

MINES RESCUE ACT 1994 No. 13

NEW SOUTH WALES



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MINES RESCUE ACT 1994 No. 13

NEW SOUTH WALES



Act No. 13, 1994

An Act to provide for mines rescue services and facilities; to constitute the Mines Rescue Board; and to repeal the Mines Rescue Act 1925.
[Assented to 10 May 1994]

The Legislature of New South Wales enacts:**PART I—PRELIMINARY****Short title**

1. This Act may be cited as the Mines Rescue Act 1994.

Commencement

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

Objects of this Act

3. The objects of this Act are:
 - (a) to provide for a rescue service capable of responding to, and dealing with, emergencies arising at underground coal mines in New South Wales; and
 - (b) to enable that rescue service to be used in connection with emergencies at other mines.

Definitions

4. In this Act:
 - “**Board**” means the Mines Rescue Board of New South Wales constituted by this Act;
 - “**Brigade**” means the New South Wales Mines Rescue Brigade established under section 37;
 - “**coal**” includes oil shale and kerosene shale, but does not include peat;
 - “**director**” means a director of the Board;
 - “**emergency**” means an emergency due to an actual or imminent occurrence (such as fire, explosion, accident or flooding) which has resulted in the death or injury of a person or is endangering or is threatening to endanger the life or physical well-being of a person;
 - “**exercise**” of a function includes the performance of a duty;
 - “**function**” includes a power, authority or duty;
 - “**Fund**” means the Mines Rescue Fund established under section 28;
 - “**mine**” means any pit or other place where mining is carried on, and includes a quarry and a salt-pan (whether occurring naturally or created artificially) and also includes any place, located at or in the vicinity of the mine, where material extracted from the mine is processed;

“mining” means extracting material from land for the purpose of recovering coal or other minerals from the material or of rehabilitating land from which any such material has been extracted, and includes:

- (a) loading, conveying and unloading any such material; or
- (b) operating a coal preparation plant; or
- (c) quarrying;

“owner” of a mine means any person who is the immediate proprietor, lessee or occupier of the mine, and includes:

- (a) if the mine is being worked by a person who is a liquidator, provisional liquidator, administrator, controller or other person authorised by law to carry on the business of working the mine—that person; or
- (b) if the mine belongs to, or is held in trust for, the Crown or a statutory authority—the Crown or the statutory authority; or
- (c) if the mine is being worked by a contractor—the contractor, but does not include a person who:
 - (d) merely receives a royalty or rent from the mine; or
 - (e) is merely the owner or lessee of the mine, subject to a lease, grant or licence to, or contract with, another person to work it; or
 - (f) is merely the owner of the soil in the mine,

and who is not otherwise interested in the coal or other minerals in the mine;

“underground coal mine” means a coal mine in which persons are employed underground when the mine is being worked.

PART 2—MINES RESCUE BOARD OF NEW SOUTH WALES

Division 1—Constitution of Board

Constitution of Board

5. (1) There is constituted by this Act a corporation with the corporate name of the Mines Rescue Board of New South Wales.

(2) The Board is, for the purposes of any Act, a statutory body representing the Crown.

Division 2—Functions of Board**Principal functions—rescue services for underground coal mines**

6. The Board has the following principal functions in connection with underground coal mines in New South Wales:

- (a) making available rescue services and facilities to deal with emergencies in those mines and, in particular, ensuring that the Brigade has the capacity to deal with any such emergencies;
- (b) ensuring that adequate rescue equipment (such as breathing apparatus) is available to enable members of the Brigade to deal with emergencies in those mines;
- (c) training members of the Brigade in mine rescue procedures at those mines and, in particular, in the use of breathing apparatus;
- (d) establishing appropriate procedures and arrangements for ensuring the mobilisation of members of the Brigade and the supply of rescue equipment in response to emergencies in those mines;
- (e) ensuring that persons with an adequate knowledge of mine rescue work are available to provide technical advice to the owners of those mines if emergencies should arise in those mines.

Additional discretionary functions—rescue services for other mines

7. (1) The Board may (but is not obliged to) exercise the following additional functions in connection with mines (other than underground coal mines in New South Wales):

- (a) providing rescue services and facilities at those mines, including rescue equipment (such as breathing apparatus);
- (b) providing training courses in connection with mine safety and emergency procedures at those mines (including, for example, fighting fires and rescuing mine workers and others who are trapped in those mines).

(2) The Board may exercise its functions under this section (or any function ancillary to those functions) either within New South Wales or elsewhere.

Additional discretionary functions—non-rescue services for mines and others

8. (1) The Board may (but is not obliged to) exercise the following additional functions:

- (a) providing occupational health and safety services for employers of mineworkers and others (not including rescue services but including, for example, training services or assistance in work underground or in confined spaces);
 - (b) providing technical and advisory services to owners of mines and others (including, for example, calibrating and repairing methane gas detection instruments and maintaining and repairing breathing apparatus).
- (2) The Board may exercise its functions under this section (or any function ancillary to those functions) either within New South Wales or elsewhere.

Ancillary functions

9. The Board also has, in connection with its functions, the following ancillary functions:

- (a) acquiring or building, and maintaining or disposing of, mine rescue stations and any plant, machinery or equipment (including vehicles); and
- (b) making or entering into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials; and
- (c) appointing agents, and acting as agent for other persons; and
- (d) any other function conferred by section 50 of the Interpretation Act 1987.

Division 3—Management of Board

Board directors

10. (1) There are to be 7 directors of the Board.
- (2) The directors of the Board are to be appointed by the Governor on the recommendation of the Minister.
- (3) Of the directors:
- (a) 3 are to be persons (of whom one is to be a mine manager) nominated by the New South Wales Coal Association to represent the interests of mine owners; and

(b) 3 are to be persons nominated to represent the interests of mine employees, of whom:

(i) one is to be nominated by the Australian Collieries' Staff Association; and

(ii) 2 are to be nominated by the United Mine Workers' Division of the Construction, Forestry, Mining and Energy Union; and

(c) one is to be a person nominated by the Minister.

(4) The director referred to in subsection (3) (c) is to be the chairperson of the directors of the Board.

(5) Schedule 1 has effect with respect to the directors of the Board.

Function of directors of Board

11. (1) The affairs of the Board are to be managed and controlled by its directors.

(2) Any act, matter or thing done in the name of, or on behalf of, the Board by its directors is taken to have been done by the Board.

(3) The directors must, as far as practicable, ensure that the activities of the Board are carried out properly and efficiently and in accordance with sound commercial practice.

Chief executive of Board

12. (1) The Governor may appoint a chief executive of the Board.

(2) Before a person is appointed as chief executive of the Board, the Minister must give the directors the opportunity of recommending a person or persons for appointment.

(3) Schedule 2 has effect with respect to the chief executive of the Board.

Functions of chief executive

13. The chief executive of the Board:

(a) is responsible, as the chief executive officer of the Board, for the management of the affairs of the Board subject to and in accordance with any direction given, or any authority conferred, by the Board's directors; and

- (b) has such other functions as are conferred or imposed on the chief executive by or under this or any other Act.

Ministerial control

14. (1) The Minister may give the directors written directions as to the exercise of the Board's functions.

(2) Subject to this section, the directors and the chief executive of the Board must ensure that the Board complies with any such direction.

(3) If the directors consider that:

(a) the Board would suffer a significant financial loss as a result of complying with any such direction; and

(b) the direction is not in the commercial interests of the Board, the directors may request the Minister to review the direction.

(4) A request for a review must be made within 7 days after the direction is given or within such other reasonable period as the Minister decides.

(5) If the directors request a review, the Board is not required to comply with the direction until notified of the Minister's decision following the review.

(6) Following the review, the Minister may confirm or revoke the direction, but the Minister must not confirm the direction unless:

(a) the Minister has estimated the financial loss concerned from information supplied by the Board or from other sources; and

(b) the Minister has referred the matter to the Treasurer; and

(c) the Treasurer has approved of the financial loss being reimbursed from public revenue.

(7) The amount to be reimbursed to the Board under this section is to be paid, from money advanced by the Treasurer or appropriated by Parliament for that purpose, at such times and in such instalments (if any) as the Treasurer decides after receiving advice from the Minister on the estimated financial loss incurred by the Board from time to time.

(8) For the purposes of this section, the amount of the financial loss that the Board suffers as a result of complying with a direction includes the amount of expenditure that the Board incurs, and the amount of revenue that the Board forgoes, as a result of complying with the direction that it would not otherwise incur or forgo.

Board to provide information to the Minister

15. The Board must:

- (a) provide the Minister or a person nominated by the Minister with such information relating to its activities as the Minister or person requires; and
- (b) keep the Minister informed of the general conduct of its activities, and of any significant development in its activities.

Corporate plans

16. (1) The Board must, at least 3 months before the beginning of each financial year of the Board (except the first financial year beginning after the commencement of this section), prepare and deliver to the Minister a draft corporate plan for the financial year.

(2) The Board must:

- (a) consider any comments on the draft corporate plan that were made by the Minister within 2 months after the draft plan was delivered to the Minister; and
- (b) deliver the completed corporate plan to the Minister before the beginning of the financial year concerned.

(3) The Board must, as far as practicable, exercise its functions in accordance with the relevant corporate plan.

(4) A corporate plan must specify:

- (a) the separate activities of the Board; and
- (b) the objectives of each such separate activity for the financial year concerned and for the following 2 financial years (or such other number of financial years as the Minister directs); and
- (c) the strategies, policies and budgets for achieving those objectives; and
- (d) targets and criteria for assessing the performance of the Board.

(5) This section is subject to any requirement made by or under this Act (including the requirements of a direction by the Minister under section 14).

(6) As soon as practicable after the commencement of this section, the Board must carry out a review of its existing activities and provide the Minister with a report on:

- (a) any of its activities that are not in the commercial interests of the Board; and

- (b) the estimated amount of the annual financial loss resulting from those activities; and
- (c) any action that can be taken for the carrying out of those activities in accordance with sound commercial practice.

Subcommittees

17. (1) The directors may establish subcommittees to assist the Board in connection with the exercise of any of its functions.

(2) At least one of the members of a subcommittee must be a director, but it does not matter that none of the other members of a subcommittee is a director.

(3) The procedure for calling meetings of a subcommittee and for the conduct of those meetings is to be as determined by the Board or (subject to any determination of the directors) by the subcommittee.

Delegation of functions of Board

18. (1) The Board may delegate to a subcommittee established under section 17 or an authorised person any of the functions of the Board, other than this power of delegation.

(2) In this section, “**authorised person**” means:

- (a) a director, the chief executive or other member of staff of the Board; or
- (b) a person of a class prescribed by the regulations or of a class approved by the Minister.

Personal liability of directors and others

19. A matter or thing done by the Board, a director or the chief executive of the Board or any person acting under the direction of the Board does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the director or chief executive, or a person so acting, personally to any action, liability, claim or demand.

Service of documents on Board

20. (1) A document may be served on the Board by leaving it at, or by sending it by post or facsimile transmission to:

- (a) the office of the Board; or
- (b) if it has more than one office—anyone of its offices.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Board in any other manner

Seal of Board

21. (1) The chief executive of the Board is required to keep the seal of the Board.

(2) The seal may be affixed to a document only:

- (a) in the presence of a director, the chief executive or any other member of the staff of the Board authorised for the purpose by the chief executive; and
- (b) with an attestation by the signature of the director, the chief executive or that member of staff of the fact of the affixing of the seal.

PART 3—STAFF

Employment of staff

22. The Board may employ such staff as it requires to exercise its functions.

Salary, wages and conditions of employment of staff

23. The Board may from time to time determine the salary, wages and conditions of employment of its staff in so far as they are not fixed by or under any other Act or law.

Regulations relating to staff

24. (1) The regulations may make provision for or with respect to the employment of the staff of the Board, including the conditions of employment and the discipline of any such staff.

(2) Any such regulations relating to the conditions of employment or the discipline of staff:

- (a) have effect subject to any relevant award made by a competent industrial tribunal and to any enterprise or industrial agreement to which the Board is a party; and
- (b) have effect despite any determination of the Board under section 23.

Use of other staff or facilities

25. (1) The Board may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of a government department, an administrative office or a public or local authority.

(2) For the purposes of this Act, a person whose services are made use of under this section is taken to be a member of the staff of the Board.

Consultants

26. The Board may engage such consultants as the Board requires to assist it in exercising its functions.

Staff superannuation schemes

27. (1) The Board may establish and administer, or engage another person to establish and administer, one or more superannuation schemes for the benefit of members of the Board's staff.

(2) The Board must ensure that the relevant requirements of the Occupational Superannuation Standards Act 1987 of the Commonwealth and of the regulations in force under that Act are complied with.

(3) In this section:

“staff” includes the chief executive of the Board;

“superannuation scheme” includes any scheme, plan, fund or arrangement of a kind that the Board decides to be a staff superannuation scheme.

PART 4—FINANCE**Establishment of Mines Rescue Fund**

28. (1) There is established by this section a fund to be known as the Mines Rescue Fund.

(2) The Fund is under the control and administration of the Board.

Payments into the Fund

29. There is payable into the Fund:

- (a) all money received by or on account of the Board (including contributions and interest payable under section 31 and fees payable under section 32); and
- (b) all interest received in respect of the investment of money belonging to the Fund; and

- (c) all money borrowed by or advanced to the Board or appropriated by Parliament for the purposes of the Board; and
- (d) all money directed to be paid into the Fund by this or any other Act.

Payments from the Fund

- 30.** There is payable from the Fund:
- (a) the remuneration (including allowances) of the directors, the chief executive and other staff of the Board; and
 - (b) all payments made on account of the Board or otherwise required to meet expenditure incurred in relation to the functions of the Board; and
 - (c) all other payments required by or under this or any other Act to be paid from the Fund.

Owners of coal mines to make contributions to the Fund for principal functions of Board

31. (1) The owner of a coal mine must, in respect of each financial year of the Board, pay to the Board towards the cost of meeting the expense incurred by the Board in exercising its principal functions a contribution of such amount as is prescribed by the regulations as being payable in respect of the mine concerned.

(2) Before a regulation is made for the purposes of this section, the Minister must certify to the Governor that the amount to be prescribed for the coal mine concerned is an appropriate contribution for the mine having regard to such of the following matters as are applicable to the mine:

- (a) the quantity of coal produced from the mine during the period of 12 months preceding the financial year concerned;
- (b) the average number of employees employed at the mine during that period;
- (c) the cost incurred during that period in meeting the expense of having members of the Board's staff on stand-by in respect of the mine;
- (d) the cost incurred during that period in training members of the Brigade to carry out mine rescue work at the mine;
- (e) an amount, quantified by the Board, representing the risk of a mining accident occurring at the mine;
- (f) the cost likely to be incurred in actually responding to a call to the Board to provide rescue services at the mine.

- (3) An amount payable for a year under this section is due and payable:
- (a) at the end of 28 days after a notice has been served in accordance with this section in respect of the amount; or
 - (b) if a notice has been served in respect of the amount in the place of a previous notice that did not specify the correct amount of the sum payable—at the end of 28 days after the replacement notice has been served in accordance with this section.
- (4) The Board must, for each year, serve on the owner of each coal mine a notice specifying the amount that the owner is required to pay under this section.
- (5) Such a notice is taken to have been served on the owner of a coal mine:
- (a) if, in the case of an owner who is not a body corporate, it is delivered to the owner personally, or is sent by mail to the owner's address last known to the Board; or
 - (b) if, in the case of an owner that is a body corporate, it is served in a manner authorised under the Corporations Law for the service of documents on a body corporate.
- (6) If an amount payable under this section has not been paid on the date on which it becomes due and payable, the owner concerned must pay interest in respect of the period from that date until the date of payment of the amount at such rate, not exceeding 15 per cent per year, as the Board determines from time to time for the purpose of this subsection.

Fees for services (other than for principal functions of Board)

32. The Board may charge fees for exercising any of its functions, other than its principal functions.

Recovery, waiver or refund of contributions etc. by Board

33. (1) The Board may, by proceedings brought in a court of competent jurisdiction, recover as a debt any contribution, interest, fee or other money due and payable to the Board.

(2) The Board may waive or refund the whole or any part of any contribution, interest, fee or other money due or paid to the Board in any particular case or in any class of cases.

Investment

34. The Board may invest money held by it:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or

- (b) if that Act does not confer power to invest money held by the Board:
- (i) in any manner authorised for the investment of trust funds; and
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

Banking

35. The Board may establish bank accounts and may deposit in those accounts any money received by it.

Financial year

36. (1) The financial year of the Board is the period from and including the date of commencement of this section and ending on 30 June 1994 and each subsequent period of 12 months beginning on 1 July 1994.

(2) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

PART 5—NEW SOUTH WALES MINES RESCUE BRIGADE**Establishment of Mines Rescue Brigade**

37. There is established by this Act the New South Wales Mines Rescue Brigade.

Functions of the Brigade

38. The function of the Brigade is to provide, under the control and direction of the Board, a mine rescue service for responding to, and dealing with, emergencies arising at underground coal mines in New South Wales and at other mines.

Composition of Brigade

39. (1) The Brigade comprises all persons for the time being appointed as members of the Brigade under section 42.

(2) A member of the Brigade is, when acting as such a member, to be regarded as being employed by the Board.

(3) While engaged in mine rescue work or undergoing training for mine rescue purposes, a member of the Brigade is entitled to be paid such fees and allowances as the Board, with the concurrence of the Minister, may determine in respect of the member.

Determination of the Board with respect to mine rescue personnel, equipment and storage facilities

40. (1) The Board must, for each underground coal mine in New South Wales, determine:

- (a) the number of persons employed at the mine whose services the owner of the mine must make available to the Board for mine rescue purposes; and
- (b) the number of items, and the kinds, of breathing apparatus and other rescue equipment that the owner must provide at the mine for use by those persons; and
- (c) the amount of area, and the kinds of facilities, that the owner must make available at the mine for the storage of that equipment when not in use, for training members of the Brigade and for use by those members during emergencies at the mine.

(2) The Board may, from time to time, vary a determination made under this section.

(3) The Board must serve a determination or variation of a determination made under this section on the owner of the underground coal mine concerned.

(4) The owner of an underground coal mine on whom a determination or variation is served must comply with the determination, or the determination as varied, within 28 days after service or within such further period as the Board allows.

(5) If a determination or variation requires the owner of an underground coal mine to make available the services of a specified number of persons employed at the mine, the owner must, within 14 days after the service of the determination or variation, provide the Board with a list that includes the names, addresses and any other particulars required by the Board of the persons selected for that purpose.

(6) If the Board is not satisfied that the owner of an underground coal mine is complying with a determination, or a determination as varied, the Board may serve on the owner a further notice specifying what the owner has to do to comply with the Board's requirements.

(7) The owner of a mine on whom such a further notice is served must, within 28 days after service (or within such further period as the Board allows), comply with the notice.

(8) The obligation imposed on the owner of an underground coal mine by subsection (4) or (7) is modified to the extent that the Board has

refused to appoint as a member of the Brigade a person whose name is included in a list provided by the owner under subsection (5) or has terminated the appointment of a member previously appointed from a list so provided. That obligation is also subject to the willingness of the persons whose names are included in such a list to be appointed as members of the Brigade.

(9) The owner of a mine who employs a member of the Brigade must allow that member to attend official training for members of the Brigade and emergencies to which the member is called to attend as such a member.

(10) An owner of a mine who, without reasonable excuse, fails to comply with subsection (4), (7) or (9) is guilty of an offence.

Maximum penalty: 100 penalty units.

(11) For the purposes of this section, a determination is taken to be varied if it is revoked and replaced by another determination.

Right of appeal against determination of the Board

41. (1) The owner of an underground coal mine on whom a determination, or a variation of a determination, made under section 40 is served may, if dissatisfied with the determination or variation, lodge with the Minister an appeal against the determination or variation. An appeal must be in writing and may only be made at any time before the determination or variation is to be complied with.

(2) The Minister is required to consider and determine an appeal as soon as practicable after it is lodged under this section.

(3) The Minister may determine an appeal:

- (a) by confirming the determination or variation appealed against; or
- (b) by modifying the determination or variation; or
- (c) by substituting for the determination or variation any determination or variation that the Board could have been made.

A determination or variation modified or substituted under this subsection is taken to be a determination or variation made by the Board.

(4) A determination or variation that is the subject of an appeal does not take effect until the appeal is either withdrawn or is finally determined and the result is notified to the owner of the underground coal mine concerned.

Appointment and termination of appointment of members of the Brigade

42. (1) On being provided with a list in accordance with section 40 (5), the Board must either appoint or refuse to appoint as members of the Brigade the persons whose names are included in the list.

(2) The Board may also appoint any other person as a member of the Brigade.

(3) A person is not to be appointed as a member of the Brigade without his or her consent.

(4) The Board may also terminate the appointment of a member of the Brigade.

(5) If the Board refuses to appoint, or terminates the appointment of, a person referred to in subsection (1) as a member of the Brigade, it must, by notice in writing, inform the person and the owner of the underground coal mine concerned of the Board's decision and the reason why the person was not appointed or the person's appointment was terminated.

(6) Within 14 days after being so informed, the owner of the underground coal mine concerned must provide the Board with a further list specifying the name, address and any other particulars required by the Board of another person employed by the owner to replace the person whose appointment was declined or terminated. This subsection applies as often as may be necessary to ensure that the owner makes available to the Board the services of the number of persons specified in the determination, or variation, served on the owner.

(7) If the owner of the underground coal mine concerned does not comply with subsection (6) within the period of 14 days referred to in that subsection, the owner is taken not to have complied with the determination of the Board served on the owner under section 40, or the determination as varied.

(8) The Board and the owner of the underground coal mine concerned are taken to have entered into an arbitration agreement to have arbitrated under the Commercial Arbitration Act 1984 any dispute between the Board and the owner arising from a decision of the Board refusing to appoint, or terminating the appointment of, a member of the Brigade. If any such dispute arises, that Act applies accordingly.

Board to be responsible for training

43. The Board is responsible for ensuring that members of the Brigade are adequately trained in:

- (a) the use of breathing apparatus and other mine safety equipment; and
- (b) mine safety procedures; and
- (c) the work involved in rescuing persons who may become trapped in a mine or who may otherwise need to be rescued from dangerous situations occurring at or in a mine; and
- (d) the procedures involved in sealing an underground coal mine and in reopening such a mine that has been sealed; and
- (e) such other matters as the Board considers necessary.

Certain events occurring at a mine rescue station to be notified to the Chief Inspector of Coal Mines etc.

44. (1) If a reportable event occurs at a mine rescue station, the person in charge of the station must:

- (a) immediately give oral notice of the event to the Chief Inspector of Coal Mines and to the Board; and
- (b) within the following 24 hours send a written notice to them setting out:
 - the nature of the event; and
 - the number and names of any persons killed or injured as a consequence of the event.

(2) The person in charge of a mine rescue station:

- (a) must keep a record of all reportable events occurring at the station; and
- (b) must make the record available for inspection by the Board, or by any person designated by the Board, whenever the Board or person requests production of the record.

(3) An event is a reportable event at a mine rescue station:

- (a) if it is an accident which causes the death of a member of the Brigade or a serious bodily injury (within the meaning of section 85 of the Coal Mines Regulation Act 1982) to such a member, being an accident occurring while the member is acting as such a member and is working at or from the station; or
- (b) if it involves the breakdown of mine rescue equipment (such as breathing apparatus) that is in use at the station or is otherwise used by the Brigade at the station.

Certificates and medallions

45. (1) When the Board is satisfied that a member of the Brigade has successfully completed a course of training in mine rescue work approved by the Board and is competent to take part in mine rescue work, the member is entitled to receive from the Board a certificate to that effect.

(2) The Board must keep a register of certificates issued under this section.

(3) The Board must not authorise a member of the Brigade to enter an irrespirable atmosphere in a mine when undertaking mine rescue work or mine rescue training unless the person:

- (a) is wearing suitable breathing apparatus; and
- (b) is the holder of a certificate issued under this section.

(4) The Board may issue a medallion to any member of the Brigade who, in its opinion, has satisfactorily completed such period of service as such a member as the Board determines. Service as a member of a permanent rescue corps established under the Mines Rescue Act 1925 may be treated as service as a member of the Brigade for the purposes of this subsection.

PART 6—MISCELLANEOUS**Acquisition of land**

46. (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) The Minister may do so only if the Board:

- (a) applies to the Minister for acquisition of the land; and
- (b) makes provision to the satisfaction of the Minister for the payment of the purchase price or of the compensation for compulsory acquisition (together with all necessary charges and expenses incidental to the acquisition).

(3) The Minister may transfer land acquired under this section to the Board.

(4) For the purposes of the Public Works Act 1912:

- (a) any such acquisition of land is taken to be for an authorised work; and
- (b) the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

(5) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this Act.

Act to bind the Crown

47. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

State Emergency and Rescue Management Act 1989

48. (1) Nothing in this Act affects the operation of the State Emergency and Rescue Management Act 1989.

(2) The Board is, in the exercise of its functions, subject to that Act.

Proceedings for offences

49. Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

50. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

Review of Act

51. (1) The Minister is required to conduct a review of this Act to ascertain whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Repeals

52. The Mines Rescue Act 1925 and the Mines Rescue Regulation 1991 are repealed.

Savings, transitional and other provisions

53. Schedule 3 has effect.

Amendment of other Acts

54. The Acts specified in Schedule 4 are amended in the manner set out in that Schedule.

**SCHEDULE 1—PROVISIONS RELATING TO THE
DIRECTORS OF THE BOARD**

(Sec. 10 (5))

Chairperson

1. In this Schedule, “**chairperson**” means the chairperson of the directors of the Board.

Deputies

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a director, and the Minister may revoke any such appointment. The deputy of a director is required to have the same qualifications for appointment as the director.

(2) In the absence of a director, the director’s deputy:

(a) may, if available, act in the place of the director; and

(b) while so acting, has all the functions of the director and is taken to be a director.

(3) The deputy of a director who is chairperson does not have the director’s functions as chairperson.

(4) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

Terms of office of directors

3. Subject to this Schedule, a director holds office for such period (not exceeding 3 years) as may be specified in the director’s instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Remuneration of directors

4. A director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

SCHEDULE 1—PROVISIONS RELATING TO THE
DIRECTORS OF THE BOARD—*continued***Vacancy in office of directors**

5. (1) The office of a director becomes vacant if the director:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this clause or by the Governor under Part 8 of the Public Sector Management Act 1988; or
 - (e) is absent from 4 consecutive meetings of directors of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the directors or unless, before the expiration of 4 weeks after the last of those meetings, the director is excused by the other directors for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a director from office at any time.

Disclosure of pecuniary interests

6. (1) If:
- (a) a director or the chief executive of the Board has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the directors; and
 - (b) the interest appears to raise a conflict with the proper performance of the duties of the director or chief executive in relation to the consideration of the matter,
- the director or chief executive must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the directors.

SCHEDULE 1—PROVISIONS RELATING TO THE
DIRECTORS OF THE BOARD—*continued*

(2) A disclosure by a director or the chief executive at a meeting of the directors that the director or chief executive:

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) The directors must record particulars of any disclosure made under this clause in a book kept for the purpose. The directors must ensure that the book is kept open at all reasonable hours to inspection by any person.

(4) After a director or the chief executive has disclosed the nature of an interest in any matter, the director or chief executive must not, unless the Minister or the other directors or, as the case may be, the directors otherwise determine:

- (a) be present during any deliberation of the directors with respect to the matter; or
- (b) take part in any decision of the directors with respect to the matter.

(5) For the purposes of the making of a determination by the directors under subclause (4), if a director or the chief executive has a direct or indirect pecuniary interest in a matter to which the disclosure relates, he or she must not:

- (a) be present during any deliberation of the directors for the purpose of making the determination; or
- (b) take part in the making by the directors of the determination.

(6) A contravention of this clause does not invalidate any decision of the directors.

(7) This clause does not apply to or in respect of an interest of a director or the chief executive (being the provision of goods or services to the director or chief executive by the Board) if the goods or services are, or are to be, available to members of the public on the same terms and conditions.

**SCHEDULE 1—PROVISIONS RELATING TO THE
DIRECTORS OF THE BOARD—*continued*****Filling of vacancy in office of a director**

7. If the office of a director becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Effect of certain other Acts

8. (1) Part 2 of the Public Sector Management Act 1988 does not apply to or in respect of the appointment of a director.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a director or from accepting and retaining any remuneration payable to the person under this Act as a director.

General procedure

9. The procedure for the calling of meetings of directors and for the conduct of business at those meetings is, subject to this Act and the regulations, as determined by the directors.

Quorum

10. The quorum for a meeting of directors is 4.

Presiding member

11. (1) The chairperson or, in the absence of the chairperson, another director elected to chair the meeting by the directors present must preside at a meeting of the directors.

(2) The person presiding at a meeting of directors has a deliberative vote and, in the event of an equality of votes, has a casting vote.

Voting

12. A decision supported by a majority of the votes cast at a meeting of the directors at which a quorum is present is the decision of the directors.

**SCHEDULE 1—PROVISIONS RELATING TO THE
DIRECTORS OF THE BOARD—*continued***

Transaction of business outside meetings or by telephone etc.

13. (1) The directors may, if they think fit, transact any of their business by the circulation of papers among all the directors for the time being, and a resolution in writing approved in writing by a majority of those directors is taken to be a decision of the directors.

(2) The directors may, if they think fit, transact any of their business at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if a director who speaks on a matter before the meeting can be heard by the other directors.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1); or
- (b) a meeting held in accordance with subclause (2),

the chairperson and each director have the same voting rights as they have at an ordinary meeting of the directors.

(4) A resolution approved under subclause (1) must, subject to the regulations, be recorded in the minutes of the meetings of directors.

(5) Papers may be circulated among directors for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

First meeting

14. The Minister may call the first meeting of the directors in such manner as the Minister thinks fit.

**SCHEDULE 2—PROVISIONS RELATING TO THE CHIEF
EXECUTIVE OF THE BOARD**

(Sec. 12 (3))

Employment of chief executive

1. (1) The chief executive is taken, while holding that office, to be employed by the Board, except that the Board is not empowered to remove him or her from office.

(2) The Minister is not to recommend a person for appointment as chief executive unless the Minister is satisfied that:

- (a) the position has been publicly advertised; and

**SCHEDULE 2—PROVISIONS RELATING TO THE CHIEF
EXECUTIVE OF THE BOARD—*continued***

(b) the person has suitable executive and administrative experience and qualifications; and

(c) the person is the most meritorious applicant for the position.

(3) The directors of the Board may arrange for the advertising of the position in accordance with the requirements of the Minister. The directors may recommend to the Minister a person or persons for appointment.

(4) During the illness or absence of the chief executive, or during a vacancy in the office of chief executive, the Board may appoint a person to act in that office for a period not exceeding 6 months at any one time. Such a person, while so acting, has all the functions of chief executive and is taken to be the chief executive.

(5) The Governor may, at any time, remove a person from the office of chief executive but only after consultation with the Board.

(6) The Board may, at any time, remove a person from office as acting chief executive.

(7) A director is not to be appointed as chief executive or as acting chief executive.

Attendance at meetings

2. (1) The chief executive is entitled to attend and speak at meetings of the directors but is not entitled to vote at those meetings.

(2) However, the chief executive is not entitled to attend a meeting of directors while any question relating to his or her employment is being considered.

**SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS**

(Sec. 53)

PART 1—PRELIMINARY

Definitions

1. In this Schedule:

“**commencement day**” means the day on which section 5 commences;

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS—*continued*

“committee” means the “committee” of a district constituted under the repealed Act;

“repealed Act” means the Mines Rescue Act 1925.

Savings and transitional provisions

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect on and from the commencement day or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its Publication.

**PART 2—PROVISIONS CONSEQUENT ON THE ENACTMENT
OF THIS ACT****Continuity of Board**

3. The Mines Rescue Board of New South Wales constituted by this Act is a continuation of, and the same legal entity as, the Mines Rescue Board constituted by the repealed Act.

Assets, rights and liabilities of committees to vest in the Board

4. (1) On the commencement day:
- (a) the assets of each committee vest in the Board; and
 - (b) the rights and liabilities of each committee become the rights and liabilities of the Board; and
 - (c) all legal proceedings by or on behalf of, or against, a committee begun before, and pending immediately before, that day are taken

SCHEDULE 3—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

to be legal proceedings pending by or on behalf of, or against, the Board; and

- (d) any act, matter or thing done or omitted to be done in relation to a committee before that day by, to or in respect of a committee is, to the extent that the act, matter or thing continues to have effect, taken to have been done, or omitted to be done, by, to or in respect of the Board.

(2) Subclause (1) (a) has effect without the need for a conveyance or transfer or any other transaction.

Superseded references

5. On and from the commencement day, a reference in any other Act, in any instrument made under any Act or in any document of any kind to the Mines Rescue Board is to be read as a reference to the Mines Rescue Board of New South Wales.

Existing members of Board

6. (1) A person who, immediately before the commencement day, held office as a member of the Board:

- (a) ceases to hold that office; and
(b) is eligible (if otherwise qualified) to be appointed as a director.

(2) A person who so ceases to hold office as a member of the Board is not entitled to any remuneration or compensation because of the loss of that office.

Permanent rescue corps to be disbanded

7. On the commencement day, each permanent rescue corps established under section 14 of the repealed Act is disbanded.

Continuity of staff of Board

8. (1) The Mines Rescue Board, as constituted under the repealed Act, is taken always to have had power to employ persons to enable it to exercise its functions under that Act and all persons purporting to have been employed by the Board under that Act are taken to have been lawfully employed by it.

SCHEDULE 3—SAVINGS, TRANSITIONAL, AND OTHER
PROVISIONS—*continued*

(2) The persons who, immediately before the commencement day, were employed by a committee or were employed by the Board are, on the commencement day, taken to be members of the staff of the Board employed under this Act and to be employed on the same terms and conditions as those on which they were employed immediately before that day.

(3) This clause applies to a person purporting to be employed as chief executive by the Mines Rescue Board, as constituted under the repealed Act, as if the person were a member of that Board's staff.

Continuation of existing staff superannuation schemes

9. Any staff superannuation scheme established under section 13B of the repealed Act for persons whose employment is continued by clause 8 is taken to be a superannuation scheme established under section 27 of this Act.

Continuation of Mines Rescue Fund

10. On the commencement day, the Central Mines Rescue Fund constituted under section 6A of the repealed Act and each fund established under section 7 of that Act together become the Mines Rescue Fund established under section 28 of this Act.

SCHEDULE 4—AMENDMENT OF OTHER ACTS

(Sec. 54)

Ambulance Services Act 1990 No. 16

Section 23 (**Unauthorised provision of ambulance transport**):

Omit section 23 (3) (d), insert instead:

- (d) the Mines Rescue Board, a member of the Board's staff (including the Board's chief executive) or a member of the New South Wales Mines Rescue Brigade established under the Mines Rescue Act 1994; or

SCHEDULE 4—AMENDMENT OF OTHER ACTS—*continued***Coal and Oil Shale Mine Workers (Superannuation) Act 1941 No. 45**

Section 2 (Definitions):

After section 2 (2) (b) (ii), insert:

; or

- (iii) he was a member of the New South Wales Mines Rescue Brigade established under the Mines Rescue Act 1994:

Jury Act 1977 No. 18Schedule 3 (**Persons who may claim exemption as of right**):

Omit item 14.

Local Government Act 1993 No. 30Section 556 (**What land is exempt from all rates, other than water supply special rates and sewerage special rates**):

Omit section 556 (o), insert instead:

- (o) land that is vested in the Mines Rescue Board and is used for the purposes of a mine rescue station controlled by the Board;

Medical Practice Act 1992 No. 94Section 105 (**Use of misleading titles etc.**):

From section 105 (4), omit “corps” wherever occurring, insert instead “organisation”.

Motor Vehicles Taxation Act 1988 No. 111Section 16 (**Vehicles totally exempt from tax**):

From section 16 (1) (a), omit “for mine rescue work in accordance with the Mines Rescue Act 1925”, insert “to carry out mine rescue work for the purposes of the Mines Rescue Act 1994”.

Occupational Health and Safety Act 1983 No. 20Section 39 (**Mines Inspection Act 1901 etc.**):

Omit “Mines Rescue Act 1925”, insert instead “Mines Rescue Act 1994”.

SCHEDULE 4—AMENDMENT OF OTHER ACTS—*continued***Public Authorities (Financial Arrangements) Act 1987 No. 33**Schedule 1 (**Authorities**):

Insert, in alphabetical order:

Mines Rescue Board.

State Emergency and Rescue Management Act 1989 No. 165Section 53 (**Offence to operate rescue unit without accreditation**):

Omit section 53 (3) (c), insert instead:

- (c) if it is a unit (including a unit of the New South Wales Mines Rescue Brigade) which only carries out rescues at mines under the Mines Rescue Act 1994; or

Water Supply Authorities Act 1987 No. 140Schedule 6 (**Land exempt from service charges and exceptions**):

Omit item 18, insert instead:

18. Land vested in the Mines Rescue Board and used for the purposes of a mine rescue station controlled by the Board.

Workers Compensation Act 1987 No. 70Schedule 1 (**Deemed employment of workers**):

From Schedule 1, omit clause 8, insert instead:

Mines rescue personnel

8. (1) For the purposes of this Act:

- (a) a member of the New South Wales Mines Rescue Brigade engaged in mine rescue work, or undergoing training, for the purposes of the Mines Rescue Act 1994 is, while so engaged or undergoing training, taken to be a worker employed by the Mines Rescue Board; and
- (b) a place at which such a member is so engaged or undergoing training is taken to be a place at which the member is employed.

SCHEDULE 4—AMENDMENT OF OTHER ACTS—*continued*

(2) A member of the New South Wales Mines Rescue Brigade who receives an injury while journeying between the place from which the member was required to attend for the purpose of engaging in mine rescue work or of undergoing training and a place referred to in subclause (1) (b) is, if the journeying was exclusively and genuinely for that purpose, entitled to receive compensation in accordance with this Act from the Mines Rescue Board.

*[Minister's second reading speech made in—
Legislative Assembly on 27 October 1993
Legislative Council on 19 April 1994]*