirectly, to the safety or health of persons employed at the plant,

a person must not be appointed to the position unless the owner or plant manager making the appointment believes on reasonable grounds that the person is technically qualified to issue the instructions.

(2) Subsection (1) does not apply to the appointment of the owner of a declared plant as the plant manager.

Duties of owner of declared plant

145D. The owner of a declared plant must make such provision as is, and take such steps as are, necessary to ensure:

- (a) that the plant is so planned, laid out and equipped as to enable it to be managed and worked in accordance with this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder; and

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

- (b) that the plant is so managed and worked.

Plant manager

145E. (1) The owner of a declared plant must appoint as the plant manager a person with qualifications or experience, or both, considered by the owner to be appropriate for the plant.

(2) The owner of a declared plant must, not later than 14 days after appointing the plant manager, give the inspector for the plant a written notice stating the full name, and the qualifications and experience, of the person appointed.

(3) The Chief Inspector may, at any time, serve on the owner of a declared plant a notice:

- (a) stating that, in the opinion of the Chief Inspector, the plant manager lacks qualifications or experience, or both, appropriate for the plant; and
- (b) giving the reasons for that opinion; and
- (c) requiring the owner to replace the plant manager by making a different appointment under subsection (1) or to take other action specified in the notice.

(4) If the owner of a declared plant fails to comply with the requirement of a notice under subsection (3) within 14 days after service of the notice (or within such further period as the Chief Inspector may allow) the Chief Inspector may file with a court:

- (a) a statement objecting to the appointment of the plant manager that is in such form, and contains such particulars, as may be specified in the rules of court; and
- (b) a copy of the notice.

(5) Following the filing with it of a statement under subsection (4), a court must hear and determine the matter and:

Coal Mines Regulation (Amendment) 1989

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

- (a) order the owner of the declared plant to comply with the requirement of the notice filed with the statement and to do so within a specified period or within such further period as the Chief Inspector may allow; or
 - (b) make such other order as the court thinks fit; or
 - (c) make no order.
- (6) An owner of a declared plant must comply with any order under subsection (5) to which the owner is subject.

Functions of plant manager

145F. (1) The plant manager:

- (a) has full charge and control of:
 - (i) all persons employed at the plant; and
 - (ii) all operations at the plant; and
 - (b) must enforce the observance, by all persons employed at the plant, of this Act, the regulations, the rules and any schemes and any directions, or conditions of exemptions or approvals, given thereunder; and
 - (c) has such other functions as may be conferred or imposed on the plant manager by this Act, the regulations, the rules and any schemes and approvals, given thereunder.
- (2) The provisions of Division 3 of Part 3 (which relate to the confirmation in writing of certain instructions) apply in relation to a declared plant and the plant manager in the same way as they apply in relation to a mine and the manager of the mine.
- (3) The regulations may make provision for or with respect to:
- (a) regular inspections of a declared plant by the plant manager; and
 - (b) records to be kept, and reports to be made, following inspections by a plant manager; and

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

- (c) procedures to be followed, and reports to be made, if the safety or health of persons in or about a declared plant appears likely to be endangered.
- (4) The regulations may:
 - (a) confer or impose functions relating to a declared plant on the plant manager; and
 - (b) provide for the delegation of functions conferred or imposed on a plant manager by or under this Act.

Plant manager or acting manager to attend plant each working day

145G. (1) The owner of a declared plant must ensure that the plant is not worked on any day unless the plant manager attends the plant on that day and exercises the functions of the plant manager.

(2) If a plant manager does not attend the plant on any day, subsection (1) does not apply on that day if:

- (a) the owner of the plant appoints as acting plant manager a person considered by the owner to be qualified to exercise, in the absence of the plant manager, the functions of the plant manager; and
- (b) the acting plant manager attends the plant on that day and exercises the functions of the plant manager.

(3) The owner of a declared plant who is informed that the plant manager will not be attending the plant and exercising the functions of the plant manager for a period of more than 7 consecutive days must, as soon as practicable after receiving the information:

- (a) give the inspector for the plant written notice of the anticipated absence of the plant manager; and
- (b) include in the notice the name, residential address and title of each acting plant manager who may attend the plant in the absence of the plant manager and exercise the functions of the plant manager.

Coal Mines Regulation (Amendment) 1989

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

(4) If a plant manager does not attend the plant and exercise the functions of the plant manager:

- (a) for a period of 2 months and the Chief Inspector has not allowed a longer period under paragraph (b); or
- (b) for a period longer than 2 months that is allowed by the Chief Inspector,

the owner of the plant must ensure that the plant is not worked on any day until another person is appointed under section 145E as the plant manager.

(5) A function of the plant manager exercised under this section by an acting plant manager has effect as if it had been exercised by the plant manager.

(6) Except in each case of an exercise of a function by an acting plant manager, this section does not operate to diminish the responsibility of the plant manager to exercise a function conferred or imposed on the plant manager by this Act.

(7) In this section:

"on any day" means a period of 24 hours ending at midnight and "on that day" has a corresponding meaning.

Irregular attendance by plant manager

145H. (1) If the inspector for a declared plant is of the opinion that attendance at the plant by the plant manager is so irregular as to be inadequate for the effective exercise of the functions of the plant manager, the inspector may serve on the owner of the plant a written notice:

- (a) expressing that opinion; and
- (b) requiring the owner to take such remedial action as is specified in the notice.

(2) The owner of a declared plant:

- (a) may, within 14 days after being served with a notice under subsection (1), appeal to the Chief Inspector against the requirement of the notice; and

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

- (b) if dissatisfied with the decision of the Chief Inspector may, within 14 days after being notified of the decision, appeal to a court against the decision.

(3) Unless a notice under subsection (1) is the subject of an appeal under subsection (2), the owner served with the notice must comply with the requirement of the notice within such time after the expiration of the time for lodging such an appeal as may be allowed by the Chief Inspector.

Supervision and inspection of plant

145L. (1) A plant manager must appoint as supervisors of the declared plant such number of engineers and other persons as, in the opinion of the manager, are necessary to assist in the efficient exercise of the functions of the manager.

(2) A plant manager must not appoint an engineer or other person as a supervisor unless satisfied that the person has the knowledge and experience necessary to detect any danger in the plant.

(3) A plant manager:

- (a) must prepare a scheme for the systematic examination and testing of electrical apparatus and mechanical apparatus at the plant; and
- (b) without limiting the generality of paragraph (a), must include in a scheme prepared under that paragraph provision with respect to such matters as are prescribed for the purposes of this subsection.

(4) A plant manager or supervisor who decides that there is a dangerous situation in a part of the plant must:

- (a) suspend ordinary operations in that part of the plant; or
- (b) take such other action as the manager or supervisor considers to be appropriate.

Coal Mines Regulation (Amendment) 1989

**SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued***

Suspension of employee by plant manager

145J. (1) The manager of a declared plant may:

- (a) suspend from duty an employee at the plant who acts, or attempts to act, in contravention of this Act or the regulations; and
- (b) require the employee to leave the plant forthwith.

(2) An employee must leave the plant forthwith when required by the plant manager under this section to do so.

Notice of commencement, discontinuance etc. of operation of plant

145K. (1) The owner of a declared plant must give written notice to the inspector for the plant of:

- (a) commencement of operations for the purpose of processing coal at the plant; and
- (b) discontinuance of operations at the plant; and
- (c) resumption of operations at the plant if it has not operated for a period of 2 months; and
- (d) abandonment of the plant,

within 14 days after the occurrence of the event of which notice is to be given.

(2) If a declared plant has not operated for a period of 2 months, the owner of the plant must, within 14 days after the expiration of that period, give the inspector for the plant written notice of the cessation of the working of the plant.

Disused and abandoned plants

145L. (1) If a declared plant ceases to be used, but is not abandoned, the owner of the plant must:

- (a) within 30 days after cessation of use of the plant, secure against use by unauthorised persons all means of access to the plant; and
- (b) while the plant is not being used, maintain the security against access effected under paragraph (a).

**SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued***

(2) When a declared plant is abandoned, and while it is abandoned, the owner of the plant must, to the satisfaction of the inspector for the plant, secure and keep secure, against the entry of any person, all means of access to the plant.

(3) A means of access to a disused or abandoned declared plant which has not been secured as required by subsection (1) or (2) and which:

- (a) is within 50 metres of a highway, road, footpath or other public place; or
- (b) is in open or unenclosed land,

is to be taken to be a public nuisance for the purposes of section 288 of the Local Government Act 1919.

(4) Section 124 (which relates to obligations of the owners of land on which an abandoned mine is situated) applies in relation to an abandoned declared plant in the same way as it applies in relation to an abandoned mine and so applies as if:

- (a) the reference in that section to a shaft or outlet of a mine were a reference to a means of access to a declared plant; and
- (b) the reference in that section to the provision or erection of an approved enclosure, barrier, plug or seal were a reference to the securing under this section of a means of access to the declared plant.

Application of certain provisions of Part 4

145M. (1) With such modifications as may be prescribed by the regulations, the provisions of Part 4 comprised in:

- (a) Division 1 (which relates to inspectors' powers of entry, inspection etc.); and
- (b) Division 2 (which relates to the powers of inspectors appointed under section 7 if a mine is dangerous); and

Coal Mines Regulation (Amendment) 1989

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

- (c) Division 3 (which relates to departmental officers' powers of entry); and
 - (d) Division 4 (which relates to inspections on behalf of workers); and
 - (e) Division 5 (which relates to notification of accidents and dangerous occurrences); and
 - (f) Division 6 (which relates to investigation of accidents and dangerous occurrences),
- of that Part apply in relation to a declared plant in the same way as they apply in relation to a mine.

- (2) The provisions of:
 - (a) section 160 (which creates certain offences); and
 - (b) section 161 (which relates to the liability of owners and others if an offence is committed); and
 - (c) section 164 (which provides certain defences); and
 - (d) section 165 (which requires notice of the result of certain proceedings to be given); and
 - (e) section 166 (which imposes penalties),
 apply in relation to a declared plant in the same way as they apply in relation to a mine.

(3) Subsections (1) and (2) have effect in relation to the provisions referred to in those subsections as if a reference in those provisions:

- (a) to an inspector for a mine were a reference to the inspector for a declared plant; and
- (b) to an owner of a mine were a reference to the owner of a declared plant; and
- (c) to the superintendent and assistant superintendent of a mine had been omitted; and
- (d) to the manager of a mine were a reference to the manager of a declared plant; and
- (e) to an official of a mine were a reference to a plant manager or a person exercising the functions of a plant manager; and

**SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued***

- (f) to the next senior mining official were a reference to the person for the time being exercising the functions of a plant manager; and
- (g) to the deputy manager, under-manager in charge, and under-managers, of a mine were omitted.

(4) With such modifications as may be prescribed, the provisions of Division 10 of Part 4 apply in relation to a declared plant in the same way as they apply in relation to any other coal preparation plant.

Rules and schemes

145N. The provisions of Division 7 of Part 4 (relating to rules and schemes), except sections 101 - 103, apply in relation to a declared plant in the same way as they apply in relation to a mine and so apply as if a reference in those provisions:

- (a) to the manager of a mine were a reference to a plant manager; and
- (b) to the district inspector for a mine were a reference to the inspector for the declared plant.

(4) Section 152 (Jurisdiction of court):

Section 152 (1) (a):

After "26", insert "or 145E".

(5) Section 174 (Regulations):

(a) Section 174 (2) (bb):

After "Part 4", insert "and section 145N".

(b) Section 174 (2) (ooo):

Omit "washeries", insert instead "coal preparation plants".

(c) Section 174 (2A):

After section 174 (2), insert:

(2A) Without limiting the generality of subsection (1), regulations may be made as if a reference in subsection (2)

Coal Mines Regulation (Amendment) 1989

SCHEDULE 3 - AMENDMENTS RELATING TO COAL
PREPARATION PLANTS - *continued*

to a mine were a reference to a coal preparation plant that,
under Part 5A, is a declared plant.

(d) Section 174 (5):

After "mine," insert "or on the owner or manager of a coal
preparation plant that, under Part 5A, is a declared plant,".

(e) Section 174 (8A):

After section 174 (8), insert:

(8A) Subsection (8) applies to an owner or manager of,
or an employee in or about, a coal preparation plant that,
under Part 5A, is a declared plant in the same way as it
applies in relation to an owner or official of a mine or a
person employed in or about a mine.

[Minister's second reading speech made in -
Legislative Assembly on 16 November 1989
Legislative Council on 7 December 1989]