



New South Wales

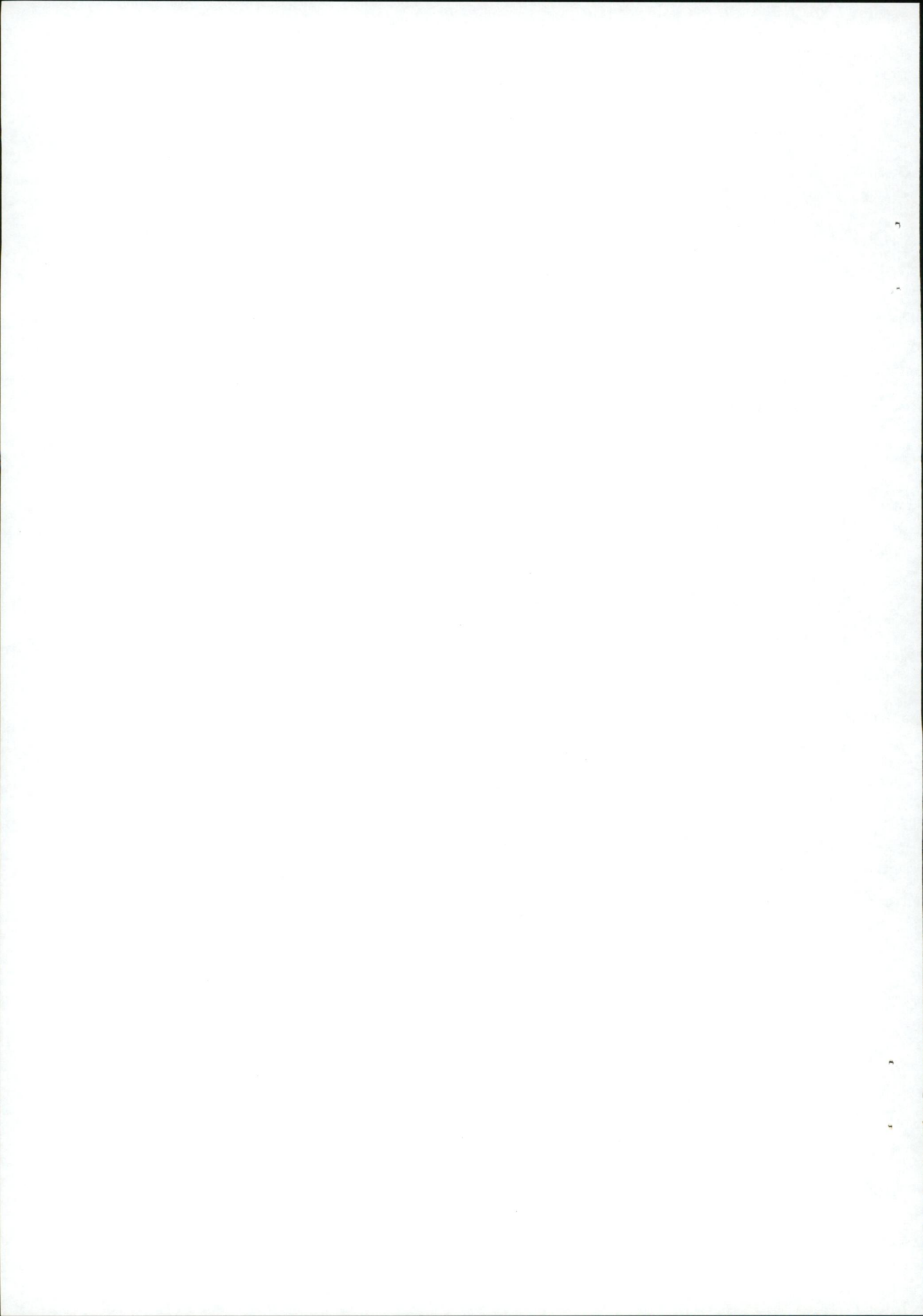
Mines Inspection Amendment Act 1998 No 69

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New South Wales

Mines Inspection Amendment Act 1998 No 69

Act No 69, 1998

An Act to amend the *Mines Inspection Act 1901* to make further provision with respect to the appointment of managers at mines (other than coal and shale mines) and the safety of persons at those mines; to amend the *Mines Inspection General Rule 1994* and the *Defamation Act 1974* consequentially; and for other purposes. [Assented to 2 July 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Mines Inspection Amendment Act 1998*.

2 Commencement

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

3 Amendment of Mines Inspection Act 1901 No 75

The *Mines Inspection Act 1901* is amended as set out in Schedule 1.

4 Amendment of Mines Inspection General Rule 1994

The *Mines Inspection General Rule 1994* is amended as set out in Schedule 2.

5 Amendment of Defamation Act 1974 No 18

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

Schedule 1 Amendment of Mines Inspection Act 1901

(Section 3)

[1] Section 2 Division of Act

Omit the section.

[2] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

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).

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.

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.

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.

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.

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.

[3] Section 4 (1), definition of "inspector"

Omit "*Public Service Act 1902*".

Insert instead "*Public Sector Management Act 1988*".

[4] Section 4 (1), definition of "mine"

Omit the definition. Insert instead:

mine is defined in section 4A.

[5] Section 4 (1), definition of "machinery"

Omit the definition. Insert instead:

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.

[6] Section 4 (1), definition of "owner"

Insert ", subcontractor" after "contractor" wherever occurring.

[7] Section 4 (1), definition of "manager"

Omit the definition.

[8] Section 4 (1), definition of “the Under Secretary”

Omit the definition.

[9] Section 4 (1), definition of “treatment”

Omit the definition. Insert instead:

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.

[10] Section 4A

Insert after section 4:

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.

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- (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.
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[11] Part 2, heading and Division 1, heading

Omit the headings. Insert instead:

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

Division 1 General managers and production managers

[12] Sections 5–5D

Omit sections 5 and 5A. Insert instead:

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.

[13] Sections 6 (1), 8 (1), 9, 11 and 32 (5) (a) (i)

Omit "managers" wherever occurring.
Insert instead "production managers".

[14] Sections 7, 8 (1) and 32 (5) (a) (i)

Omit "manager" wherever occurring.
Insert instead "production manager".

[15] Section 7 Grant of certificates of competency

Insert "qualifications," after "sobriety," in section 7 (1).

[16] Sections 8 (2) (c), 9 (2) and 11

Omit "manager granted under this Act" wherever occurring.
Insert instead "production manager".

[17] Section 9 Certificates granted outside New South Wales

Omit "manager" from section 9 (1).
Insert "production manager (however described)".

[18] Section 10 Form of certificates

Omit "managers granted under this Act".
Insert instead "production manager".

[19] Section 13 Board of examiners for engine-drivers

Omit "prescribing" from section 13 (2) (e).
Insert instead "regulating".

[20] Part 2, Divisions 2A and 2B

Insert after section 18A:

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

18B Production manager to undertake training to maintain competencies

- (1) This section applies to a person who:
 - (a) holds a certificate of competency as production manager, and
 - (b) is the production manager of a mine.
- (2) Any person to whom this section applies must undertake the training prescribed by the general rules to ensure that production managers maintain the competencies required to discharge the duties of a production manager.

Maximum penalty: 20 penalty units.

- (3) Any person to whom this section applies must:
 - (a) keep the records prescribed by the general rules of any training undertaken by the person for the purposes of this section, and
 - (b) make available, on request, any such record for inspection by an inspector.

Maximum penalty: 20 penalty units.

- (4) The Chief Inspector may, by written notice, require any person to whom this section applies to provide (in the manner, and within the time, specified in the notice) evidence that the person has maintained the competencies required to discharge the duties of a production manager.
- (5) The Chief Inspector may, by written notice, require any person to whom this section applies 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 maintain the competencies required to discharge the duties of a production manager.

- (6) A person must not fail, without reasonable excuse, to comply with a notice given to the person under this section.

Maximum penalty (subsection (6)): 20 penalty units.

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

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- (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.

[21] Part 2, Division 3, heading

Omit the heading. Insert instead:

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

[22] Section 19 Inquiry into conduct of general manager, production manager, engine-driver or shotfirer

Omit “If at any time representation is made to the Minister by an inspector that any manager or engine-driver is by reason of incompetency or negligence, unfit to discharge the manager’s or engine-driver’s duties, or has been convicted of an offence against this Act (not being an offence under section 18A), the Minister may cause inquiry to be made into the conduct of the manager, or engine-driver, and with respect to every such inquiry the following provisions shall have effect:”.

Insert instead:

- (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:

[23] Section 19 (2) (b) and (d) (as amended by item [22])

Omit "manager, or engine-driver" wherever occurring.

Insert instead "general manager, production manager, engine-driver or shotfirer".

[24] Section 19 (2) (d) (as amended by item [22])

Omit "manager or engine-driver".

Insert instead "general manager, production manager, engine-driver or shotfirer".

[25] Section 19 (2) (f)–(g1)

Omit section 19 (2) (f) and (g) (as amended by item [22]).

Insert instead:

- (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.

[26] Section 19 (2) (h) (as amended by item [22])

Omit "Court of Petty Sessions". Insert instead "Local Court".

[27] Section 20 Costs and expenses of inquiry

Omit "any Stipendiary Magistrate or any two Justices of the Peace in Petty Sessions, as if such costs and expenses were a fine imposed by that Court of Petty Sessions" from section 20 (1).

Insert instead "any Local Court, as if such costs and expenses were a fine imposed by the Local Court".

[28] Section 21 Record of cancellation of certificate and restoration in certain cases

Omit "certificate of a manager or engine-driver" from section 21 (1).

Insert instead "certificate of a production manager, engine-driver or shotfirer".

[29] Section 21 (2)

Omit "board of examiners of managers, or the board of examiners of engine-drivers".

Insert instead "board of examiners of production managers, the board of examiners of engine-drivers or the board of examiners of shotfirers".

[30] Section 23 Expenses in relation to certificates and permits and application of fees

Omit "in carrying into effect the provisions of this Act with respect to certificates of competency or service" from section 23 (1).

Insert instead "or inspectors in carrying into effect the provisions of this Act with respect to certificates of competency, certificates of service or permits".

[31] Section 23 (2)

Omit "holders of certificates, or for a copy of a certificate".
Insert instead "holders of certificates or permits, or for a copy of a certificate or permit".

[32] Section 24 Penalty for forgery or false declaration

Omit "manager, or engine-driver" from section 24 (c).
Insert instead "general manager, production manager, engine-driver or shotfirer".

[33] Part 3, Division 1

Omit the Division.

[34] Section 26 Persons who must not be employed in mines

Omit section 26 (4).

[35] Sections 28–31, 37A, 41 (2), (4), (5) and (6), 44, 57 (b), 58 (3) (b), 65 and 72

Omit "manager" wherever occurring.
Insert instead "general manager".

[36] Section 32 Appointment of inspectors

Omit "*Public Service Act 1902*" from section 32 (1).
Insert instead "*Public Sector Management Act 1988*".

[37] Section 32 (5)

Omit "Department of Mines" wherever occurring.
Insert instead "Director-General".

[38] Section 34 Disqualification of persons as inspectors

Omit "manager".
Insert instead "general manager, production manager".

[39] Section 34

Omit "managers". Insert instead "general managers".

[40] Section 36 Powers of inspector

Omit "manager".

Insert instead "general manager or production manager".

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

Omit "by the manager" from section 37 (1).

[42] Section 37 (1)

Omit "or manager" wherever occurring.

Insert instead "or general manager".

[43] Section 38 Notice and directions of inspector to be entered in book

Omit "the owner or manager".

Insert instead "the owner or general manager".

[44] Section 38

Omit "signed by the manager".

Insert instead "signed by the general manager and by the production manager if the general manager is not also the production manager".

[45] Section 38

Omit "Every owner or manager".

Insert instead "Every owner, general manager or production manager".

[46] Section 39 Special report of inspector

Omit the section.

[47] Section 40 Annual Reports

Omit "of Mines".

[48] Section 40 (2)

Insert at the end of section 40:

- (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.

[49] Section 41 Plans to be furnished

Omit section 41 (1). Insert instead:

- (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 mining surveyor authorised by the Chief Inspector.
- (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.

[50] Section 41 (2) and (4)

Omit "Minister" wherever occurring.
Insert instead "Chief Inspector".

[51] Section 41 (3)

Omit the subsection. Insert instead:

- (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.

[52] Section 41 (4), (5) and (6)

Omit “and sections” wherever occurring.

[53] Section 41 (4)

Omit “the workings”.

Insert instead “the workings that have been carried out or that are proposed to be carried out”.

[54] Section 41 (4)

Insert “all” before “the mine workings”.

[55] Section 41 (6)

Omit “subsection (1)”.

Insert instead “this section”.

[56] Section 41 (7)

Insert after section 41 (6):

- (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.

[57] Sections 42A (2) and 78

Omit "Under Secretary" wherever occurring.
Insert instead "Director-General".

[58] Section 42B Drillholes

Omit "manager" wherever occurring.
Insert instead "production manager".

[59] Section 42B (1)

Omit "manager's".
Insert instead "production manager's".

[60] Section 43 Notice to be given of accidents in mines

Omit the section.

[61] Section 44 Notice to be given of opening and abandonment of mine

Omit "two or more persons are". Insert instead "any person is".

[62] Part 4, Divisions 3 and 4

Omit Divisions 3–5. Insert instead:

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.

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,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 site

- (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 if an inspector is available.
- (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.

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

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.

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.

48 Special report of inspector

- (1) The Minister is to direct an inspector to investigate and make a special report with respect to any serious accident or dangerous incident.
- (2) The Minister is to give the direction immediately after the serious accident or dangerous incident has occurred.
- (3) The Minister may cause the report to be made public at such time and in such manner as the Minister thinks fit.

[63] Part 5 Drainage of mines

Omit the Part.

[64] Section 56 General rules

Insert as section 56 (1) (a):

- (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

[65] Section 56 (1) (c) (vi)–(viii)

Insert after section 56 (1) (c) (v):

, 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.

[66] Section 57 Non-compliance with rules

Insert after section 57 (b):

, 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.

[67] Section 58 Special rules for certain mines

Omit "dangerous accidents" from section 58 (1).

Insert instead "serious accidents or dangerous incidents".

[68] Section 58 (3) (c)

Insert after section 58 (3) (b):

, 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.

[69] Section 67 Penalty for offences against Act

Omit "other than an owner, or manager," from section 67 (1).
Insert instead "(other than an owner, general manager or production manager)".

[70] Section 67 (1)

Omit "in the case of an owner or manager".
Insert instead "in the case of an owner, general manager or production manager".

[71] Section 67 (2)

Omit "or manager".
Insert instead ", general manager or production manager".

[72] Section 68 Imprisonment for wilful neglect, endangering life or limb

Omit "owner, or manager".
Insert instead "owner, general manager or production manager".

[73] Section 68

Omit "serious personal injury to any such persons, or to cause a dangerous accident".
Insert instead "a serious accident or dangerous incident".

[74] Section 69 Proceedings for offences

Omit "court of petty sessions held before a stipendiary magistrate" from section 69 (1).
Insert instead "Local Court constituted by a Magistrate".

[75] Section 69 (2)

Omit "court of petty sessions held before a stipendiary magistrate".
Insert instead "Local Court".

[76] Section 69 (5)

Omit "court of petty sessions". Insert instead "Local Court".

[77] Section 71 Prosecution of owners, general managers and others

Omit "owner or manager" wherever occurring from section 71 (1).
Insert instead "owner, general manager or production manager".

[78] Section 71 (2)

Omit "owner or manager or an employee of a mine if satisfied that the owner, manager".

Insert instead "owner, general manager, production manager or an employee of a mine if satisfied that the owner, general manager, production manager".

[79] Section 74 Application of fines

Omit "explosion or accident" wherever occurring.
Insert instead "serious accident or dangerous incident".

[80] Section 74

Omit "explosion, accident" wherever occurring.
Insert instead "serious accident, dangerous incident".

[81] Section 80 Entry to ascertain if encroachment exists

Omit "owner and manager" wherever occurring.
Insert instead "owner, general manager and production manager".

[82] Section 80 (4)

Omit "owner or manager".
Insert instead "owner, general manager or production manager".

[83] Schedules 1 and 2

Omit the Schedules.

[84] Schedule 3, heading

Omit the heading. Insert instead:

Schedule 3 Savings, transitional and other provisions

[85] Schedule 3

Renumber clause 1 as clause 1A.

[86] Schedule 3, Parts 1 and 2

Insert before clause 1A (as renumbered by item [85]):

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

- (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**

[87] Schedule 3, Part 3

Insert after clause 1A (as renumbered by item [85]):

**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.

Schedule 2 Amendment of Mines Inspection General Rule 1994

(Section 4)

[1] Clause 7 Safe working—health and safety

Insert after clause 7 (3):

- (4) The general manager of a mine must ensure that an effective communication system is installed and maintained at the mine (including an above ground mine) so that communication is available with the persons who are employed at the mine.
- (5) The general manager of a mine must ensure that, where practicable, two exits are provided from each underground working place at the mine. Each exit must have a means of egress to the surface of the mine that is separate from the other exit.
- (6) The general manager of a mine must ensure that a system is in place at the mine that enables the general manager and the production manager to be aware of the name of any person for the time being employed in an underground working place at the mine and, as far as is reasonably possible, the person's likely location in that place.

[2] Part 7A

Insert after clause 39:

Part 7A Waste materials

39A Waste materials—health and safety

- (1) A person who uses, handles, stores, transports or disposes of waste materials produced at a mine must do so in a manner that does not tend to injure, or threaten the health or safety of, any person.

- (2) The general manager of a mine must ensure that the mine personnel have adequate information, training and conveniently stored equipment to respond to a spillage or other emergency involving waste materials.
- (3) In this clause, *waste materials* means waste rock, overburden, spoil or waste substances produced from the processing of ore or tailings.

[3] Clause 55 Definition

Insert “means any foreseeable industrial or natural disaster and” before “includes” in the definition of *emergency*.

[4] Clause 55, definition of “emergency”

Omit “an unforeseen,”. Insert instead “a”.

[5] Clause 56 Planning for emergencies

Omit “manager” wherever occurring.
Insert instead “general manager”.

[6] Clause 56 (3)

Insert after clause 56 (2):

- (3) The general manager must ensure that any strategy or procedure referred to in subclause (1) integrates with any emergency response plans prepared by emergency services organisations for the area in which the mine is located.

Schedule 3 Amendment of Defamation Act 1974

(Section 5)

Section 17U

Insert after section 17T:

17U Reports under the Mines Inspection Act 1901

There is a defence of absolute privilege for the publication of a report referred to in section 48 of the *Mines Inspection Act 1901* of an inspector appointed under that Act to or by the Minister administering that Act.

[Minister's second reading speech made in—
Legislative Assembly on 26 May 1998
Legislative Council on 24 June 1998]