

Mine Health and Safety Act 2004 No 74

[2004-74]



New South Wales

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Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
[Rail Safety Act 2008 No 97](#) (not commenced — to commence on 1.1.2009)

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Mine Health and Safety Act 2004 No 74



New South Wales

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Mine Health and Safety Act 2004 No 74



New South Wales

An Act to secure the health, safety and welfare of persons in connection with certain mines; to repeal the *Mines Inspection Act 1901*; to amend certain Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Mine Health and Safety Act 2004*.

2 Commencement

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

3 Definitions

(1) In this Act:

abandoned mine includes a discontinued mine, a closed mine (other than a suspended mine) and a former mine.

authorised representative has the same meaning as in section 76 of the *Occupational Health and Safety Act 2000*.

Board means the Metalliferous Mines and Extractive Industries Competence Board constituted by section 112.

Board of Inquiry means a Board of Inquiry constituted under section 95.

certificate of competence means a certificate granted under section 118 that is in force.

Chief Inspector means the person appointed as Chief Inspector under section 127.

coal includes oil shale and kerosene shale, but does not include peat.

competent means having appropriate experience, knowledge, skills and capabilities.

contractor, in relation to a mine, means a person who is not an employee at a mine, who undertakes work at the mine, but does not include the operator of the mine.

contractor management plan for a mine means a contractor management plan prepared for the mine under section 37.

Department means the Department of Mineral Resources.

direction includes any instruction, order or requirement authorised by this Act to be given or made by the Minister or an inspector.

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

emergency plan for a mine means an emergency plan prepared for the mine under section 42.

employee means an individual who works under a contract of employment or apprenticeship or, subject to the regulations, under some other arrangement whereby the individual expects to receive something of value for the individual's work, being a share of, or payment out of proceeds from the sale of, a mineral recovered or a payment dependent on the recovery of a mineral.

employer means a person who employs another person under a contract of employment or apprenticeship or, subject to the regulations, enters some other arrangement whereby the person agrees to give another person who is an individual something of value for the other person's work, being a share of, or payment out of proceeds from the sale of, a mineral recovered or a payment dependent on the recovery of a mineral.

evidence of competence means a certificate of competence or other evidence of competence specified by the regulations.

exercise a function includes perform a duty.

function includes a power, duty and authority.

government official means a person appointed under section 127 or 129.

inspector means a person appointed as an inspector under section 127.

investigator means a person appointed as an investigator under section 127 or 129.

involved union means a Federal or State industrial organisation of employees of which a person employed to engage in work at a mine is a member, where that person is qualified to be such a member by virtue of the work that the person performs in the person's employment at the mine.

machinery means any device or item of plant, whether fixed or mobile (however powered), that is used:

(a) to do work at or about a mine, or

(b) for the treatment of any product of a mine.

management structure for a mine means the management structure prepared for the mine under section 35.

mine—see section 6.

mine holder means:

- (a) in relation to land subject to a mining title granted under the [Mining Act 1992](#)—the person who holds the title, or
- (b) in relation to land subject to a mining licence granted under the [Offshore Minerals Act 1999](#)—the person who holds the licence, or
- (c) in relation to any other land—the person with the right to extract minerals or quarry product from the land.

mine safety management plan for a mine means a mine safety management plan prepared for the mine under section 27.

mine safety officer means a person appointed as a mine safety officer under section 127.

mineral means any substance that is for the time being a mineral within the meaning of the [Mining Act 1992](#) or the [Offshore Minerals Act 1999](#), but does not include coal.

mining industry code of practice means a mining industry code of practice under Part 11.

operator of a mine means:

- (a) the mine holder, if the mine holder nominated himself, herself or itself as the operator of the mine under section 22 and that nomination is not rejected, or
- (b) the person nominated by the mine holder as the operator of the mine, and not rejected by the Chief Inspector, under section 22, or
- (c) the person declared by the Chief Inspector to be the operator under section 23, or
- (d) the person prescribed by, or determined in accordance with, the regulations to be the operator of the mine.

place of work means premises where persons work.

plant includes any machinery, equipment (including scaffolding), appliance, implement or tool and any component or fitting of, or accessory to, any machinery, equipment, appliance, implement or tool.

premises includes any place and in particular includes:

- (a) any land, building or part of any building, and
- (b) any vehicle, vessel or aircraft, and
- (c) any installation on land, on the bed of any waters or floating on any waters, and
- (d) any tent or moveable structure.

previous offender, in relation to the maximum penalty for an offence, means a person who has, at any time before being sentenced for that offence, been convicted of any other offence of any kind against:

- (a) this Act, or
- (b) the *Mines Inspection Act 1901*, or
- (c) the *Coal Mine Health and Safety Act 2002*, or
- (d) the *Coal Mines Regulation Act 1982*, or
- (e) the *Occupational Health and Safety Act 2000*, or
- (f) the *Occupational Health and Safety Act 1983*.

quarry product means conglomerate, sandstone, shale, basalt, andesite, trachyte, porphyry or other rock, or sand, clay, shale, gravel or peat, that is extracted or treated (or is intended to be extracted or treated) for commercial or industrial purposes, but does not include coal.

recycling operation means the sorting, grading and preparation of recycled concrete, recycled brick, recycled bitumen, recycled stone or recycled rock to be blended with any quarry product.

risks—see section 5.

site check inspector, in relation to a mine, means a person elected under section 138 as a site check inspector for the mine.

stop work order means an order under section 100.

supervisor means a person nominated as a supervisor in the management structure for a mine.

treatment means:

- (a) the crushing, grinding, cutting, classifying, reducing, smelting, concentrating, precipitating or separating of any material that has been extracted from land for the purpose of recovering minerals or quarry product, or

- (b) any other process, or part of a process, for recovering minerals or quarry product from material that has been extracted from land.

underground mine means a mine in which persons are employed below ground when the mine is being worked.

vehicle includes any mechanically driven machine capable of moving under its own power.

- (2) Notes included in this Act do not form part of this Act.

4 When a person is at work

For the purposes of this Act, a person is at work at a mine throughout the time when the person is at the mine, but not otherwise.

5 Risks arising from activities at work

For the purposes of this Act, **risks** arising out of the activities of persons at work include risks attributable to:

- (a) the manner of conducting an undertaking, or
- (b) the plant or substances used for the purposes of an undertaking, or
- (c) the condition of premises (or any part of premises) used for the purposes of an undertaking.

Part 2 Application of Act

6 Application of Act

- (1) This Act applies to the following places of work (which are called **mines** in this Act):
- (a) any place where the extraction of material from land for the purpose of recovering minerals or quarry product is carried out,
 - (b) any place where the treatment of any such extracted material, or the treatment of minerals or quarry product, is carried out, if that place is at or near the place from which the material, minerals or quarry product were extracted,
 - (c) any place where the storage or treatment of waste resulting from:
 - (i) the extraction of material from land for the purpose of recovering minerals or quarry product, or
 - (ii) the treatment of minerals or quarry product,is carried out, if that place is at or near the place from which the material, minerals or quarry product were extracted,

- (d) any place where recycling operations are carried out, if that place is at or near the place from which material was extracted from land for the purpose of recovering quarry product to be used in the recycling operations,
- (e) any place where the manufacturing of ready-mix concrete or bitumen hot mix is carried out, if that place is:
 - (i) at or near a place from which material was extracted from land for the purpose of recovering quarry product, and
 - (ii) under the control of the same person or entity that has control of the place referred to in subparagraph (i),
- (f) any place where mining exploration is carried out,

Note—

See subsection (6).

- (g) any place where the treatment of zircon, rutile, ilmenite, monazite and associated minerals is carried out,
 - (h) any place where offshore exploration or mining activities within the meaning of the *Offshore Minerals Act 1999* are carried out,
 - (i) any place where operations associated with the care, security or maintenance of a place referred to in paragraph (a)–(h), (j) or (k) are carried out during any time when activities or operations at that place are suspended,
 - (j) any place where operations associated with the decommissioning or abandonment of a place referred to in paragraph (a)–(i) are carried out,
 - (k) any place where an activity or operation referred to in paragraph (a)–(j) is or has been carried out, and that is being rehabilitated.
- (2) Any building, structure, pit, shaft, drive, level, incline, decline, excavation or work that is:
- (a) at a place referred to in subsection (1) (a)–(h), and
 - (b) in the course of construction, and
 - (c) intended to be part of a mine,
- is taken to be part of the **mine** constituted by that place.
- (3) This Act also applies to the following places, whether or not they are places of work:
- (a) an abandoned mine (other than an abandoned mine used for the storage, treatment or disposal of waste that is not connected with an activity or operation referred to in subsection (1) (a)–(h)),

- (b) any place described in subsection (1) (a)–(k) during any time when activities or operations at that place are suspended,
 - (c) any place on which drilling operations (within the meaning of section 68) are carried out,
 - (d) any land (that is not otherwise a mine within the meaning of subsection (1)) on which activities or uses take place that are the subject of, or required to be the subject of, a permit under Division 3 of Part 6.
- (4) For the purposes of this section, the **extraction** of material from land for the purpose of recovering minerals or quarry product includes:
- (a) any activity that is ancillary to, or connected with, extracting material for such a purpose, and
 - (b) such other activities as may be prescribed by the regulations,
- but does not include any activity or class of activity that is excluded from the operation of this subsection by the regulations.
- (5) For the purposes of this section (but subject to the regulations), a place (the **relevant place**) is taken to be **near** a place if:
- (a) the relevant place is operating on an ongoing basis, and
 - (b) the relevant place (or any part of it) is within 10 kilometres of the nearest boundary of the place.
- (6) In subsection (1) (f), **mining exploration** means the carrying out of works on, or the removal of samples from, land for the purpose of testing the mineral or quarry product bearing qualities of the land, but does not include:
- (a) (Repealed)
 - (b) offshore exploration or mining activities within the meaning of the [Offshore Minerals Act 1999](#), or
 - (c) any activity or class of activity that is excluded from this definition by the regulations.

7 Act does not apply to certain mines or places

- (1) This Act does not apply to:
- (a) any mine or place that is of a class prescribed by the regulations or in circumstances or during time periods prescribed by the regulations, or
 - (b) any mine or place specified by the Minister in a notice published in the Gazette.

- (2) The Minister is to notify any other Minister administering the *Occupational Health and Safety Act 2000* if any notice under subsection (1) (b) is published in the Gazette. However, failure to notify any such other Minister does not affect the validity of the notice published in the Gazette.

8 Decision on question of whether this Act applies

- (1) If any question arises, otherwise than in proceedings before a court, as to whether a mine or other place is a mine or place to which this Act applies, the question is to be referred to the Minister.
- (2) The Minister's decision on any such question is final and binding on any court in any proceedings arising under this Act or the *Occupational Health and Safety Act 2000*.
- (3) Subsection (2) does not apply in relation to any such proceedings commenced before the Minister's decision was made.
- (4) The Minister is to notify any other Minister administering the *Occupational Health and Safety Act 2000* if a decision is made by the Minister under this section. However, failure to notify any such other Minister does not affect the validity of the decision.
- (5) A decision under this section does not, in itself, operate to impose any liability on a person for anything done or omitted to have been done by the person before the decision was made.

9 Act does not apply to coal mines

This Act does not apply to a place of work or other place to which the *Coal Mine Health and Safety Act 2002* applies.

10 Act does not apply to railway operations

This Act does not apply to a railway operation to which the *Rail Safety Act 2002* applies.

11 Act does not apply to civil engineering works

- (1) Subject to the regulations and any notice given by the Minister under section 7 (1) (b), this Act does not apply to:
- (a) any place where the extraction or treatment of quarry product is carried out, where those activities are an integral part of any civil engineering work, or
 - (b) any place where underground work involving the extraction or treatment of quarry product is carried out, where that work is an integral part of any civil engineering work.
- (2) In this section, ***civil engineering work*** means the construction, structural alteration, repair, maintenance and demolition of, for example, airports, docks, harbours, inland waterways, dams, river and avalanche and sea defence works, roads and highways,

railways, bridges and tunnels, viaducts and works related to the provision of services such as communications, drainage, sewerage, water and energy supplies.

12 Act does not apply to certain other operations

This Act does not apply to any part of a mine used for the purpose only of manufacturing bricks, tiles, pottery, earthenware pipes, terracotta, chinaware, refractory material or cement.

13 Act to bind Crown

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

Part 3 Objects of Act

14 Objects of Act

The objects of this Act are as follows:

- (a) to assist in securing the objects of the *Occupational Health and Safety Act 2000* at mines (including the object of securing and promoting the health, safety and welfare of persons at work at mines or related places),
- (b) to ensure that the particular hazards associated with mines are identified and that risks arising from those hazards are assessed and eliminated or controlled,
- (c) to ensure that effective provisions for emergencies are developed and maintained at mines,
- (d) to ensure that managers, supervisors and employees are competent, by ensuring that appropriate health and safety competencies are defined and are implemented in the mining and quarrying industry.

Part 4 Application of *Occupational Health and Safety Act 2000*

Note—

The *Occupational Health and Safety Act 2000* is the main Act that deals with the health, safety and welfare of persons at work, including persons at work at a mine. This Part explains how this Act fits in with the *Occupational Health and Safety Act 2000*. Generally, this Act creates additional protections, rights and obligations necessary because of the special risks associated with mines. This Part makes it clear that this Act provides for an increase in the standard of protection of persons at work at mines and does not result in less protection than the *Occupational Health and Safety Act 2000* would otherwise provide.

15 Act to be read in conjunction with OH&S Act

This Act is to be read in conjunction with the *Occupational Health and Safety Act 2000*.

16 Act adds to protection provided by OH&S Act

- (1) If a provision of the *Occupational Health and Safety Act 2000* or the regulations under

that Act applies to mines or other places to which this Act applies, that provision continues to apply, and must be observed, in addition to this Act or the regulations under this Act.

Note—

For example, Part 2 of the *Occupational Health and Safety Act 2000* imposes duties relating to health, safety and welfare at mines. So does Part 5 of this Act. The provisions of this Act apply in addition to those of the OH&S Act and do not remove any OH&S protections, rights or obligations.

- (2) Without limiting subsection (1) or any other provision of this Act, the failure by an operator to comply with a provision of this Act or the regulations does not affect any liability of an employer or other person under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations under that Act.

17 OH&S Act prevails

- (1) The provisions of the *Occupational Health and Safety Act 2000* and the regulations under that Act prevail, to the extent of any inconsistency, over the provisions of both this Act and the regulations under this Act.

Note—

For example, if a provision of this Act deals with a certain matter and a provision of the *Occupational Health and Safety Act 2000* deals with the same matter and it is impossible to comply with both provisions, then a person must comply with the *Occupational Health and Safety Act 2000*. If provisions of both Acts deal with the same matter and it is possible to comply with both provisions, then a person must comply with both Acts.

- (2) This section is subject to section 104.

18 Compliance with this Act is no defence to prosecution under OH&S Act

Compliance with this Act or the regulations, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the *Occupational Health and Safety Act 2000* or the regulations under that Act.

Note—

For example, a person may be guilty of an offence under the *Occupational Health and Safety Act 2000* in respect of any act or omission that is expressly required or permitted to be done or omitted by or under this Act or the regulations under this Act.

19 Relationship between duties under this Act and OH&S Act

Evidence of a relevant contravention of this Act or the regulations is admissible in any proceedings for an offence against the *Occupational Health and Safety Act 2000* or the regulations under that Act.

20 No double jeopardy

Where an act or omission constitutes an offence:

- (a) under this Act or the regulations, and

(b) under the *Occupational Health and Safety Act 2000* or the regulations under that Act, the offender is not liable to be punished twice in respect of the offence.

21 Documents

To avoid doubt, any documents or plans that by virtue of this Act or the regulations are required to be kept at a mine are taken to be documents that directly affect the occupational health and safety of employees within the meaning of section 81 of the *Occupational Health and Safety Act 2000*.

Part 5 Duties relating to health, safety and welfare at mines

Note—

Part 2 of the *Occupational Health and Safety Act 2000* imposes duties relating to health, safety and welfare at work on employers and others. Those duties apply to work at mines.

This Part imposes extra duties.

Division 1 Duties of mine holders

Note—

Section 8 of the *Occupational Health and Safety Act 2000* imposes duties on employers. If a mine holder nominates himself, herself or itself as the operator of the mine, the mine holder has the duties in that section as the employer of its employees and has duties in relation to other persons who work at the mine.

Section 10 of the *Occupational Health and Safety Act 2000* imposes duties on a person who has control of premises used by persons as a place of work. If a mine holder nominates a person other than himself, herself or itself as the operator of the mine, the mine holder is, for the purpose of that Act, a person who has control of the premises constituted by the mine and so has duties under that section.

This Division imposes extra duties on mine holders.

22 Duty to nominate the operator of a mine

- (1) A mine holder must not undertake any work directly related to mining, or allow any other person to undertake any work directly related to mining, at a mine unless the mine holder has nominated one person who is the employer with the day to day control of the mine as the operator of the mine.
- (2) A nomination must be made in writing to the Chief Inspector.
- (3) A mine holder may nominate himself, herself or itself as the operator of a mine.
- (4) If there is more than one separate and distinct mine at a place, the mine holder may nominate the person who is the employer with the day to day control of each such mine, individually or collectively.
- (5) A nomination under this section must be in the form prescribed by the regulations.
- (6) The Chief Inspector may require a mine holder to provide further information

concerning a nomination.

- (7) The Chief Inspector must tell the mine holder who made the nomination if the nomination has been rejected. This must be done within 28 days of receiving the nomination or within any further time specified by the Chief Inspector when the Chief Inspector requests further information under subsection (6).
- (8) The Chief Inspector may reject a nomination under this section:
 - (a) if the Chief Inspector believes that the nominated operator is not the employer with the day to day control of the mine, or
 - (b) in such circumstances as may be prescribed by the regulations.
- (9) If a nomination is rejected it is taken, on and from the time the rejection is notified to the operator, not to have been made.
- (10) If an operator whose nomination has not been rejected under this section ceases to be the employer with the day to day control of the mine, the mine holder must not undertake any mining, or allow any other person to undertake any mining, at the mine unless the mine holder has nominated another operator of the mine. This section applies to a further nomination in the same way as it applies to an initial nomination.
- (11) This section does not require a mine holder to nominate an operator if a previous mine holder nominated an operator other than himself, herself or itself and that nomination was not rejected.
- (12) The regulations may specify that work is or is not ***directly related to mining*** for the purposes of this section.
- (13) The regulations may provide for the circumstances in which a person is taken to cease to be the employer with the day to day control of a mine for the purposes of this section.
- (14) Subject to the regulations, the fact that an operator was not, when nominated as the operator under this section, the employer with the day to day control of the mine concerned does not affect the operator's obligations under this Act.
- (15) Subject to the regulations, the fact that an operator has ceased to be the employer with the day to day control of the mine does not affect the operator's obligations under this Act.

23 Chief Inspector may declare person as operator

- (1) If it appears to the Chief Inspector that there is no operator of a mine or no mine holder exists in relation to a mine or class of mine, the Chief Inspector may declare, by notice in writing, that a specified person, or a person who is a member of a specified class of persons, is the operator of the mine or class of mines.

- (2) Any such notice may specify the time from which the declaration takes effect.

24 Mine holder must give operator health and safety information

- (1) If a mine holder nominates a person other than the mine holder as the operator of a mine, the mine holder must provide the person nominated with all information available to the mine holder that may reasonably be relevant to the development and implementation of a mine safety management plan for the mine.
- (2) The regulations may prescribe the information that must be provided under this section.

25 Penalty for offence against this Division

A mine holder who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty: 250 penalty units.

Division 2 Duties of operators of mines

Note—

Section 8 (1) of the [Occupational Health and Safety Act 2000](#) imposes a duty on employers in relation to their employees. The operator of a mine has that duty in relation to its employees. This Division imposes extra duties on operators, including in relation to other persons who work at the mine.

Subdivision 1 General duty

26 Worker safety

The operator of a mine must ensure that all persons working at the mine (including managers and supervisors) have the necessary skills, competence and resources to undertake their work safely and to ensure the safety of others.

Subdivision 2 Mine safety management plans

27 Duty of operator to prepare mine safety management plan

- (1) The operator of a mine must prepare a statement, in accordance with this Act and the regulations, stating how the health and safety of the persons who work at the mine, or who are directly affected by the mine, will be protected. This is a **mine safety management plan**.
- (2) For the purposes of this section, a person may be directly affected by a mine even if the person is not inside the mine.
- (3) The regulations may specify which persons or classes of persons are directly affected by a mine for the purposes of this Subdivision.

- (4) This section does not require an operator to prepare a mine safety management plan for a mine if:
- (a) a previous operator of the mine prepared a plan that complies with this Act and the regulations, and
 - (b) the plan is adopted by the subsequent operator.

28 No work directly related to mining without mine safety management plan

- (1) The operator of a mine must ensure that work directly related to mining is not carried out by any person at the mine unless a mine safety management plan that complies with this Act and the regulations has been implemented for the mine.
- (2) The regulations may specify that work is or is not ***directly related to mining*** for the purposes of this section.

29 Duty of operator to ensure compliance with mine safety management plan

The operator of a mine must ensure that work at the mine is carried out in compliance with the mine safety management plan for the mine. This includes work undertaken by contractors who undertake work at the mine.

30 Contents of mine safety management plan

- (1) A mine safety management plan for a mine must include summaries of, or references to:
- (a) any regulations under this Act that apply to the mine, and
 - (b) any systems, policies, programs, plans and procedures developed and implemented under this Act or the regulations in relation to the mine, and
 - (c) any codes, standards or guidelines that apply to the mine.
- (2) A mine safety management plan for a mine must provide:
- (a) the basis for the identification of hazards, and of the assessment of risks arising from those hazards, by the operator of the mine, and
 - (b) for the development of controls for those risks, and
 - (c) for the reliable implementation of those controls.
- (3) A mine safety management plan must include:
- (a) the document that sets out the management structure required under Subdivision 3, and
 - (b) the contractor management plan required under Subdivision 4, and

- (c) the emergency plan required under Subdivision 5, and
- (d) any other matter required by the regulations.

31 Consultation

The persons who work at the mine must be consulted, in the manner required by the regulations, during the preparation of the mine safety management plan and before its amendment.

32 Obligations concerning mine safety management plan

The operator of a mine must:

- (a) communicate the mine safety management plan, or a summary of the plan, to the persons working at the mine, and
- (b) regularly review the mine safety management plan, including a process of consultation with those persons, and
- (c) ensure that no contractor starts work at the mine without having been provided with a copy of, or with access to, the mine safety management plan for places of work relevant to the contractor.

33 Access to mine safety management plan

- (1) An up-to-date copy of the mine safety management plan for a mine must be kept at the mine by the operator of the mine and must be made available for inspection by:
 - (a) a government official, or
 - (b) a site check inspector for the mine, or
 - (c) an authorised representative who is entitled to exercise functions in relation to the mine, or
 - (d) any person who works at the mine.
- (2) The operator of a mine must immediately supply the Chief Inspector with an up-to-date copy of the mine safety management plan for the mine if the Chief Inspector requests a copy.

Note—

Section 178 protects information obtained in connection with the administration or execution of this Act by preventing its disclosure except in limited circumstances.

34 Former operator must return information

If a person ceases to be the operator of a mine, that person must take all reasonable steps to return to the current mine holder any information provided to the person under

section 24 (1) or otherwise obtained by the person in the course of exercising the functions of an operator that are prescribed by the regulations, whether or not updated by the operator. That information must be returned as soon as practicable after the person ceases to be the operator.

Subdivision 3 Management structure

35 Operator must prepare management structure

- (1) As part of the mine safety management plan for a mine, the operator of the mine must prepare a document that sets out the management structure of the mine.
- (2) The management structure must:
 - (a) nominate persons within the structure by position and must outline their areas of responsibility and accountability, and
 - (b) include competent persons with appropriate engineering competence, and
 - (c) include competent persons to perform the functions of supervisors of the mine.
- (3) An operator must take all reasonable steps to maintain the management structure. This includes having others acting in, and the timely filling of, vacant positions in the structure.
- (4) During an emergency, the management structure of a mine may be suspended and a different management structure may be put into place for the duration of the emergency.

36 Register of persons occupying positions

- (1) The operator of a mine must keep a register at the site of the mine containing the names of persons occupying positions in the management structure of the mine.
- (2) The register must cover both current occupants of positions and occupants for the previous 5 years (including any period before the commencement of this section).
- (3) The register is to be made available for inspection on request by a government official, a site check inspector or by any person who works at the mine.

Subdivision 4 Duties regarding contractors

37 Operator to prepare contractor management plan

As part of the mine safety management plan for a mine, the operator of a mine at which contractors are proposed to be used must prepare a contractor management plan stating how the risks arising from the use of contractors at the mine will be managed.

38 Content of contractor management plan

A contractor management plan for a mine must make provision for the matters prescribed by the regulations.

39 Operator to ensure contractor's familiarity with systems

The operator of a mine at which any contractor proposes to work must ensure, before that work commences, that consultation occurs with the contractor so that:

- (a) the contractor is familiar with the relevant parts of the mine safety management plan for that mine, and
- (b) the contractor's arrangements for safety management are consistent with the mine safety management plan for that mine.

40 Duties of operator regarding contractors

(1) An operator of a mine must ensure:

- (a) that every contractor who works at the mine is directed to comply with the requirements of this Act and the regulations and the *Occupational Health and Safety Act 2000* and the regulations under that Act, and
- (b) that the activities of the contractor are monitored to the extent necessary to determine whether or not the contractor is complying with the operator's mine safety management plan or with the contractor's safety management plan (if it has been accepted under section 63) and with the requirements of this Act and the regulations and the *Occupational Health and Safety Act 2000* and the regulations under that Act, and
- (c) that, if the contractor is not so complying, the contractor is directed to take action immediately to comply with the safety management plan or the requirements of this Act and the regulations and the *Occupational Health and Safety Act 2000* and the regulations under that Act, and
- (d) that if a risk to the health or safety of a person arises because of such non-compliance, the contractor is directed to stop work immediately and to not resume work until those requirements are complied with, unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the contractor must be directed to stop work as soon as it is safe to do so, and
- (e) that the contractor and the contractor's employees receive induction training with respect to occupational safety and health as specified in the mine safety management plan for the mine, and
- (f) that the contractor is provided with details of any relevant changes made to the mine safety management plan for the mine.

- (2) A failure by an operator to give a direction, or to ensure that a direction is given, under this section does not affect any liability of the contractor under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations under that Act.

Subdivision 5 Emergency management

41 Meaning of “emergency”

For the purposes of this Subdivision, an **emergency** exists at a mine when a situation is not controlled by the mine safety management plan for the mine and there is a threat to the life or physical well-being of persons at or outside the mine.

42 Operator must prepare emergency plan

The operator of a mine must ensure that an emergency plan that complies with this Subdivision is prepared for the mine.

43 No mining or quarrying without emergency plan

The operator of a mine must ensure that work is not carried out at the mine unless an emergency plan that complies with this Subdivision is implemented for the mine.

44 Contents of emergency plan

- (1) An emergency plan must contain an up-to-date plan of the mine and any other plan required by the regulations.
- (2) An emergency plan must adequately address emergency evacuation and any other matter prescribed by the regulations.

45 Review and testing

- (1) The operator of a mine must ensure that the emergency plan for the mine is reviewed and tested:
 - (a) as soon as practicable after any emergency has occurred at the mine, and
 - (b) whenever the mine safety management plan for the mine is reviewed.
- (2) The persons who work at the mine must be consulted, in the manner prescribed by the regulations, during the review.
- (3) A review under this section is only required to consider the relevant parts of the emergency plan.

Subdivision 6 Keeping of records and reporting

46 Keeping of records by operators

The operator of a mine must keep the records concerning health and safety that are required by this Act or the regulations, in the manner required by the regulations and for at least the time required by the regulations.

47 Reporting by operators

The operator of a mine must make the reports concerning health and safety that are required by the regulations, in the manner required by the regulations.

Subdivision 7 Penalties

48 Penalty for offence against this Division

An operator or former operator of a mine who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

Subdivision 8 Saving of certain notices and directions

49 Saving of certain notices and directions

- (1) If a notice or direction is given under this Act to a person as the operator of a mine and that person is replaced as operator by another person, any notice or direction is taken to have been given to the new operator.
- (2) Nothing in this section affects any liability for an offence committed by a person when the person was the operator of a mine.

Division 3 Duties and rights of employees

Note—

Sections 20, 21, 24 and 25 of the *Occupational Health and Safety Act 2000* impose duties on employees. This Division imposes extra duties and confers a right on employees.

50 Duties of employees

- (1) An employee who works at any mine:
 - (a) must comply with the mine safety management plan for the mine, and
 - (b) must follow the operator's procedures for emergencies as set out in the emergency plan for the mine, and
 - (c) must, before commencing work and at frequent intervals during the employee's work day, carefully examine the working place and any machinery or system intended to be used so as to be satisfied that it is safe, and
 - (d) must take any actions within the employee's responsibility to control a danger at the mine, and
 - (e) if the employee is employed by a contractor, must comply with any safety management plan of the contractor that has been accepted by the operator of the mine in accordance with section 63.
- (2) An employee who works at a mine must immediately report to the employee's immediate supervisor (if any) any situation that the employee believes could present a risk to health and safety and that is not within the employee's competence to control. If the employee's supervisor is not immediately available, the employee must instead immediately report the situation to another senior person (if any) at the mine.

Maximum penalty:

- (a) in the case of a previous offender—45 penalty units, or
- (b) in any other case—30 penalty units.

51 Rights of employees

An employee who works at a mine has the right to remove himself or herself from any location at the mine when circumstances arise that appear to the employee, with reasonable justification, to pose a serious danger to the employee's own health, safety or welfare.

52 Unlawful dismissal or other victimisation of employee

- (1) An employer of any person who works at a mine must not 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:
 - (a) participates in a consultation process required by this Act or the regulations, or
 - (b) exercises rights under this Act or the regulations, or
 - (c) reports a notifiable incident within the meaning of section 88, or

- (d) in connection with a health and safety matter, seeks the assistance of, or reports a matter to, an authorised representative, or
 - (e) performs functions or complies with duties under this Act or the regulations or assists a government official, or
 - (f) is, or is standing for election to be, a site check inspector.
- (2) In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the dismissal, injury or alteration was not actuated by the reason alleged in the charge lies on the defendant.
- (3) If a person is found guilty by a court of contravening this section, the court may order the person:
- (a) to pay the employee a specified sum by way of reimbursement for the salary or wages lost by the employee, and
 - (b) to reinstate the employee to his or her usual position or a similar position.
- (4) Such a person must give effect to an order of the court under subsection (3).

Maximum penalty (subsections (1) and (4)):

- (a) in the case of a corporation (being a previous offender)—375 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—250 penalty units, or
- (c) in the case of an individual (being a previous offender)—225 penalty units, or
- (d) in the case of an individual (not being a previous offender)—150 penalty units.

Note—

An employer of any person who works at a mine has a duty under section 23 of the [Occupational Health and Safety Act 2000](#) not to unlawfully dismiss or victimise employees. This section imposes an additional duty.

53 Division applies to employees of contractor

This Division applies to an employee of a contractor who works at a mine, to the extent that it applies to work done by the employee, in the same way as it applies to an employee of an operator.

Division 4 Duties of persons in management positions

Note—

Section 26 of the [Occupational Health and Safety Act 2000](#) imposes duties on those in management positions because it provides that where a corporation contravenes a provision of that Act or the regulations under that Act, then each director and each person concerned in the management of the corporation is taken to have contravened the same provision unless they can establish a defence. This Division imposes additional duties on those in management positions.

54 Persons in management positions must comply with mine safety management plan

- (1) A person who holds a management position at a mine must comply with the mine safety management plan for the mine.
- (2) A person who holds a management position at a mine and is an employee of a contractor must comply with any safety management plan of the contractor that has been accepted by the operator of the mine in accordance with section 63.

55 Persons in management positions must inform operator of non-compliance

- (1) A person who holds a management position at a mine must inform the operator of the mine if the person is aware that the conduct of the mine does not conform with this Act or the regulations or the *Occupational Health and Safety Act 2000* or the regulations under that Act.
- (2) A failure by a person to inform the operator under this section does not affect any liability of the operator under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations under that Act.

56 Further obligations

A person who holds a management position at a mine:

- (a) must ensure that the workplace and work methods for which the person is responsible are safe, and
- (b) must ensure that hazards at the workplace for which the person is responsible are identified and that associated risks are controlled, and
- (c) must ensure that safety information concerning the workplace for which the person is responsible is communicated to relevant persons, particularly other supervisors at the change of a shift, and
- (d) must have regard to appropriate risk management standards at the workplace for which the person is responsible, and
- (e) must implement risk management practices in areas that the person controls.

57 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a previous offender—75 penalty units, or
- (b) in any other case—50 penalty units.

Division 5 Duties of supervisors

58 Supervisor must comply with mine safety management plan

- (1) A supervisor at a mine must comply with the mine safety management plan for the mine.
- (2) A supervisor at a mine who is an employee of a contractor must comply with any safety management plan of the contractor that has been accepted by the operator of the mine in accordance with section 63.

59 Supervisor must inform operator of non-compliance

- (1) A supervisor at a mine must inform the operator of the mine if the supervisor is aware that the conduct of the mine does not conform with this Act or the regulations or the *Occupational Health and Safety Act 2000* or the regulations under that Act.
- (2) A failure by a supervisor to inform the operator under this section does not affect any liability of the operator under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations under that Act.

60 Further obligations

A supervisor at a mine:

- (a) must ensure that safety information concerning that part or aspect of the workplace for which the supervisor is responsible is communicated to relevant persons, particularly other supervisors at the change of a shift, and
- (b) must have regard to appropriate risk management standards, and
- (c) must implement risk management practices in that part or aspect of the workplace for which the supervisor is responsible.

61 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a previous offender—75 penalty units, or
- (b) in any other case—50 penalty units.

Division 6 Duties of and in relation to contractors

Note—

A contractor who works at a mine will have obligations as an employer under section 8 of the *Occupational Health and Safety Act 2000* or as a self-employed person under section 9 of that Act. This Division imposes extra duties on contractors in relation

to mines.

62 Contractor must comply with operator's mine safety management plan

Except as provided by section 63, a contractor who works at a mine must comply with the mine safety management plan of the operator for the mine to the extent that it applies to work done by the contractor.

63 Contractor's safety management plan

- (1) A contractor who works at a mine may prepare a safety management plan that includes an assessment of risks associated with the work to be carried out by the contractor at the mine.
- (2) Any such safety management plan must address occupational health and safety issues and must include (but is not limited to) details of the following:
 - (a) the work process,
 - (b) the equipment to be used in the work process,
 - (c) the standards or codes to be complied with,
 - (d) the records to be kept of the process,
 - (e) the competencies of the personnel doing the work,
 - (f) safe work method statements for all work activities assessed as having risks,
 - (g) any other matter prescribed by the regulations.
- (3) A contractor may provide the safety management plan of the contractor to the operator of a mine at which the contractor proposes to work for the operator's acceptance.
- (4) The operator of a mine must not accept the safety management plan of a contractor, or any proposed amendment to the plan, unless:
 - (a) in the opinion of the operator, the plan is compatible with, and contains an equivalent standard of risk assessment and provides for an equivalent standard of safety to, the mine safety management plan for the mine, and
 - (b) the plan is otherwise acceptable to the operator.
- (5) If the safety management plan of a contractor is accepted by the operator of a mine, the contractor must maintain and keep the safety management plan up-to-date and must submit to the operator any proposed amendment to the plan for the operator's acceptance.
- (6) A contractor who has prepared and had accepted a safety management plan must

make the plan available for inspection on request by any authorised representative or by any site check inspector.

- (7) A contractor, employee of a contractor or subcontractor of the contractor who works at a mine must comply with the contractor's safety management plan, if that plan has been accepted by the operator in accordance with this section.
- (8) Despite sections 50, 54, 58, 62 and 66, a contractor, employee of a contractor or subcontractor who works at a mine in compliance with the contractor's safety management plan accepted by the operator under this section only needs to comply with the mine safety management plan of the operator to the extent that they are required to do so by the contractor's safety management plan.
- (9) A contractor must ensure that a copy of the contractor's safety management plan is available for inspection during the course of work:
 - (a) by any person working at the place of work concerned and by any person about to commence work at that place, and
 - (b) by a representative of the operator, a government official, a site check inspector or an authorised representative.

64 Duties of contractors regarding safe work method statement

- (1) A contractor must not undertake work at a mine unless the contractor:
 - (a) has undertaken an assessment of the risks associated with the work to be carried out by the contractor, and
 - (b) has prepared a written safe work method statement that includes a copy of the assessment of those risks, and
 - (c) has provided a copy of that statement to a person designated by the operator of the mine.
- (2) A safe work method statement must:
 - (a) describe how work is to be carried out, and
 - (b) identify the work activities assessed as having safety and health risks, and
 - (c) identify those safety and health risks, and
 - (d) describe the control measures that will be applied to the work activities, and
 - (e) make provision for any matters that may be required by the regulations.
- (3) A contractor:
 - (a) must maintain and keep up-to-date the contractor's safe work method statement,

and

- (b) must provide a person designated by the operator with any changes made to the safe work method statement.

65 Contractor to ensure work carried out in accordance with safe work method statement

- (1) A contractor must ensure that all work carried out by the contractor, or by an employee of the contractor, at a mine is carried out in accordance with the safe work method statement prepared by the contractor in relation to that mine.
- (2) If a risk to the health or safety of a person arises because of non-compliance with the statement, the contractor must ensure that work is stopped immediately and does not resume until the statement is complied with.
- (3) However, if the immediate cessation of work is likely to increase the risk to health or safety, the contractor is not required to stop the work immediately but must stop the work as soon as it is safe to do so.
- (4) If there is a conflict between the mine safety management plan for a mine and the safe work method statement of a contractor, the mine safety management plan prevails.

66 Contractor's duties regarding subcontractors

- (1) A contractor who works at a mine must ensure that any subcontractor of the contractor provides the operator of the mine, or a person nominated by the operator, with a written safe work method statement, for the work to be carried out by the subcontractor, before the subcontractor commences work at the mine.
- (2) A contractor who works at a mine must ensure that any subcontractor of the contractor complies with the mine safety management plan of the operator of the mine.
- (3) A contractor must ensure that, if any change is made to the safe work method statement during the course of work, a copy of any part of the statement that has been changed and that is relevant to a subcontractor or employee of the contractor is provided to the subcontractor or employee as soon as practicable after the change is made.

67 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or

- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

Division 7 Duty to give notice

68 Duty to give notice of drilling operations

- (1) A person must not commence drilling operations unless the person has given the Chief Inspector at least 7 days' written notice of the operations.
- (2) If notice has been given of drilling operations on particular land, no further notice is required if other related drilling operations are later commenced on that land.
- (3) That notice must contain the details required by the regulations.
- (4) In this section, **drilling operation** means any drilling operation carried out from the surface in the course of searching for minerals or quarry products, and includes the preparation and restoration of drill sites.

69 Regulations may require notice to be given

- (1) The regulations may require a person, or persons of a specified class, to give notice to the Chief Inspector of the commencement or discontinuation of operations or activities at a mine that are prescribed by the regulations.
- (2) The regulations may prescribe the amount of notice to be given and the details that are required to be contained in the notice.
- (3) A person who is required to give notice must comply with the regulations made under this section.

70 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Division 8 General

71 Person may have more than one duty

A person on whom a duty is imposed under this Part may be subject to more than one duty under this Part.

72 Relationship between duties under this Part and regulations

- (1) Compliance with the regulations is not in itself a defence in any proceedings for an offence against this Part.
- (2) However, a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against this Part.
- (3) This section is subject to any regulations under section 168 or 169.

Note—

See Part 11 for provisions relating to the use of approved mining industry codes of practice in proceedings for offences against this Act.

73 Multiple contraventions of duties under this Part

- (1) More than one contravention of a provision of this Part by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.
- (2) This section does not authorise contraventions of 2 or more of those provisions to be charged as a single offence.
- (3) A single penalty may only be imposed in respect of more than one contravention of any such provision that is charged as a single offence.

74 Civil liability not affected by this Part

- (1) Nothing in this Part is to be construed:
 - (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Part, or
 - (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.
- (2) Subsection (1) does not affect the extent (if any) to which the breach of a duty imposed by the regulations is actionable (including any regulation that adapts a provision of this Part).

Part 6 Miscellaneous matters concerning mines

Division 1 Mine plans

75 Regulations concerning mine plans

- (1) The regulations may impose requirements concerning the preparation of plans in relation to the workings of a mine.
- (2) Without limiting what the regulations may make provision for, they may make provision for any of the following:
 - (a) the persons who must prepare plans,
 - (b) the contents of plans,
 - (c) the revision of plans,
 - (d) access to plans,
 - (e) the inspection of plans by government officials.

Division 2 Hours of work

76 Hours of work and associated working arrangements below ground

- (1) Except in cases of emergency, a person other than an operator or a person acting in the management of the mine is not to be employed underground in a mine for more than 8 consecutive hours at any time or for more than 48 hours in a period of 7 consecutive days.
- (2) Except in cases of emergency, each person employed underground in a mine is to have at least one full day of 24 consecutive hours off work in each period of 7 consecutive days.
- (3) The regulations may prescribe circumstances where some or all of the requirements of subsections (1) and (2) do not apply.
- (4) Except in cases of emergency or in the circumstances prescribed by the regulations, a person other than an operator or a person acting in the management of a mine must not be employed at the mine for more than 8 consecutive hours at any time:
 - (a) in a shaft, except in a cage, or
 - (b) in any situation in which there is a danger of falling down a shaft, such as at work in close proximity to an unguarded shaft.
- (5) In this section, **shaft** does not include a pit except in circumstances in which the regulations provide that it is to include a pit.

77 Chief Inspector may require alteration of hours of work

- (1) The Chief Inspector may, subject to section 76 and the regulations, direct the operator of a mine to limit working hours or to alter associated working arrangements at the mine if the Chief Inspector is of the opinion that existing hours of work or associated working arrangements are likely to adversely affect the health or safety of employees of the operator or any other person.
- (2) A direction under this section may be given in respect of a particular class of employees or in respect of a particular class of work, or may be given generally.
- (3) The operator of a mine must comply with a direction under this section.
- (4) This section does not affect any other powers of the Chief Inspector under this Act.

78 Regulations concerning hours of work

- (1) The regulations may make provision concerning the hours of work of persons working at mines.
- (2) A person other than an operator or a person acting in the management of the mine is not to be employed in a mine in contravention of the limitation on hours of work specified in the regulations for the purposes of this section.
- (3) Subsection (2) does not apply in the case of an emergency.

79 Display of shift roster regimes

The operator of a mine at which persons are employed underground must keep prominently displayed, in a place that is easily accessible to the employees, details of shift roster regimes at the mine.

80 Recording of hours worked

- (1) The operator of a mine must keep records of the hours worked underground by each employee at the mine (whether an employee of the operator or any other person) and must make the records available to a government official on request.
- (2) The regulations may make provision for or with respect to the keeping of records under this section.

81 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division, or who permits any person to contravene or fail to comply with any provision of this Division, is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—375 penalty units, or

- (b) in the case of a corporation (not being a previous offender)—250 penalty units, or
- (c) in the case of an individual (being a previous offender)—225 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—150 penalty units.

82 Defence

A person is not guilty of an offence against this Division for a contravention of a requirement relating to the time for which persons were employed underground if the person proves that there were special circumstances to render the contravention necessary for the safe and proper working of the mine and that the contravention did not create an increased risk of injury to the persons so employed in the mine.

Division 3 Tourist and educational activities

83 Definitions

In this Division:

mine includes an abandoned mine or part of a mine.

permit means a permit that has been issued under section 85 and that has not been revoked under section 86.

84 Tourist activities in mines or use of mines for educational purposes not allowed without a permit

A person must not conduct tourist activities in or about a mine or use a mine principally for educational purposes unless:

- (a) the tourist activities are, or the use of the mine principally for educational purposes is, authorised by a permit issued to that person, and
- (b) the person complies with the conditions (if any) to which the permit is subject.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)— 500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

85 Issue of tourist and educational permits

- (1) Any of the following persons may apply for a permit in relation to a mine:

- (a) in relation to a mine that is located on land subject to a mining lease (other than a mining lease in respect of coal), or to a mineral claim, under the *Mining Act 1992*, the holder of which owns the land—the mining lease or mineral claim holder or another person with that holder’s consent,
 - (b) in relation to a mine that is located on land subject to a mining lease (other than a mining lease in respect of coal), or to a mineral claim, under the *Mining Act 1992*, the holder of which does not own the land—the mining lease or mineral claim holder with the land owner’s consent, or another person with the consent of the mining lease or mineral claim holder and the land owner,
 - (c) in relation to a mine that is not located on land subject to a mining lease or mineral claim under the *Mining Act 1992*—the owner of the land on which the mine is located or another person with the land owner’s consent.
- (2) The Minister may, on application being made to the Minister in writing, issue a permit that:
- (a) authorises tourist activities to be conducted in or about the mine, or
 - (b) authorises the mine to be used principally for educational purposes,
- or both, subject to any conditions that the Minister may specify in the permit and any conditions that may be prescribed by the regulations.
- (3) An application for a permit is to be in the form approved by the Minister and must be accompanied by any particulars or documents specified in that form or prescribed by the regulations (or both).
- (4) The Minister may require an applicant for a permit to furnish additional information within a time specified by the Minister and may refuse to issue a permit if such information is not furnished in that time.
- (5) An application for a permit is to be accompanied by the fee determined by the Minister under section 188.
- (6) In determining an application, the Minister may consult with any persons, government agencies or other bodies that the Minister considers appropriate.
- (7) A permit must not be issued under this section in respect of a mine unless the Minister is satisfied that all necessary precautions will be taken by the applicant to protect the health and safety of persons entering the mine.

86 Revocation or variation of permits

- (1) The Minister:
- (a) may revoke a permit if a condition to which the permit is subject is breached or if

the Minister is satisfied that persons cannot enter the mine to which the permit relates:

- (i) without risk to their safety or health that is higher than that which is reasonably acceptable for tourist or educational activities, or
 - (ii) without risk to their health or safety that is not properly managed by the holder of the permit, and
- (b) may from time to time attach conditions or additional conditions to a permit or vary the conditions to which a permit is subject.
- (2) A revocation of a permit, a variation of conditions to which a permit is subject or the attachment of conditions or additional conditions to a permit does not take effect until notice of the revocation, variation or attachment is served on the occupier of the mine to which the permit relates. However, if the Minister forms the view that an emergency exists, the Minister is not required to give notice and the revocation or variation or attachment of conditions takes effect immediately.
- (3) A variation may be made under subsection (1) (b) by way of addition, amendment or deletion of conditions.
- (4) The regulations may provide that a permit is taken to be automatically revoked during any period of non-compliance with specified conditions or conditions of a specified class.

87 Minister and certain other persons not liable in certain circumstances

- (1) This section applies if:
- (a) the Minister has issued a permit in relation to a mine to a person, and
 - (b) that person, or any other person, suffers any injury or incurs any loss as a result of any person entering the mine pursuant to the permit.
- (2) The Crown, the Minister and any officer of the Department are not liable for any loss arising out of any injury or loss suffered or incurred by any person who enters the mine area pursuant to the permit.

Part 7 Notification of incidents

Division 1 Notification of certain incidents

88 Notification of certain incidents and other matters

- (1) The operator of a mine must give the Chief Inspector notice in accordance with this section of any of the following incidents (***notifiable incidents***):
- (a) any incident at the mine that has resulted in a person being killed,

(b) any other incident at the mine of a kind prescribed by the regulations for the purposes of this paragraph,

(c) any incident or other matter occurring at or in relation to the mine that the regulations declare to be an incident or matter that is required to be notified.

(2) Any notice under this section must be given:

(a) as soon as practicable (but not later than 7 days) after the operator becomes aware of the notifiable incident, and

(b) in writing and, if a form has been prescribed by the regulations, in that form.

(3) Any notice must, in the case of a notifiable incident referred to in subsection (1) (a) or (b), also be given:

(a) immediately the operator becomes aware of the incident, and

(b) by the quickest available means.

This subsection does not apply if the operator is aware that another person has given the required notice of the incident.

(4) The regulations may vary the obligations under this section with respect to the person required to give notice and the time and manner in which the notice is to be given.

89 Non-disturbance of plant involved in notifiable incidents (and of surrounding area)

(1) This section applies if a notifiable incident referred to in section 88 (1) (a) or (b) has occurred at a mine.

(2) The operator of a mine must take measures to ensure that:

(a) plant at that mine is not used, moved or interfered with after it has been involved in a notifiable incident, and

(b) the area and environment at that mine that is connected with the notifiable incident is not disturbed.

(3) If the regulations prescribe measures that satisfy the requirements of this section, the operator is taken to have satisfied those requirements if the operator has taken the measures so prescribed.

(4) This section does not prevent any action:

(a) to help or remove a trapped or injured person or to remove a body, or

(b) to avoid injury to a person or damage to property, or

(c) for the purposes of any police investigation, or

(d) in accordance with a direction of a government official or with the permission of a government official, or

(e) in any other circumstances that may be prescribed by the regulations.

(5) The requirements of this section in relation to any particular occurrence apply only for the period ending 24 hours after notification of the incident in accordance with section 88 or only during any other period prescribed by the regulations.

90 Records of notifications

(1) The operator of a mine must keep records at the mine of every notification given under this Division.

(2) Those records must be kept for at least 5 years.

91 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

(a) in the case of a corporation (being a previous offender)—750 penalty units, or

(b) in the case of a corporation (not being a previous offender)— 500 penalty units, or

(c) in the case of an individual (being a previous offender)—375 penalty units, or

(d) in the case of an individual (not being a previous offender)—250 penalty units.

Division 2 Health and safety

92 Records of medical and first aid treatment

(1) The operator of a mine must keep records at the mine of every occasion on which medical or first aid treatment is provided by or on behalf of the operator to a person employed at the mine.

(2) Those records must be kept for at least 5 years.

93 Offence relating to reporting of health or safety matters

(1) The operator of a mine must not provide, directly or indirectly, any financial benefit or financial incentive to a person for the purpose of discouraging that person from reporting a health or safety matter to the person's supervisor, a site check inspector, an authorised representative, a government official or the Department.

(2) In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of

proving that the provision of a financial benefit or financial incentive was not actuated for the reason of discouraging the reporting of a health or safety matter lies on the defendant.

94 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)— 500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Division 3 Inquiries

95 Boards of Inquiry

- (1) This section applies if it appears to the Minister that an investigation of any of the following is necessary:
 - (a) any event causing death or serious injury at a mine and its causes and circumstances,
 - (b) any dangerous occurrence at a mine and its causes and circumstances,
 - (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,
 - (d) any matter relating to the safety, health, conduct or discipline of persons at or in relation to a mine.
- (2) If this section applies, the Minister may constitute a person as a Board of Inquiry to conduct a special inquiry into the event, occurrence, practice or matter.
- (3) A Board of Inquiry may, at a special inquiry conducted by it, take evidence on oath or affirmation 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.
- (4) 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.
- (5) If the Board of Inquiry agrees, an agent (including an Australian legal practitioner) may represent a person or body at the special inquiry.
 - (6) A Board of Inquiry, when conducting, and making a determination 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.
 - (7) 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.
 - (8) 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.
 - (9) A Board of Inquiry conducting a special inquiry may be assisted by an Australian legal practitioner appointed by the Minister for the purposes of the inquiry.
 - (10) A Board of Inquiry is to determine its own procedure, except as provided by this Act.

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

- (7) A person appearing at a special inquiry must answer any such questions.
- (8) A person is not excused from a requirement under this section to answer a question on the ground that the answer might incriminate the person or make the person liable to a penalty.
- (9) However, any answer given by a natural person in compliance with a requirement under this section is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this section) if the person objected at the time to answering the question on the ground that it might incriminate the person or the person was not warned on that occasion that the person may object to answering the question on the ground that it might incriminate the person.
- (10) Further information obtained as a result of an answer given under this section is not inadmissible on the ground that the answer had to be given or that the answer might incriminate the person.

97 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 event or dangerous occurrence, if the special inquiry concerns an event 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 a mine.
- (2) The Minister may, if the Minister thinks fit, publish the report at the time and in the manner determined by the Minister.

98 No appeal 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.

99 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)— 500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or

- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Part 8 Stop work orders

100 Minister may make stop work order

- (1) If the Minister is of the opinion that any action is being, or is about to be, carried out by any person at a place of work to which this Act applies that involves, or is likely to result in, a serious breach of a provision of:
- (a) this Act or the regulations, or
 - (b) the *Occupational Health and Safety Act 2000* or the regulations under that Act,
- the Minister may order that the person is to cease or is not to carry out the action and that no action, other than any action that may be specified in the order, is to be carried out in or in the vicinity of the place, or a specified part of the place, within a period not exceeding 28 days after the day of the order.
- (2) An order takes effect on and from the time at which:
- (a) a copy of the order is provided to the operator of the mine by the Minister, or
 - (b) a copy of the order is affixed in a conspicuous place in the mine by the Minister, or
 - (c) the person carrying out or about to carry out the action the subject of the order is notified by the Minister that the order has been made,
- whichever is the sooner.
- (3) In this Part, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Minister may make an order, in accordance with this Part, that any such action is to be carried out.
- (4) The regulations may modify this Part in relation to its application to a stop work order that specifies actions that must be carried out.
- (5) Without limiting the Minister's delegation powers under section 182, the Minister may, by instrument in writing, delegate to any or all government officials the functions of giving notice or providing or affixing copies of an order under this section.

101 Prior notification of making of stop work order not required

The Minister is not required, before making a stop work order, to notify any person who may be affected by the order.

102 Extension of stop work order

- (1) The Minister may extend a stop work order for any further period or periods, of no more than 28 days each, that the Minister thinks fit.

- (2) An order extending a stop work order takes effect in the same way as the original order, that is, on and from the time referred to in section 100 (2).

103 Consultation about modification of proposed detrimental action

After the Minister makes a stop work order, the Director-General must immediately consult with the person carrying out or proposing to carry out the action the subject of the order to determine whether any modification of the action may be sufficient to avoid a serious breach of a provision of any Act or regulation referred to in section 100 (1).

104 Stop work order prevails over other instruments

- (1) An investigation notice, improvement notice or prohibition notice issued under the *Occupational Health and Safety Act 2000* that requires or permits work or an activity the subject of a stop work order in force under this Part to be significantly affected is inoperative to the extent of any inconsistency with the stop work order.
- (2) An approval, notice, order or other instrument made or issued by or under any other Act that requires or permits work the subject of a stop work order in force under this Part to be significantly affected is inoperative to the extent of any inconsistency with the stop work order.
- (3) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the stop work order.

105 Costs of enforcing stop work order

- (1) If a person on whom a stop work order is imposed does not comply with the order, within the period specified in the order, the Minister may cause work to be carried out for the purpose of stopping the work specified in the order or otherwise giving effect to the order.
- (2) Any costs or expenses incurred by or on behalf of the Minister under this section are a debt due to the Crown by the person who was carrying out or proposing to carry out the action to which the order relates.
- (3) In any proceedings instituted for the recovery from a person of a debt due by that person to the Crown under this section, a certificate of the Minister that a specified amount is the amount of the debt so due is evidence of that fact.
- (4) A debt due by any person to the Crown under this section is recoverable whether or not the person is convicted of an offence under section 106.
- (5) A person on whom a stop work order is imposed, or any person directed by the Minister to take action for the purposes of subsection (1), may, upon giving reasonable notice to the occupier of the land, enter on or remain on any land for the purpose of complying with the direction of the Minister or with the stop work order, as the case

may require.

- (6) A court that convicts a person of an offence under section 106 may, on the application of the prosecutor, order the person to pay to the Crown the amount that the court is satisfied the Crown is entitled to recover from the person under this section in respect of the failure to which the offence relates. Any amount paid by a person under such an order is taken to have been recovered from the person under subsection (2) and is to be dealt with accordingly.
- (7) For the purposes of subsection (6), a court that makes a finding that a person is guilty of an offence under section 106 without proceeding to a conviction is taken to have convicted the person of the offence.
- (8) For the purposes of this section, a stop work order is taken to have been imposed on the person or persons carrying out the action, or proposing to carry out the action, to which the order relates.

106 Offence: failure to comply with a stop work order

A person who, without reasonable excuse, fails to comply with a requirement imposed by a stop work order is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—1,500 penalty units and in the case of a continuing offence, a further penalty not exceeding 750 penalty units for each day the offence continues, or
- (b) in the case of a corporation (not being a previous offender)—1,000 penalty units and in the case of a continuing offence, a further penalty not exceeding 500 penalty units for each day the offence continues, or
- (c) in the case of an individual not acting in the capacity of an employee (being a previous offender)—750 penalty units and in the case of a continuing offence, a further penalty not exceeding 375 penalty units for each day the offence continues, or
- (d) in the case of an individual not acting in the capacity of an employee (not being a previous offender)—500 penalty units and in the case of a continuing offence, a further penalty not exceeding 250 penalty units for each day the offence continues, or
- (e) in the case of an individual acting in the capacity of an employee (being a previous offender)—45 penalty units and in the case of a continuing offence, a further penalty not exceeding 20 penalty units for each day the offence continues, or
- (f) in the case of an individual acting in the capacity of an employee (not being a previous offender)—30 penalty units and in the case of a continuing offence, a further penalty not exceeding 15 penalty units for each day the offence continues.

Part 9 Competence standards

Division 1 Key obligations

107 Regulations may specify functions to which this Part applies

- (1) The regulations may specify a function as one to which this Part applies (a ***specified function***).
- (2) The regulations may specify, or authorise the Board to determine, what will be sufficient evidence of competence to perform a function to which this Part applies (***specified evidence of competence***).

108 Operator to ensure only competent persons employed to perform specified functions

- (1) The operator of a mine must not employ a person at the mine to perform a specified function unless the person holds specified evidence of competence to perform that function.
- (2) The operator of a mine must ensure that no person at the mine performs a specified function unless the person holds specified evidence of competence to perform that function.

109 Contractor to ensure only competent persons employed to perform specified functions

A contractor must not employ a person at a mine to perform a specified function unless the person holds specified evidence of competence to perform that function.

110 Only competent persons to perform specified functions

A person at a mine must not perform a specified function unless the person holds specified evidence of competence to perform that function.

111 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—25 penalty units.

Division 2 Metalliferous Mines and Extractive Industries Competence

Board

112 Constitution of Metalliferous Mines and Extractive Industries Competence Board

- (1) There is constituted by this Act a body corporate with the corporate name of the Metalliferous Mines and Extractive Industries Competence Board.
- (2) The Board represents the Crown.

113 Ministerial control of Board

The Board is subject to the control and direction of the Minister.

114 Membership of Board

- (1) The Board is made up of the following persons appointed by the Minister:
 - (a) the Chairperson of the Board, and
 - (b) 2 employer representatives selected from a panel of 4 submitted to the Minister by a body or bodies representing employers, and
 - (c) 2 employee representatives selected from a panel of 4 submitted to the Minister by a body or bodies representing employees, and
 - (d) between 2 and 4 persons who have expertise in the development and assessment of competence of persons performing functions at mines, and
 - (e) 2 officers of the Department.
- (2) The regulations may make provision for or with respect to the submission of representatives under this section and the appointment of members of the Board.

115 Procedure of Board

- (1) The regulations may make provision for or with respect to the procedure of the Board.
- (2) The Board may make rules about the procedure of the Board that are not inconsistent with this Act or the regulations. Those rules are subject to any direction of the Minister.

Division 3 Functions of Board

116 Functions of Board

- (1) The Board has the functions conferred or imposed on it by or under this Act.
- (2) Without limiting subsection (1), the functions of the Board include the following:
 - (a) to oversee the development of competence standards for persons performing functions at mines that may impact on health and safety,

- (b) to undertake initial and ongoing assessments of the competence of persons performing functions at mines,
 - (c) to advise the Minister on matters related to the competence required of persons to perform functions at mines,
 - (d) any other functions that the Minister may confer on the Board from time to time.
- (3) Without limiting subsection (2), the Board may do any or all of the following for the purpose of carrying out its functions:
- (a) engage consultants,
 - (b) develop competence standards or cause competence standards to be developed,
 - (c) assess a person's competence, cause a person's competence to be assessed or accept an assessment of a person's competence.

117 Annual report

The Board must, at any time or within any period that the Minister may direct, make an annual report of its activities during the preceding year to the Minister.

Division 4 Certificates of competence

118 Certificates of competence may be granted

The Minister may, in accordance with the regulations and any orders made under section 120, grant a certificate of competence to perform a specified function. That certificate may be granted unconditionally or subject to conditions.

119 Regulations concerning competence standards

The regulations may make provision for or with respect to any or all of the following:

- (a) the development of competence standards,
- (b) the assessment of the competence standards of persons, including the conduct of examinations,
- (c) the granting and replacement of certificates of competence,
- (d) the imposition of conditions on certificates of competence,
- (e) the maintenance of competence by those to whom a certificate of competence has been granted,
- (f) the suspension or cancellation of certificates of competence, including suspension or cancellation by reason of incompetence or negligence,

- (g) the restoration of certificates of competence that have been suspended or cancelled,
- (h) the circumstances in which a certificate of competence granted by an authority outside New South Wales will be accepted as being sufficient qualification for the grant of a certificate of competence under this Act and the circumstances in which it will not be accepted,
- (i) the range of specified functions that the holder of specified evidence of competence is allowed to perform without breaching this Part,
- (j) the keeping of a register of certificates of competence,
- (k) the appointment and functions of examiners,
- (l) the charging of fees for any service provided by the Minister, the Board or any other person in relation to this Part.

120 Ministerial orders

- (1) The Minister may make orders, not inconsistent with this Act or the regulations, for or with respect to any or all of the following:
 - (a) the qualifications to be held by a person in order for the grant to the person of a certificate of competence to be recommended,
 - (b) the experience that a person applying for a certificate of competence must have in order for the grant to the person of a certificate of competence to be recommended,
 - (c) the age that a person must have attained before the person may be granted a certificate of competence,
 - (d) the course of instruction to be undertaken by an applicant for a certificate of competence,
 - (e) the nature and type of examinations to be undertaken by an applicant for a certificate of competence and the manner of their conduct,
 - (f) the circumstances in which the Board may grant to an applicant for a certificate of competence an exemption from complying with the rules in respect of the undertaking of examinations, the holding of qualifications, the possession of experience and the attendance at courses of instruction,
 - (g) the matters to be included in an application for a certificate of competence,
 - (h) the declaration by the Minister that a person's competence is not recognised,
 - (i) any other matters that may be prescribed by the regulations.

- (2) The Board may make recommendations to the Minister concerning the making, amendment or revocation of orders under this section.
- (3) An order must be published in the Gazette. An order takes effect on the date on which it is published in the Gazette or on any later date specified in the order.
- (4) Sections 42–45 of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to statutory rules within the meaning of that Act.

Division 5 Offences

121 Offences: certificates of competence

A person must not, with intent to deceive:

- (a) use a certificate of competence granted under this Act, or
- (b) lend to another person a certificate of competence granted under this Act, or
- (c) allow to be used by another person a certificate of competence granted under this Act.

122 Offence of forging or having forged document

A person must not:

- (a) make a document so closely resembling a certificate of competence granted under this Act as to be calculated to deceive, or
- (b) have in the person's possession a document so closely resembling a certificate of competence granted under this Act as to be calculated to deceive.

123 False or misleading statements

A person must not make a statement that the person knows to be false or misleading in a material particular or recklessly make a statement that is false or misleading in a material particular, or produce, furnish, send or otherwise make use of a document that is false or misleading in a material particular for the purposes of obtaining for himself, herself or another person:

- (a) the grant of any certificate of competence or the issue of a duplicate certificate of competence or the restoration of any such certificate, or
- (b) employment at a mine to perform functions for which a certificate of competence is required.

124 Offences if a person's competence is declared as not recognised

- (1) A person whose competence has been declared by the Minister, in accordance with

the regulations, as not recognised is guilty of an offence if the person continues to perform functions for which that competence was required.

- (2) An operator who requires or permits functions to be performed by a person whose competence is declared as not recognised is guilty of an offence.

125 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Part 10 Oversight of mines

Division 1 Outline of this Part

126 Outline of this Part

- (1) This Part provides for the appointment, functions and powers of the following persons as government officials:
 - (a) the Chief Inspector,
 - (b) inspectors,
 - (c) mine safety officers,
 - (d) investigators.
- (2) This Part also provides for the election or appointment of site check inspectors to carry out inspections as representatives of the workforce at mines.

Division 2 Inspections by government officials

Subdivision 1 Appointment of government officials

127 Appointment of government officials

- (1) The Minister may appoint a person employed under Chapter 2 of the *Public Sector Employment and Management Act 2002* as:
 - (a) the Chief Inspector, or

- (b) an inspector, or
 - (c) a mine safety officer, or
 - (d) an investigator.
- (2) An instrument appointing a person under this section may limit the functions that the person has as a government official.
- (3) A person appointed under this section is to be issued with an identification card under section 48 of the *Occupational Health and Safety Act 2000*.

128 Qualifications of inspectors

A person must not be appointed as an inspector unless the Minister considers that the person:

- (a) has a professional engineering qualification relevant to mining or quarrying operations from an Australian university or any equivalent qualification, and
- (b) has appropriate competencies, and adequate experience, in mining or quarrying operations to effectively perform the functions of an inspector.

129 Appointment of consultants as investigators

- (1) The Minister may appoint a consultant:
- (a) as an investigator for the purposes of carrying out investigations under this Act, or
 - (b) to assist an investigator in carrying out such investigations.
- (2) A consultant appointed under this section has, while exercising the functions for which the consultant was appointed, the same functions as an investigator has under this Act and the regulations, and the provisions of this Act and the regulations apply in respect of the consultant in the same way as they apply in respect of an inspector and anything done by an inspector.

Subdivision 2 Functions of government officials

130 Functions of Chief Inspector

- (1) The functions of the Chief Inspector are:
- (a) the control and direction of inspectors and mine safety officers, and
 - (b) reviewing appeals from notices issued by inspectors and mine safety officers, and
 - (c) the other functions that are conferred on the Chief Inspector by this Act or the regulations, and

(d) any other function conferred by the Minister from time to time.

(2) For the purposes of this Act, the Chief Inspector is an inspector.

131 Bringing concerns regarding health, safety or welfare to the attention of operators

If a government official:

- (a) exercises any of the powers conferred on the official at or in connection with a mine, and
- (b) as a result of the exercise of those powers, obtains any information or becomes aware of any practice at a mine that may, in the official's opinion, be relevant to the continued safe operation of a mine or the health, safety or welfare at work of the persons who work at a mine,

the government official must, as soon as possible, advise the most senior person in the management structure of the mine who is currently at work that the official has obtained any such information or has become aware of any such practice.

132 Consideration and investigation of complaints

- (1) A government official must consider any complaint made to the government official by a site check inspector for a mine, being a complaint concerning the health, safety or welfare at work of the persons who work at the mine.
- (2) A government official may investigate any such complaint if the official considers it appropriate to do so.
- (3) A government official must report to the site check inspector, who made the complaint to the government official, concerning the results of the official's consideration or investigation of the complaint.
- (4) Nothing in this section prevents a site check inspector from raising matters directly with the operator of a mine.

133 Audit and review of mine safety management plans and other arrangements

- (1) A government official may at any time audit and review:
 - (a) the mine safety management plan for a mine, and
 - (b) the emergency plan for the mine, and
 - (c) any other arrangements for the mine required by this Act or the regulations.
- (2) Such an audit and review may occur periodically, after the occurrence of an event prescribed by the regulations or at any other time that the government official thinks is appropriate.

134 Additional functions

A government official has the following additional functions:

- (a) in the case of a government official other than the Chief Inspector, to provide advice to the Chief Inspector on matters relating to the health, safety and welfare of persons at work at mines,
- (b) to make reports on incidents or other matters at mines and to make recommendations for further action based on those reports.

Subdivision 3 Powers of government officials

Note—

Section 47A of the *Occupational Health and Safety Act 2000* provides that a person appointed as a government official under this Act is taken to have been appointed as an inspector for the purposes of the OH&S Act and has the powers of an inspector under that Act in relation to mining workplaces.

135 Powers of entry at any time

Despite Part 5 of the *Occupational Health and Safety Act 2000*, a government official may enter any place to which this Act applies at any time.

Note—

Section 6 specifies the places to which this Act applies.

136 Power to cross land

- (1) A government official may enter any land (including any land that includes residential premises) at any time if entering that land is the only way that the government official can gain entry to a place of work to which this Act applies for the purpose of exercising functions under this Act or the *Occupational Health and Safety Act 2000*.
- (2) A government official may enter only by any means or route approved by the occupier of the land and must exercise all due care in entering, being on and leaving the land.
- (3) However, subsection (2) does not apply:
 - (a) in the case of an emergency, or
 - (b) where the government official has made reasonable efforts to locate the occupier of the land and has been unable to do so, or
 - (c) if the occupier of the land unreasonably fails to approve a means or route to cross the land, or
 - (d) if the occupier of the land approves an unreasonable means or route to cross the land.

137 Power to require plan

- (1) A government official may require the operator of a mine to provide the government official with a plan of the mine marked with information that the government official considers necessary for an investigation or inquiry that the government official is making.
- (2) An operator must not fail to comply with a requirement made under this section.
Maximum penalty: 100 penalty units.

Division 3 Inspections on behalf of work force

Notes—

Section 13 of the *Occupational Health and Safety Act 2000*, and the regulations under that Act, require an employer to consult employees about occupational health and safety matters.

This Division makes provision for the election or appointment of certain persons to carry out inspections and perform other functions on behalf of persons who work at a mine. Section 17 (7) of the *Occupational Health and Safety Act 2000* provides that a site check inspector under this Act must be a member of any OHS committee for the mine.

Subdivision 1 Site check inspectors

138 Site check inspectors

- (1) For the purpose of enabling inspections to be carried out at a mine, on behalf of the persons at work at the mine, an individual may be elected as a site check inspector for the mine.
- (2) More than one person may be elected as a site check inspector if the operator agrees or the Chief Inspector so directs.

139 Trigger for election

An election of a site check inspector for a mine must be held if one or more positions are vacant and:

- (a) a person employed in or about the mine requests in writing that an election be held,
or
- (b) the Chief Inspector directs that an election be held.

140 Conduct of election of site check inspectors

- (1) An election for a site check inspector for a mine may be conducted:
 - (a) if there is only one involved union in relation to the mine—by that involved union,
or
 - (b) if there is more than one involved union and all the involved unions are in agreement that a specified one of those unions should conduct the election—by

that specified union, or

(c) if there is no involved union in relation to the mine or agreement cannot be reached under paragraph (b)—by a person authorised by the Chief Inspector to conduct elections under this section.

- (2) A person may be a candidate in the election if and only if the person is employed at the mine.
- (3) Subject to the regulations, all individuals employed in or about the mine are entitled to vote in the election.
- (4) Where there is only one candidate for the election, that person is taken to have been elected.
- (5) The election must be conducted in a manner that is consistent with recognised democratic principles.
- (6) Where a person is elected as a site check inspector for a mine, the involved union or other person authorised under subsection (1) to conduct the election must, as soon as practicable after the person has been so elected, inform the Chief Inspector and the operator of the mine.
- (7) As soon as practicable after being so informed, the operator of the mine must cause a notice, that the person so elected is a site check inspector for the mine, to be displayed in a prominent place at the mine, that will allow all of the persons working in or about the mine to be notified of the election.

Maximum penalty: 10 penalty units.

141 Term of office

Subject to section 142, a site check inspector for a mine holds office for 2 years after the date on which the site check inspector was elected but is eligible to be elected for further terms of office.

142 Vacation of office of site check inspector

- (1) A person ceases to be a site check inspector for a mine if:
 - (a) the person resigns as a site check inspector, or
 - (b) the person ceases to be employed in or about the mine, or
 - (c) the person's term of office expires without the person having been elected to be a site check inspector for the mine for a further term.
- (2) A person may resign as a site check inspector for a mine:

- (a) if the person was last elected as a site check inspector in an election conducted by an involved union in relation to the mine—by notice in writing delivered to the involved union that nominated the person as a candidate in the election, or
 - (b) in any case—by notice in writing delivered to the operator of the mine.
- (3) If a person has resigned as a site check inspector for a mine:
- (a) if subsection (2) (a) applies—the involved union to which the notice of resignation was delivered, or
 - (b) in any other case—the operator of the mine,
- must notify the persons employed at or about the mine, and, in a case to which subsection (2) (a) applies, the operator of the mine, of the resignation.
- (4) If a person has ceased to be a site check inspector for a mine because of subsection (1) (b), the person must notify the following persons in writing that the person has ceased to be a site check inspector for that mine:
- (a) the persons employed at or about the mine,
 - (b) the operator of the mine,
 - (c) if the person was last elected as a site check inspector in an election conducted by an involved union in relation to the mine—the involved union that nominated the person as a candidate in the election.

143 Notification of election

A person elected as a site check inspector for a mine must:

- (a) notify the operator of the mine of the person's election, and
- (b) give to the operator the person's address and telephone number (including any mobile telephone number).

Maximum penalty: 5 penalty units.

144 Functions of site check inspectors

The functions of a site check inspector for a mine are as follows:

- (a) to keep under review the measures taken to ensure the health, safety and welfare of persons at the mine, including procedures to control risks,
- (b) to investigate any matter that may be a risk to health and safety at the mine,
- (c) to attempt to resolve such matters but, if unable to do so, to request an investigation into those matters by an inspector for that purpose,

- (d) to make a request to accompany an inspector on an inspection at the mine under section 69 of the *Occupational Health and Safety Act 2000* and to accompany the inspector if the request is granted,
- (e) to be an observer during the presentation of any formal report made by a government official to the operator of a mine, or to a contractor who does work at a mine, about an occupational health and safety matter related to work at the mine,
- (f) at the request of an employee at the mine, to accompany the employee during any interview or discussion with an employer or the operator of the mine about any occupational health and safety issue,
- (g) to be an observer during any formal in-house investigation of a notifiable incident within the meaning of Division 1 of Part 7,
- (h) to assist in the development of arrangements for recording workplace hazards and accidents and to promote improved workplace health and safety,
- (i) to make recommendations on the training of employees in relation to health and safety,
- (j) to participate in consultation that the operator, or any contractor who does work at the mine, is required to undertake with a site check inspector under this Act or the regulations,
- (k) to inspect the mine to assess the level of risk to which employees are exposed, including inspecting documents and plans relating to health, safety and welfare that are required to be kept at the mine by this Act or the regulations or by the *Occupational Health and Safety Act 2000* or the regulations under that Act,
- (l) any other functions prescribed by the regulations.

145 Training of site check inspectors

- (1) A site check inspector for a mine must undertake a course of training relating to occupational health and safety that is accredited by the Minister for the purposes of this section.
- (2) The operator of a mine must permit a site check inspector for the mine to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

146 Duties of operators in relation to site check inspectors

The operator of a mine must:

- (a) on being requested to do so by a site check inspector for the mine, consult with a site check inspector on the implementation of any changes at the mine that may affect

the health or safety of persons at work at the mine, and

- (b) permit a site check inspector to make any inspection of the mine that a site check inspector is entitled to make under this Act and to accompany an investigator during any investigation at the mine by the investigator, and
- (c) if there is no OHS committee under the *Occupational Health and Safety Act 2000* in respect of the operator's employees at the mine—on being requested to do so by a site check inspector, consult with a site check inspector concerning the development, implementation and review of measures to ensure the health or safety of persons at work at the mine, and
- (d) permit a site check inspector to be present at any interview at which a site check inspector is entitled to be present under this Act, and
- (e) provide a site check inspector with access to any information to which a site check inspector is entitled to have access in accordance with this Act and to which access has been requested, and
- (f) provide a site check inspector with reasonable time, during normal working hours, to exercise the functions of a site check inspector without loss of remuneration or other entitlements, and
- (g) provide a site check inspector with access to any facilities that are:
 - (i) prescribed for the purposes of this paragraph, or
 - (ii) necessary for the purposes of exercising the powers of a site check inspector.

Maximum penalty: 100 penalty units.

Note—

An operator also has duties as an employer under the *Occupational Health and Safety Act 2000*. They include duties under that Act (and the regulations under that Act) to consult with employees.

147 Duties of contractors in relation to site check inspectors

A contractor carrying out work at a mine must:

- (a) on being requested to do so by a site check inspector for the mine, consult with a site check inspector on the implementation of changes at any mine at which employees of the contractor perform work for the contractor, being changes that may affect the health or safety at work of the employees, and
- (b) permit a site check inspector to make any inspection of the mine that a site check inspector is entitled to make under this Act, and to accompany an investigator during any investigation at the mine by the investigator, and

- (c) if there is no OHS committee (established under the *Occupational Health and Safety Act 2000*) in respect of the contractor's employees at the mine—on being requested to do so by a site check inspector, consult with a site check inspector concerning the development, implementation and review of measures to ensure the health or safety at work of those employees, and
- (d) permit a site check inspector to be present at any interview at which a site check inspector is entitled to be present under this Act, and
- (e) provide a site check inspector with access to any information to which a site check inspector is entitled to have access in accordance with this Act and to which access has been requested, and
- (f) if a site check inspector is an employee of the contractor, provide the site check inspector with reasonable time, during normal working hours, to exercise the functions of a site check inspector, without loss of remuneration or other entitlements.

Maximum penalty: 100 penalty units.

Note—

A contractor also has duties as an employer under the *Occupational Health and Safety Act 2000*. They include duties under that Act (and the regulations under that Act) to consult with employees.

148 Assistance to site check inspectors

The operator of a mine and all other persons at the mine must afford every facility and assistance to a site check inspector for the purposes of an inspection of the mine by a site check inspector.

Maximum penalty: 100 penalty units.

149 Reports by site check inspectors

- (1) After making an inspection at a mine, a site check inspector must report any perceived hazard to the operator of the mine.

Maximum penalty: 20 penalty units.

- (2) On receipt of a report from a site check inspector, the operator must:
 - (a) send a copy of the report to a government official within 24 hours after receiving it, and
 - (b) take measures to resolve the matter including the taking of any necessary corrective action.

Maximum penalty: 20 penalty units.

- (3) A government official who receives a copy of a report must investigate the report at

the earliest practicable time.

Subdivision 2 Inspections on behalf of work force

150 Inspections by site check inspectors

A site check inspector for a mine may:

- (a) at any time enter and inspect working places, machinery and equipment at the mine and the shafts, roadways, working places, old workings and machinery and equipment at the mine, and
- (b) inspect any documents or plans that are required to be kept at the mine by this Act or the regulations or by the *Occupational Health and Safety Act 2000* or the regulations under that Act, and
- (c) when there is at the mine an event or other occurrence (being an event or occurrence for which notice is required to be given by or under this Act) inspect the place where the event or other occurrence happened and, so far as is necessary for the purpose of ascertaining its cause:
 - (i) inspect any other part of the mine and any machinery, apparatus or other thing at the mine, or
 - (ii) test the atmosphere at the place where the event or other occurrence happened.

151 Site check inspector may be accompanied by operator or operator's representative

For the purposes of an inspection of a mine under section 150, a site check inspector may be accompanied by the operator, or a representative of the operator, if the operator thinks fit.

152 Site check inspector must not leave work without prior notice

A site check inspector employed at a mine must not leave his or her place of work for the purpose of exercising functions as a site check inspector under this Division unless the site check inspector gives reasonable notice to the operator of the mine of his or her intention to do so. For this purpose, notice given to a supervisor is taken to have been given to the operator.

Maximum penalty: 20 penalty units.

153 Power to cross land

- (1) A site check inspector or an authorised representative for a mine may enter any land (including any land that includes residential premises) at any time if entering that land is the only way that the site check inspector or the authorised representative can gain entry to a mine for the purpose of exercising functions under this Act or the *Occupational Health and Safety Act 2000*.

- (2) A site check inspector or authorised representative may enter only by any means or route approved by the occupier of the land and must exercise all due care in entering, being on and leaving the land.
- (3) However, subsection (2) does not apply:
 - (a) in the case of an emergency, or
 - (b) where the site check inspector or authorised representative has made reasonable effort to locate the occupier of the land and has been unable to do so, or
 - (c) if the occupier of the land unreasonably fails to approve a means or route to cross the land, or
 - (d) if the occupier of the land approves an unreasonable means or route to cross the land.

Division 4 Offences

154 Offence of failing to comply with requirement of government official

A person must not, without reasonable excuse, refuse or fail to comply with a requirement made by a government official in accordance with this Act.

Maximum penalty:

- (a) in the case of a previous offender—150 penalty units, or
- (b) in any other case—100 penalty units.

155 Obstruction of site check inspectors in exercise of functions

A person must not obstruct a site check inspector in the exercise of any function conferred on a site check inspector by this or any other Act.

Maximum penalty: 100 penalty units.

156 Offence of interfering with site check inspector or government official

A person must not, without reasonable excuse, wilfully interfere with a site check inspector or a government official in exercising the inspector's or official's functions under this Act.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—225 penalty units, or

(d) in the case of an individual (not being a previous offender)—150 penalty units.

157 Offence of impersonating a site check inspector or government official

A person must not impersonate, or falsely represent that the person is, a site check inspector or a government official.

Maximum penalty: 100 penalty units.

Part 11 Mining industry codes of practice

158 Purpose of industry codes of practice

The purpose of a mining industry code of practice is to provide practical guidance to operators, employers and others who have duties under Part 5 of this Act or Part 2 of the *Occupational Health and Safety Act 2000* with respect to occupational health, safety and welfare at mines.

159 Minister may prepare draft codes

- (1) The Minister may prepare, or cause to be prepared, draft mining industry codes of practice.
- (2) A draft mining industry code of practice may refer to or incorporate, with or without modification, a document prepared or published by a body specified in the code, as in force at a particular time or from time to time.

160 Consultation on draft codes

The Minister is to arrange for any organisations or persons, that the Minister may think appropriate, to be consulted about a draft mining industry code of practice.

161 Approval of codes by Minister

The Minister may approve a mining industry code of practice.

162 Publication, commencement and availability of codes

- (1) An approved mining industry code of practice:
 - (a) is to be published in the Gazette, and
 - (b) takes effect on the day on which it is so published or, if a later day is specified in the code for that purpose, on the later day so specified.
- (2) The following are to be made available for public inspection without charge at an office of the Department designated by the Director-General during normal office hours:
 - (a) a copy of each approved mining industry code of practice,

- (b) if an approved mining industry code of practice has been amended, a copy of the code as so amended,
- (c) if an approved mining industry code of practice refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.

163 Amendment or revocation of codes

An approved mining industry code of practice may be amended or revoked by an instrument prepared, approved and published in accordance with the relevant procedures of this Part with respect to mining industry codes of practice.

164 Use of codes

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

Part 12 Regulations

165 Regulations: general power

- (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 the objects of this Act.
- (2) Any specific power to make regulations under this Act does not limit the generality of subsection (1).

166 Regulations: specific miscellaneous powers

Regulations may be made for or with respect to any of the following matters:

- (a) the safety, health, welfare, convenience and conduct of persons at mines,
- (b) critical controls for major hazards at mines,
- (c) the records that must be kept and the reports that must be made by an operator of a

- mine to the Chief Inspector concerning the health and safety performance of the mine,
- (d) the matters in a mine safety management plan,
 - (e) the matters in an emergency plan,
 - (f) the matters in a contractor's safety management plan,
 - (g) regulating or prohibiting:
 - (i) the design, manufacture, supply or use of any plant at or in relation to a mine, and
 - (ii) the design, manufacture, supply, storage, transport or use of any substance at or in relation to a mine, and
 - (iii) the carrying on of any process or the carrying out of any activity at or in relation to a mine,
 - (h) requiring persons to identify hazards to the health and safety of persons, and to assess risks arising from work at or in relation to a mine (including risks arising from the place of work or from any plant or substance for use at work),
 - (i) designating the persons (whether employees, employers, self-employed persons, contractors or other persons) who are to be responsible for compliance with the obligations imposed by the regulations,
 - (j) the registration of persons occupying positions,
 - (k) requiring a person, before commencing to carry out work of a particular kind at a place of work at or in relation to a mine, to give the Minister or other persons notice of the proposed work in accordance with the regulations,
 - (l) requiring persons at a mine, in any circumstances involving a risk to their health, to undergo a biological, hearing or other test,
 - (m) prohibiting persons at a mine eating, drinking or smoking in any circumstances involving an increased risk to their health,
 - (n) measures for detecting and investigating cases in which the health of persons has been, or may have been, affected, including medical examinations, the making of biological, hearing or other tests and the notification of absences from work,
 - (o) prohibiting, absolutely or conditionally, the use of specified materials or classes or types of materials at or in relation to mines,
 - (p) regulating or prohibiting blasting,
 - (q) requiring or regulating fire prevention and control,

- (r) requiring or regulating strata control,
- (s) the design, construction, installation, maintenance, use, testing, repair, adjustment, alteration and examination of plant used at or in relation to mines,
- (t) the design, use, construction and maintenance of buildings and structures at mines,
- (u) the design, use, construction and maintenance of equipment used in connection with shafts and roadways in mines,
- (v) the provision of security measures at a mine to prevent access to shafts, declines and surface buildings when unattended,
- (w) the circumstances in which consultation must be undertaken by an operator of a mine or by a contractor,
- (x) the mode of consultation by the operator of a mine or by a contractor,
- (y) the requirements to be observed and the precautions to be taken in mining any location, including:
 - (i) under the ocean, a river, a lake, an estuary, a reservoir or an aquifer, and
 - (ii) near any place or strata that is likely to contain a dangerous accumulation of gas or water or material that flows when wet,
- (z) the control of the supply, storage and use of blasting materials, blasting devices and inflammable materials at a mine,
- (aa) requiring the surveying, and the preparation of plans, of barriers and protective pillars in a mine and prescribing the time in which any such surveys or plans must be made or prepared,
- (ab) the waiver, remission or refund of fees charged under this Act or the regulations and the interest payable for late payment of such fees,
- (ac) the registration of any plant, material or thing before it may be used in, installed in or taken into a mine or connected to, or used with, any other plant, material or thing used or installed in a mine,
- (ad) the generation, storage, transformation, transmission and use of electricity at a mine,
- (ae) requiring communication systems to be provided in a mine,
- (af) the supply and maintenance of first aid equipment, facilities and locations at a mine,
- (ag) the employment at a mine of persons trained to administer first aid to injured persons,

- (ah) the conveyance of persons injured within a mine from the mine to their homes or hospital,
- (ai) the supply of drinking water at a mine,
- (aj) the provision of facilities for the taking of meals both on the surface and underground at a mine,
- (ak) the supply and maintenance of safety equipment for the use of persons employed at a mine,
- (al) the transport of persons and materials in a mine,
- (am) requiring persons employed in a mine who carry out prescribed functions that may affect the safety or health of other persons to hold any evidence of competence that may be prescribed,
- (an) the ventilation of underground mines,
- (ao) the environmental working conditions in a mine,
- (ap) the control of the temperature and humidity to which persons may be exposed in a mine,
- (aq) lighting in or about mines,
- (ar) prohibiting the taking into mines of items that may affect the safety of persons at mines,
- (as) searching persons, before entry into mines, for items referred to in paragraph (ar) and the confiscation and disposal of any such items found,
- (at) the fencing, enclosing or sealing of abandoned mines or parts of mines by any person (including the owner or occupier of land on which those abandoned mines or parts of mines are located),
- (au) requiring the provision of information, and the means of information provision, at a mine and prescribing:
 - (i) the number, design, construction, size and location of those means of information provision, and
 - (ii) the matters that must be displayed or provided, and
 - (iii) the class or classes of persons to whom information is to be provided,
- (av) the preparation, maintenance, keeping and preservation of plans, sections, copies or tracings of any original plans and sections, and drawings of mines (including abandoned mines) and of workings in or about mines and of related documents,

including provisions for or with respect to the preparation of those plans, sections, copies and drawings by the Director-General and the recovery of the cost of their preparation, maintenance, keeping and preservation,

- (aw) surveys of mines (including abandoned mines),
- (ax) the furnishing or production of copies of plans, sections and drawings of mines (including abandoned mines) and the furnishing of information relevant to the preparation of those plans, sections and drawings to the Director-General, inspectors and other persons,
- (ay) the supply of, or the furnishing of information from, copies of plans, sections or drawings filed with the Director-General to persons,
- (az) prescribing, in respect of tailings disposal areas, engineering, environmental and safety standards and practices to be adopted in constructing and using emplacement areas and steps to be taken to keep emplacement areas secure,
- (ba) the provision, retention, maintenance and inspection of records at a mine,
- (bb) the obligations of land owners and land occupiers at or in the vicinity of mines or abandoned mines,
- (bc) the functions of the Chief Inspector,
- (bd) the functions of inspectors, investigators or mine safety officers, including provisions for or with respect to the production of identification cards by inspectors, investigators or mine safety officers and the warnings to be administered to persons in the course of an inspection,
- (be) the functions of site check inspectors including provisions for or with respect to the production of identification cards by such persons,
- (bf) the analysis of any substance,
- (bg) the fees chargeable or payable for doing any act or providing any service in connection with this Act or the regulations,
- (bh) forms for the purposes of this Act or the regulations,
- (bi) the manner of serving notices under this Act or the regulations,
- (bj) any information to be provided to any person by an inspector or other person exercising functions under this Act,
- (bk) the persons, or class of persons, entitled to vote at an election under this Act,
- (bl) the manner in which an election under this Act must be held,

- (bm) the fitness for work of persons who work at mines,
- (bn) the setting and variation of working time arrangements of persons who work at mines,
- (bo) the consumption of alcohol or other drugs by persons who work at mines or who visit mines or abandoned mines under the authority of a permit under Division 3 of Part 6,
- (bp) the content and operation of a management structure for a mine,
- (bq) supervision of persons who work at mines,
- (br) the duties of an operator of a mine in relation to subcontractors,
- (bs) periodic performance reports by operators of mines concerning the occurrence of notifiable incidents within the meaning of section 88,
- (bt) regulating tourist activities and the use of mines for educational purposes,
- (bu) the lodgment of applications under this Act,
- (bv) the transfer of any permit and the fees payable in respect of such a transfer,
- (bw) the duration of any permit, which may be indefinite or of specified length,
- (bx) modifying the requirements of Part 5 so that they apply, with the prescribed modifications, to and in respect of persons who conduct tourist activities in or about a mine, or use a mine for educational purposes, under the authority of a permit issued under Part 6.

167 Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal

- (1) The regulations may authorise a person to apply to the Administrative Decisions Tribunal for a review of a decision under this Act or the regulations that is of a class prescribed by the regulations.
- (2) The regulations may require any person who applies to the Administrative Decisions Tribunal for a review of a decision under this Act to notify any person of that application.
- (3) Despite section 60 of the *Administrative Decisions Tribunal Act 1997*, the regulations may make provision for the operation and implementation of a decision under review, or pending review, by the Administrative Decisions Tribunal.
- (4) Any such regulation cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

168 Regulations: adapting duties under Part 5

The regulations may adapt the provisions of Part 5 to meet the circumstances of any specified class of case.

169 Regulations concerning application of Part 5 to contractors

- (1) The regulations may specify contractors or classes of contractors:
 - (a) in relation to whom some or all of Subdivision 4 of Division 2 of Part 5 does not create any duties or creates duties subject to conditions, or
 - (b) to whom some or all of Division 6 of Part 5 does not apply or applies subject to conditions.
- (2) Any regulation made under this section applies only to contractors who do not undertake mining activities as part of the work that they undertake in connection with a mine.

170 Regulations may adopt other publications

The regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time.

171 Regulations may create criminal offences

The regulations may create offences punishable by a penalty not exceeding 250 penalty units.

172 Exemptions

- (1) The regulations may exempt, or provide for the exemption of, persons, or persons of a prescribed class, or any act, matter or thing, or any prescribed class of act, matter or thing, either absolutely or subject to conditions, from any provision of the regulations.
- (2) The regulations may exempt an operator, or a class of operators, from the requirement to prepare a mine safety management plan and from requirements relating to that plan under Subdivision 2 of Division 2 of Part 5.

173 Regulations relating to consultation

- (1) If a provision of this Act requires consultation to be carried out with persons who work at a mine, in the manner required by the regulations, the regulations may specify the circumstances where it is sufficient for the OHS committee for the mine (established under the *Occupational Health and Safety Act 2000*) or a site check inspector for the mine to be consulted about the matter rather than the persons who work at the mine.
- (2) This section does not limit the mode of consultation that may be required by the regulations, or the circumstances where consultation may be required.

Part 13 Miscellaneous

Division 1 Enforcement

Note—

Section 104A of the *Occupational Health and Safety Act 2000* provides for offences under this Act and the regulations to be prosecuted under that Act.

174 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the director or person satisfies the court that:
 - (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.
- (4) In the case of a corporation that is a local council, a member of the council (in his or her capacity as such a director) is not to be regarded as a director or person concerned in the management of the council for the purposes of this section.

175 Aiding and abetting etc

- (1) A person:
 - (a) who aids, abets, counsels or procures, or
 - (b) who, by act or omission, is in any way directly or indirectly knowingly concerned in or a party to,the commission of an offence against this Act or the regulations is taken to have committed that offence and is punishable accordingly.
- (2) Subsection (1) does not apply to a person who is acting in the ordinary course of the person's duties as an officer of a Federal or State industrial organisation of employees or employers.

176 Defence

It is a defence to any proceedings against a person for an offence against a provision of this Act or the regulations if the person proves that:

- (a) it was not reasonably practicable for the person to comply with the provision, or
- (b) 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 for the person to make provision.

177 Defences to criminal proceedings not affected by this Act

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 this Act gives the Chief Inspector or the Department an opportunity to object to that course of action.

Division 2 Information

178 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this or any other Act, or
- (c) for the purposes of any legal proceedings arising out of this or any other Act or of any report of any such proceedings, or
- (d) in accordance with the [Freedom of Information Act 1989](#), or
- (e) in accordance with a requirement imposed under the [Ombudsman Act 1974](#), or
- (f) with the consent of the Minister, or
- (g) with other lawful excuse.

Maximum penalty: 20 penalty units.

179 False or misleading statements

A person must not, in giving any answer required of the person by a person under this Act, or in complying with a requirement to make a report under this Act, to furnish any returns, statistics or other information or to inform a person of the substance of any instructions, make a statement that the person knows to be false or misleading in a material particular or recklessly make a statement that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a previous offender—150 penalty units, or
- (b) in any other case—100 penalty units.

180 Defence

A person does not commit an offence against this Division by giving any answer, information or a document if the person, when giving the answer, information or document:

- (a) tells the other person, to the best of his or her ability, how it is false or misleading, and
- (b) gives the correct information, in circumstances where the person has, or can reasonably obtain, the correct information.

Division 3 Exercise and delegation of functions

181 Chief Inspector subject to Ministerial control

The Chief Inspector is, in the exercise of the Chief Inspector's functions, subject to Ministerial control and direction.

182 Delegation of functions by Minister

- (1) The Minister may, by instrument in writing, delegate to the Director-General any of the functions conferred or imposed on the Minister by or under this Act (other than this power of delegation).
- (2) The Minister may, by instrument in writing, delegate to the Board any of the functions conferred or imposed on the Minister under Part 9.

183 Delegation of functions by Chief Inspector

The Chief Inspector may, by instrument in writing, delegate to any inspector any of the functions conferred or imposed on the Chief Inspector by or under this Act (other than this power of delegation).

184 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, including this power of delegation.
- (2) The Director-General may subdelegate to any authorised person any function delegated to the Director-General by the Minister if the Director-General is authorised to do so by the Minister.
- (3) In this section:

authorised person means:

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

Division 4 Service of documents

185 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.

186 Supply of documents to operator

If this Act or the regulations require something to be sent or given to the operator of a mine, it is sufficient that it is sent or given to the most senior person identified in the operator's management structure who is at work or given to a person at the mine or at the premises at which the relevant part of the work of the mine is carried out.

187 Supply of documents to Chief Inspector

If this Act or the regulations require something to be sent or given to the Chief Inspector, it is sufficient that it is sent or given to a person, or left at a place, specified by the Chief Inspector by order published in the Gazette.

Division 5 Fees

188 Fees

- (1) The Minister may determine the fees and charges payable:
 - (a) by an applicant for a certificate of competence, and
 - (b) by a candidate for an examination conducted by the Board, and
 - (c) for any service provided by the Board, and
 - (d) for the testing of plant or material for registration for the purpose of this Act or the regulations, and
 - (e) for the issue of any tourist or educational permit under section 85, and
 - (f) for any other purpose in connection with this Act authorised by the regulations.
- (2) Any determination made under this section is subject to the regulations.

Division 6 Liability

189 Protection from liability

- (1) A matter or thing done or omitted to be done by a protected person does not, if the matter or thing was done or omitted in good faith for the purpose of executing any provision of this Act or the *Occupational Health and Safety Act 2000*, subject such person personally to any action, liability, claim or demand.
- (2) In this section, **protected person** means any of the following:
 - (a) the Minister,
 - (b) the Director-General,
 - (c) the Chief Inspector,
 - (d) a member of the Board,
 - (e) a site check inspector,
 - (f) an inspector,
 - (g) a mine safety officer,
 - (h) an investigator,
 - (i) a person who constitutes a Board of Inquiry,
 - (j) an assessor sitting with a Board of Inquiry,

(k) a member of staff of the Department.

190 No obligation to exercise power

Nothing in this Act, other than a provision creating an offence, imposes an obligation on a person to exercise any power because the person is a site check inspector.

Division 7

191-195 (Repealed)

Division 8 General

196 Savings, transitional and other provisions

Schedule 5 has effect.

197 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.

Schedules 1-4 (Repealed)

Schedule 5 Savings, transitional and other provisions

(Section 196)

Part 1 General

1 Regulations

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

2 Definition

In this Part:

former Act means the *Mines Inspection Act 1901*.

3 Phasing-in of plans and systems

Without limiting clause 1, the regulations may make provision for plans, systems or other arrangements developed under the former Act and in force or having effect immediately before the repeal of the former Act to be acceptable as fulfilling any requirement imposed by or under this Act for the duration of any phasing-in period prescribed by the regulations.

4 Existing occupational safety and health policies

Without limiting clause 3, an occupational safety and health policy prepared for a mine under the *Mines Inspection General Rule 2000* as in force immediately before the repeal of the former Act continues to have effect in respect of the mine after that date and until replaced by a mine safety management plan prepared under this Act.

5 Existing exemptions in relation to mines

A proclamation under section 1 (2) of the former Act and in force immediately before the repeal of the former Act has effect as if it were a regulation under section 7 (1) (a) of this Act (but may be revoked by any such regulation).

6 Decisions of Minister under section 76 of former Act

- (1) A decision of the Minister under section 76 of the former Act, and in force immediately before the repeal of the former Act, that a mine was not a mine to which the former Act applied has effect as if it were a decision under section 8 of this Act.
- (2) Subclause (1) does not prevent a further decision being made under section 8 of this Act as to whether a mine that was the subject of a decision under section 76 of the former Act is, or is not, a mine to which this Act applies.

7 Agreement concerning hours of work

An agreement under section 29 (2) of the former Act in force immediately before the repeal of the former Act continues to have effect despite the provisions of section 76 of this Act. The agreement cannot be varied but may be terminated by the operator concerned or by the Chief Inspector.

8 Approvals concerning hours of work

Despite the provisions of section 76 of this Act, an approval under section 29 (4) of the former Act in force immediately before the repeal of the former Act is taken to be an approval authorising employment contrary to the provisions of section 76 of this Act. Such an approval continues to have effect until it expires, or is revoked by the Chief Inspector, whichever occurs sooner.

9 Requirement of alteration of work hours

A direction given by the Chief Inspector under section 30 of the former Act in force immediately before the repeal of the former Act is taken to be a direction given under section 77 of this Act. Such a direction continues to have effect until it expires, or is revoked by the Chief Inspector, whichever occurs sooner.

10 Existing certificates of competency

On and from the repeal of the former Act:

- (a) a certificate of competency as a production manager granted under section 7 of the former Act is taken to have been granted under section 118 of this Act in relation to the functions ordinarily required to be exercised by the holder of a position prescribed by the regulations for the purposes of this clause, and
- (b) a certificate of competency as shotfirer granted under section 18G of the former Act is taken to have been granted under section 118 of this Act in relation to the functions ordinarily required to be exercised by the holder of a position prescribed by the regulations for the purposes of this clause, and
- (c) a certificate of competency as an engine driver relating to winders and hoists granted under section 14 of the former Act is taken to have been granted under section 118 of this Act in relation to the functions ordinarily required to be exercised by the holder of a position prescribed by the regulations for the purposes of this clause.

11 Existing tourist and educational permits

- (1) A permit issued under section 48C of the former Act and in force immediately before the repeal of the former Act is taken to be a permit issued under section 85 of this Act to the person who was the owner (within the meaning of the former Act) of the mine concerned immediately before the commencement of this clause.

(2) Sections 86 (4) and 87 of this Act apply to and in respect of any such permit.

12 Place of accident or occurrence not to be disturbed

Division 4 of Part 4 of the former Act continues to apply for 3 days after the repeal of the former Act as if it had not been repealed.

13 Holders of positions in management structure

Without limiting clause 1, the regulations may make provision for a person who held a position in the management structure of a mine immediately before the repeal of the former Act to be taken to hold a prescribed position in the management structure of a mine under this Act.

14 Notification of certain events and other matters

Part 7 extends to an event that occurred in the 2 days immediately before the commencement of that Part.

15 Continuation of Boards of Inquiry

A Board of Inquiry constituted under the former Act and active immediately before the repeal of the former Act continues under this Act as if it were constituted under this Act and may continue any special inquiry under that Act as if the Act had not been repealed. In particular, section 47L of the former Act continues to apply to such a special inquiry as if it had not been repealed.

16 Site check inspectors

A person who held office under the former Act as a check inspector or employee representative for a mine immediately before the repeal of the former Act is taken to have been appointed as a site check inspector under this Act for the mine. The person's appointment as a site check inspector under this Act is taken to have commenced when the person was elected to the office concerned under the former Act.

17 References to former Act

On and from the commencement of this clause, a reference in any Act other than this Act, in any instrument made under another Act, or in any document of any kind, to the former Act is to be read as a reference to this Act.

18 Operation of Part

The operation of this Part is subject to the regulations.