

# Mines Inspection Act 1901 No 75

[1901-75]



New South Wales

## Status Information

### Currency of version

Repealed version for 23 December 2006 to 31 August 2008 (accessed 16 August 2024 at 19:26)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Mines Inspection Amendment Act 1998 No 69](#), Sch 1 [20] in so far as it inserts sec 18B (not commenced)
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
- **Repeal**

The Act was repealed by sec 191 (a) of the [Mine Health and Safety Act 2004 No 74](#) with effect from 1.9.2008.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 1 September 2008

# Mines Inspection Act 1901 No 75



New South Wales

## Contents

<b>Long title</b> .....	8
<b>Part 1 Preliminary</b> .....	8
1 Commencement, name of Act and application of Act .....	8
2 (Repealed) .....	8
3 Repeal .....	8
4 Definitions .....	8
4A Definition of “mine” .....	12
4B Proclamations .....	13
4C Act to bind the Crown .....	13
<b>Part 2 General managers, production managers, engine-drivers and shotfirers</b> .....	13
<b>Division 1 General managers and production managers</b> .....	13
5 Appointment of general manager of mine .....	13
5A Appointment of temporary general manager .....	13
5B Production operations to be supervised by qualified person .....	14
5C Chief Inspector may grant production managers’ permits .....	15
5D Delegation by general manager .....	16
6 Board of examiners for production managers .....	16
7 Grant of certificates of competency .....	17
8 Grant of certificate of service as production manager of above ground mine .....	18

9 Certificates granted outside New South Wales .....	18
10 Form of certificates .....	19
11 Register of certificates .....	19
<b>Division 2 Engine-drivers</b> .....	19
12 Penalty on unqualified person taking charge of machinery .....	19
13 Board of examiners for engine-drivers .....	20
14 Grant of certificates to applicants on passing examination .....	21
15 (Repealed) .....	22
16 Certificates granted outside of New South Wales .....	22
17 Certificates to contain particulars .....	22
18 Register of certificates .....	22
18A Medical examination of holders of certificates .....	22
<b>Division 2A Maintenance of competencies by holders of certificates of competency as production manager</b>	
.....	25
18C Production manager to provide evidence of competencies after absence .....	25
18D Exemptions .....	25
<b>Division 2B Shotfirers</b> .....	26
18E Blasting operations to be undertaken by qualified persons .....	26
18F Board of examiners for shotfirers .....	26
18G Grant of certificates of competency as shotfirers .....	27
18H Certificates granted outside New South Wales .....	27
18I Form of certificates .....	27
18J Inspector may grant shotfirers' permits .....	27
18K Register of certificates .....	28
<b>Division 3 General managers, production managers, engine-drivers and shotfirers</b>	
.....	28
19 Inquiry into conduct of general manager, production manager, engine-driver or shotfirer .....	28
20 Costs and expenses of inquiry .....	30
21 Record of cancellation of certificate and restoration in certain cases .....	30
22 Copy of certificate in case of loss .....	30

23 Expenses in relation to certificates and permits and application of fees .....	31
24 Penalty for forgery or false declaration .....	31
<b>Part 3 Employees</b> .....	<b>32</b>
<b>Division 1 (Repealed)</b> .....	<b>32</b>
<b>Division 2 Restriction on employment</b> .....	<b>32</b>
26 Persons who must not be employed in mines .....	32
27 (Repealed) .....	32
28 Records of employment.....	32
29 Hours of work and associated working arrangements below ground .....	32
30 Chief Inspector may require alteration of hours of work etc.....	33
30A Display of shift roster regimes.....	34
30B Recording of hours worked .....	34
31 Penalty for contravention of this Division .....	34
<b>Part 4 Inspection and management</b> .....	<b>35</b>
<b>Division 1 Inspection</b> .....	<b>35</b>
32 Appointment of inspectors .....	35
32A Delegation by Chief Inspector .....	36
33 (Repealed) .....	36
34 Disqualification of persons as inspectors.....	36
35 Appointment and functions of mine safety officers .....	36
36 Powers of inspectors and mine safety officers.....	36
36A Supplementary powers of inspectors and mine safety officers .....	37
36B Inspector or mine safety officer to inform mine management of certain matters .....	38
36C Offences .....	39
37 Notice to be given of cause of danger .....	39
37A Order to withdraw persons from mine.....	40
38 Notice and directions of inspector to be entered in book .....	41
39 (Repealed) .....	41
40 Annual reports .....	41
<b>Division 2 Plans, returns, notices, and abandonment</b> .....	<b>42</b>

41 Plans to be furnished .....	42
42 Where mine abandoned, plans to be deposited with Minister .....	44
42A Furnishing of statistics, returns etc.....	44
42B Drillholes .....	45
43 (Repealed) .....	46
44 Notice to be given of opening and abandonment of mine.....	46
45 Abandoned mine to be protected .....	46
<b>Division 3 Risk management strategies .....</b>	<b>47</b>
46 Risk management strategies .....	47
<b>Division 4 Serious accidents, dangerous incidents and certain diseases</b> .....	<b>47</b>
47 Notification of serious accidents or dangerous incidents.....	47
47A Serious accident or dangerous incident site not to be disturbed.....	48
47B Inspection of serious accident or dangerous incident .....	48
47C Notification of certain diseases .....	49
47D Notification of death resulting from serious accident or disease.....	49
47E Records to be kept of certain accidents.....	49
47F Determinations as to investigations .....	50
47G Investigations by inspectors.....	51
47H Functions of investigators .....	51
47I Reports by investigators.....	51
47J Other persons who may be investigators .....	52
47K Special reports .....	52
47L Boards of Inquiry.....	52
47M Witnesses and evidence at special inquiries.....	53
47N Additional functions of Boards of Inquiry.....	54
47O Report by Board of Inquiry .....	54
47P No appeals against exercise of functions by Boards of Inquiry.....	54
48 (Repealed) .....	55
<b>Part 4A Tourist and educational activities .....</b>	<b>55</b>
48A Definitions .....	55
48B Tourist and educational activities in certain mines to be authorised by permit.....	55

48C Issue of permits .....	55
48D Revocation of permits etc .....	55
<b>Part 5 (Repealed)</b> .....	56
<b>Part 6 Rules</b> .....	56
<b>Division 1 General rules</b> .....	56
55 (Repealed) .....	56
56 General rules .....	56
57 Non-compliance with rules .....	58
<b>Division 2 Special rules</b> .....	58
58 Special rules for certain mines .....	58
59-64 (Repealed) .....	59
<b>Division 3 Publication of rules</b> .....	59
65 Publication of abstract of Act and general rules and copy of special rules .....	59
66 Pulling down or defacing notices .....	60
<b>Part 7 Legal proceedings and miscellaneous</b> .....	60
<b>Division 1 Legal proceedings</b> .....	60
67 Penalty for offences against Act .....	60
68 Imprisonment for wilful neglect, endangering life or limb .....	61
69 Proceedings for offences .....	61
70 (Repealed) .....	61
71 Prosecution of owners, general managers and others .....	61
72 Report of result of proceedings against workmen .....	62
73 Saving for proceedings under other Acts .....	62
74 Application of fines .....	62
75 Service of notices .....	62
<b>Division 2 Miscellaneous</b> .....	63
76 Decision of question whether a mine is under this Act .....	63
76A Delegation of functions by Director-General .....	63
77 Government Geologist and Geological Surveyors may enter mines .....	63

77A Exercise of inspector’s powers under Occupational Health and Safety Act 2000 .....	63
78 Powers of Minister as to making and revoking orders .....	63
79 Regulations.....	64
80 Entry to ascertain if encroachment exists .....	64
81 Disclosure of information.....	64
82 Savings and transitional provisions .....	65
<b>Schedules 1, 2 (Repealed)</b> .....	65
<b>Schedule 3 Savings, transitional and other provisions</b> .....	65

# Mines Inspection Act 1901 No 75



New South Wales

An Act to make better provision for the regulation and inspection of mines other than coal and shale mines; to regulate the treatment of the products of such mines; and for purposes incidental to or consequent on those objects.

## Part 1 Preliminary

### 1 Commencement, name of Act and application of Act

- (1) This Act shall come into operation on the first day of February, one thousand nine hundred and two (which date is in this Act referred to as the commencement of this Act), and may be cited as the *Mines Inspection Act 1901*.
- (2) This Act shall apply to all mines other than mines of coal and mines of shale.

Provided that the Governor may by proclamation published in the Gazette, exempt any mine or class of mines or any part of a mine from the operation of this Act or any of its provisions, and such exemption may be either without conditions, or during the time and on the conditions specified in the proclamation.

### 2 (Repealed)

### 3 Repeal

Subsection (3) of section sixty-four of the *Mining Act 1874 (37 Vic No 13)*, and the Act fifty-seventh Victoria number eighteen, and the regulations made thereunder, are hereby repealed: Provided that this repeal shall not affect any exemption granted under any enactment so repealed.

### 4 Definitions

- (1) In this Act, unless the subject matter or context otherwise indicates:

***blasting operations*** means any of the following:

- (a) the firing of charges of explosives at or about a mine,
- (b) the storage, manufacture, handling, conveyance or use of explosives at or about a mine,



(c) the supervision of an activity referred to in paragraph (a) or (b).

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

**certificate of competency as production manager** means a certificate of competency as production manager granted by the Minister under section 7.

**certificate of competency as shotfirer** means a certificate of competency as shotfirer granted by the Minister under section 18G.

**certificate of service as production manager** means a certificate of service as production manager granted by the Minister under section 8.

**Check inspector** means a person appointed under the general rules, by the persons employed in a mine, to inspect the mine.

**Chief Inspector** means the Chief Inspector of Mines.

**dangerous incident** means an incident at a mine that has the potential to cause loss of life to a number of persons at the mine or in the vicinity of the mine.

**Department** means the Department of Mineral Resources.

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

**exercise** of a function includes the performance of a duty.

**function** includes a power, authority or duty.

**general manager** of a mine means the person nominated under section 5 as general manager of the mine.

**General rule** means general rule made or deemed to be made under section 56.

**Inspector** means inspector of mines, including electrical inspector of mines and inspector of mechanical engineering, appointed under the [Public Sector Management Act 1988](#), for the purposes of this Act, and includes the Chief Inspector of Mines, Deputy Chief Inspector of Mines and Senior Inspector of Mines.

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

**Justice** means justice of the peace.

**mine** is defined in section 4A.

**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.

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

**Owner** means person who is the immediate proprietor or lessee, or occupier of a mine, or of any part thereof, and does not include a person who merely receives a royalty, rent, or fine from a mine, or is merely the proprietor of a mine, subject to any lease, grant, or licence for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor, subcontractor or tributer for the working of a mine, or any part thereof, shall be subject to this Act in like manner as if the contractor, subcontractor or tributer were an owner, but so as not to exempt the owner from any liability.

**Metal** and **mineral** includes gold, sandstone, basalt, andesite, trachyte, porphyry, any substance which is for the time being a mineral within the meaning of the [Mining Act 1992](#) or the [Offshore Minerals Act 1999](#) and any other substance or rock used for commercial or industrial purposes or obtained for use by a council, or by a county council, within the meaning of the [Local Government Act 1993](#), but does not include coal or shale.

**Plan** and **sections** include correct copies or tracings of any original plan and sections.

**production manager** of a mine means a person who supervises the production operations at the mine.

**production manager's permit** means a production manager's permit granted by the Chief Inspector under section 5C.

**production operations** includes development works carried out for the purposes of production operations at a mine.

**Quarry** includes any place, open cut, or excavation wherein or whereby any operation is carried on above ground for or in connection with the purpose of obtaining any metal or mineral other than coal or shale and any place adjoining thereto on which any product of the quarry is stacked, stored or treated.

**registered mining surveyor** means a registered mining surveyor within the meaning of the [Surveying Act 2002](#).

**serious accident** means an accident that causes the death of, or serious injury to, a person:

- (a) at a mine, or
- (b) in the vicinity of a mine as the result of any operations at the mine.

**serious injury** means any of the following:

- (a) a fracture of the skull, jaw, spine, pelvis, arm, shoulder-blade, collar-bone, forearm, thigh, leg, knee-cap, ankle or ribs,
- (b) a dislocation of the shoulder, elbow, hip, knee or spine,
- (c) an amputation of the hand or foot or a substantial part of the hand or foot,
- (d) the loss of sight of an eye,
- (e) an internal haemorrhage requiring hospital treatment,
- (f) burns requiring hospital treatment,
- (g) asphyxia,
- (h) any other kind of injury prescribed by the general rules.

**Shaft** includes pit.

**Shale** means oil shale.

**shotfirer** means a person who is the holder of:

- (a) a certificate of competency as shotfirer, or
- (b) a shotfirer's permit,

that is in force.

**shotfirer's permit** means a shotfirer's permit granted by an inspector under section 18J.

**treatment** means:

- (a) the crushing, grinding, classifying, reducing, smelting, concentrating, precipitating or separating of any product of a mine, or
- (b) any other process, or part of a process, for obtaining any metal or mineral from the product of a mine, or
- (c) the mixing of any product of a quarry with any substance so as to produce ready mix concrete or bitumen hot mix, or
- (d) the sorting, grading and preparation of recycled concrete, recycled brick, recycled bitumen, recycled stone or recycled rock to be blended with any product of a quarry.

**Warden** means warden referred to in or appointed under the [Mining Act 1992](#).

(2) (Repealed)

**4A Definition of “mine”**

(1) In this Act, **mine** means any aboveground or underground site where any of the following activities take place:

- (a) exploration for metals and minerals,
- (b) extraction of metals or minerals.

(2) Without limiting subsection (1), **mine** includes:

- (a) the treatment of metals or minerals extracted from a site referred to in subsection (1) if the treatment is carried out at a place at, adjoining or near the site, and
- (b) any machinery, equipment, appliance or plant, whether moveable or not, or any building, laboratory, tunnel, drift, haul road or other structure or work, that is situated at a site referred to in subsection (1) and that is used in connection with an activity referred to in subsection (1), and
- (c) any place where waste resulting from an activity referred to in subsection (1) is stacked, stored or treated if the place is at, adjoins or is near the site where the activity takes place, and
- (d) any quarry and any ready mix concrete or bitumen hot mix plant that adjoins, and is in common ownership with, the quarry (whether or not the plant uses material excavated from the quarry in the manufacture of the concrete or bitumen), and
- (e) any place on which treatment and separation plants are installed for the recovery and treatment of zircon, rutile, ilmenite, monazite and associated minerals, and
- (f) any part of a site referred to in subsection (1) where environmental rehabilitation is being carried out (irrespective of whether mining operations at the site have been completed), and
- (g) any abandoned mine (other than an abandoned mine used for the storage, treatment or disposal of waste that is unconnected with an activity referred to in subsection (1)), and
- (h) any place where operations for the care, security and maintenance of a site referred to in subsection (1) are being carried out during any time when mining operations at the site are suspended, and
- (i) any place where restoration, decommissioning or abandonment operations of a site referred to in subsection (1) are being carried out.

#### **4B Proclamations**

Any proclamation made under this Act may be amended, rescinded or substituted by a subsequent proclamation made in like manner as the proclamation being amended, rescinded or substituted.

#### **4C Act to bind the Crown**

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **Part 2 General managers, production managers, engine-drivers and shotfirers**

### **Division 1 General managers and production managers**

#### **5 Appointment of general manager of mine**

- (1) The owner of a mine must ensure that at all times there is a person holding the position of general manager of the mine, being a person who has been nominated by the owner as general manager of the mine and who is competent to hold that position.

Maximum penalty: 20 penalty units and a further 0.5 penalty unit for each day the offence continues.

- (2) Nothing in this section prevents the owner of a mine from nominating himself or herself as general manager of the mine if the owner is competent to be general manager of the mine.
- (3) As soon as possible after the nomination of a person as general manager of a mine, the owner of the mine must notify the Chief Inspector in writing of the following details:
  - (a) the person's name and address,
  - (b) the date of the nomination.

Maximum penalty: 5 penalty units.

- (4) The general manager of a mine must reside in its vicinity and is responsible for the daily supervision, control and management of the mine.
- (5) A person is not eligible to hold the position of general manager of a mine during any disqualification period imposed under section 19 (2) (f1) (ii).

#### **5A Appointment of temporary general manager**

- (1) The owner of a mine may appoint a competent person to act as general manager of the mine for a period of not more than 2 months (whether consecutive or non-

consecutive) in any one year if there is a vacancy in the position of general manager of the mine or the general manager of the mine is absent from the mine for recreational purposes or for any other reason.

- (2) An acting general manager of a mine appointed under this section has all the functions of the general manager of the mine while acting in the position and is taken to be the general manager of the mine during that period.

#### **5B Production operations to be supervised by qualified person**

- (1) The general manager of a mine must ensure that the production operations at the mine are supervised by a person who is qualified to be a production manager.

Maximum penalty: 20 penalty units and a further 0.5 penalty unit for each day the offence continues.

- (2) Nothing in this section prevents the general manager of a mine from supervising the production operations at the mine if the general manager is qualified to be a production manager.
- (3) The general manager of a mine must notify the Chief Inspector in writing of the appointment of a production manager of the mine and of the details of the production manager's qualifications as soon as possible after the appointment is made.

Maximum penalty: 5 penalty units.

- (4) Except as provided by subsection (5), a person is qualified to be a production manager of a mine if the person is the holder of one of the following qualifications granted in respect of the relevant class of mine:
  - (a) a certificate of competency as production manager,
  - (b) a certificate of service as production manager,
  - (c) a production manager's permit.
- (5) If the Chief Inspector has given a notice to the general manager of a mine directing that only a person who holds a qualification specified in the notice may supervise the production operations at the mine, a person is qualified to be production manager of the mine only if the person is the holder of the qualification specified in the notice.
- (6) The Chief Inspector may give a notice under subsection (5) to the general manager of a mine only if the Chief Inspector is of the opinion that, having regard to the location of the mine, the complexity of operations at the mine or the nature of the material mined, special knowledge or skill is required to supervise the production operations at the mine.
- (7) The general manager of a mine does not commit an offence under subsection (1) by

allowing a person who is not qualified to be a production manager of the mine to supervise the production operations at the mine if:

- (a) the period of supervision is not more than 2 months (whether consecutive or non-consecutive) in any one year, and
  - (b) a person who is so qualified is unavailable to supervise the production operations at the mine, and
  - (c) the person supervising those operations is competent to do so, and
  - (d) there is no notice in force under subsection (5) in respect of the mine.
- (8) If the general manager of a mine allows a person who is not qualified to be a production manager of a mine to supervise production operations at the mine as referred to in subsection (7), the general manager of the mine must notify the Chief Inspector in writing of the person's name and the date that the person commenced to supervise production operations at the mine.

Maximum penalty (subsection (8)): 5 penalty units.

#### **5C Chief Inspector may grant production managers' permits**

- (1) On application in writing to the Chief Inspector and payment of such fee as the Minister may approve, the Chief Inspector may grant a production manager's permit to a person that authorises the person to supervise the production operations at a particular mine.
- (2) The Chief Inspector must not grant a production manager's permit to a person unless the Chief Inspector:
  - (a) is satisfied that the person has had sufficient experience to supervise the production operations at the mine concerned, and
  - (b) in the case of a mine at which more than 20 persons are employed:
    - (i) is of the opinion that, having regard to the location of the mine, or the nature of the material mined, minimal knowledge or skill is required to supervise the production operations at the mine, or
    - (ii) is satisfied that the person will shortly sit for the requisite examination for the grant of a certificate of competency as production manager.
- (3) A production manager's permit is subject to such conditions as are specified in the permit and, if subject to conditions, has effect only while the conditions are complied with.
- (4) The Chief Inspector may, by written notice, vary a production manager's permit.

- (5) A person whose production manager's permit is varied under subsection (4) may apply in writing to the Director-General, within 4 weeks of receiving notice that the permit has been varied, for a review of the decision. The decision of the Director-General on the matter is final.
- (6) The Director-General is to give written notice as soon as possible to the person concerned of the Director-General's decision under subsection (5).
- (7) A person who is the holder of a production manager's permit must return the permit to the Chief Inspector:
  - (a) within one month of ceasing to supervise the production operations at the mine in respect of which the permit was granted—for cancellation, or
  - (b) not later than 4 weeks after receiving notice that the permit has been varied if the person has not applied for a review under subsection (5)—for the permit to be endorsed to show the variation, or
  - (c) immediately after receiving notice that the Director-General has confirmed the decision of the Chief Inspector to vary the permit—for the permit to be endorsed to show the variation.

Maximum penalty (subsection (7)): 5 penalty units.

#### **5D Delegation by general manager**

- (1) The general manager of a mine may, by instrument in writing, delegate to a person employed at the mine any function conferred or imposed on the general manager by or under this Act other than:
  - (a) this power of delegation, or
  - (b) any function prescribed by the general rules for the purposes of this paragraph.
- (2) The supervision of the production operations at a mine may be delegated only to a person who is qualified to be a production manager as referred to in section 5B (4) or (5), as the case requires.
- (3) A delegation of the supervision of the production operations at a mine is revoked if the person to whom the delegation is made ceases to be qualified to be the production manager of the mine.

#### **6 Board of examiners for production managers**

- (1) The Minister shall appoint fit persons to act as a board of examiners of production managers, who may hold examinations and examine applicants for certificates of competency as production managers.

The examination shall be partly in writing and partly oral; and regard shall be had to



such knowledge as is necessary for the practical working of mines in New South Wales.

(2) The Minister may make rules:

- (a) regulating the proceedings of the said board and its membership in relation to any particular proceedings,
- (b) prescribing the places and times of holding examinations,
- (c) prescribing the remuneration of members of the said board,
- (d) prescribing the fee to be paid by an applicant desiring to be examined,
- (e) regulating the conduct of examinations, and
- (f) prescribing the qualifications of applicants for examination.

And every such rule shall be observed by the said board.

(3) Rules made under subsection (2) may be made so as to apply differently in respect of different classes of mines or any other matter specified in the rules.

## **7 Grant of certificates of competency**

(1) The Minister shall grant a certificate of competency as production manager to every applicant who is duly reported by the board of examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of the applicant's sobriety, qualifications, experience, ability, and general good conduct, and that the applicant has had practical experience in a mine for at least three years.

(1A) If the applicant is a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth), the Minister must not refuse to grant a certificate of competency as production manager to the applicant on the ground of the applicant's disability unless the applicant, because of that disability, would be unable to carry out the inherent requirements of the occupation of production manager.

(1B) The following are to be taken into account in determining whether an applicant would be unable to carry out the inherent requirements of the occupation of production manager:

- (a) the applicant's past training, qualifications and experience relevant to that occupation,
- (b) if the applicant is already acting as a production manager, the applicant's performance in that occupation,
- (c) all other relevant factors that it is reasonable to take into account.

- (2) The Minister shall specify in a certificate granted under subsection (1) the class of mine to which it relates.
- (3) A certificate that was granted under subsection (1) before the commencement of Schedule 2 to the *Mines Inspection (Amendment) Act 1978* and that had not been cancelled before that commencement shall, on and from that commencement, be deemed to relate to a below ground mine.

#### **8 Grant of certificate of service as production manager of above ground mine**

- (1) A certificate of service as production manager that relates to an above ground mine shall be granted by the Minister to a person who satisfies the board of examiners of production managers that the person has had satisfactory experience in New South Wales, before the commencement of Schedule 2 to the *Mines Inspection (Amendment) Act 1978*, in the capacity of production manager of an above ground mine in or about which more than 20 persons were ordinarily employed.
- (2) A certificate of service granted under subsection (1) shall:
  - (a) specify the class of above ground mine to which it relates,
  - (b) contain particulars of the length and nature of the previous service, in respect of the class of mine to which the certificate relates, of the person to whom the certificate is granted, and
  - (c) for the purposes of this Act, have the same effect as a certificate of competency as production manager.
- (3) The holder of a certificate of service granted under subsection (1) may be registered upon the payment of such fee as the Minister may direct.

#### **9 Certificates granted outside New South Wales**

- (1) Any certificate of competency or service as production manager (however described) granted by any duly constituted and recognised authority outside New South Wales may be approved by the board of examiners of production managers, if the holder thereof produces such certificate and gives satisfactory evidence to such board of the holder's sobriety, general good conduct, and bona fides.
- (2) Every such certificate so approved shall be equivalent in all respects to a certificate of competency as production manager; and the holder thereof may be registered upon the payment of such fee as the Minister may direct.
- (3) The board of examiners of production managers shall, when it approves a certificate under subsection (1), specify in the instrument of approval the class of mine to which the certificate relates.
- (4) A certificate that was approved under subsection (1) before the commencement of

Schedule 2 to the *Mines Inspection (Amendment) Act 1978* and that had not been cancelled before that commencement shall, on and from that commencement, be deemed to relate to a below ground mine.

## 10 Form of certificates

The certificates of competency or service as production manager shall be in such form as the Minister may direct; and every such certificate shall specify, in addition to any particulars hereinbefore in this Act required, the name, and the place, and date of birth of the person to whom such certificate is granted.

## 11 Register of certificates

A register of the holders of certificates of competency or service as production manager, and of certificates approved by the board of examiners of production managers, shall be kept by such person and in such manner as the Minister may direct.

## Division 2 Engine-drivers

### 12 Penalty on unqualified person taking charge of machinery

(1) Any person:

- (a) who is not registered as a holder of a certificate of competency as an engine-driver granted under this Act or of a certificate approved by the board of examiners of engine-drivers, or
- (b) who (whether or not the holder of a certificate as aforesaid) by reason of deafness, total or partial, or defective sight or being subject to fits, giddiness or any other infirmity is unable to carry out the inherent requirements of the person's duties,

and who is in charge of machinery, of a class or description prescribed for the purposes of section 13 (2) (g), in use at any mine in which steam, water, electricity, gas, oil, or air, or any two or more of them are used as motive power (except water power used for pumping) and any other person (referred to in this section as **the employer**) who, knowing that such person is not registered as the holder of such certificate, or that the person is subject to such defect or infirmity, employs any such person as aforesaid, shall be guilty of an offence against this Act.

(2) Any person who being registered as the holder of a certificate as aforesaid is in charge of any such machinery in use at any mine and such machinery is not of the class or description of machinery of which the person may be in charge or have the management under the authority of such certificate shall be guilty of an offence against this Act.

(3) This section shall not extend to persons in charge of:

- (a) electric motors, other than those used for operating winding engines, in which the starting, stopping and acceleration are effected by contactor switches operated either automatically or by push buttons, and which are so used that in the opinion of an inspector there exists no risk to life or limb by such method of control, and provided the person who performs the duties of periodic inspection and servicing of such motors is registered as the holder of an electric motor driver's certificate of competency granted under this Act,
  - (b) drilling machines, sinking pumps, electric motors not exceeding 5 kilowatts, air motors, not exceeding 20 kilowatts, and air winches and air hoists not exceeding 10 kilowatts when installed for raising or lowering supplies to underground working places (not being places where persons are engaged in winze sinking or shaft sinking) and moving trucks at filling and emptying stations.
- (4) The following are to be taken into account in determining whether a person is unable to carry out the inherent requirements of his or her duties (as referred to in subsection (1) (b)):
- (a) the person's past training, qualifications and experience relevant to employment in those duties,
  - (b) if the person is already employed in such duties, the person's performance as an employee,
  - (c) all other factors that it is reasonable to take into account.
- (5) A person who is unable to carry out the inherent requirements of his or her duties does not commit an offence under subsection (1) if the person would have been able to carry out those inherent requirements had the employer provided services or facilities that would not have imposed an unjustifiable hardship (within the meaning of the [Disability Discrimination Act 1992](#) of the Commonwealth) on the employer.
- (6) Subsection (5) does not affect the liability of the employer under this section.

### **13 Board of examiners for engine-drivers**

- (1) The Minister shall appoint fit persons to act as a board of examiners of engine-drivers, who may hold examinations and examine applicants for certificates of competency as engine-drivers.
- (2) The Minister may make rules:
  - (a) regulating the proceedings of the said board,
  - (b) prescribing the places and times of holding examinations,
  - (c) prescribing the remuneration of members of the said board,

- (d) prescribing the fee to be paid by an applicant desiring to be examined,
- (e) regulating the conduct of examinations,
- (f) prescribing the qualifications of applicants for examination, and
- (g) prescribing the classes of certificates of competency as engine-drivers to be granted under this Act, and prescribing in respect of each class of certificate the class or description of machinery of which the holder shall be authorised to be in charge or have the management.

And every such rule shall be observed by the said board.

#### **14 Grant of certificates to applicants on passing examination**

- (1) The Minister shall grant a certificate of competency as engine-driver to every applicant who is duly reported by the board of examiners of engine-drivers to have complied with the provisions of the rules made under section 13 (2) (d), (e) and (f) and to have produced evidence satisfactory to the said board of the applicant's physical fitness and that the applicant's sight, hearing and other faculties are unimpaired.
  - (1A) If the applicant is a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth), the Minister must not refuse to grant a certificate of competency as engine-driver to the applicant on the ground of the person's disability unless the applicant, because of that disability, would be unable to carry out the inherent requirements of the occupation of engine-driver.
  - (1B) The following are to be taken into account in determining whether an applicant would be unable to carry out the inherent requirements of the occupation of engine-driver:
    - (a) the applicant's past training, qualifications and experience relevant to that occupation,
    - (b) if the applicant is already acting as an engine-driver, the applicant's performance in that occupation,
    - (c) all other relevant factors that it is reasonable to take into account.
- (2) Every certificate of competency granted shall specify the class or description of machinery of which the holder is thereby authorised to be in charge or have the management. Every certificate, granted under this Division either before or after the commencement of the *Mines Inspection (Amendment) Act 1945* shall be valid and effectual only in respect of the class or description of machinery to which such certificate relates.
- (3), (4) (Repealed)

## **15 (Repealed)**

## **16 Certificates granted outside of New South Wales**

- (1) Any certificate of competency or service as engine-driver granted by any duly constituted and recognised authority inside or outside New South Wales may be approved by the board of examiners of engine-drivers, if the holder produces the same and gives satisfactory evidence to such board of the holder's sobriety, general good conduct, and bona fides, and of the holder's physical fitness and that the holder's sight, hearing and other faculties are unimpaired.
- (1A) If the holder is a person with a disability (within the meaning of the *Disability Discrimination Act 1992* of the Commonwealth), the board of examiners must not refuse to approve any such certificate of competency or service on the ground of the holder's disability unless the holder, because of that disability, would be unable to carry out the inherent requirements of the occupation of engine-driver.
- (1B) The following are to be taken into account in determining whether a holder would be unable to carry out the inherent requirements of the occupation of engine-driver:
  - (a) the holder's past training, qualifications and experience relevant to that occupation,
  - (b) if the holder is already acting as an engine-driver, the holder's performance in that occupation,
  - (c) all other relevant factors that it is reasonable to take into account.
- (2) Every such certificate so approved shall be equivalent in all respects to a certificate of competency as engine-driver granted under this Act, and the holder thereof may be registered upon the payment of such fee as the Minister may direct.

## **17 Certificates to contain particulars**

The certificates of competency as engine-drivers granted under this Act shall be in such form as the Minister may direct, and every such certificate shall specify, in addition to any particulars hereinbefore in this Act required, the name, and the place, and date of birth of the person to whom such certificate is granted.

## **18 Register of certificates**

A register of the holders of certificates of competency as engine-driver granted under this Act, and of certificates approved by the board of examiners of engine-drivers, shall be kept by such person and in such manner as the Minister may direct.

## **18A Medical examination of holders of certificates**

- (1) In this section:

**engine-driver's certificate** means a certificate of competency as engine-driver granted under this Act or a certificate approved by the board of examiners of engine-drivers.

**last known address**, in relation to a person, means the address of that person last known to the Chief Inspector.

**medical certificate** means a certificate given by a medical practitioner following an examination by the medical practitioner, on a day specified in the certificate, of a person referred to in the certificate and specifying, in relation to that person:

- (a) the person's physical condition,
  - (b) the condition of the person's sight, hearing and other faculties, and
  - (c) any disease, disability or defect from which the person was suffering,
- at the time of the examination.

**prescribed certificate** means an engine-driver's certificate to which subsection (3) applies.

**prescribed machinery** means machinery to which subsection (3) applies.

(2) The Minister may, by order published in the Gazette, declare that:

- (a) an engine-driver's certificate of a specified class or description is a certificate to which subsection (3) applies, and
- (b) machinery of a specified class or description is machinery to which that subsection applies,

and that subsection shall, on the expiration of six months after publication of the order, or at such later time as may be specified in the order, apply accordingly.

(3) A person who is the holder of a prescribed certificate shall not take charge of or operate prescribed machinery unless the person has first:

- (a) obtained a medical certificate relating to a medical examination undergone by the person not earlier than two years before the date on which the person takes charge of or operates the machinery, and
- (b) sent that medical certificate to the Chief Inspector.

(4) A person who is the holder of an engine-driver's certificate shall, if so directed by the Chief Inspector by notice in writing sent to the person at the person's last known address, send to the Chief Inspector, within a time specified in the notice, a medical certificate relating to an examination undergone by that person not earlier than a date so specified.

(5) Where:

- (a) a medical certificate discloses that the person referred to in the certificate is physically unfit in any way or that the person's sight, hearing or any other faculty is impaired or that the person is suffering from any disease, disability or defect, and
- (b) the Chief Inspector certifies to the Minister that the Chief Inspector is of the opinion that, having regard to safety requirements, the person, by reason of the matters contained in the medical certificate, would be unable to carry out the inherent requirements of his or her duties,

the Minister shall forthwith cancel or suspend the engine-driver's certificate.

- (6) Where a person who is the holder of an engine-driver's certificate contravenes or neglects or fails to comply with any of the provisions of subsection (3) or (4), the Minister may cancel or suspend the certificate.
- (7) A person who was the holder of an engine-driver's certificate that has been cancelled or suspended under this section shall, if so directed by the Chief Inspector by notice in writing sent to the person at the person's last known address, deliver up the certificate to the Chief Inspector within a time specified in the notice.

(8) Where:

- (a) the engine-driver's certificate of a person has been cancelled or suspended under subsection (6),
- (b) a medical certificate referred to in subsection (3) or (4) and relating to that person is subsequently received by the Chief Inspector, and
- (c) the Chief Inspector certifies to the Minister that the Chief Inspector is of the opinion that, having regard to safety requirements, the person whose engine-driver's certificate has been cancelled or suspended would be able to carry out the inherent requirements of his or her duties,

the Minister shall restore the cancelled engine-driver's certificate or remove the suspension of the certificate (as the case may be) and the Chief Inspector shall, if it was delivered up to the Chief Inspector, send it to the person, to whom it was granted, at the person's last known address.

- (9) Where a person who holds or held an engine-driver's certificate contravenes or neglects or fails to comply with any of the provisions of this section the person shall, whether or not the certificate has been cancelled or suspended under this section, be guilty of an offence against this Act.
- (10) For the purposes of this section, in determining whether a person would be able or



unable to carry out the inherent requirements of his or her duties, the Chief Inspector is to take into account the following:

- (a) the person's past training, qualifications and experience relevant to those duties,
- (b) if the person is already carrying out those duties, the person's performance in carrying out those duties,
- (c) all other relevant factors that it is reasonable to take into account.

## **Division 2A Maintenance of competencies by holders of certificates of competency as production manager**

### **18C Production manager to provide evidence of competencies after absence**

- (1) This section applies to a person who:
  - (a) holds a certificate of competency as production manager, and
  - (b) has not performed the duties of a production manager for 10 years (or, if another period is prescribed by the general rules, that other period).
- (2) Any person to whom this section applies must not exercise the functions of a production manager without the approval in writing of the Chief Inspector.  
Maximum penalty: 20 penalty units.
- (3) Application for an approval referred to in subsection (2) is to be made in writing to the Chief Inspector.
- (4) The Chief Inspector must not give an approval referred to in subsection (2) unless satisfied that the person concerned is competent to discharge the duties of a production manager.
- (5) The Chief Inspector may, by written notice, require any person who has applied for an approval referred to in subsection (2) to provide (in the manner, and within the time, specified in the notice) evidence that the person is competent to discharge the duties of a production manager.
- (6) The Chief Inspector may, by written notice, require any person who has applied for an approval referred to in subsection (2) to undertake such additional training as may be specified in the notice (within the time specified in the notice) if the Chief Inspector is of the opinion that the person requires the additional training to discharge the duties of a production manager competently.

### **18D Exemptions**

- (1) The Chief Inspector may, by written notice to a person, exempt the person from the operation of all or any of the provisions of this Division.

- (2) An exemption:
  - (a) may be given unconditionally or subject to conditions, and
  - (b) if subject to conditions, has effect only while the conditions are complied with.
- (3) The Chief Inspector may, by written notice, vary or revoke an exemption under this section.

## **Division 2B Shotfirers**

### **18E Blasting operations to be undertaken by qualified persons**

- (1) A person must not undertake blasting operations at a mine unless the person is a shotfirer.  
Maximum penalty: 20 penalty units.
- (2) The general manager of a mine must ensure that any person who undertakes blasting operations at the mine is a shotfirer.  
Maximum penalty: 20 penalty units.
- (3) Subsections (1) and (2) do not apply to the carrying out of blasting operations:
  - (a) by a person who is, or belongs to a class of persons, authorised by the general rules to carry out blasting operations, or
  - (b) of a class or classes prescribed by the general rules.

### **18F Board of examiners for shotfirers**

- (1) The Minister is to appoint fit persons to act as a board of examiners of shotfirers.
- (2) The board of examiners of shotfirers may hold examinations and examine applicants for certificates of competency as shotfirers.
- (3) The Minister may make rules that are to be observed by the board of examiners of shotfirers for or with respect to the following:
  - (a) regulating the proceedings of the board,
  - (b) prescribing the places and times of holding examinations,
  - (c) prescribing the remuneration of members of the board,
  - (d) prescribing the fee for an examination,
  - (e) regulating the conduct of examinations,
  - (f) prescribing the qualifications of applicants for examination.

- (4) Rules made under subsection (3) may be made so as to apply differently in respect of different classes of blasting operations or any other matter specified in the rules.

### **18G Grant of certificates of competency as shotfirers**

The Minister is to grant a certificate of competency as shotfirer to an applicant who is reported by the board of examiners of shotfirers to have satisfactorily passed the requisite examination conducted by the board.

### **18H Certificates granted outside New South Wales**

- (1) Any certificate of competency as shotfirer granted by any duly constituted and recognised authority outside New South Wales may be approved by the board of examiners of shotfirers if the holder produces the certificate and gives satisfactory evidence to the board of the holder's sobriety, general good conduct and bona fides.
- (2) Every such certificate so approved is taken to be equivalent in all respects to a certificate of competency as shotfirer and the holder may be registered on payment of such fee as the Minister may approve.

### **18I Form of certificates**

- (1) A certificate of competency as shotfirer must be in such form as the Minister may direct.
- (2) Each certificate must specify the name, and the place and date of birth, of the person to whom the certificate is granted.

### **18J Inspector may grant shotfirers' permits**

- (1) On application in writing to an inspector and payment of such fee as the Minister may approve, the inspector may grant a shotfirer's permit to a person who, in the opinion of the inspector, is appropriately qualified to carry out blasting operations at a mine.
- (2) A shotfirer's permit is subject to such conditions as are specified in the permit and, if subject to conditions, has effect only while the conditions are complied with.
- (3) An inspector may, by written notice, vary or cancel a shotfirer's permit.
- (4) A person whose shotfirer's permit is varied or cancelled under subsection (3) may apply in writing to the Director-General, within 4 weeks of receiving notice that the permit has been varied or cancelled, for a review of the decision. The decision of the Director-General on the matter is final.
- (5) The Director-General is to give written notice as soon as possible to the person concerned of the Director-General's decision under subsection (4).
- (6) A person who is the holder of a shotfirer's permit must return the permit to the inspector for the area in which the mine concerned is located:

- (a) within one month of ceasing to carry out blasting operations at the mine—for cancellation, or
- (b) not later than 4 weeks after receiving notice that the permit has been varied or cancelled if the person has not applied for a review under subsection (4)—for the permit to be endorsed to show the variation or for cancellation, as the case requires, or
- (c) immediately after receiving notice that the Director-General has confirmed the decision of the Chief Inspector to vary or cancel the permit—for the permit to be endorsed to show the variation or for cancellation, as the case requires.

Maximum penalty (subsection (6)): 5 penalty units.

### **18K Register of certificates**

A register of the holders of certificates of competency as shotfirer, and of certificates approved by the board of examiners of shotfirers, must be kept by such person and in such manner as the Minister may direct.

## **Division 3 General managers, production managers, engine-drivers and shotfirers**

### **19 Inquiry into conduct of general manager, production manager, engine-driver or shotfirer**

- (1) The Minister may cause an inquiry to be made into the conduct of a general manager, production manager, engine-driver, or shotfirer (being the holder of a certificate of competency as shotfirer), if at any time representation is made to the Minister by an inspector that:
  - (a) the general manager, production manager, engine-driver or shotfirer is unfit to discharge the duties of the position because of incompetency or negligence, or
  - (b) the general manager, production manager, engine-driver or shotfirer has been convicted of an offence against this Act (not being an offence under section 18A), or
  - (c) in the case of a production manager who is the holder of a certificate of competency as production manager—the production manager has failed to demonstrate that he or she has maintained the competencies required to discharge the production manager's duties or has failed to undertake additional training required by the Chief Inspector.
- (2) The following provisions have effect with respect to any such inquiry:
  - (a) The inquiry shall be public, and shall be held by a Court consisting of such warden as may be named by the Minister, sitting either alone or assisted by any assessor

or assessors named by the Minister; and such Court shall be held at such place as the Minister may appoint.

- (b) The Minister shall, before the commencement of the inquiry, furnish to the general manager, production manager, engine-driver or shotfirer a statement of the case on which the inquiry is instituted.
- (c) Some person appointed by the Minister shall undertake the management of the case.
- (d) The general manager, production manager, engine-driver or shotfirer may attend the inquiry by himself or herself, or by his or her counsel, solicitor, or agent, and may, if the general manager, production manager, engine-driver or shotfirer thinks fit, be sworn and examined as a witness.
- (e) Such Court shall, on the conclusion of the inquiry, send to the Minister a report containing a full statement of the case, and the decision of the Court thereon, and such report of, or extracts from the evidence, as the Court may think fit. The Minister may cause the report of the Court to be made public at such time and in such manner as the Minister may think fit.
- (f) The Court may take action under paragraph (f1) if the Court finds that:
  - (i) a general manager, production manager, engine-driver or shotfirer is unfit to discharge the duties of the position because of incompetency or negligence, or of having been convicted of any offence against this Act, or
  - (ii) in the case of a production manager who is the holder of a certificate of competency as production manager—the production manager is unfit to discharge his or her duties because of failure to demonstrate that he or she has maintained the competencies required to discharge those duties or has failed to undertake additional training required by the Chief Inspector.
- (f1) If the Court makes a finding referred to in paragraph (f), the Court may:
  - (i) in the case of a production manager, engine-driver or shotfirer—cancel or suspend the person's certificate or permit, or
  - (ii) in the case of a general manager—cancel the approval of the general manager's nomination under section 5 and disqualify the general manager from holding the position of general manager of a mine permanently or for a specified period of time.
- (g) The Court may, if it thinks fit, require a production manager, engine-driver or shotfirer to deliver up the certificate or permit concerned. Such a person is liable to a fine not exceeding 2 penalty units if the person fails to satisfy the Court of a reasonable excuse for failing to deliver up the certificate or permit.

- (g1) The Court may hold any certificate or permit so delivered up until the conclusion of the inquiry and must then either restore, cancel or suspend the certificate or permit according to its judgment on the case.
- (h) The Court shall have for the purpose of the inquiry, all the powers of a Local Court, and all the powers of an inspector under this Act.
- (i) The Court may also, by summons signed by the warden presiding, require the attendance of all such persons as it thinks fit for the purpose of the inquiry; and every person so summoned shall be allowed such expenses as would be allowed to a witness attending on subpoena before the Supreme Court; and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to the Prothonotary who, on request signed by the Court, shall ascertain and certify the proper amount of such expenses.

## **20 Costs and expenses of inquiry**

- (1) Such Court may make such order as it thinks fit respecting the costs and expenses of the inquiry, and such order shall, on the application of any party entitled to the benefit thereof, be enforced by any Local Court, as if such costs and expenses were a fine imposed by the Local Court.
- (2) The Minister may, if the Minister thinks fit, pay to any assessors such remuneration as the Minister may appoint.
- (3) Any costs and expenses ordered by the Court to be paid by the Minister, and any remuneration paid under this section, shall be paid out of moneys provided by Parliament.

## **21 Record of cancellation of certificate and restoration in certain cases**

- (1) Where a certificate of a production manager, engine-driver or shotfirer is cancelled or suspended in pursuance of this Act, the Minister shall cause the cancellation or suspension to be recorded in the register of holders of such certificates.
- (2) The Minister may at any time, in the case of a certificate cancelled or suspended in pursuance of section 18A, on the recommendation of the Chief Inspector, or, in the case of a certificate cancelled or suspended in pursuance of any other provision of this Act, on the recommendation of the board of examiners of production managers, the board of examiners of engine-drivers or the board of examiners of shotfirers, as the case may be, renew or restore, on such terms as the Minister thinks fit, the certificate, and cause the renewal or restoration to be recorded in the register aforesaid.

## **22 Copy of certificate in case of loss**

Whenever any person proves to the satisfaction of the Minister that the person has, without fault on the person's part, lost or been deprived of any certificate granted to the

person or approved by any board of examiners under this Act, the Minister shall, on payment of such fee, if any, as the Minister may direct, cause a copy of the certificate to which the applicant appears by the register to be entitled, or a statement containing such particulars as the register may disclose (hereinafter termed **statement of particulars**), to be made out and certified by the person who keeps the register, and delivered to the applicant; and any such copy of a certificate or statement of particulars which purports to be so made and certified as aforesaid shall have the same effect as the original certificate, and for the purposes of this Act shall be deemed to be a certificate of the same nature as the original certificate.

### **23 Expenses in relation to certificates and permits and application of fees**

- (1) All expenses incurred by the Minister or inspectors in carrying into effect the provisions of this Act with respect to certificates of competency, certificates of service or permits shall be defrayed out of moneys provided by Parliament.
- (2) All fees payable under this Act by the applicants for or holders of certificates or permits, or for a copy of a certificate or permit, or a certified statement of particulars, shall be paid into the Treasury as the Colonial Treasurer may from time to time direct, and be carried to the Consolidated Revenue Fund.

### **24 Penalty for forgery or false declaration**

Every person who commits any of the following offences that is to say:

- (a) forges, or counterfeits, or knowingly makes any false statement in any permit or any certificate of competency or service under this Act, or any official copy of any such certificate, or any certified statement of particulars, or
- (b) knowingly utters or uses any such permit, certificate, or copy or statement of particulars which has been forged or counterfeited or contains any false statement, or
- (c) for the purpose of obtaining for himself or herself or any other person employment as a general manager, production manager, engine-driver or shotfirer, or the grant, renewal, or the restoration of any permit or certificate under this Act, or a copy of any such certificate, or a certified statement of particulars, either:
  - (i) makes or gives any declaration, representation, statement, or evidence which is false in any particular, or
  - (ii) knowingly utters or uses any such declaration, representation, statement, or evidence, or any document containing the same,

shall be guilty of an indictable offence, and be liable on conviction to imprisonment for a term not exceeding two years.

## **Part 3 Employees**

### **Division 1**

#### **25 (Repealed)**

### **Division 2 Restriction on employment**

#### **26 Persons who must not be employed in mines**

- (1) Subject to subsection (2), no person under the age of 16 years shall be employed in or about a mine.
- (2) A person under the age of 16 years but not under the age of 15 years may be employed above ground at a mine as a probationer, trainee apprentice or indentured apprentice within the meaning of the [Apprenticeship Act 1981](#).
- (3) (Repealed)
- (3A) No person under the age of 18 years shall be employed in caging operations.
- (4) (Repealed)

#### **27 (Repealed)**

#### **28 Records of employment**

- (1) The owner or general manager of a mine shall keep records indicating, in respect of persons under the age of 18 years employed or working in the mine below ground:
  - (a) the dates of birth of those persons, duly certified wherever possible, and
  - (b) the dates at which those persons were employed or worked in the mine below ground for the first time.
- (2) The owner or general manager of a mine shall, on request:
  - (a) make available to inspectors the records referred to in subsection (1), and
  - (b) make available to representatives of persons who work at the mine lists showing the names of persons under the age of 18 years who are employed or work in the mine below ground and the dates recorded in respect of them pursuant to subsection (1).

#### **29 Hours of work and associated working arrangements below ground**

- (1) Except in cases of emergency, a person other than an owner or a person acting in the management of the mine is not to be employed below ground 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, and each person employed below ground in a mine is to have at least one full



day of 24 consecutive hours off work in each period of 7 consecutive days.

- (2) Despite subsection (1), the general manager of a mine at which persons are employed, or are to be employed, below ground may determine the hours of work so as to require persons to work below ground in the mine for more than 8 consecutive hours or for more than 48 hours in a period of 7 consecutive days and may determine the associated working arrangements. If this requires any alteration to the hours of work or associated working arrangements of persons employed underground at the mine then no such alteration may be made until the general manager has consulted with those persons and with representatives of any trade unions representing them and has obtained agreement to the alterations of not less than 65% of the persons employed underground. The general rules may make provision for or with respect to the manner in which the persons employed underground and the representatives of trade unions are to be consulted.
- (3) In determining hours of work and associated working arrangements below ground, the general manager is, nevertheless, to comply with the [Occupational Health and Safety Act 2000](#).
- (4) Except in cases of emergency or with the approval of the Chief Inspector of Mines, a person other than an owner or 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 general rules provide that it is to include a pit.
- (6) Despite the provisions of the [Mining Act 1992](#) or the [Offshore Minerals Act 1999](#), a condition of a mining lease or a mining licence that is inconsistent with this section is, to the extent of the inconsistency, of no effect.
- (7) This section extends to the alteration of hours of work and associated working arrangements below ground in force at the commencement of the [Mines Inspection \(Amendment\) Act 1993](#).

### **30 Chief Inspector may require alteration of hours of work etc**

- (1) The Chief Inspector of Mines may direct the owner or general manager of a mine to limit working hours or to alter associated working arrangements at the mine if of the opinion that existing hours of work or associated working arrangements are likely to affect adversely the health or safety of employees.
- (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 owner or general manager 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.

### **30A Display of shift roster regimes**

The general manager of a mine at which persons are employed below ground must keep prominently displayed in a place that is easily accessible to the employees of the mine details of shift roster regimes at the mine.

### **30B Recording of hours worked**

- (1) The general manager of a mine must keep records of the hours worked below ground by each employee at the mine and must make the records available to an inspector on request.
- (2) The general rules may make provision for or with respect to the keeping of records under this section.

### **31 Penalty for contravention of this Division**

- (1) If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with any provision of this Division, the person shall be guilty of an offence against this Act.
- (2) And in the event of any such contravention or non-compliance by any person whomsoever:
  - (a) the owner of the mine shall be guilty of an offence against this Act, unless the owner proves that he or she had taken all reasonable means, by publishing and to the best of his or her power enforcing the provisions of this section, to prevent the contravention or non-compliance, and
  - (b) the general manager of the mine shall be guilty of an offence against this Act, unless the general manager proves that he or she had taken all reasonable means, by publishing and to the best of his or her power enforcing the provisions of this section, to prevent the contravention or non-compliance.
- (3) No person shall be deemed to be guilty of an offence against this Act for a contravention of a requirement relating to the time for which persons shall not be employed below ground, if such person proves that there were special circumstances to render such contravention necessary for the safe and proper working of the mine, and that such contravention was not injurious to the persons so employed in the mine.
- (4) If it appears that a person was employed on the false representation of the person's

parent or guardian that the person was of the age at which the person's employment would not be in contravention of this Act, and under the belief in good faith that the person was of that age, the owner or general manager of the mine and the immediate employer shall be exempted from any penalty, and the parent or guardian shall for the false representation be deemed guilty of an offence against this Act.

## **Part 4 Inspection and management**

### **Division 1 Inspection**

#### **32 Appointment of inspectors**

- (1) The Governor may, under and subject to the provisions of the *Public Sector Management Act 1988*, appoint a Chief Inspector of Mines, a Deputy Chief Inspector of Mines, Senior Inspectors of Mines, and such other qualified persons as inspectors of mines including electrical inspectors of mines and inspectors of mechanical engineering as the Governor may deem necessary.
- (2) The person who immediately before the commencement of the *Mines Inspection (Amendment) Act 1958* was the Chief Inspector of Mines and all persons who immediately before such commencement were inspectors of mines shall be deemed to have been appointed under subsection (1).
- (3) (Repealed)
- (4) The powers, authorities, duties and functions conferred or imposed by or under this Act upon inspectors may be exercised by electrical inspectors only in relation to the installation and use of electricity in a mine and by inspectors of mechanical engineering only in relation to the installation and use of machinery and the erection of buildings, workshops, changehouses, structures or works in or about a mine.
- (5)
  - (a) An inspector, not being an electrical inspector or an inspector of mechanical engineering, shall be:
    - (i) the holder of a certificate of competency as production manager granted under this Act or approved by the board of examiners of production managers, and
    - (ii) the holder of a degree or diploma in mining engineering from the University of Sydney, the University of New South Wales or other educational body approved by the Director-General or a qualification recognised by the Director-General as equivalent to any such degree or diploma.
  - (b) An electrical inspector shall be the holder of a degree or diploma in electrical engineering from the University of Sydney, the University of New South Wales or other educational body approved by the Director-General or a qualification

recognised by the Director-General as equivalent to any such degree or diploma.

- (c) An inspector of mechanical engineering shall be the holder of a degree or diploma in mechanical engineering from the University of Sydney, the University of New South Wales or other educational body approved by the Director-General or a qualification recognised by the Director-General as equivalent to any such degree or diploma.

### **32A Delegation by Chief Inspector**

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

### **33 (Repealed)**

### **34 Disqualification of persons as inspectors**

No person who practises or acts as or is a partner of any person who practises or acts as a land agent or mining engineer, or as a general manager, production manager, agent, or valuer of mines, or arbitrator in any difference arising between owners, agents, or general managers of mines, or is otherwise employed in or about any mine, or is a miner's agent or a mine-owner shall act as an inspector under this Act, and no inspector shall be a partner or have any interest direct or indirect in any mine in New South Wales.

### **35 Appointment and functions of mine safety officers**

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

### **36 Powers of inspectors and mine safety officers**

An inspector or mine safety officer may do all or any of the following things, namely:

- (a) make such inspection, examination, and inquiry as may be necessary to ascertain whether in respect of any mine the provisions of this Act and the general rules and special rules (if any) in force therein relating to matters above or below ground are complied with,
- (b) at all times by day and night enter any mine and inspect the same and examine and inquire respecting the state and condition and ventilation of the mine or any part thereof, and the state and condition of the machinery, and the sufficiency of the special rules (if any) in force therein, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto, or the care and treatment of the horses and other animals used in the mine,
- (bi) enter on any private land or workplace in the performance of the inspector's

functions,

(c) exercise such other powers as may be necessary for carrying this Act into effect.

The Minister may authorise any registered mining surveyor, engineer, electrician, medical practitioner, or other competent person to accompany an inspector or mine safety officer above or below ground for the purpose of assisting the inspector or mine safety officer in making investigations or in exercising the inspector's or mine safety officer's functions under this Act.

Every person who wilfully obstructs any inspector or mine safety officer in the execution of the inspector's or mine safety officer's duty under this Act or any person so authorised to accompany the inspector or mine safety officer, and every owner or general manager or production manager of a mine who refuses or neglects to furnish to the inspector or mine safety officer or person so authorised to accompany the inspector or mine safety officer the means necessary for making any entry, inspection, examination, or inquiry under this Act in relation to such mine, shall be guilty of an offence against this Act.

### **36A Supplementary powers of inspectors and mine safety officers**

(1) For the purpose of any inspection, examination or inquiry referred to in section 36, an inspector or mine safety officer has power to do all or any of the following things:

(a) subject to subsection (2), to require any person:

(i) whom the inspector or mine safety officer finds at a mine or other workplace entered under section 36 or whom the inspector or mine safety officer has reasonable cause to believe to be, or within the preceding 2 months to have been, employed at the mine or workplace, and

(ii) who has been informed of the provisions of subsection (2),

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

(b) to take samples of any articles or substances found at a mine or other workplace entered under section 36 or of the atmosphere in a mine,

(c) subject to subsections (3) and (4), to take possession of any machinery, apparatus or other article at a mine or other workplace entered under section 36 that appears to the inspector or mine safety officer to have caused, or to be likely to cause, danger to the safety or health of any persons employed at a mine and cause it to be dismantled, removed or subjected to any process or test, even though the process or test may cause it to be damaged or destroyed,

(d) to require the production of, and to inspect:

- (i) any registers, books, plans or other documents that by virtue of this Act and the rules are required to be kept, and
  - (ii) any other documents that are in the possession or under the control of the owner, general manager or production manager of a mine or the owner or manager of another workplace entered under section 36 and are relevant for the purposes of the examination or inquiry,
- (e) to require the general manager of a mine to mark or cause to be marked on any plan of workings in the mine produced in compliance with a requirement imposed under paragraph (d) such information as the inspector or mine safety officer considers relevant to an examination or inquiry,
- (f) to require any person having responsibilities under this Act in relation to a mine or other workplace entered under section 36 to give the inspector or mine safety officer such facilities and assistance, with respect to any matters or things to which the responsibilities of that person extend, as are necessary for the purpose of enabling the inspector or mine safety officer to exercise any of the powers conferred on the inspector or mine safety officer by section 36 and this section.
- (2) An answer given by a person in pursuance of a requirement imposed under subsection (1) (a) is not admissible in evidence against the person in any proceedings except proceedings for an offence under section 36C (e).
- (3) If it appears likely to the general manager or production manager of a mine that a process or test referred to in subsection (1) (c) will result in machinery, apparatus or an article being damaged or destroyed, that person may request the inspector or mine safety officer concerned not to subject the machinery, apparatus or article to the process or test.
- (4) If the general manager or production manager of a mine makes a request to an inspector or mine safety officer under subsection (3) in respect of machinery, apparatus or an article, the inspector or mine safety officer must not subject the machinery, apparatus or article to the process or test unless the approval of the Chief Inspector, either orally or in writing, is obtained.
- (5) An inspector or mine safety officer may require a person to answer a question under subsection (1) (a) either orally or in writing and may allow a person further time (not exceeding 24 hours) to answer a question.

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

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

continued safe operation of a mine or the safety of the persons employed at a mine, the inspector or mine safety officer must, as soon as possible, so advise the general manager of the mine or, if the general manager is not present at the mine, the next most senior person at the mine.

### **36C Offences**

A person must not:

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

Maximum penalty:

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

### **37 Notice to be given of cause of danger**

- (1) If in any respect not provided for by express provision of this Act or by any general or special rule any inspector finds any mine or any part thereof, or any matter, thing, or practice in or connected with such mine, or in connection with the control, management, or direction thereof to be dangerous or defective, so as in the inspector's opinion to threaten or tend to injure the health or the body of any person, such inspector shall give notice thereof in writing to the owner or general manager of the mine, and shall state in such notice the particulars in which the inspector considers such mine or any part thereof, or any matter, thing, or practice, to be dangerous or defective, and require the same to be remedied within a period named in such notice; and if the cause of danger is not removed or if such defect is not

remedied within the period so named, the inspector may take proceedings against the owner or general manager for such default, and on being satisfied that such notice was justified by the matter complained of, the court may impose on such owner or general manager a penalty not exceeding 5 penalty units, and a further penalty of 1 penalty unit for every day after such decision during which such notice is not complied with.

- (2) A copy of every notice as aforesaid shall forthwith be transmitted by the inspector to the Chief Inspector, who may transmit a copy of the notice to the Minister.
- (3) An investigator who is also an inspector may not serve a notice under this section.

### **37A Order to withdraw persons from mine**

- (1) Where an inspector is of the opinion that the safety or health of persons employed in or about a mine or part of a mine is seriously threatened as a consequence of:
  - (a) a contravention of the provisions of this Act, the general rules or any special rules applicable to the mine, or
  - (b) any matter, thing or practice required to be remedied under section 37 (1),the inspector may, by an order in writing served on the owner or general manager of the mine, require the owner or general manager:
  - (c) to withdraw forthwith from the mine or part of the mine, as the case may be, the persons employed in or about the mine or part, and
  - (d) not to employ any persons in or about the mine or part of the mine, as the case may be, until:
    - (i) the contravention of this Act, the general rules or the special rules specified in the order has ceased or, as the case may be, the matter, thing or practice so specified has been remedied, or
    - (ii) the order is revoked under subsection (2),whichever first occurs.
- (2) An order under subsection (1) may be revoked by the Minister, by the Chief Inspector or by the inspector who served the order, by notice in writing served on the owner or general manager of the mine to which the order relates.
- (3) An order served on the owner or general manager of a mine under subsection (1) does not apply to persons employed in or about the mine for the purpose of bringing about compliance with the provisions of this Act, the general rules or the special rules or remedying the matter, thing or practice, as the case may be, specified in the order.
- (4) An owner or general manager who fails to comply with an order under subsection (1)



is, unless the court is satisfied that the inspector had no reasonable grounds for serving the order, guilty of an offence against this Act and, in respect of each day on which the failure occurs, liable to a penalty not exceeding 100 penalty units.

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

### **38 Notice and directions of inspector to be entered in book**

In the case of any mine, at which not less than twenty persons are employed, where an inspector has given any notice in writing to the owner or general manager in respect of the mode of conducting the works of such mine either above or below ground, or has given notice of any matter, thing, or practice in or connected with such mine, or with the control, management, or direction thereof which, in the opinion of the inspector, threatens or tends to injure the health or body of any person, the details of such notice shall be entered in a book to be kept at the mine for the purpose. And a statement of all acts done in conformity with or in consequence of any such notice shall also be entered in such book. All entries shall bear date of the day of entry, and shall be signed by the general manager and by the production manager if the general manager is not also the production manager. Such book shall on request be produced at the mine at all reasonable times to any inspector, who may inspect and copy the same or make extracts therefrom.

Every owner, general manager or production manager who fails to act in compliance with this section shall be guilty of an offence against this Act.

### **39 (Repealed)**

### **40 Annual reports**

- (1) Every inspector shall make an annual report of the inspector's proceedings during the preceding year to the Chief Inspector, those reports shall be summarised by the Chief Inspector and embodied in the annual report of the Department, and that annual report shall be laid before both Houses of Parliament.
- (2) Without limiting subsection (1), the annual report is to include information of a kind required by the general rules in relation to the following matters for the period covered by the report:
  - (a) accidents of a class or classes prescribed by the general rules,
  - (b) dangerous incidents at mines,
  - (c) occupational diseases resulting from employment at a mine.

## **Division 2 Plans, returns, notices, and abandonment**

### **41 Plans to be furnished**

- (1) This section applies to:
- (a) a mine at which 20 or more persons are employed, and
  - (b) a mine at which less than 20 persons are employed, if the Chief Inspector has advised the general manager of the mine in writing that this section applies to the mine.
- (1A) The owner or general manager of a mine to which this section applies must, before the commencement of any mining operations at the mine after the commencement of this subsection, cause an accurate plan of the proposed workings of the mine to be prepared in accordance with this section by:
- (a) a qualified mining engineer, or
  - (b) a production manager, or
  - (c) a registered mining surveyor.
- (1B) The plan must include any previous workings at the mine if any part of the mine has been worked in the past or if the mine was an abandoned mine.
- (1C) The plan must be drawn to a scale showing a distance of not more than 1:1 250 unless the Chief Inspector, in writing, permits the plan to be drawn to another scale.
- (1D) The plan must be revised, if necessary, every 3 months to show any significant changes in respect of the workings that have been carried out, or the workings that are proposed to be carried out, at the mine.
- (1E) The plan, or plan as revised from time to time, must be deposited at the office of the mine and must be produced, on request, to an inspector or to any other person authorised in writing by the Chief Inspector to inspect it.
- (1F) The owner or general manager of the mine must, if requested by an inspector or person authorised by the Chief Inspector:
- (a) mark on the plan, to the best of the owner's or general manager's ability, the progress of the workings of the mine up to the time at which the plan is produced to the inspector or person, and
  - (b) allow the inspector or person to examine the plan and to take a copy of it.
- (1G) The owner or general manager of a mine must, if requested to do so by the Chief Inspector by notice in writing, provide an inspector with a copy of a plan (or latest revision of a plan) as deposited at the office of the mine within the time specified in

the notice.

- (1H) An inspector must file any copy of a plan provided to the inspector in accordance with subsection (1G) in the records of the Department.
- (2) If an inspector has reason to think that any plan produced to the inspector as aforesaid is incorrect the inspector shall report the fact to the Chief Inspector, who may cause a check survey to be made; and if thereupon the said plan proves to be incorrect in any material respect the owner or general manager of the mine shall be liable to pay all costs and charges of making such check survey, or in connection therewith, and such costs and charges may be recovered by any inspector as a fine under this Act.
- (3) The owner or general manager of a mine is guilty of an offence against this Act if the owner or general manager:
- (a) fails to cause a plan to be prepared in accordance with subsection (1A) or to be revised in accordance with subsection (1D), or
  - (b) fails to deposit a plan or a revised plan in accordance with subsection (1E), or
  - (c) refuses or fails to produce a full and accurate plan in response to a request under subsection (1E), (1F) or 1G), or
  - (d) fails to comply fully with a request under subsection (1E), (1F) or (1G).

Maximum penalty: 10 penalty units.

- (3A) The owner or general manager of a mine is not guilty of an offence against this Act of failing to produce a full and accurate plan if the owner or general manager shows that he or she did not know or could not reasonably have known that the plan was not a full and accurate plan.
- (4) An inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner or general manager to cause an accurate plan of the workings that have been carried out or that are proposed to be carried out to be made and deposited at the office at the mine within a reasonable time at the expense of the owner.

The Chief Inspector may by notice in writing direct the owner or general manager of any mine to supply to an inspector an accurate plan of all the mine workings.

If the owner or general manager fails, within thirty days or such further time as may be shown to be necessary after the requisition of the inspector, or direction of the Chief Inspector, as the case may be, to make and deposit or supply such plan, the owner or general manager shall be guilty of an offence against this Act.

- (5) The owner or general manager of any mine shall, on the request of a check inspector,

produce to the check inspector at the office of the mine during an inspection of the mine the plan deposited therein pursuant to the requirements of this section.

The check inspector shall be entitled to examine such plan but shall not take away from the mine any copy thereof.

Any owner, general manager or check inspector who contravenes the provisions of this subsection shall be guilty of an offence against this Act.

(6) (Repealed)

(7) A reference in this section to a plan of a mine includes a reference to sections of the workings of the mine and to correct copies or tracings of any original plan and sections.

#### **42 Where mine abandoned, plans to be deposited with Minister**

- (1) Where any mine, of which a plan and sections are required under the provisions of this Act to be deposited, is abandoned, the person who at the time of abandonment was the owner shall, within three months after such abandonment, forward to the Minister an accurate plan and sections of the workings of such mine up to the time of abandonment.
- (2) If the said person fails to comply with this section, the person shall be guilty of an offence against this Act, and be liable to a fine not exceeding 10 penalty units.
- (3) An information for an offence under this section may be laid at any time within 2 years after the abandonment of the mine, or after service on the owner aforesaid of a notice by an inspector to comply with the requirements of this section, whichever last happens.

#### **42A Furnishing of statistics, returns etc**

- (1) The owner of every mine and every other person carrying on mining, prospecting or other operations in connection therewith or purchasing metals, minerals or other products derived therefrom who may be called upon so to do, shall, at such times and in such manner as the Minister may require, furnish such statistics, returns, and other information as may be required and shall keep such records as may be necessary for the completion thereof.
- (2) Any information required under this section in respect of any particulars supplied in or omitted from a return shall be furnished within such period as may be specified by the Director-General.
- (3) Any person authorised in writing by the Minister shall at all times have full and free access to all mines and to all buildings, books, documents and other records relating to the production, treatment, disposal and purchase of metals, minerals or other products derived from any mine and may make extracts from or copies of such books,

documents or records, and may make such investigations as the person may consider proper in connection with the production, treatment, disposal and purchase of such metals, minerals or other products.

- (4) Statistics, returns and information obtained pursuant to this section shall be treated as confidential provided that the Minister may cause to be published or otherwise made available the results of such statistics, returns and information with respect to the whole of New South Wales or any portion thereof and such details furnished on an individual return (other than details relating to working expenses) as the Minister may think fit.
- (5) Any person who fails to comply with this section or who makes any return or supplies any information which is incomplete or false in any particular shall be guilty of an offence against this Act.

#### **42B Drillholes**

- (1) The owner or production manager of any mine who for exploratory purposes proposes to drill a drillhole or to extend an existing drillhole to a depth exceeding 15 metres shall, before commencing the work, notify the Chief Inspector of the owner's or production manager's intention, and furnish to the Chief Inspector particulars of the location of the drillhole, and shall also either before or after commencing the work, furnish such additional particulars in relation to the drillhole as the Chief Inspector may require.
- (2) Where, in the course of drilling any such drillhole, a core is obtained, such core (other than material therefrom required for purposes of assay) or if no core is so obtained, samples of the material obtained, shall be labelled and preserved by the owner or production manager of the mine for at least one year after the completion of the drillhole in such manner as the Chief Inspector may direct:

Provided that no samples need be kept where the drillhole is sunk in surface gravel or alluvial ground:

Provided further that before disposing of any core or samples after the expiry of a year at least two weeks notice thereof shall be given by the owner or production manager to the Chief Inspector.

- (3) Cores and samples preserved as aforesaid shall at all times be available for examination by the Government Geologist, Geological Surveyor or inspector of mines, or any other officer authorised in that behalf by the Minister, and specimens may be taken for purposes of assay or other treatment, but no information obtained as a result of such examination or treatment shall be published without the consent of the owner or production manager unless the Minister sees fit to direct otherwise.
- (4) The owner or production manager of any mine who fails to act in compliance with this

section or with any direction given thereunder shall be guilty of an offence against this Act.

**43 (Repealed)**

**44 Notice to be given of opening and abandonment of mine**

In the case of any mine in or about which any person is employed:

- (a) where any working is commenced:
  - (i) for the purpose of sinking a shaft or driving a tunnel for the purpose of opening up a vein, lode or mineral deposit, or
  - (ii) in connection with quarrying operations, or
- (b) where the mine, or any part thereof, is abandoned, or the working thereof discontinued, or
- (c) where the working of the mine, or any part thereof, is recommenced after any abandonment or discontinuance for a period exceeding two months, or
- (d) where any change occurs in the name of such mine, or in the name of the owner or general manager of such mine, or in the principal officers of any company which is the owner of such mine,

the owner or general manager of the mine shall give notice thereof to an inspector, within fourteen days after the commencement, abandonment, discontinuance, recommencement, or change; and if such notice is not given, the owner or general manager shall be guilty of an offence against this Act.

**45 Abandoned mine to be protected**

- (1) Where any mine is abandoned or the working thereof discontinued, at whatever time the abandonment or discontinuance occurred, the person who, at such time, was the owner thereof shall cause the top of every shaft and any other opening considered to be a source of danger by an inspector to be securely protected for the purpose of preventing accidents.
- (2) If any person fails to act in conformity with this section the person shall be guilty of an offence against this Act.
- (3) No person shall be precluded by any agreement from doing, or be liable under any contract to any damages, penalty, or forfeiture for doing such acts as may be necessary in order to comply with the provisions of this section.
- (4) If any occupier of land or other person wilfully obstructs the owner of a mine or other person in doing any such acts, the occupier or other person firstmentioned shall be guilty of an offence against this Act.

- (5) Any shaft or opening which is not protected as required by this section, and is within 50 metres of any highway, road, footpath, or place of public resort, or is in open or unenclosed land, shall be deemed to be a public nuisance.
- (6) If any person shall, after any shaft or adit has become disused for mining purposes, wilfully damage or render useless such shaft or adit by the removal of any fencing, timbering, slabs, covering, casing, lining, ladder, platform, or other appliance provided in such shaft or adit without the consent in writing of the Minister, the person shall be guilty of an offence against this Act.

### **Division 3 Risk management strategies**

#### **46 Risk management strategies**

The general manager of a mine must ensure that as soon as is reasonably practicable:

- (a) any reasonably foreseeable safety or health risk arising from the carrying out of operations at the mine and that has the potential to cause significant harm to persons carrying out those operations is identified and assessed, and
- (b) any such risk is eliminated, or if it is not reasonably practicable to eliminate the risk, the risk is minimised to the fullest extent that is reasonably practicable by measures that include the design of safe work systems.

Maximum penalty: 20 penalty units.

### **Division 4 Serious accidents, dangerous incidents and certain diseases**

#### **47 Notification of serious accidents or dangerous incidents**

- (1) If a serious accident or dangerous incident occurs, the owner or general manager of the mine concerned must immediately give oral notice of the accident or incident to an inspector.
- (2) Within 24 hours after a serious accident or dangerous incident occurs, the owner or general manager of the mine concerned must send a written notice (in a form approved by the Chief Inspector) to the inspector to whom oral notice was given under subsection (1) setting out details of the following:
  - (a) in the case of a serious accident:
    - (i) the nature of the accident, and
    - (ii) the name of any person killed or injured, and
    - (iii) the number of persons killed, and
    - (iv) the number of persons otherwise injured and a description of the injuries,

(b) in the case of a dangerous incident—the nature of the incident.

- (3) The owner or general manager of a mine who fails, without reasonable excuse, to give notice in accordance with this section is guilty of an offence.

Maximum penalty (subsection (3)): 10 penalty units.

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

#### **47A Serious accident or dangerous incident site not to be disturbed**

- (1) The owner or general manager of the mine concerned must ensure that the place where a serious accident or dangerous incident occurred is left as it was immediately after the accident until:

(a) the expiration of 3 days after the notice was given under section 47 (1), or

(b) a visit to the place by an inspector or other person authorised under section 47B, whichever occurs first.

Maximum penalty: 10 penalty units.

- (2) This section does not apply if compliance with the section would tend to increase or continue a danger or would unnecessarily impede the working of the mine.

#### **47B Inspection of serious accident or dangerous incident**

- (1) After a serious accident or dangerous incident occurs, the general manager of the mine concerned must permit:

(a) a representative of the persons employed at the mine (who is to be one of the persons so employed), or

(b) a check inspector,

to make an inspection of the place where the accident or incident occurred as soon as the inspection can safely be made.

Maximum penalty: 10 penalty units.

- (2) The inspection is to be made in company with an inspector.

- (3) Before leaving the mine, the representative or check inspector is to report the result of the inspection in a book to be kept at the mine for the purpose.

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



visiting the mine at which the accident or incident occurred.

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

#### **47C Notification of certain diseases**

The owner or general manager of a mine must send a written notice to an inspector that a person employed at the mine is suffering from silicosis, pneumoconiosis or any other pathological condition of the pulmonary organs within 7 days of the owner or general manager having become aware that the person is so suffering.

Maximum penalty: 10 penalty units.

#### **47D Notification of death resulting from serious accident or disease**

- (1) The owner or general manager of the mine concerned must, within 24 hours of the owner or general manager having become aware of the fact, send a written notice to an inspector if:
  - (a) a person dies as the result of an injury received in a serious accident, or
  - (b) a person employed at the mine dies of a pathological condition referred to in section 47C.

Maximum penalty: 10 penalty units.

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

#### **47E Records to be kept of certain accidents**

- (1) The general manager of a mine must keep a separate record for each month containing the following information in relation to accidents of a class or classes prescribed by the general rules:

- (a) the total number of such accidents occurring during the month,
  - (b) the total number of persons (including contractors and subcontractors) employed or working at the mine during the month,
  - (c) the total number of hours worked during the month by those persons.
- (2) The record must be in a form approved by the Chief Inspector.
- (3) The general manager of a mine must make available, on request, any such record for inspection by an inspector.
- (4) The general manager of a mine who fails, without reasonable excuse, to comply with a requirement of this section is guilty of an offence.

Maximum penalty (subsection (4)): 10 penalty units.

#### **47F Determinations as to investigations**

- (1) On receipt of a copy of a report under section 47B (5) or (6) as to a serious accident or dangerous incident, the Director-General must determine whether the accident or incident is:
- (a) to continue to be investigated by the person who made the preliminary report under section 47B, or
  - (b) to be investigated by an investigator, or
  - (c) to be the subject of no further investigation.
- (2) In making a determination, the Director-General is to have regard to:
- (a) whether the serious accident or dangerous incident raises substantial matters of occupational health and safety, and
  - (b) whether investigation of the accident or incident may involve examination of rules or any scheme relating to the safety, health, conduct or discipline of persons in mines, and
  - (c) any other matter the Director-General thinks relevant.
- (3) If a serious accident or dangerous incident results in the death of a person, the Director-General must determine that it is to be investigated by an investigator.
- (4) A determination is to be notified in writing to the Chief Inspector and to the Manager, Investigations Unit, in the Department.
- (5) The Chief Inspector must notify the person who made the preliminary report under section 47B of the determination.

#### **47G Investigations by inspectors**

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

#### **47H Functions of investigators**

- (1) An investigator has the following functions:
  - (a) to investigate serious accidents or dangerous incidents that the Director-General determines under section 47F are to be investigated by an investigator,
  - (b) to report on matters relating to the safety, health, conduct or discipline of persons in mines, or any occurrence or practice at a mine, as directed by the Director-General,
  - (c) any other function conferred or imposed on an investigator by or under this Act.
- (2) For the purpose of carrying out his or her functions under this Act, an investigator has the functions of an inspector under sections 36, 36A and 36B and section 36C applies in respect of an investigator in the same way that it applies in respect of an inspector and anything done by an inspector under Division 1 of Part 4.
- (3) If an investigation is being carried out by an investigator under this Act, an inspector or mine safety officer is not to proceed with any inspection or examination of the serious accident or dangerous incident being investigated by the investigator, unless requested to do so by the investigator for the purpose of assisting the investigator.
- (4) Nothing in this section prevents an inspector from serving a notice under section 37 or an order under section 37A in relation to a mine the subject of an investigation by an investigator.

#### **47I Reports by investigators**

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

interim report to the Director-General.

- (4) The Director-General may, if the Director-General thinks fit, publish the report at the time and in the manner determined by the Director-General.

#### **47J Other persons who may be investigators**

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

#### **47K Special reports**

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

#### **47L Boards of Inquiry**

- (1) If it appears to the Minister that an investigation of:
  - (a) any serious accident or dangerous incident at a mine and its causes and circumstances, or
  - (b) any practice at a mine that, in the opinion of the Minister, adversely affects or is likely to adversely affect the safety or health of persons employed at the mine, or

(c) any matters relating to the safety, health, conduct or discipline of persons in mines,

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

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

#### **47M Witnesses and evidence at special inquiries**

- (1) A Board of Inquiry may summon a person to appear at a special inquiry conducted by the Board to give evidence and to produce such documents (if any) as are specified in the summons.
- (2) A Board of Inquiry may require a person appearing at a special inquiry to produce a document.

- (3) A person served with a summons to appear at a special inquiry and to give evidence must not, without reasonable excuse, fail to attend as required by the summons.

Maximum penalty: 5 penalty units.

- (4) A person appearing at a special inquiry to give evidence must not, without reasonable excuse:

(a) when required to be sworn or affirm—fail to comply with the requirement, or

(b) fail to produce a document that the person is required to produce under this section.

Maximum penalty: 5 penalty units.

- (5) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at a rate approved by the Minister for the purposes of this section.

- (6) A Board of Inquiry may require a person appearing at a special inquiry to answer questions and sections 36A (2) and 36C apply to such a person in the same way as they apply to a person required by an inspector under section 36A (1) (a) to answer questions.

#### **47N Additional functions of Boards of Inquiry**

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

#### **47O Report by Board of Inquiry**

- (1) A Board of Inquiry must, within the period required by the Minister, prepare a report as to:

(a) the causes of the serious accident or dangerous incident, if the inquiry concerns an accident or incident, or

(b) its findings in relation to the practice or matter, if the inquiry concerns a practice at a mine or a matter relating to the safety, health, conduct or discipline of persons in mines.

- (2) The Minister may, if the Minister thinks fit, publish the report at the time and in the manner determined by the Minister.

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

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

inquiry.

#### **48 (Repealed)**

### **Part 4A Tourist and educational activities**

#### **48A Definitions**

In this Part:

**mine** includes an abandoned mine.

**permit** means a permit that has been issued under section 48C and that has not been revoked under section 48D.

#### **48B Tourist and educational activities in certain mines to be authorised by permit**

The owner of a mine shall not allow tourist activities to be conducted in or about the mine or allow the mine to be used principally for educational purposes unless:

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

Maximum penalty: 10 penalty units.

#### **48C Issue of permits**

- (1) The Minister may, upon application being made to the Minister in writing, issue a permit to the owner of a mine that authorises tourist activities to be conducted in or about the mine, or authorises the mine to be used principally for educational purposes, subject to such conditions (if any) as the Minister may specify in the permit.
- (1A) An application for a permit is to be accompanied by a fee equivalent to the fee required to accompany an application for a permit under section 107 (Issue of tourist and educational permits) of the *Coal Mine Health and Safety Act 2002*.
- (2) A permit shall not be issued under this section in respect of a mine unless the Minister is satisfied that persons can enter the mine without risk to their safety or health.

#### **48D Revocation of permits etc**

- (1) The Minister may:
  - (a) revoke a permit where a condition to which the permit is subject is breached or where the Minister is satisfied that persons can no longer enter the mine to which the permit relates without risk to their safety or health, or

- (b) from time to time vary the conditions to which a permit is subject.
- (2) A variation may be made under subsection (1) (b) by way of attachment, amendment or deletion of conditions.
- (3) A revocation under subsection (1) (a) or variation under subsection (1) (b) does not take effect until notice of the revocation or variation is served on the owner of the mine to which the permit relates.

## **Part 5**

### **49-54 (Repealed)**

## **Part 6 Rules**

### **Division 1 General rules**

#### **55 (Repealed)**

#### **56 General rules**

- (1) The Governor may:
  - (a) make general rules, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, and
  - (b) make general rules dealing with:
    - (i) the ventilation and construction of mines and mining works,
    - (ii) the management and supervision of mines,
    - (iii) the drainage of mines,
    - (iv) the storage and use of explosives in or about mines,
    - (v) the nature, maintenance, examination, and inspection of all machinery used in or about mines,
    - (vi) all other matters whatsoever involved in or connected with the control and working of mines, and of works which are in or about a mine and in which any metal or mineral is treated, and
    - (vii) (Repealed)
  - (c) make general rules for or with respect to:
    - (i) the monitoring, measurement and recording of noise levels, radiation levels



- and heat levels in or about a mine, or
- (ii) the protection of persons employed in or about a mine from exposure to excessive noise or to radiation or heat stress, or
  - (iii) the provision of adequate lighting in or about a mine, or
  - (iv) ensuring a safe level of vibration in machinery in or about a mine, or
  - (v) ensuring the stability of tailings, dams, dumps and excavations that are part of, or consequential upon, the operations in or about a mine, or
  - (vi) the keeping of a register of holders of production managers' permits and the information to be contained in the register, or
  - (vii) the keeping of a register of holders of shotfirers' permits and the information to be contained in the register, or
  - (viii) the replacement of production managers' permits or shotfirers' permits that have been lost, damaged or stolen and the fee to be paid for a duplicate permit.
- (1A) The general rules in force immediately before the repeal of section 55 by the *Mines Inspection (Amendment) Act 1978* shall, notwithstanding that repeal, continue in force and shall be deemed to have been made under subsection (1).
- (2) (Repealed)
- (2A) A provision of a general rule may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,
- or may do any combination of those things.
- (2B) (Repealed)
- (3) Subject to subsection (4), the general rules shall, so far as may be reasonably practicable, be observed in and about every mine in the same manner as if they were enacted in this Act.
- (4) The Governor may, by proclamation published in the Gazette, exempt any mine or class of mine or any part of a mine from the operation of the general rules or any of them, either without conditions, or during the time and on the conditions specified in

the proclamation.

### **57 Non-compliance with rules**

Any person who contravenes or does not comply with any of the general rules shall be guilty of an offence against this Act; and in the event of any such contravention by any person whomsoever in the case of any mine:

- (a) the owner of the mine shall be guilty of an offence against this Act, unless the owner proves that he or she had taken all reasonable means, by publishing and to the best of his or her power enforcing the rules as regulations for the working of the mine so as to prevent such contravention or non-compliance, and
- (b) the general manager of the mine shall be guilty of an offence against this Act, unless the general manager proves that he or she had taken all reasonable means, by publishing and to the best of his or her power enforcing the rules as regulations for the working of the mine so as to prevent such contravention or non-compliance, and
- (c) if the offence relates to the production operations at the mine—the production manager is guilty of an offence against this Act unless the production manager proves that he or she had taken all reasonable means, by enforcing the rules as regulations for the working of the mine to the best of his or her power, so as to prevent such contravention or non-compliance.

## **Division 2 Special rules**

### **58 Special rules for certain mines**

- (1) The Governor may make such rules (referred to in this Act as **special rules**) for the conduct and guidance of the persons acting in the management of any mine or employed in or about the mine as, under the particular state and circumstances of such mine, may appear best calculated to prevent serious accidents or dangerous incidents, and to provide for the safety, convenience, and proper discipline of the persons employed in or about the mine.

(1A) A provision of a special rule may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(1B) (Repealed)

- (2) All special rules shall be observed in and about the mine to which they refer (including any extension thereof) in the same manner as if they were enacted in this Act.
- (3) If any person who is bound to observe the special rules for any mine acts in contravention of or fails to comply with any of them, the person shall be guilty of an offence against this Act, and also:
  - (a) the owner of the mine shall be guilty of an offence against this Act, unless the owner proves that he or she had taken all reasonable means, by publishing and to the best of his or her power enforcing the rules as regulations for the working of the mine, so as to prevent such contravention or non-compliance, and
  - (b) the general manager of the mine shall be guilty of an offence against this Act, unless the general manager proves that he or she had taken all reasonable means, by publishing and to the best of his or her power enforcing the rules as regulations for the working of the mine, so as to prevent such contravention or non-compliance, and
  - (c) if the offence relates to the production operations at the mine—the production manager is guilty of an offence against this Act unless the production manager proves that he or she had taken all reasonable means, by enforcing the rules as regulations for the working of the mine to the best of his or her power, so as to prevent such contravention or non-compliance.
- (4) Any special rules in force immediately before the commencement of the *Mines Inspection (Amendment) Act 1967*:
  - (a) shall continue in force notwithstanding any amendments made by that Act,
  - (b) shall be deemed to have been made by the Governor under this section as amended by that Act, and
  - (c) may be amended, substituted or repealed by the Governor under this section, as so amended.

**59-64 (Repealed)**

**Division 3 Publication of rules**

**65 Publication of abstract of Act and general rules and copy of special rules**

For the purpose of making known the provisions of this Act, the general rules and the special rules (if any) to all persons employed in and about a mine, an abstract of this Act and the general rules supplied, on the application of the owner or general manager of the mine, by an inspector, and a correct copy of the special rules (if any) shall, if deemed necessary by an inspector, be published as follows:

- (a) The owner or general manager of the mine shall cause the abstract of this Act and the

general rules and the copy of the special rules (if any), with the name of the mine and the name of the owner and of the general manager to be posted up, in legible characters, in some conspicuous place at or near the mine, where they may be conveniently read by the persons employed therein; and so often as such abstract or copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

- (b) The owner or general manager shall, on request, supply a printed copy of the abstract and the special rules (if any) gratis to each person employed in or about the mine.

In the event of any non-compliance with the provisions of this section:

- (c) the owner of the mine shall be guilty of an offence against this Act, unless the owner proves that he or she had taken all reasonable means, by enforcing, to the best of his or her power, the observance of this section to prevent such non-compliance, and
- (d) the general manager of the mine shall be guilty of an offence against this Act, unless the general manager proves that he or she had taken all reasonable means, by enforcing, to the best of his or her power, the observance of this section to prevent such non-compliance.

## **66 Pulling down or defacing notices**

Every person who pulls down, injures, or defaces any abstract, notice, proposed special rules, or special rules, when posted up in pursuance of this Act, or any notice posted up in pursuance of the special rules, shall be guilty of an offence against this Act.

## **Part 7 Legal proceedings and miscellaneous**

### **Division 1 Legal proceedings**

#### **67 Penalty for offences against Act**

- (1) Every person employed in or about a mine (other than an owner, general manager or production manager) who is guilty of any act or omission, which in the case of an owner, general manager or production manager would be an offence against this Act, shall be deemed to be guilty of an offence against this Act.
- (2) Every person who is guilty of an offence against this Act for which a penalty is not expressly prescribed shall be liable to a fine not exceeding, if the person is an owner, general manager or production manager, 10 penalty units, and if the person is any other person, 4 penalty units for each offence; and if an inspector has given written notice of any such offence, to a further fine not exceeding 2 penalty units for every day after such notice that such offence continues to be committed.
- (3) The penalty for an offence against this Act relating to the storage or use of explosives in or about a mine is a fine not exceeding 20 penalty units

## **68 Imprisonment for wilful neglect, endangering life or limb**

Where an owner, general manager or production manager of, or a person employed in or about, a mine is guilty of any offence against this Act which, in the opinion of the Court that tries the case, is one which was reasonably calculated to endanger the safety of the persons employed in or about the mine, or to cause a serious accident or dangerous incident, and was committed wilfully by the personal act, personal default, or personal negligence of the person accused, such person shall be liable, if the Court is of opinion that a fine will not meet the circumstances of the case, to imprisonment for a period not exceeding three months.

## **69 Proceedings for offences**

- (1) Proceedings for an offence against this Act, section 24 excepted, may be taken before a Local Court constituted by a Magistrate sitting alone or before the Supreme Court in its summary jurisdiction.
- (2) If proceedings in respect of an offence against this Act are brought in a Local Court the maximum monetary penalty that the court may impose in respect of the offence is, notwithstanding any other provision of this Act, 100 penalty units (including any daily penalty) or the maximum monetary penalty provided by this Act in respect of the offence, whichever is the lesser.
- (3) If proceedings in respect of an offence against this Act are brought in the Supreme Court in its summary jurisdiction, the Supreme Court may impose a penalty not exceeding the maximum penalty provided by this Act in respect of the offence.
- (4) Proceedings in the Supreme Court in its summary jurisdiction in respect of an offence against this Act may be commenced only within 2 years after the offence was committed.
- (5) Notwithstanding anything in any other Act, proceedings before a Local Court in respect of an offence against this Act (except section 42) may be instituted within the period of 2 years after the act or omission alleged to constitute the offence.

## **70 (Repealed)**

## **71 Prosecution of owners, general managers and others**

- (1) Where an offence has been committed, for which the owner, general manager or production manager of a mine is liable under this Act, but which has not personally been committed by such owner, general manager or production manager, no proceedings for such offence shall be instituted against such owner, general manager or production manager except by an inspector or with the consent in writing of the Minister.
- (2) An inspector shall not institute any prosecution under this Act against the owner,

general manager, production manager or an employee of a mine if satisfied that the owner, general manager, production manager or employee had taken all reasonable means to prevent the commission of the offence.

- (3) Proceedings for an offence referred to in section 37A (4) shall not be instituted except with the consent of the Minister.

## **72 Report of result of proceedings against workmen**

Where the owner or general manager of a mine has taken proceedings under this Act against any person employed in or about a mine in respect of an offence committed under this Act, the owner or general manager shall within twenty-one days after the hearing of the case report the result thereof to an inspector.

## **73 Saving for proceedings under other Acts**

- (1) Nothing in this Act shall prevent any person from being indicted or liable under any other Act or otherwise to any other or higher penalty or punishment than is provided for any offence by this Act: Provided that no person shall be punished twice for the same offence.
- (2) If the court before which a person is charged with an offence under this Act thinks that proceedings ought to be taken against such person for such offence under any other Act or otherwise, it may adjourn the case to enable such proceedings to be taken.

## **74 Application of fines**

Where a fine is imposed under this Act for neglecting to send a notice of any serious accident or dangerous incident, or for any offence against this Act which has occasioned loss of life or personal injury, the Minister may direct such fine to be paid to or distributed among the persons injured, and the relatives of any person whose death may have been occasioned by the serious accident, dangerous incident, or offence, or among some of them: Provided that:

- (a) such persons did not in the Minister's opinion occasion or contribute to occasion the serious accident or dangerous incident, and did not commit and were not parties to committing the offence,
- (b) the fact of the payment or distribution shall not in any way affect or be receivable as evidence in any legal proceeding relative to or consequential on the serious accident, dangerous incident, or offence.

Save as aforesaid all fines recovered under this Act shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

## **75 Service of notices**

All notices and documents required by this Act to be served or sent by or to an inspector

may be either delivered personally, or served or sent by post by a registered letter.

## **Division 2 Miscellaneous**

### **76 Decision of question whether a mine is under this Act**

If any question arises, otherwise than in legal proceedings, whether a mine is a mine to which this Act applies, the question shall be referred to the Minister, whose decision thereon shall be final.

### **76A Delegation of functions by Director-General**

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

(2) In this section:

**authorised person** means:

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

### **77 Government Geologist and Geological Surveyors may enter mines**

The Government Geologist and the Geological Surveyors may enter any mine at all reasonable times and examine the mine or any part thereof.

### **77A Exercise of inspector's powers under [Occupational Health and Safety Act 2000](#)**

(1) If an inspector appointed under section 47A of the [Occupational Health and Safety Act 2000](#) requires a person referred to in section 36A (1) (a) of this Act to answer questions in the course of the inspector exercising functions under that Act, the person is entitled to nominate another person to be present while being questioned.

(2) The regulations may make provision for or with respect to the exercise of functions under the [Occupational Health and Safety Act 2000](#) in relation to a mine (within the meaning of this Act) by an inspector appointed under section 47A of that Act.

(3) A reference in subsection (2) to the exercise of functions under the [Occupational Health and Safety Act 2000](#) in relation to a mine includes a reference to the exercise of functions under Division 2 of Part 5 of that Act in relation to premises other than a mine for the purpose of investigating any matter under that Act in relation to a mine.

### **78 Powers of Minister as to making and revoking orders**

Any order or exemption authorised by or under this Act to be made or granted by the Minister may be made and granted, and from time to time revoked or altered by the

Minister, either unconditionally or subject to such conditions as the Minister may see fit, and shall be signed by the Minister or the Director-General.

## **79 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. In particular, the regulations may make provision for or with respect to the powers, authorities, duties and functions of inspectors, investigators and mine safety officers.

## **80 Entry to ascertain if encroachment exists**

- (1) Where the manager of any company claiming to be legally or equitably interested in any land adjoining or near to any mine, or of any person so claiming, alleges by affidavit, taken before any Justice or Commissioner for affidavits, that the owner of such mine is believed by the person making such affidavit to be encroaching upon such land, the Minister may, by writing under the Minister's hand, authorise an inspector, together with a registered mining surveyor or experienced miner, to enter such mine and land for the purpose of ascertaining whether any such encroachment has been made, and if so the extent thereof. But before granting such authority the Minister shall require a deposit to be made of such a sum of money not exceeding \$500 as, in the Minister's opinion, will be necessary to cover the cost of such inspection.
- (2) The persons so authorised may thereupon enter such mine and land and descend any shaft or enter any mine therein, and use the engines and other machinery ordinarily employed for that purpose, and make such plans and sections of the mine and land entered and of any drives or other works therein as may be considered necessary; and the owner, general manager and production manager of any such mine shall render all necessary assistance to the persons so authorised.
- (3) (Repealed)
- (4) Any owner, general manager or production manager who refuses such assistance shall be liable to a fine not exceeding 1 penalty unit.
- (5) The Minister may, out of the sum deposited as aforesaid, defray the cost of such inspection, and if the owner, general manager and production manager of the mine render such assistance as aforesaid, and if there is no encroachment, may out of such sum award to such owner compensation for any loss or expense to which the owner may be put by reason of such inspection.

## **81 Disclosure of information**

- (1) A person shall not disclose any information obtained by the person in connection with the administration or execution of this Act or in the exercise of any power conferred by



or under this Act, unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Act or in the exercise of any power conferred by or under this Act,
- (c) for the purposes of any legal proceedings arising out of this or any other Act or of any report of any such proceedings,
- (d) for the purposes of any inquiry or proceedings conducted by a warden under this or any other Act, or
- (e) with the concurrence of the Minister.

- (2) A person shall not use for the purposes of personal gain any information obtained by the person in connection with the administration or execution of this Act or in the exercise of any power conferred by or under this Act.

Maximum penalty: 10 penalty units.

## **82 Savings and transitional provisions**

Schedule 3 has effect.

## **Schedules 1, 2 (Repealed)**

## **Schedule 3 Savings, transitional and other provisions**

(Section 82)

### **Part 1 Preliminary**

#### **1 Regulations**

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

*Mines Inspection Amendment Act 1998*

*Mines Legislation Amendment (Mines Safety) Act 1998*

*Mining Legislation Amendment (Health and Safety) Act 2002*

- (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 enactment of [Mines Inspection \(Amendment\) Act 1962](#)**

### **1A References to inspector for the district, inspector of the district**

A reference in any other Act or statutory instrument, or in any other instrument, however expressed, to an inspector for the district or an inspector of the district within the meaning of this Act, as in force immediately before the commencement of the [Mines Inspection \(Amendment\) Act 1962](#), shall be read as a reference to an inspector.

## **Part 3 Provisions consequent on enactment of [Mines Inspection Amendment Act 1998](#)**

### **2 Definition**

In this Part, **amending Act** means the [Mines Inspection Amendment Act 1998](#).

### **3 Certificates of competency as shotfirer**

A certificate of competency as shotfirer granted in accordance with the general rules before the commencement of section 18G and in force immediately before that commencement is taken to be a certificate of competency as shotfirer granted under section 18G.

### **4 Certificates of competency as manager**

A certificate of competency as manager granted under this Act and in force immediately before the amendment of section 7 by the amending Act is taken to be a certificate of competency as production manager.

### **5 Certificates of services as manager**

A certificate of service as manager granted under this Act and in force immediately before the amendment of section 8 by the amending Act is taken to be a certificate of service as production manager.

### **6 Register of certificates of competency or service as manager**

The register kept under section 11 as in force immediately before the commencement of the amendments made to that section by the amending Act is taken to be the register kept under section 11 as so amended.

## 7 Existing managers of mines

A person who held the position of manager of a mine in accordance with section 5 immediately before its substitution by the amending Act is taken to be the general manager of the mine and notification of the relevant details is taken to have been given under subsection (3) of that section as so substituted.

## 8 Existing exemption for certain opal mines

The exemption under section 1 (2) (relating to an opal mine in which no persons are employed other than the owners of the mine) that was proclaimed in Gazette No 81 of 16 May 1986 at page 2127 continues to have effect despite the substitution of section 5 by the amending Act. However, a reference in the proclamation to section 5 (3)-(5A) is to be read as a reference to sections 5A, 5B and 5C.

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

### 9 Definition

In this Part:

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

### 10 Preliminary reports

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

### 11 Boards of Inquiry

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