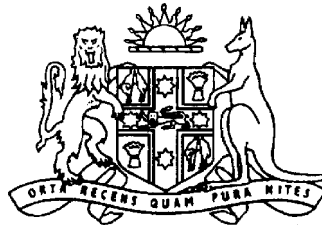


[Act 2002 No 129]



New South Wales

Coal Mine Health and Safety Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

This Bill is about the health, safety and welfare of people who work at coal operations, that is, people who work at colliery holdings (including coal mines, oil shale mines and kerosene shale mines), at coal exploration sites and in the exploration for or recovery of offshore coal. The *Occupational Health and Safety Act 2000* is the main Act that deals with the health, safety and welfare of people at work. It covers people at work at coal operations. This Bill puts in place special additional obligations, protections and procedures necessary for the control of particular risks arising from coal operations. The obligations, protections and procedures in the *Occupational Health and Safety Act 2000* will continue to apply to coal operations.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines terms used in the proposed Act.

Clause 4 clarifies that certain buildings, structures, pits, shafts, drives, levels, drifts, excavations and works are part of a coal operation for the purposes of the proposed Act.

Clause 5 clarifies that an employee is at work for the purposes of the proposed Act when he or she is at the coal operation.

Clause 6 makes it clear that risks arising out of the activities of people at work include risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking or the condition of premises used for the purposes of an undertaking.

Clause 7 provides that notes do not form part of the proposed Act.

Part 2 Application of Act

Clause 8 provides that the proposed Act applies to all places of work that are a place within a colliery holding, an exploration site or a place involved in exploration for or the recovery of coal offshore.

Clause 9 provides that the proposed Act binds the Crown.

Part 3 Objects of Act

Clause 10 sets out the objects of the proposed Act, which are to assist in securing the objects of the *Occupational Health and Safety Act 2000* in relation to coal operations, to put in place special provisions necessary for the control of particular risks arising from the mining of or exploration for coal and to ensure that effective emergency provisions are developed and maintained at coal operations and related places.

Part 4 Application of Occupational Health and Safety Act 2000

Clause 11 provides for the proposed Act and the regulations made under it to be read and interpreted as if they formed part of the *Occupational Health and Safety Act 2000* (the *OH&S Act*).

Clause 12 makes it clear that the proposed Act adds to the protection provided by the OH&S Act. The clause provides that if a provision of the OH&S Act or the regulations made under it applies to a coal operation, that provision continues to apply, and must be observed, in addition to the proposed Act or the regulations made under it.

Clause 13 provides that the OH&S Act and the regulations made under it always prevails if there is an inconsistency between the OH&S Act or the regulations made under it and the proposed Act or the regulations made under it.

Clause 14 makes it clear that compliance with the proposed Act or the regulations made under it is not in itself a defence in any proceedings for an offence against the OH&S Act or the regulations made under it.

Clause 15 provides that evidence of a relevant contravention of the proposed Act or the regulations is admissible in any proceedings for an offence against the OH&S Act or the regulations made under it.

Clause 16 prevents a person being punished twice in respect of an act or omission that constitutes an offence under the proposed Act or the regulations and under the OH&S Act or the regulations made under it.

Part 5 Duties relating to health, safety and welfare at coal operations

Division 1 Duties of colliery holders

Clause 17 imposes a duty on a colliery holder to nominate a person who is the employer with the day to day control of each coal operation within the colliery holding as the operator of the coal operation. A colliery holder must not undertake any mining, or allow any other person to undertake any mining, at the coal operation unless the nomination has been made. The nomination is to be made to the Chief Inspector, who may reject it. Many of the significant obligations imposed under the proposed Act are imposed on the operator of a coal operation. A colliery holder must not carry on any operations in relation to a coal operation unless an operator has been nominated.

Clause 18 requires a colliery holder to provide a nominated operator with all information available to the colliery holder that may reasonably be relevant to

the development and implementation of a health and safety management system for the coal operation, including any major hazard management plans that form part of that system.

Clause 19 sets out the maximum penalty for offences against the proposed Division.

Division 2 Duties of operators of coal operations

Subdivision 1 Health and safety management systems

Clause 20 imposes a duty on the operator of a coal operation to prepare a health and safety management system in accordance with the regulations stating how the health and safety of the people who work at the coal operation, or who are directly affected by the coal operation, will be protected.

Clause 21 requires the operator of a coal operation to ensure that mining is not carried out at the coal operation unless a health and safety management system that complies with the proposed Act, and that has been registered, is in effect for the coal operation. Because of the definition of *mine* (as a verb) this requirement applies to coal mines and preparation plants but not exploration sites.

Clause 22 imposes a duty on the operator of a coal operation to ensure that mining at the coal operation is carried out in compliance with the health and safety management system. This includes activities undertaken by contractors.

Clause 23 provides that a health and safety management system must include system elements, any major hazard management plan required by the proposed Act, the management structure of the coal operation and any contractor management plan required by the proposed Act and any other matters that may be prescribed by the regulations.

Clause 24 requires the people who work at a coal operation to be consulted in the preparation of the health and safety management system.

Clause 25 requires the operator to supply information relating to the health and safety management system to the Chief Inspector and the relevant industry check inspector.

Clause 26 sets out a procedure for the Chief Inspector to object to a health and safety management system if he or she forms the view that the system does not comply with the requirements of the proposed Act or the regulations, that there was insufficient or inadequate consultation in its preparation or that it is insufficient to protect the health and safety of those who work at or are affected by the coal operation. If the Chief Inspector has not notified the operator of an objection within a prescribed period, the health and safety management system may be implemented.

Clause 27 provides for an industry check inspector to raise objections with the Chief Inspector regarding the content of a health and safety management system.

Clause 28 requires the operator to review the health and safety management system at least once every three years, as well as within 12 months after the commencement of operations at the coal operation, if there is a fatality at or arising directly from the coal operation, if there is a dangerous incident at the coal operation that could reasonably have been expected to result in a fatality, if there is a significant change in mining operations or if it is required by the Chief Inspector or the regulations.

Clause 29 sets out the procedure for amending health and safety management systems.

Clause 30 requires a copy of the health and safety management system for a coal operation to be kept at the office of the coal operation and be made available for inspection by a government official, a check inspector or a worker.

Clause 31 requires a person who ceases to be the operator of a coal operation to return to the colliery holder any information provided to the person or obtained by the person in the course of exercising prescribed functions.

Subdivision 2 Major hazard management plans

Clause 32 provides for the regulations to prescribe a hazard to people as a major hazard to which the proposed Subdivision applies.

Clause 33 provides for the Minister to declare that the operator of a coal operation must undertake specified processes to identify any major hazard that affects their coal operation. A major hazard so identified is a major hazard to which the proposed Subdivision applies.

Clause 34 provides for the Minister to declare by notice in the Gazette that a coal operation, or a class of coal operations, is subject to a risk from mining from a major hazard to which the proposed Subdivision applies.

Clause 35 imposes a duty on an operator of a coal operation at which a risk from mining arises from a major hazard to establish and maintain a major hazard management plan as part of the health and safety management system for the coal operation. In addition, an operator must establish a major hazard management plan for each major hazard identified by the operator in the operator's assessment of risks arising from the coal operation. A separate major hazard management plan must be prepared for each major hazard.

Clause 36 provides that a major hazard management plan must state how the health and safety of the people at work at the coal operation will be protected from the major hazard.

Subdivision 3 Management structure

Clause 37 requires the operator of a coal operation to prepare a management structure of the coal operation, which nominates people within it by position and outlines their areas of responsibility and accountability.

Clause 38 requires the operator of a coal operation to keep a register of the names of people occupying positions in the management structure for the coal operation.

Subdivision 4 Duties regarding contractors

Clause 39 requires the operator of a coal operation at which contractors are proposed to be used to prepare a contractor management plan, stating how the risks arising from the use of contractors at the coal operation will be managed. The contractor management plan is part of the health and safety management system.

Clause 40 provides that the regulations may prescribe the required contents of a contractor management plan.

Clause 41 requires the operator to consult with any contractor proposing to work at the coal operation for the purpose of ensuring that the contractor is familiar with the relevant parts of any health and safety management system, any major hazard management plan and the contractor management plan and that the contractor's arrangements for health and safety management are consistent with any health and safety management system for the coal operation.

Clause 42 requires the operator of a coal operation to ensure that each contractor provides the operator with a written safe work method statement for the work to be carried out by the contractor and imposes other duties on the operator regarding contractors.

Clause 43 requires the operator of a coal operation to give each contractor who is to work at the coal operation a copy of the health and safety management system for the coal operation.

Subdivision 5 Emergency management systems

Clause 44 defines an *emergency* as existing at a coal operation when the situation is beyond the scope or control of the health and safety management system for the coal operation and there is a threat to the life or physical well-being of people at or outside the coal operation.

Clause 45 imposes a duty on the operator of a coal operation to ensure that an emergency management system is prepared for the coal operation.

Clause 46 requires the operator of a coal operation to ensure that mining is not carried out at the coal operation unless an emergency management system is implemented for the coal operation.

Clause 47 describes the contents of an emergency system, which must include an up-to-date plan of the coal operation.

Clause 48 requires the people who work at a coal operation to be consulted during the preparation of the emergency management system.

Clause 49 requires the operator to ensure that a summary of the emergency management system, and any amendment of it, is supplied to the Chief Inspector.

Clause 50 requires the operator to ensure that a copy of the emergency management system, and any amendment of it, is made available for inspection by an inspector, a site check inspector, an industry check inspector and any person working at the coal operation and to the Chief Inspector on request.

Clause 51 requires the operator to ensure that people required to perform duties as part of the emergency management system are competent to carry out those duties and are given appropriate training.

Clause 52 provides for the review of an emergency management system whenever the health and safety management system for the coal operation is reviewed.

Subdivision 6 High risk activities

Clause 53 provides for the regulations to prescribe an activity as a high risk activity to which the proposed Subdivision applies.

Clause 54 imposes a duty on the operator of a coal operation to ensure that a high risk activity is not carried out at or in relation to the coal operation unless notice has been given of the activity to the Chief Inspector, an industry check inspector and the site check inspector for the coal operation and the prescribed waiting period has elapsed.

Subdivision 7 Keeping of records and reporting

Clause 55 requires the operator of a coal operation to keep the records concerning health and safety that are required by the regulations.

Clause 56 requires the operator to make reports concerning health and safety as required by the regulations.

Subdivision 8 Penalties

Clause 57 sets out the maximum penalty for offences against the proposed Division.

Subdivision 9 Saving of certain notices and directions

Clause 58 provides that if a notice or direction is given under the proposed Act to a person as the operator of a coal operation and that person is replaced as operator by another person, any notice or direction is taken to have been given to the new operator.

Division 3 Duties and rights of employees

Clause 59 requires an employee who works at a coal operation to comply with the operator's health and safety management system. An employee is required to inform the operator of any circumstances that the employee considers may lead to a loss of control of a major hazard and is required to immediately report to a supervisor any situation that he or she believes could present a risk to health and safety that is not within the employee's competence to control.

Clause 60 provides that every employee has a right to remove himself or herself from any location at the coal operation when circumstances arise that appear to the employee, with reasonable justification, to pose a serious danger to his or her own safety or welfare.

Clause 61 protects employees from being unlawfully dismissed or victimised. The clause makes it an offence for an employer of any person who works at a coal operation to dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because the employee participates in a consultation process required by or under the proposed Act, exercises rights under the proposed Act or is a check inspector.

Clause 62 makes it clear that the proposed Division applies to employees of a contractor who work at a coal operation.

Division 4 Duties of those in management positions

Clause 63 requires the manager of mining engineering for a coal operation to advise the operator of health and safety standards and practices in his or her discipline, of any significant deviation from those standards and practices and of any risks to health and safety of which he or she becomes aware.

Clause 64 requires the manager of electrical engineering for a coal operation to advise the operator of health and safety standards and practices in his or her discipline, of any significant deviation from those standards and practices and of any risks to health and safety of which he or she becomes aware.

Clause 65 requires the manager of mechanical engineering for a coal operation to advise the operator of health and safety standards and practices in his or her discipline, of any significant deviation from those standards and practices and of any risks to health and safety of which he or she becomes aware.

Clause 66 requires a person who holds a management position at a coal operation to comply with the health and safety management system for the coal operation.

Clause 67 requires a person who holds a management position at a coal operation to inform the operator of the coal operation if he or she is aware that the conduct of the coal operation does not conform with the *Occupational Health and Safety Act 2000* or the proposed Act or the regulations under either Act.

Clause 68 sets out the maximum penalty for offences against the proposed Division.

Division 5 Duties of supervisors

Clause 69 requires a supervisor at a coal operation to comply with the health and safety management system for the coal operation.

Clause 70 requires a supervisor at a coal operation to inform the operator if he or she is aware that the conduct of the coal operation does not conform with the *Occupational Health and Safety Act 2000* or the proposed Act or the regulations under either Act.

Clause 71 sets out the maximum penalty for offences against the proposed Division.

Division 6 Duties of contractors

Clause 72 requires a contractor to comply with the health and safety management system for the coal operation.

Clause 73 requires a contractor to prepare a safe work method statement.

Clause 74 requires a contractor to ensure that work is carried out in accordance with the safe work method statement for a coal operation.

Clause 75 requires certain prescribed contractors to prepare and implement a site-specific occupational health and safety management plan.

Clause 76 creates certain duties in relation to subcontractors.

Clause 77 sets out the maximum penalty for offences against the proposed Division.

Division 7 Duties of exploration holders and others to give notice

Clause 78 imposes a duty on an exploration holder not to commence drilling operations unless the Chief Inspector has been given notice of the operations.

Clause 79 allows for the regulations to require a person, or a person of a specified class, to give notice of the commencement or discontinuation of prescribed operations or activities at a coal operation.

Clause 80 sets out the maximum penalty for offences against the proposed Division.

Division 8 General

Clause 81 makes it clear that a person can have more than one duty under the proposed Part.

Clause 82 provides that compliance with the regulations is not in itself a defence in any proceedings for an offence against the proposed Part but that a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against the proposed Part.

Clause 83 provides that if in proceedings against a person for an offence against the proposed Part, the court is not satisfied that the person contravened the provision but is satisfied that the act or omission concerned constituted a contravention of another provision of the proposed Part or of section 8 or 9 of the *Occupational Health and Safety Act 2000*, the court may convict the person of an offence against that other provision.

Clause 84 deals with multiple contraventions of general duties under the proposed Part. It provides that more than one contravention of a provision of the proposed Part that arises out of the same factual circumstances may be charged as a single offence or as separate offences but that contraventions of two or more provisions may not be charged as a single offence.

Clause 85 makes it clear that nothing in the proposed Part confers a right of action in any civil proceedings in respect of any contravention of any provision of the proposed Part and that nothing in the proposed Part confers a defence to an action in any civil proceedings or otherwise affects a right of action in any civil proceedings.

Part 6 Safety of coal operations

Division 1 Methods or systems of working mines

Clause 86 requires a barrier to be left when any seam of coal is mined.

Clause 87 empowers the Minister to direct that a barrier or protective pillar of a specified width be left.

Clause 88 empowers the Minister to direct the carrying out of works.

Clause 89 empowers the Minister to grant approval to mine a barrier or pillar.

Clause 90 sets out the maximum penalty for offences against the proposed Division.

Division 2 Closing of shafts and outlets in abandoned mines

Clause 91 makes it clear that the obligations imposed on an operator by the proposed Division are imposed on the colliery holder or the person who last registered the colliery holding.

Clause 92 requires the operator of a mine to cause every shaft and outlet at the mine that will cease to be used to be fully sealed or filled in a manner approved by the Chief Inspector or to be provided with an approved enclosure, barrier, plug or seal. The clause also requires that before abandoning a mine the operator of the mine must cause every shaft or outlet at the mine to be fully sealed or filled or provided with an approved enclosure, barrier plug or seal.

Clause 93 provides for the Chief Inspector to require a former operator of a mine that has ceased to be used, to carry out work to ensure that a shaft or outlet at that mine remains properly sealed.

Clause 94 prevents an occupier of land or any other person from wilfully obstructing the operator of a mine or any other person from doing any act required to be done by or under proposed section 92 or 93.

Clause 95 provides that certain unenclosed shafts or outlets are taken to be a public nuisance.

Clause 96 provides that the owner of land on which there is a shaft or outlet of an abandoned mine that is not fully sealed or filled may be required to seal or fill the shaft or outlet with an enclosure, barrier, plug or seal. This provision mirrors an existing provision of the *Coal Mines Regulation Act 1982* and does not impose additional obligations.

Clause 97 sets out the maximum penalty for offences against the proposed Division.

Division 3 Control of emplacement areas

Clause 98 defines certain terms. In particular, *emplacement area* is defined as any pile, heap, hole, excavation or place in which or on which reject is piled, heaped, dumped, accumulated, deposited or placed and any wall or other structure that retains or confines reject but does not include an accumulation or deposit of reject situated underground.

Clause 99 provides that the Minister may direct the occupier of land or, where there is no occupier, the land owner, to make an emplacement safe.

Clause 100 provides that a person must not establish an emplacement area except with the approval of the Minister and in the manner and subject to any conditions that the Minister may determine.

Clause 101 provides that a person who has established an emplacement area pursuant to Ministerial approval must not discontinue to use that emplacement area without Ministerial approval or the temporary approval of the Chief Inspector.

Clause 102 imposes requirements on the construction and use of emplacement areas. The clause provides that an emplacement area must be constructed in accordance with sound engineering practice, must be compatible with the environment and must be kept secure.

Clause 103 provides when a decision or notice takes effect under the proposed Division.

Clause 104 sets out the maximum penalty for offences against the proposed Division.

Division 4 Tourist and educational activities

Clause 105 defines terms used in the proposed Division.

Clause 106 provides that tourist activities cannot be conducted in or about a former mine without a permit. The clause also provides that a former mine must not be used principally for educational purposes without a permit.

Clause 107 provides for the issue of permits authorising tourist activities or the use of the mine principally for educational purposes.

Clause 108 provides for the revocation or variation of such permits.

Clause 109 sets out the maximum penalty for offences against the proposed Division.

Part 7 Notification of incidents

Division 1 Notification of certain incidents

Clause 110 requires the operator of a coal operation to give the Chief Inspector notice of certain notifiable incidents, namely any incident that has resulted in a person being killed or any incident or other matter that the regulations declare to be required to be notified.

Clause 111 ensures the non-disturbance of plant involved in a notifiable incident. If such an incident has occurred at a coal operation, the operator must ensure that plant at the coal operation is not used, moved or interfered with, and that the area around the notifiable incident is not disturbed, for 24 hours.

Clause 112 sets out the maximum penalty for offences against the proposed Division.

Division 2 Inquiries

Clause 113 provides for the constitution of a Board of Inquiry to conduct a special inquiry into any event or dangerous occurrence causing death or serious bodily injury, any dangerous occurrence, certain practices at a coal operation or any matters relating to the safety, health, conduct or discipline of persons at or in relation to a coal operation.

Clause 114 makes provision regarding witnesses and evidence at special inquiries.

Clause 115 provides for a Board of Inquiry to report to the Minister.

Clause 116 provides that no appeal lies from any decision or determination of a Board of Inquiry on a special inquiry.

Clause 117 sets out the maximum penalty for offences against the proposed Division.

Part 8 Stop work orders

Clause 118 provides that if the Minister is of the opinion that any action is being, or is about to be, carried out at a coal operation that is likely to result in a serious breach of a provision of the *Occupational Health and Safety Act 2000* or of the regulations made under that Act or the proposed Act or the regulations made under it, the Minister may order that the action is to cease and that no action, other than any specified action, is to be carried out in or in the vicinity of the coal operation, or a specified part of the coal operation, for a period not exceeding 28 days.

Clause 119 makes it clear that the Minister is not required to notify any person before making a stop work order.

Clause 120 provides for the Minister to extend the duration of a stop work order.

Clause 121 requires consultation about the possible modification of proposed detrimental action to avoid the need for a stop work order to continue.

Clause 122 provides that a stop work order prevails over any approval, notice, order or other instrument made or issued under the *Occupational Health and Safety Act 2000* or under any other Act that requires or permits work.

Clause 123 provides for the Minister to enforce a stop work order by carrying out work for the purpose of stopping the work specified in the order and provides for the Minister to recover any costs or expenses incurred in doing so.

Clause 124 makes it an offence to fail to comply with a requirement imposed by a stop work order.

Part 9 Competence standards

Division 1 Key obligations

Clause 125 provides for the regulations to specify functions to which the proposed Part applies and to specify, or authorise the Minister to determine, what is sufficient evidence of competence to perform those functions.

Clause 126 provides that the operator of a coal operation must not employ a person at the coal operation to perform a specified function unless the person holds specified evidence of competence to perform that function.

Clause 127 provides that a contractor must not employ a person at a coal operation to perform a specified function unless the person holds specified evidence of competence to perform that function.

Clause 128 provides that a person must not perform at a coal operation a specified function unless the person holds specified evidence of competence to perform that function.

Clause 129 sets out the maximum penalty for offences against the proposed Division.

Division 2 Coal Competence Board

Clause 130 constitutes the Coal Competence Board.

Clause 131 provides that the Board is subject to Ministerial control and direction.

Clause 132 sets out the membership of the Board.

Clause 133 provides that the regulations may make provision for the procedure of the Board.

Division 3 Functions of Board

Clause 134 sets out some of the functions of the Board. These include to oversee the development of competence standards for people performing functions in coal operations that may impact on health and safety, to undertake initial and ongoing assessments of the competence of people and to advise the Minister on certain matters.

Clause 135 requires the Board to prepare an annual report.

Division 4 Certificates of competence

Clause 136 provides for the Minister to grant certificates of competence to perform specified functions.

Clause 137 provides for the making of regulations concerning competence standards and certificates of competence.

Clause 138 provides for the making of Ministerial orders concerning competence standards and certificates of competence. These orders have no effect if they are inconsistent with the proposed Act or the regulations.

Division 5 Offences

Clause 139 makes it an offence to use another person's certificate of competence, lend a certificate of competence or allow it to be used by another person.

Clause 140 makes it an offence to forge a certificate of competence or to possess a forged certificate.

Clause 141 makes it an offence to make false or misleading statements in relation to the grant of any certificate of competence, the issue of a duplicate certificate, the restoration of a certificate or for the purpose of obtaining employment at a coal operation to perform functions for which a certificate is required.

Clause 142 makes it an offence for a person whose competence has been declared as not recognised to continue to perform functions for which that competence was required.

Clause 143 sets out the maximum penalty for offences against the proposed Division.

Part 10 Oversight of coal operations

Division 1 Outline of this Part

Clause 144 outlines the proposed Part which provides for the appointment, functions and powers of government officials (namely, the Chief Inspector, inspectors, mine safety officers and investigators) as well as people to carry out inspections as representatives of the work force at a coal operation (namely, site check inspectors, electrical check inspectors and industry check inspectors).

Division 2 Inspections by government officials

Subdivision 1 Appointment of government officials

Clause 145 provides for the appointment of public servants as the Chief Inspector, inspectors, mine safety officers and investigators.

Clause 146 specifies the qualifications of inspectors.

Clause 147 provides for the appointment of consultants as investigators.

Clause 148 provides that if the Chief Inspector is absent from duty, or on duty but outside the State, the Minister may appoint an inspector to exercise the functions of the Chief Inspector.

Subdivision 2 Functions of government officials

Clause 149 sets out the functions of the Chief Inspector, which include the oversight of the operations of inspectors and mine safety officers.

Clause 150 requires a government official to bring certain concerns regarding the health, safety or welfare at work of people at the coal operation to the attention of a senior person at the coal operation.

Clause 151 requires a government official to consider any complaint made to him or her by an industry check inspector or a site check inspector for a coal operation, being a complaint concerning the health, safety and welfare at work of people at the coal operation. A government official may investigate a complaint and is required to report to the industry check inspector or site check inspector who made the complaint as to the results of his or her consideration or investigation.

Clause 152 provides for a government official to audit and review the health and safety management system for a coal operation.

Clause 153 provides for a government official to provide advice to the Chief Inspector on matters relating to the health, safety and welfare of people at work

at coal operations and to make reports on incidents or other matters at coal operations.

Subdivision 3 Powers of government officials

Clause 154 provides that a government official has those powers that an inspector has under Part 5 of the *Occupational Health and Safety Act 2000* so as to make any examination and inquiry that may be necessary to ascertain whether the proposed Act and the regulations have been complied with, to ascertain whether there is at a coal operation any matter or thing that affects or is likely to affect the safety or health of persons employed at the coal operation, to ascertain the causes and circumstances of any event or other occurrence at a coal operation or to investigate any complaint made to the government official by an industry check inspector or a site check inspector.

Clause 155 empowers a government official to enter any coal operation at any time.

Clause 156 provides that a government official may require the operator of a coal operation to provide the government official with a plan of the coal operation marked with information that the government official considers necessary for an investigation.

Division 3 Inspections on behalf of work force

Subdivision 1 Site check inspectors

Clause 157 provides for the election of site check inspectors for the purpose of enabling inspections to be carried out at a coal operation on behalf of the people at the coal operation.

Clause 158 provides that an election of a site check inspector for a coal operation must be held if one or more positions is vacant and an employee of the operator requests in writing that an election be held or the Chief Inspector directs that an election be held.

Clause 159 provides for the conduct of elections of site check inspectors.

Clause 160 provides that a site check inspector for a coal operation holds office for 2 years.

Clause 161 sets out the circumstances in which a site check inspector will be disqualified from holding office.

Clause 162 sets out when a site check inspector ceases to hold office and sets out notification requirements.

Clause 163 requires a person elected as a site check inspector to notify the operator of the coal operation of his or her election and contact details.

Clause 164 lists the functions of a site check inspector, which include to keep under review the measures taken to ensure the health, safety and welfare of people at the coal operation including procedures to control risks, and to investigate any matter that may be a risk to health and safety at the coal operation.

Clause 165 provides for the training of site check inspectors in matters of occupational health and safety.

Clause 166 sets out the rights of site check inspectors, which include the right to be present when an inspector makes a formal report to the operator concerning a health, safety or welfare matter at the coal operation.

Clause 167 sets out the duties of operators in relation to site check inspectors.

Clause 168 sets out the duties of contractors in relation to site check inspectors.

Clause 169 requires the operator of a coal operation and all other people at the coal operation to afford every facility and assistance to a site check inspector for the purposes of an inspection of the coal operation by the site check inspector.

Clause 170 requires a site check inspector to make a report of any inspection of the coal operation and to send the report to the operator of the coal operation.

Clause 171 requires a site check inspector to report the finding of certain dangers at a coal operation, namely noxious or inflammable gas, the existence of self-heating by coal or other material or any other condition from which danger to the coal operation or to the safety or health of persons employed at the coal operation may be apprehended.

Subdivision 2 Electrical check inspectors

Clause 172 provides for the election of electrical check inspectors for the purpose of enabling inspections to be carried out on electrical equipment at a coal operation on behalf of the people at the coal operation.

Subdivision 3 Industry check inspectors

Clause 173 provides for the appointment of a person as an industry check inspector.

Clause 174 sets out the functions of an industry check inspector, which include to review the content and functioning of any health and safety management system, to investigate any complaint from an employee at a coal operation regarding health and safety and to participate in investigations of events or notifiable incidents.

Clause 175 empowers an industry check inspector to issue a notice directing that any operations be suspended.

Clause 176 empowers an industry check inspector to delegate his or her power under proposed section 175 to a site check inspector.

Clause 177 provides that in the exercise of functions under the proposed Division, an industry check inspector must do as little damage as possible.

Clause 178 provides for the Minister to issue industry check inspectors with identification cards.

Subdivision 4 Inspections on behalf of work force

Clause 179 makes provision for inspections by check inspectors on behalf of the work force.

Clause 180 provides that a check inspector may be accompanied by the operator or a representative of the operator, if the operator thinks fit.

Clause 181 provides that a check inspector must not leave his or her place of work for the purposes of making an inspection under the proposed Subdivision unless he or she has given notice to the operator or a supervisor.

Division 4 Offences

Clause 182 makes it an offence to refuse or fail to comply with a requirement made by a government official.

Clause 183 makes it an offence to wilfully interfere with a check inspector or a government official.

Clause 184 makes it an offence to impersonate a check inspector or a government official or to falsely represent oneself as such an inspector or official.

Part 11 Coal mining industry codes of practice

Clause 185 specifies that the purpose of a coal mining industry code of practice is to provide practical guidance to operators, employers and others who have duties under Part 5 of the proposed Act or Part 5 of the *Occupational Health and Safety Act 2000* with respect to occupational health, safety and welfare at coal operations.

Clause 186 provides that the Minister may prepare, or cause to be prepared, draft coal mining industry codes of practice.

Clause 187 requires the Minister to arrange consultation about a draft coal mining industry code of practice.

Clause 188 provides for the Minister to approve a coal mining industry code of practice.

Clause 189 provides for the publication of an approved coal mining industry code of practice in the Gazette, specifies when a code commences and provides that a code must be made available for public inspection without change.

Clause 190 provides for the amendment or revocation of an approved coal mining industry code of practice.

Clause 191 provides that in any proceedings for an offence against the proposed Act or the regulations or against the *Occupational Health and Safety Act 2000* or the regulations under that Act, an approved coal mining industry code of practice that is relevant to any matter that it is necessary for the prosecution to prove or to establish the commission of the offence by a person is admissible evidence in those proceedings. A person's failure to observe the code at any material time is evidence of the matter to be established in those proceedings. A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe an approved coal mining industry code of practice.

Part 12 Regulations

Clause 192 empowers the Governor to make regulations under the proposed Act.

Clause 193 lists specific matters that the regulations may deal with.

Clause 194 provides that regulations may provide for the classification of underground mines.

Clause 195 provides that the regulations may require an application under the proposed Act to be verified by statutory declaration.

Clause 196 empowers the regulations to prescribe decisions that are to be reviewable by the Administrative Decisions Tribunal.

Clause 197 provides for the regulations to adapt the provisions of Part 5.

Clause 198 provides for the regulations to disapply certain provisions of Part 5 in relation to contractors.

Clause 199 provides for the regulations to apply, adopt or incorporate any publication as in force at a particular time or from time to time.

Clause 200 provides for the regulations to create offences.

Clause 201 provides for the regulations to create exemptions from obligations created by the regulations.

Clause 202 provides for the regulations to modify obligations regarding consultation required by the proposed Act.

Part 13 Miscellaneous

Division 1 Enforcement

Clause 203 imposes liability on directors of corporations, and those concerned in the management of corporations, for certain contraventions by corporations.

Clause 204 makes it an offence for a person to aid, abet, counsel, procure or be directly or indirectly concerned with the commission of an offence.

Clause 205 provides that it is a defence to any proceedings against a person for an offence if the person proves that it was not reasonably practicable for the person to comply with the provision or the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable to make provision.

Clause 206 provides that it is not a defence to an action in any criminal proceedings that a given course of action was not objected to by the Chief Inspector or the Department, even if the proposed Act gives the Chief Inspector or the Department an opportunity to object to that course of action.

Division 2 Information

Clause 207 protects information obtained in connection with the administration or execution of the proposed Act from disclosure except in specified circumstances.

Clause 208 prohibits the making of false or misleading statements in purported compliance with the proposed Act.

Clause 209 specifies when a person has a defence to a charge under the proposed Division.

Division 3 Exercise and delegation of functions

Clause 210 provides that the Chief Inspector is subject to Ministerial control and direction.

Clause 211 provides that the Minister may exercise any function of the Chief Inspector.

Clause 212 provides for the delegation of functions by the Minister to the Director-General or the Board (in relation to functions under proposed Part 9).

Clause 213 provides for the delegation of functions by the Chief Inspector.

Clause 214 provides for the delegation of functions by the Director-General.

Division 4 Service of documents

Clause 215 provides for the service of documents under the proposed Act.

Clause 216 provides for the supply of documents and other things to an operator of a coal operation.

Clause 217 provides for the supply of documents and other things to the Chief Inspector.

Clause 218 provides for the supply of documents and other things to an industry check inspector.

Division 5 Fees

Clause 219 provides for the Minister to determine certain fees and charges.

Division 6 General

Clause 220 protects certain persons from liability in relation to things done or omitted in good faith for the purpose of executing any provision of the proposed Act or any other Act.

Clause 221 makes it clear that nothing in the proposed Act imposes an obligation on a person to exercise any power because the person is a site check inspector or industry check inspector.

Part 14 Repeals and amendments

Clause 222 repeals the *Coal Mines Regulation Act 1982* and the regulations and rules made under it.

Clause 223 gives effect to the amendments to the *Occupational Health and Safety Act 2000* in Schedule 1.

Clause 224 gives effect to the amendments, required as a consequence of the enactment of the proposed Act, to the Acts set out in Schedule 2.

Clause 225 gives effect to the Schedule of savings and transitional provisions set out in Schedule 3.

Clause 226 provides for Ministerial review of the proposed Act.

Schedule 1 Amendment of Occupational Health and Safety Act 2000

Schedule 1 amends the *Occupational Health and Safety Act 2000* (as proposed to be amended by the *Mining Legislation (Health and Safety) Act 2002*) as a consequence of the enactment of the proposed Act.

Schedule 1 [1] omits the repealed *Coal Mines Regulation Act 1982* from the list of associated occupational health and safety legislation. The proposed *Coal Mine Health and Safety Act 2002* is not included in that list because it contains sufficient provisions regarding the regulation of health and safety at coal operations.

Schedule 1 [2] inserts a definition of a *coal workplace*, which is defined to mean a place to which the proposed Act applies.

Schedule 1 [3] amends the definition of *mine* so that it relates only to non-coal mines.

Schedule 1 [4] amends a note to extend its application to coal workplaces.

Schedule 1 [5] amends section 17 of the OH&S Act, which deals with the establishment of OHS committees and the election of OHS representatives. The amendment provides that in relation to a coal workplace a site check inspector and an electrical check inspector for the coal workplace must be members of any OHS committee for the workplace. The amendment also provides that the subsection requiring an OHS representative to be elected does not apply to a coal workplace, since the proposed Act makes provision for the election of check inspectors for coal workplaces.

Schedule 1 [6] provides for the reaching of alternative verdicts if a court is satisfied that provision of the proposed Act has been contravened.

Schedule 1 [7] and [8] remove coal workplaces from the operation of proposed section 47A of the OH&S Act.

Schedule 1 [9] provides that a person appointed as a government official under the proposed Act is taken to have been appointed as an inspector for the purposes of the OH&S Act and the regulations made under it. Such a person is only authorised to exercise functions under the OH&S Act in relation to a coal workplace, but may exercise certain functions in relation to certain other places.

Schedule 1 [10] and [14] update references to an Act.

Schedule 1 [11] extends provisions relating to powers of entry to circumstances where there is a suspected breach of the proposed Act.

Schedule 1 [12] removes coal workplaces from the operation of provisions dealing with the notification of accidents and other dangerous incidents. Such matters are dealt with in relation to coal workplaces in Part 7 of the proposed Act.

Schedule 1 [13] provides for the application to coal workplaces of the provisions of the OH&S Act dealing with criminal and other proceedings.

Schedule 2 Amendment of other Acts

Schedule 2 makes consequential amendments to provisions of other Acts that refer to the *Coal Mines Regulation Act 1982* or the Chief Inspector of coal mines.

Schedule 2.9 makes an additional amendment to a provision that refers to offences against the occupational health and safety legislation. The amendment applies the provision to offences under the proposed Act and makes it clear that the provision includes offences under the repealed *Occupational Health and Safety Act 1983*.

Schedule 3 Savings, transitional and other provisions

Schedule 3 makes savings and transitional provisions consequent on the enactment of the proposed Act.