



New South Wales

Mine Safety (Cost Recovery) Act 2005 No 116

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New South Wales

Mine Safety (Cost Recovery) Act 2005 No 116

Act No 116, 2005

An Act to make provision with respect to the funding of regulatory activities in relation to mine safety. [Assented to 7 December 2005]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Mine Safety (Cost Recovery) Act 2005*.

2 Commencement

This Act commences on the date of assent.

3 Definitions

(1) In this Act:

Department means the Department of Primary Industries.

Director-General means the Director-General of the Department.

exercise a function includes perform a duty.

financial year means a year commencing on 1 July.

function includes a power, authority or duty.

Fund means the Mine Safety Fund established under this Act.

insurance premiums order has the same meaning as in the Workers Compensation Acts.

insurer means:

- (a) a licensed mining industry insurer, or
- (b) a mining industry self-insurer, or
- (c) a specialised mining industry insurer.

licensed mining industry insurer means a licensed insurer (within the meaning of the Workers Compensation Acts) who issues workers compensation policies of insurance to mining industry employers, but does not include a specialised insurer within the meaning of the Workers Compensation Acts.

mine safety legislation means any of the following Acts and the regulations and other instruments made under them:

- (a) this Act,
- (b) *Occupational Health and Safety Act 2000* to the extent that it relates to mines,
- (c) *Coal Mine Health and Safety Act 2002*,
- (d) *Mine Health and Safety Act 2004*,
- (e) *Coal Mines Regulation Act 1982*,
- (f) *Mines Inspection Act 1901*,

(g) *Petroleum (Onshore) Act 1991*.

mining industry employer—see section 4.

mining industry self-insurer means a mining industry employer who is a self-insurer within the meaning of the Workers Compensation Acts.

specialised mining industry insurer means a specialised insurer (within the meaning of the Workers Compensation Acts) who issues workers compensation policies of insurance to mining industry employers, and includes the workers compensation company within the meaning of the *Coal Industry Act 2001*.

Note. The workers compensation company referred to in this definition is taken to be a specialised insurer for the purposes of the Workers Compensation Acts.

Workers Compensation Acts means the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

- (2) A reference to a **mine** in paragraph (b) of the definition of **mine safety legislation** in subsection (1) is a reference to any of the following:
- (a) any place of work to which the *Coal Mine Health and Safety Act 2002* applies,
 - (b) any place of work that is a mine within the meaning of the *Mine Health and Safety Act 2004* or at which activities are carried out under the *Petroleum (Onshore) Act 1991*,
 - (c) a mine within the meaning of the *Coal Mines Regulation Act 1982* or the *Mines Inspection Act 1901*,
 - (d) a coal preparation plant that is declared under Part 5A of the *Coal Mines Regulation Act 1982*.
- (3) Notes included in the text of this Act do not form part of this Act.

4 Meaning of “mining industry employer”

- (1) In this Act:
- mining industry employer** means a person:
- (a) who employs workers who work in the mining industry (or whose work includes work in the mining industry), and
 - (b) who has obligations and responsibilities under the mine safety legislation in relation to the health and safety of those workers, and includes:
 - (c) a principal who (as provided by section 20 of the *Workers Compensation Act 1987*) is liable to pay compensation under that Act to a worker of a contractor who is a person referred to in paragraphs (a) and (b), or

- (d) a principal contractor who (as provided by section 175B of the *Workers Compensation Act 1987*) is liable for the payment of any workers compensation insurance premiums payable by a person referred to in paragraphs (a) and (b).
- (2) For the purposes of this Act, a person is a ***mining industry employer*** only to the extent that the person employs workers in the mining industry.
- (3) In this section, ***worker*** has the same meaning as in the Workers Compensation Acts, and includes a person who is, by operation of the Workers Compensation Acts, deemed to be a worker for the purposes of those Acts.

Part 2 Funding of mine safety regulatory activities

Division 1 Establishment of Mine Safety Fund

5 Establishment of Fund

- (1) There is to be established in the Special Deposits Account a fund called the Mine Safety Fund.
- (2) The Fund is to be administered by the Director-General.

6 Payments into Fund

The following is to be paid into the Fund:

- (a) contributions paid by insurers under and in accordance with this Act,
- (b) any money appropriated by Parliament for the purposes of the Fund,
- (c) the proceeds of the investment of money in the Fund,
- (d) any other money required to be paid into the Fund by or under this or any other Act or the regulations under this Act.

7 Payments out of Fund

- (1) The following is to be paid from the Fund:
 - (a) all payments required to meet expenditure incurred by the Department in carrying out regulatory activities under or in connection with the mine safety legislation,
 - (b) all other amounts required to meet expenditure incurred by the Department in the administration or execution of the mine safety legislation,
 - (c) any money required to reimburse the WorkCover Authority for expenses incurred by it in connection with its functions under this Act,
 - (d) any money required to meet administrative expenses in relation to the Fund,
 - (e) all other money directed or authorised to be paid from the Fund by this Act or by the regulations under this Act.
- (2) The assets of the Fund cannot be applied for the purpose of enabling any payment as a dividend to the credit of the Consolidated Fund nor can they be applied for any purpose by any other Act.

8 Investment of money in Fund

The Director-General may, on behalf of the Department, invest money in the Fund:

- (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 on the Department to invest the money, in any other manner approved by the Treasurer.

Division 2 Contributions to Mine Safety Fund

9 Estimate by Director-General of amount to be contributed to Fund

- (1) The Director-General is to make an estimate before the beginning of each relevant period of the amount required to be contributed to the Fund to meet the payments required to be made from the Fund during that period.
- (2) A *relevant period* is any financial year or, in the case of the financial year commencing 1 July 2005, such other period (if any) as the Director-General determines for the purposes of this section.
- (3) The Director-General's estimate for a relevant period has no effect unless it is approved by the Minister.

10 Contributions to Fund by insurers

- (1) The amount estimated by the Director-General under section 9 for a relevant period is to be paid to the Director-General by way of contributions by insurers in accordance with this section.
- (2) The Director-General may, in respect of an estimate for a relevant period, determine:
 - (a) the insurers or classes of insurers by whom contributions under this section are to be paid, and
 - (b) the amount of the contributions to be paid by such insurers or classes of insurers (including different amounts of contributions in respect of different insurers or classes of insurers), and
 - (c) the times at which the contributions are to be paid and the manner in which they are to be paid (including by way of instalments).
- (3) The amount payable may be expressed as a fixed amount or in such other manner as may be determined by the Director-General.
- (4) The Director-General is to notify each insurer of the amount of contributions payable by the insurer for a relevant period and the times and manner in which they are to be paid.

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- (5) In the case of a licensed mining industry insurer, the insurer may, subject to and in accordance with any relevant insurance premiums order, adjust the premium payable in respect of a policy of insurance issued to a mining industry employer so as to include an amount equivalent to such part of the contributions payable by the insurer under this section as relates to that employer and that policy. Accordingly, an insurance premiums order may make provision for the adjustment of any such premium and it does not matter if the order relating to the policy concerned relates to the period commencing 4 pm on the day immediately preceding the financial year to which the estimate relates.
- (6) In the case of a specialised mining industry insurer, the insurer may adjust the premium payable in respect of a policy of insurance issued to a mining industry employer so as to include an amount equivalent to such part of the contributions payable by the insurer under this section as relates to that employer and that policy.
- (7) Except as may be provided by the regulations, an adjustment of premium may, despite any other Act, be made for the purposes of subsection (5) or (6) in respect of a policy of insurance in force as at the date on which the Director-General's determination (if any) under this section is made in relation to the financial year commencing 1 July 2005.
- (8) If a contribution payable by an insurer has not been paid within the time required under this section:
- (a) the insurer is guilty of an offence and liable to a penalty not exceeding 100 penalty units, and
 - (b) the amount of the required contribution together with a late payment fee calculated at the rate of 15% of that amount per annum compounded quarterly (or, where another rate is prescribed by the regulations, that other rate) may be recovered by the Director-General from the insurer as a debt due to the State for payment into the Fund.
- (9) A certificate purporting to be signed by the Director-General as to the amount of a contribution payable under this section by an insurer specified in the certificate and the due date for payment is admissible in proceedings under this section and is evidence of the matters specified in the certificate.
- (10) The obligation of an insurer to make a contribution under this section in respect of any period during which the person was an insurer does not cease merely because the person subsequently ceases to be an insurer.

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Part 2 Funding of mine safety regulatory activities

- (11) A determination by the Director-General under subsection (2) (c) may only be made with the concurrence of the WorkCover Authority unless the determination relates solely to the workers compensation company within the meaning of the *Coal Industry Act 2001*.

Part 3 Miscellaneous

11 Act to bind Crown

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

12 Arrangements for exchanging information and for other matters

- (1) The Director-General may enter into arrangements with the WorkCover Authority for any of the following purposes:
 - (a) the exchanging of information for or in connection with the making of a determination under section 10,
 - (b) the payment of contributions under section 10 by insurers of a specified class to the WorkCover Authority for subsequent payment into the Fund,
 - (c) authorising the WorkCover Authority to make a determination as referred to in section 10 (2) (c) in relation to a specified class of insurers,
 - (d) authorising the WorkCover Authority to notify a specified class of insurers of any matters required to be notified under section 10,
 - (e) authorising the WorkCover Authority to bring any debt recovery proceedings arising under section 10 in relation to a specified class of insurers,
 - (f) for the payment of money out of the Fund to reimburse insurers of a specified class for expenses incurred by them in connection with this Act, but only if those expenses have been approved by the WorkCover Authority after consulting with the Director-General.
- (2) Information may be exchanged between the Director-General and the WorkCover Authority under any such arrangement despite the provisions of any other Act.
- (3) The Director-General may enter into arrangements with any insurer for the provision by the insurer of any information that may be used by the Director-General for the purposes of making a determination under section 10.

13 Requirement to provide information

- (1) An authorised officer may, by notice in writing, require a specialised mining industry insurer or mining industry self-insurer to provide the authorised officer with such documents and information, and within

such time, as may be specified in the notice for the purposes of enabling the Director-General to make a determination under section 10.

- (2) The regulations may make provision for or with respect to:
 - (a) the provision by specialised mining industry insurers and mining industry self-insurers of documents and information of the kind referred to in subsection (1), and
 - (b) the keeping of records by specialised mining industry insurers and mining industry self-insurers for the purposes of this Act.
- (3) An authorised officer may:
 - (a) carry out an audit or inspection of the documents and records required to be provided or kept by or under this section, and
 - (b) make copies of any such documents or records.
- (4) An authorised officer has, for the purposes of exercising any function under subsection (3), the same functions as an authorised officer of the WorkCover Authority under section 238 of the *Workplace Injury Management and Workers Compensation Act 1998*.
- (5) A reference in subsection (1) or (2) to a specialised mining industry insurer or mining industry self-insurer includes a reference to any person who, in the opinion of the Director-General, is or may be such an insurer.
- (6) A person who contravenes any requirement imposed on the person under this section or under the regulations referred to in this section is guilty of an offence.
Maximum penalty: 100 penalty units.
- (7) In this section:
authorised officer means any person appointed by the Director-General as an authorised officer for the purposes of this section, and includes the Director-General.

14 Delegation

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

15 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:

- (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person, or
 - (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (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 a person in any other manner.

16 Nature of proceedings for offences

Proceedings for an offence under this Act may be dealt with summarily before a Local Court.

17 Regulations

- (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) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (3) Any such savings or transitional provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date. 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

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Part 3 Miscellaneous

- (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.

18 Amendment of Coal Industry Act 2001 No 107

Section 23 (Approved companies not subject to certain State taxes) of the *Coal Industry Act 2001* is amended by inserting in subsection (1) after the words “the State” the words “(other than under the *Mine Safety (Cost Recovery) Act 2005*)”.

19 Review of Act

- (1) The Minister is to review this Act to determine 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 on 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.

[Second reading speech made in—

Legislative Assembly on 17 November 2005

Legislative Council on 29 November 2005]

BY AUTHORITY