



New South Wales

Mines Legislation Amendment (Mines Safety) Act 1998 No 122

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Coal Mines Regulation Act 1982 No 67	2
4 Amendment of Mines Inspection Act 1901 No 75	2
5 Amendment of Defamation Act 1974 No 18	2

Schedules

1 Amendment of Coal Mines Regulation Act 1982	3
2 Amendment of Mines Inspection Act 1901	20
3 Amendment of Defamation Act 1974	34



New South Wales

Mines Legislation Amendment (Mines Safety) Act 1998 No 122

Act No 122, 1998

An Act to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* with respect to the functions of inspectors, investigators, mine safety officers, assessors, the Director-General of the Department of Mineral Resources and other persons, the role of Boards of Inquiry and the matters that are subject to special reports to the Minister; to amend the *Coal Mines Regulation Act 1982* to improve safety measures for unused mine shafts and outlets; to amend the *Defamation Act 1974* with respect to publications and reports under the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901*; and for other purposes. [Assented to 26 November 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mines Legislation Amendment (Mines Safety) Act 1998*.

2 Commencement

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

3 Amendment of Coal Mines Regulation Act 1982 No 67

The *Coal Mines Regulation Act 1982* is amended as set out in Schedule 1.

4 Amendment of Mines Inspection Act 1901 No 75

The *Mines Inspection Act 1901* is amended as set out in Schedule 2.

5 Amendment of Defamation Act 1974 No 18

The *Defamation Act 1974* is amended as set out in Schedule 3.

Schedule 1 Amendment of Coal Mines Regulation Act 1982

(Section 3)

[1] Section 5 Definitions

Insert in alphabetical order in section 5 (1):

Board of Inquiry means a Board of Inquiry constituted under section 94A.

[2] Section 5 (1), definition of 'Investigator'

Insert in alphabetical order:

investigator means a person appointed under Part 2 of the *Public Sector Management Act 1988* and designated by the Director-General as an investigator for the purposes of this Act.

[3] Section 5 (1), definition of "mine safety officer"

Insert in alphabetical order:

mine safety officer means a person appointed as a mine safety officer under Part 2 of the *Public Sector Management Act 1988*.

[4] Part 2, Division 1, heading

Insert "**and mine safety officers**" after "**inspectors**".

[5] Section 12A

Insert after section 12:

12A Functions of mine safety officers

A mine safety officer has the functions imposed on the mine safety officer by or under this Act.

[6] Part 4, Division 1, heading

Insert "**and mine safety officers**" after "**Inspectors**".

[7] Section 59 Powers generally

Insert “or mine safety officer” after “inspector” wherever occurring in section 59 (1).

[8] Section 59 (1) (a) (ii)

Insert “or mine safety officer’s” after “inspector’s”.

[9] Section 60 Supplementary powers

Insert “or mine safety officer” after “inspector” wherever occurring in section 60 (1), (3) and (4).

[10] Section 60 (1) (a) (i)

Insert “or other workplace entered under section 59 (1) (a) (ii)” after “mine” where firstly occurring.

[11] Section 60 (1) (a) (i)

Insert “or workplace” after “mine” where secondly occurring.

[12] Section 60 (1) (a)

Insert “forthwith” after “answer”.

[13] Section 60 (1) (b)

Insert “or other workplace entered under section 59 (1) (a) (ii)” after “mine” where firstly occurring.

[14] Section 60 (1) (c)

Insert “or other workplace entered under section 59 (1) (a) (ii)” after “mine” where firstly occurring.

[15] Section 60 (1) (c)

Omit “the mine”. Insert instead “a mine”.

[16] Section 60 (1) (d) (ii)

Insert "or the employer at a workplace entered under section 59 (1) (a) (ii)" after "mine".

[17] Section 60 (1) (f)

Insert "or other workplace entered under section 59 (1) (a) (ii)" after "mine".

[18] Section 60 (5)

Insert after section 60 (4):

- (5) An inspector or mine safety officer may require a person to answer a question under subsection (1) (a) either orally or in writing and may allow a person further time (not exceeding 24 hours) to answer a question.

[19] Section 61 Inspector to inform mine management of exercise of certain powers

Insert "or other workplace" after "mine" where firstly occurring.

[20] Section 61

Insert "or mine safety officer" after "inspector" wherever occurring.

[21] Section 61

Omit "the mine" where firstly, secondly and thirdly occurring.
Insert instead "a mine".

[22] Section 61

Insert "or mine safety officer's" after "inspector's".

[23] Section 62 Offences

Insert “or mine safety officer” after “inspector” wherever occurring.

[24] Section 62 (c)

Insert “or other workplace” after “mine”.

[25] Section 62 (d)

Omit “within a period of 24 hours of the requirement being made”.

[26] Section 62 (f)

Insert “or mine safety officer’s” after “inspector’s”.

[27] Section 63 Inspector may impose prohibitions or restrictions or direct evacuation or closure of mine

Insert after section 63 (7):

- (8) An investigator who is also an inspector may not serve a notice under this section.

[28] Section 63A Engineering inspector may act to preserve health or safety

Insert after section 63A (7):

- (8) An investigator who is also an engineering inspector may not serve a notice under this section.

[29] Section 86 Notification of accidents

Insert after section 86 (2):

- (3) On receipt of written notice under subsection (1) (b), the district inspector must give a copy of the notice to the Director-General.

[30] Section 87 Notice of death following injury

Insert at the end of the section:

- (2) On being notified of the death, the district inspector must give notice of the death to the Director-General.

[31] Section 89 Notification of dangerous occurrences

Insert after section 89 (2):

- (3) On receipt of written notice under subsection (1) (b), the district inspector must give a copy of the notice to the Director-General.

[32] Section 90 Place of accident or occurrence not to be disturbed

Insert "(or other person authorised under section 91)" after "inspector" where firstly occurring in section 90 (1) (d).

[33] Section 90 (2) (a)

Insert "or other person authorised under section 91" after "inspector".

[34] Section 91 Inspectors to visit mine and report as soon as practicable

Insert at the end of section 91:

- (2) The inspector must make a preliminary report with respect to the accident or dangerous occurrence in writing to an officer of the Department, nominated by the Director-General for the purposes of this section, as soon as practicable after first visiting the mine at which the accident or occurrence occurred.
- (3) The nominated officer must, if the report relates to an accident or occurrence of a kind prescribed by the regulations, give a copy of the report to the Director-General as soon as practicable after receiving the report.

- (4) The nominated officer must, if requested to do so by the Director-General, give to the Director-General a copy of any report relating to an accident or occurrence that is not of a kind referred to in subsection (3).
- (5) The Director-General may authorise an inspector other than the inspector to whom notice of the accident or dangerous occurrence was given, or a mine safety officer, to carry out the functions under this section of the inspector to whom notice was given.
- (6) Nothing in subsections (2)–(5) or sections 93A–93E affects the carrying out by a check inspector of his or her functions under this section.

[35] Sections 93A–93E

Insert after section 93:

93A Determinations as to investigations

- (1) On receipt of a copy of a report under section 91 (3) or (4) as to an accident or dangerous occurrence, the Director-General must determine whether the accident or occurrence is:
 - (a) to continue to be investigated by the person who made the preliminary report under section 91, or
 - (b) to be investigated by an investigator, or
 - (c) to be the subject of no further investigation.
- (2) In making a determination, the Director-General is to have regard to:
 - (a) whether the accident or occurrence raises substantial matters of occupational health and safety, and
 - (b) whether investigation of the accident or occurrence may involve examination of rules or any scheme relating to the safety, health, conduct or discipline of persons in mines, or any directions, conditions or exemptions or approvals given under this Act, the regulations or rules, and
 - (c) any other matter the Director-General thinks relevant.

- (3) If an accident or dangerous occurrence results in the death of a person, the Director-General must determine that it is to be investigated by an investigator.
- (4) A determination is to be notified in writing by the Director-General to the Chief Inspector and to the Manager, Investigations Unit, in the Department.
- (5) The Chief Inspector must notify the person who made the preliminary report under section 91 of the determination.

93B Investigations by inspectors

- (1) On notification of a determination under section 93A that an accident or dangerous occurrence is to continue to be investigated by the person who made the preliminary report under section 91, the person must, after completing the examination and inspections, and any investigations, relating to the accident or occurrence, report to the Chief Inspector in relation to the accident or occurrence.
- (2) Without limiting subsection (1), a report is to contain information as to the causes of the accident or dangerous occurrence and its circumstances.

93C Functions of investigators

- (1) An investigator has the following functions:
 - (a) to investigate accidents or occurrences that the Director-General determines under section 93A are to be investigated by an investigator,
 - (b) to report on matters relating to the safety, health, conduct or discipline of persons in mines, or any occurrence or practice at a mine, as directed by the Director-General,
 - (c) any other function conferred or imposed on an investigator by or under this Act.
- (2) For the purpose of carrying out his or her functions under this Act, an investigator has the functions of an inspector under sections 59, 60 and 61 and section 62 applies in respect of an investigator in the same way that it applies in respect of an inspector and anything done by an inspector under Division 1 of Part 4.

- (3) If an investigation is being carried out by an investigator under this Act, an inspector or mine safety officer is not to proceed with any inspection or examination of the accident or dangerous occurrence being investigated by the investigator, unless requested to do so by the investigator for the purpose of assisting the investigator.
- (4) Nothing in this section prevents an inspector from serving a notice under section 63 in relation to a mine the subject of an investigation by an investigator.

93D Reports by investigators

- (1) An investigator must, after completing an investigation under this Act, report to the Director-General in relation to the subject-matter of the investigation.
- (2) Without limiting subsection (1), a report concerning an accident or dangerous occurrence is to contain information as to the causes of the accident or occurrence and its circumstances.
- (3) An investigator may, at any time before the completion of an investigation, make an interim report to the Director-General.
- (4) The Director-General, if the Director-General thinks fit, may publish the report at the time and in the manner determined by the Director-General.

93E Other persons who may be investigators

- (1) The Director-General may appoint consultants:
 - (a) as investigators for the purposes of carrying out investigations of a kind referred to in section 93A.
or
 - (b) to assist an investigator in carrying out any such investigation.
- (2) A consultant appointed under this section has, while exercising the functions for which the consultant was appointed, the same functions as an investigator and section 62 applies in respect of the consultant in the same way that it applies in respect of an inspector and anything done by an inspector under Division 1 of Part 4.

[36] Section 94

Omit the section. Insert instead:

94 Minister may require special reports

- (1) The Minister may direct an inspector, investigator or mine safety officer, or request any other person, to make a special report with respect to an accident causing death or serious bodily injury, or a dangerous occurrence, at a mine.
- (2) The Minister may at any time direct an inspector, investigator or mine safety officer, or request any other person, to make a special report as to matters relating to the safety, health, conduct or discipline of persons in mines, or any occurrence or practice at a mine, if the Minister thinks it appropriate that a special report should be made.
- (3) The Minister, if the Minister thinks fit, may publish a special report at the time and in the manner determined by the Minister.
- (4) A person requested to make a special report under this section has, for the purpose of exercising his or her functions under this section, the functions of an inspector under sections 59, 60 and 61 and section 62 applies in respect of the person in the same way that it applies in respect of an inspector and anything done by an inspector under Division 1 of Part 4.

[37] Sections 94A–94E

Insert after section 94:

94A Boards of Inquiry

- (1) If it appears to the Minister that an investigation of:
 - (a) any accident or dangerous occurrence causing death or serious bodily injury at a mine and its causes and circumstances, or

- (b) any dangerous occurrence at a mine and its causes and circumstances, or
- (c) any practice at a mine that, in the opinion of the Minister, adversely affects or is likely to adversely affect the safety or health of persons employed at the mine, or
- (d) any matters relating to the safety, health, conduct or discipline of persons in mines,

is necessary, the Minister may constitute a person as a Board of Inquiry to conduct a special inquiry into the accident, occurrence, practice or matter.

- (2) A Board of Inquiry may, at a special inquiry conducted by it, take evidence on oath and, for that purpose, the person constituting the Board:
 - (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.
- (3) In conducting a special inquiry, a Board of Inquiry:
 - (a) is not bound to act in a formal manner, and
 - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.
- (4) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at the special inquiry.
- (5) A Board of Inquiry, when conducting, and making determinations in respect of, a special inquiry is to sit with an assessor or 2 or more assessors appointed by the Minister for the purposes of the inquiry.
- (6) An assessor sitting with a Board of Inquiry has the power to advise the Board of Inquiry but not to adjudicate on any matter before the Board of Inquiry.

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- (7) A Board of Inquiry has the right to consult, either collectively or individually, and either in public or in private, with assessors sitting with it.
 - (8) A Board of Inquiry conducting a special inquiry may be assisted by a legal practitioner appointed by the Minister for the purposes of the inquiry.
 - (9) A Board of Inquiry is to determine its own procedure, except as provided by this Act.

94B Witnesses and evidence at special inquiries

- (1) A Board of Inquiry may summon a person to appear at a special inquiry conducted by the Board to give evidence and to produce such documents (if any) as are specified in the summons.
- (2) A Board of Inquiry may require a person appearing at a special inquiry to produce a document.
- (3) A person served with a summons to appear at a special inquiry and to give evidence must not, without reasonable excuse, fail to attend as required by the summons.
Maximum penalty: 5 penalty units.
- (4) A person appearing at a special inquiry to give evidence must not, without reasonable excuse:
 - (a) when required to be sworn or affirm—fail to comply with the requirement, or
 - (b) fail to produce a document that the person is required to produce under this section.Maximum penalty: 5 penalty units.
- (5) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
- (6) A Board of Inquiry may require a person appearing at a special inquiry to answer questions and sections 60 (2) and 62 apply to such a person in the same way as they apply to a person required by an inspector under section 60 (1) (a) to answer questions.

94C Additional functions of Boards of Inquiry

In addition to its other functions under this Division, a Board of Inquiry has, for the purpose of conducting a special inquiry, the functions of an inspector under sections 59, 60 and 61 and section 62 applies in respect of a Board of Inquiry in the same way that it applies in respect of an inspector and anything done by an inspector under Division 1 of Part 4.

94D Report by Board of Inquiry

- (1) A Board of Inquiry must, within the period required by the Minister, prepare a report as to:
 - (a) the causes of the accident or dangerous occurrence, if the special inquiry concerns an accident or dangerous occurrence, or
 - (b) its findings in relation to the practice or matter, if the inquiry concerns a practice at a mine or a matter relating to the safety, health, conduct or discipline of persons in mines.
- (2) The Minister may, if the Minister thinks fit, publish the report at the time and in the manner determined by the Minister.

94E No appeals against exercise of functions by Boards of Inquiry

No appeal lies from any decision or determination of a Board of Inquiry on a special inquiry.

[38] Section 99 Costs of investigations or special inquiries

Insert "or a special inquiry" after "investigation".

[39] Section 121 Closing of shafts and outlets

Omit section 121 (1). Insert instead:

- (1) The owner of a mine must:
 - (a) cause every shaft or outlet at a mine that is ceasing to be used to be fully sealed or filled in an approved manner, or provided with an approved enclosure, barrier, plug or seal, within 30 days of the mine ceasing to be used, and

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- (b) cause the seal, fill, enclosure, barrier or plug to be properly maintained, and
 - (c) before abandoning the mine, cause every shaft or outlet at the mine to be fully sealed or filled in an approved manner, or provided with an approved enclosure, barrier, plug or seal.

[40] Section 123 Certain unenclosed shafts or outlets to be public nuisances

Omit "which is not provided with an enclosure, barrier, plug or seal".

Insert instead "that is not fully sealed or filled in an approved manner, or provided with an approved enclosure, barrier, plug or seal,".

[41] Section 124 Owners of land on which abandoned mines are situated may be required to close shafts and outlets

Omit section 124 (1). Insert instead:

- (1) The Minister may cause to be served on the owner of land on which is situated any shaft or outlet of an abandoned mine that is not fully sealed or filled in an approved manner, or provided with an approved enclosure, barrier, plug or seal, a direction requiring the owner:
 - (a) to fully seal or fill the shaft or outlet in an approved manner, or
 - (b) to provide the shaft or outlet with an approved enclosure, barrier, plug or seal.

within the period specified in the direction.

[42] Section 151 Assessors

Insert after section 151 (1):

- (1A) A court, when carrying out, and making determinations in respect of, an investigation under section 95 is to sit with one or more assessors appointed in accordance with the rules of court.

[43] Section 151 (2)

Insert “or (IA)” after “subsection (1)” in section 151 (2).

[44] Section 160 Offences against Act

Insert “, investigator, mine safety officer” after “an inspector” in section 160 (h).

[45] Section 167A

Insert after section 167:

167A Delegation of functions by Director-General

- (1) The Director-General may, by instrument in writing, delegate to an authorised person any function conferred or imposed on the Director-General by or under this Act, other than this power of delegation.
- (2) In this section:
authorised person means:
 - (a) an officer of the Department, or
 - (b) any other person prescribed by the regulations.

[46] Section 168A

Insert after section 168:

168A Protection of employees

- (1) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting an inspector, an investigator, a mine safety officer, a Board of Inquiry or a court for the purposes of this Act is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation, 100 penalty units, or
 - (b) in the case of an individual, 40 penalty units.
- (2) In this section, a reference to a person assisting an inspector, an investigator, a mine safety officer, a Board of Inquiry or a court is a reference to a person who:
- (a) has complied with or proposes to comply with a requirement of an inspector, an investigator, a mine safety officer, a Board of Inquiry or a court under this Act, or
 - (b) has appeared, is appearing or is to appear as a witness before a Board of Inquiry or a court, or
 - (c) assisted, is assisting or is to assist an inspector, an investigator, a mine safety officer, a Board of Inquiry or a court in any other manner.
- (3) In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

[47] Section 174 Regulations

Insert “, investigators or mine safety officers” after “inspectors” wherever occurring in section 174 (1) (nnn).

[48] Section 175

Insert after section 174:

175 Savings and transitional provisions

Schedule 3 has effect.

[49] Schedule 3

Insert after Schedule 2:

Schedule 3 Savings and transitional provisions

(Section 175)

Part 1 Regulations

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Mines Legislation Amendment (Mines Safety) Act 1998

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision 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 Amendments consequent on enactment of Mines Legislation Amendment (Mines Safety) Act 1998

2 Definition

In this Part:

amending Act means the *Mines Legislation Amendment (Mines Safety) Act 1998*.

3 Preliminary reports

Sections 91 and 93A–93E, as amended and inserted by the amending Act, do not apply to an accident or dangerous occurrence that occurs before the commencement of the amendment made to section 91 by the amending Act.

4 Boards of Inquiry

Sections 94A–94E, as inserted by the amending Act, do not apply to an accident or dangerous occurrence that occurred before the commencement of section 94A.

5 Abandoned or closed mine shafts

It is sufficient compliance with section 123 if a shaft or outlet of a mine provided with an enclosure, barrier, plug or seal, before the amendment of section 121 by the amending Act, complies with section 121 as in force before that amendment.

Schedule 2 Amendment of Mines Inspection Act 1901

(Section 4)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Board of Inquiry means a Board of Inquiry constituted under section 47L.

[2] Section 4 (1), definition of “investigator”

Insert in alphabetical order:

investigator means a person appointed under Part 2 of the *Public Sector Management Act 1988* and designated by the Director-General as an investigator for the purposes of this Act.

[3] Section 4 (1), definition of “mine safety officer”

Insert in alphabetical order:

mine safety officer means a person appointed as a mine safety officer under Part 2 of the *Public Sector Management Act 1988*.

[4] Section 35

Insert after section 34:

35 Appointment and functions of mine safety officers

A mine safety officer has the functions conferred or imposed on the mine safety officer by or under this Act.

[5] Section 36 Powers of inspector

Insert “or mine safety officer” after “inspector” wherever occurring.

[6] Section 36 (bi)

Omit the paragraph. Insert instead:

- (bi) enter on any private land or workplace in the performance of the inspector's functions,

[7] Section 36

Omit "carrying out the inspector's duties or the exercise of the inspector's powers".

Insert instead "exercising the inspector's or mine safety officer's functions",

[8] Section 36

Insert "or mine safety officer's" after "inspector's".

[9] Sections 36A–36C

Insert after section 36:

36A Supplementary powers of inspectors and mine safety officers

- (1) For the purpose of any inspection, examination or inquiry referred to in section 36, an inspector or mine safety officer has power to do all or any of the following things:
 - (a) subject to subsection (2), to require any person:
 - (i) whom the inspector or mine safety officer finds at a mine or other workplace entered under section 36 and whom the inspector or mine safety officer has reasonable cause to believe to be, or within the preceding 2 months to have been, employed at the mine or workplace, and
 - (ii) who has been informed of the provisions of subsection (2).

to answer forthwith (in the absence of persons, other than a person nominated to be present by the person to be questioned and any persons whom the inspector or mine safety officer may allow to be present) such questions as the inspector or mine safety officer thinks fit to ask,

- (b) to take samples of any articles or substances found at a mine or other workplace entered under section 36 or of the atmosphere in a mine,
- (c) subject to subsections (3) and (4), to take possession of any machinery, apparatus or other article at a mine or other workplace entered under section 36 that appears to the inspector or mine safety officer to have caused, or to be likely to cause, danger to the safety or health of any persons employed at a mine and cause it to be dismantled, removed or subjected to any process or test, even though the process or test may cause it to be damaged or destroyed.
- (d) to require the production of, and to inspect:
 - (i) any registers, books, plans or other documents that by virtue of this Act and the rules are required to be kept, and
 - (ii) any other documents that are in the possession or under the control of the owner or manager of a mine or other workplace entered under section 36 and are relevant for the purposes of the examination or inquiry.
- (e) to require the manager of a mine to mark or cause to be marked on any plan of workings in the mine produced in compliance with a requirement imposed under paragraph (d) such information as the inspector or mine safety officer considers relevant to an examination or inquiry.

- (f) to require any person having responsibilities under this Act in relation to a mine or other workplace entered under section 36 to give the inspector or mine safety officer such facilities and assistance, with respect to any matters or things to which the responsibilities of that person extend, as are necessary for the purpose of enabling the inspector or mine safety officer to exercise any of the powers conferred on the inspector or mine safety officer by section 36 and this section.
- (2) An answer given by a person in pursuance of a requirement imposed under subsection (1) (a) is not admissible in evidence against the person in any proceedings except proceedings for an offence under section 36C (e).
- (3) If it appears likely to the manager of a mine that a process or test referred to in subsection (1) (c) will result in machinery, apparatus or an article being damaged or destroyed, the manager may request the inspector or mine safety officer concerned not to subject the machinery, apparatus or article to the process or test.
- (4) If the manager of a mine makes a request to an inspector or mine safety officer under subsection (3) in respect of machinery, apparatus or an article, the inspector or mine safety officer must not subject the machinery, apparatus or article to the process or test unless the approval of the Chief Inspector, either orally or in writing, is obtained.
- (5) An inspector or mine safety officer may require a person to answer a question under subsection (1) (a) either orally or in writing and may allow a person further time (not exceeding 24 hours) to answer a question.

36B Inspector or mine safety officer to inform mine management of certain matters

If, as a result of the exercise at or in connection with a mine or other workplace of any of the powers conferred on an inspector or mine safety officer under section 36 or 36A, the inspector or mine safety officer obtains any information or becomes aware of any practice at a mine

that may, in the inspector's or mine safety officer's opinion, be relevant to the continued safe operation of a mine or the safety of the persons employed at a mine, the inspector or mine safety officer must, as soon as possible, so advise the manager of the mine or, if the manager is not present at the mine, the next most senior person at the mine.

36C Offences

A person must not:

- (a) wilfully fail to comply with any requirement imposed by an inspector or mine safety officer under this Division, or
- (b) wilfully prevent, or attempt to prevent, any other person from appearing before an inspector or mine safety officer or from answering any question to which an inspector or mine safety officer may, by virtue of section 36 or 36A, require an answer or
- (c) without permission granted by an inspector or mine safety officer, wilfully remove from a mine or other workplace, or conceal or tamper with, any machinery, apparatus or other article of which possession has been taken by an inspector or mine safety officer under section 36A, or
- (d) wilfully fail to comply with a requirement made under section 36A (1) (a), or
- (e) in giving any answer required of the person by an inspector or mine safety officer under section 36A (1) (a), make a statement that the person knows to be false in a material particular or make a statement that is false in a material particular, or
- (f) wilfully obstruct an inspector or mine safety officer in the exercise of the inspector's or mine safety officer's functions.

Maximum penalty:

- (a) in the case of a corporation, 100 penalty units, or
- (b) in the case of an individual, 40 penalty units.

[10] Section 37 Notice to be given of cause of danger

Insert after section 37 (2):

- (3) An investigator who is also an inspector may not serve a notice under this section.

[11] Section 37A Order to withdraw persons from mine

Insert after section 37A (4):

- (5) An investigator who is also an inspector may not serve an order under this section.

[12] Section 47 Notification of serious accidents or dangerous incidents

Insert after section 47 (3):

- (4) On receipt of written notice under subsection (2), the inspector must give a copy of the notice to the Director-General.

[13] Section 47A Serious accident or dangerous incident site not to be disturbed

Insert "or other person authorised under section 47B" after "inspector" in section 47A (1) (b).

[14] Section 47B Inspection of serious accident or dangerous incident

Omit "if an inspector is available" from section 47B (2).

[15] Section 47B (4)–(8)

Insert after section 47B (3):

- (4) The inspector must make a preliminary report with respect to the serious accident or dangerous incident in writing to an officer of the Department, nominated by the Director-General for the purposes of this section, as soon as practicable after first visiting the mine at which the accident or incident occurred.

- (5) The nominated officer must, if the report relates to a serious accident or dangerous incident of a kind prescribed by the rules, give the Director-General a copy of the report as soon as practicable after receiving the report.
- (6) The nominated officer must, if requested to do so by the Director-General, give to the Director-General a copy of any report relating to a serious accident or dangerous incident that is not of a kind referred to in subsection (5).
- (7) The Director-General may authorise an inspector other than the inspector to whom notice of the serious accident or dangerous incident was given under section 47, or a mine safety officer, to carry out the functions under this section of the inspector to whom notice was given.
- (8) Nothing in subsections (4)–(7) or sections 47F–47J affects the carrying out by a representative or check inspector of his or her functions under this section.

[16] Section 47D Notification of death resulting from serious accident or disease

Insert at the end of section 47D:

- (2) On receipt of the written notice, the inspector must give a copy of the notice to the Director-General.

[17] Sections 47F–47P

Omit section 48. Insert instead:

47F Determinations as to investigations

- (1) On receipt of a copy of a report under section 47B (S) or (6) as to a serious accident or dangerous incident, the Director-General must determine whether the accident or incident is:
 - (a) to continue to be investigated by the person who made the preliminary report under section 47B, or
 - (b) to be investigated by an investigator, or
 - (c) to be the subject of no further investigation.

- (2) In making a determination, the Director-General is to have regard to:
 - (a) whether the serious accident or dangerous incident raises substantial matters of occupational health and safety, and
 - (b) whether investigation of the accident or incident may involve examination of rules or any scheme relating to the safety, health, conduct or discipline of persons in mines, and
 - (c) any other matter the Director-General thinks relevant.
- (3) If a serious accident or dangerous incident results in the death of a person, the Director-General must determine that it is to be investigated by an investigator.
- (4) A determination is to be notified in writing to the Chief Inspector and to the Manager, Investigations Unit, in the Department.
- (5) The Chief Inspector must notify the person who made the preliminary report under section 47B of the determination.

47G Investigations by inspectors

- (1) On notification of a determination under section 47F that an accident or incident is to continue to be investigated by the person who made the preliminary report under section 47B, the person must, after completing the examination and inspections, and any investigations, relating to the accident or incident, report to the Chief Inspector in relation to the accident or incident.
- (2) Without limiting subsection (1), a report is to contain information as to the causes of the accident or incident and its circumstances.

47H Functions of investigators

- (1) An investigator has the following functions:
 - (a) to investigate serious accidents or dangerous incidents that the Director-General determines under section 47F are to be investigated by an investigator.

- (b) to report on matters relating to the safety, health, conduct or discipline of persons in mines, or any occurrence or practice at a mine, as directed by the Director-General,
 - (c) any other function conferred or imposed on an investigator by or under this Act.
- (2) For the purpose of carrying out his or her functions under this Act, an investigator has the functions of an inspector under sections 36, 36A and 36B and section 36C applies in respect of an investigator in the same way that it applies in respect of an inspector and anything done by an inspector under Division 1 of Part 4.
- (3) If an investigation is being carried out by an investigator under this Act, an inspector or mine safety officer is not to proceed with any inspection or examination of the serious accident or dangerous incident being investigated by the investigator, unless requested to do so by the investigator for the purpose of assisting the investigator.
- (4) Nothing in this section prevents an inspector from serving a notice under section 37 or an order under section 37A in relation to a mine the subject of an investigation by an investigator.

471 Reports by investigators

- (1) An investigator must, after completing an investigation under this Act, report to the Director-General in relation to the subject-matter of the investigation.
- (2) Without limiting subsection (1), a report concerning a serious accident or dangerous incident is to contain information as to the causes of the accident or incident and its circumstances.
- (3) An investigator may, at any time before the completion of an investigation, make an interim report to the Director-General.
- (4) The Director-General may, if the Director-General thinks fit, publish the report at the time and in the manner determined by the Director-General.

47J Other persons who may be investigators

- (1) The Director-General may appoint:
 - (a) consultants as investigators for the purposes of carrying out an investigation of a kind referred to in section 47H (1) (a), or
 - (b) to assist an investigator in carrying out any such investigation.
- (2) A consultant appointed under this section has, while exercising the functions for which the consultant was appointed, the same functions as an investigator and section 36C applies in respect of the consultant in the same way that it applies in respect of an inspector.

47K Special reports

- (1) The Minister may direct an inspector, investigator or mine safety officer, or request any other person, to make a special report with respect to any serious accident or dangerous incident at a mine.
- (2) The Minister may at any time direct an inspector, investigator or mine safety officer, or request any other person, to make a special report as to matters relating to the safety, health, conduct or discipline of persons in mines, or any occurrence or practice at a mine, if the Minister thinks it appropriate that a special report should be made.
- (3) The Minister, if the Minister thinks fit, may publish a special report at the time and in the manner determined by the Minister.
- (4) A person requested to make a special report under this section has, for the purpose of exercising his or her functions under this section, the functions of an inspector under sections 36, 36A and 36B and section 36C applies in respect of the person in the same way that it applies in respect of an inspector and anything done by an inspector under Division 1 of Part 4.

47L Boards of Inquiry

- (1) If it appears to the Minister that an investigation of:
 - (a) any serious accident or dangerous incident at a mine and its causes and circumstances, or

- (b) any practice at a mine that, in the opinion of the Minister, adversely affects or is likely to adversely affect the safety or health of persons employed at the mine, or
- (c) any matters relating to the safety, health, conduct or discipline of persons in mines,

is necessary, the Minister may constitute a person as a Board of Inquiry to conduct a special inquiry into the accident, incident, practice or matter.

- (2) A Board of Inquiry may, at a special inquiry conducted by it, take evidence on oath and, for that purpose the person constituting the Board:
 - (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.
- (3) In conducting a special inquiry, a Board of Inquiry:
 - (a) is not bound to act in a formal manner, and
 - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.
- (4) If a Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at a special inquiry.
- (5) A Board of Inquiry, when conducting, and making determinations in respect of, a special inquiry is to sit with an assessor or 2 or more assessors appointed by the Minister for the purposes of the inquiry.
- (6) An assessor sitting with a Board of Inquiry has the power to advise the Board of Inquiry but not to adjudicate on any matter before the Board of Inquiry.

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- (7) A Board of Inquiry has the right to consult, either collectively or individually, and either in public or in private, with assessors sitting with it.
 - (8) A Board of Inquiry conducting a special inquiry may be assisted by a legal practitioner appointed by the Minister for that purpose.
 - (9) A Board of Inquiry is to determine its own procedure, except as provided by this Act.

47M Witnesses and evidence at special inquiries

- (1) A Board of Inquiry may summon a person to appear at a special inquiry conducted by the Board to give evidence and to produce such documents (if any) as are specified in the summons.
- (2) A Board of Inquiry may require a person appearing at a special inquiry to produce a document.
- (3) A person served with a summons to appear at a special inquiry and to give evidence must not, without reasonable excuse, fail to attend as required by the summons.

Maximum penalty: 5 penalty units.

- (4) A person appearing at a special inquiry to give evidence must not, without reasonable excuse:
 - (a) when required to be sworn or affirm—fail to comply with the requirement, or
 - (b) fail to produce a document that the person is required to produce under this section.

Maximum penalty: 5 penalty units.

- (5) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at a rate approved by the Minister for the purposes of this section.
- (6) A Board of Inquiry may require a person appearing at a special inquiry to answer questions and sections 36A (2) and 36C apply to such a person in the same way as they apply to a person required by an inspector under section 36A (1) (a) to answer questions.

47N Additional functions of Boards of Inquiry

In addition to its other functions under this Division, a Board of Inquiry has, for the purpose of conducting a special inquiry, the functions of an inspector under sections 36, 36A and 36B and section 36C applies in respect of a Board of Inquiry in the same way that it applies in respect of an inspector and anything done by an inspector under Division 1 of Part 4.

47O Report by Board of Inquiry

- (1) A Board of Inquiry must, within the period required by the Minister, prepare a report as to:
 - (a) the causes of the serious accident or dangerous incident, if the inquiry concerns an accident or incident, or
 - (b) its findings in relation to the practice or matter, if the inquiry concerns a practice at a mine or a matter relating to the safety, health, conduct or discipline of persons in mines.
- (2) The Minister may, if the Minister thinks fit, publish the report at the time and in the manner determined by the Minister.

47P No appeals against exercise of functions by Boards of Inquiry

No appeal lies from any decision or determination of a Board of Inquiry on a special inquiry.

[18] Section 76A

Insert after section 76:

76A Delegation of functions by Director-General

- (1) The Director-General may, by instrument in writing, delegate to an authorised person any function conferred or imposed on the Director-General by or under this Act, other than this power of delegation.

(2) In this section:

authorised person means:

- (a) an officer of the Department, or
- (b) any other person prescribed by the regulations.

[19] Section 79

Insert after section 78:

79 Regulations

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.

[20] Schedule 3 Savings and transitional provisions

Insert at the end of clause 1 (1):

Mines Legislation Amendment (Mines Safety) Act 1998

[21] Schedule 3, Part 4

Insert at the end of Part 3:

**Part 4 Provisions consequent on enactment of
Mines Legislation Amendment (Mines
Safety) Act 1998**

9 Definition

In this Part:

amending Act means the *Mines Legislation Amendment (Mines Safety) Act 1998*.

10 Preliminary reports

Sections 47B and 47F–47K, as amended by the amending Act, do not apply to an accident or serious incident that occurs before the commencement of the amendment to section 47B.

11 Boards of Inquiry

Sections 47L–47P, as inserted by the amending Act, do not apply to an accident or serious incident that occurred before the commencement of section 47L.

Schedule 3 Amendment of Defamation Act 1974

(Section 5)

[1] Section 17G

Omit the section. Insert instead:

17G Reports under the Coal Mines Regulation Act 1982

There is a defence of absolute privilege:

- (a) for the publication of a report by an inspector, a mine safety officer, an investigator or a Board of Inquiry, under the *Coal Mines Regulation Act 1982*, to or by the Minister administering that Act or the Director-General of the Department of Mineral Resources, or
- (b) for a publication by a Board of Inquiry in the course of a special inquiry under the *Coal Mines Regulation Act 1982*.

[2] Section 17U

Omit the section. Insert instead:

17U Reports under the Mines Inspection Act 1901

There is a defence of absolute privilege:

- (a) for the publication of a report by an inspector, a mine safety officer, an investigator or a Board of Inquiry, under the *Mines Inspection Act 1901*, to or by the Minister administering that Act or the Director-General of the Department of Mineral Resources, or
- (b) for a publication by a Board of Inquiry in the course of a special inquiry under the *Mines Inspection Act 1901*.

[3] Schedule 2 Proceedings of public concern and official and public documents and records

Insert after clause 2 (19):

(19A) proceedings at a special inquiry conducted by a Board of Inquiry under the *Coal Mines Regulation Act 1982*,

(19B) proceedings at a special inquiry conducted by a Board of Inquiry under the *Mines Inspection Act 1901*,

[Minister's second reading speech made in—
Legislative Assembly on 14 October 1998
Legislative Council on 27 October 1998]