

[STATE ARMS]

New South Wales

Mines Legislation Amendment (Mines Safety) Bill 1998

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* to confer functions on persons appointed as investigators and mine safety officers, and other persons, relating to the investigation of matters under those Acts, and
- (b) to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* to enable inspectors and other officers to enter workplaces (apart from mines) for the purpose of investigating matters relating to accidents and occurrences in mines, and
- (c) to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* to require preliminary reports to be made by inspectors relating to serious accidents and dangerous occurrences and incidents in mines and to provide for investigation of certain matters by investigators rather than inspectors involved with mines and reports as to investigations, and
- (d) to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* to extend the matters in respect of which the Minister may direct a special report to be made, and
- (e) to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* to enable Boards of Inquiry to be established to investigate serious accidents and dangerous occurrences and incidents in mines and to confer necessary powers on Boards of Inquiry to do so, and

- (f) to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* to enable the Director-General of the Department of Mineral Resources (the **Director-General**) to delegate his or her functions under each Act, and
- (g) to amend the *Coal Mines Regulation Act 1982* to require unused mine shafts and outlets to be fully sealed or filled or provided with approved enclosures, barriers, plugs or seals, and
- (h) to amend the *Coal Mines Regulation Act 1982* to make it clear that assessors may assist a Court of Coal Mines Regulation when exercising its investigatory functions, and
- (i) to amend the *Coal Mines Regulation Act 1982* to make it an offence for an employer to dismiss or prejudice an employee in his or her employment for assisting an inspector, investigator, mine safety officer, Board of Inquiry or a Court of Coal Mines Regulation (maximum penalty \$11,000 for a corporation and \$4,400 for an individual), and
- (j) to amend the *Mines Inspection Act 1901* to insert a general regulation-making power, and
- (k) to amend the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* to make provisions of a savings and transitional nature, and
- (l) to amend the *Defamation Act 1974* to provide protection against defamation proceedings for reports by inspectors, mine safety officers, investigators and Boards of Inquiry under the *Coal Mines Regulation Act 1982* and the *Mines Inspection Act 1901* and in relation to proceedings at special inquiries conducted by Boards of Inquiry under those Acts.

Outline of provisions

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

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

Clause 3 is a formal provision giving effect to the amendments to the *Coal Mines Regulation Act 1982* [50] set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Mines Inspection Act 1901* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Defamation Act 1974* set out in Schedule 3.

Schedule 1 Amendment of Coal Mines Regulation Act 1982

Functions of investigators and mine safety officers

Schedule 1 [5] inserts proposed section 12A which confers the functions on mine safety officers that are imposed by or under the Principal Act. Mine safety officers are public servants who are appointed as mine safety officers (see **Schedule 1 [3]**). Mine safety officers will have the powers of inspectors to examine and investigate matters (see **Schedule 1 [7] – [9], [18], [20] and [22]**) and it will be an offence to fail to comply with a requirement of a mine safety officer (see **Schedule 1 [23] and [26]**). Mine safety officers will not have the powers of inspectors to issue notices relating to mines.

Schedule 1 [4], [6], [44] and [47] make consequential amendments.

Schedule 1 [12] and [18] enable an inspector or mine safety officer carrying out an inspection, examination or inquiry under the Principal Act to require a person to answer questions either orally or in writing immediately, or within such further time (not exceeding 24 hours) as the inspector or mine safety officer allows. **Schedule 1 [25]** makes a consequential amendment.

Power to exercise functions at other workplaces

Schedule 1 [10], [11], [13]–[17], [19], [21] and [24] enable inspectors and mine safety officers to exercise, at workplaces other than mines, existing powers to question persons, take samples, take possession of machinery and other items, require documents to be produced, and to require assistance

to be given. Currently, these powers may only be exercised at mines.

Investigation processes

Currently, district inspectors are required to be notified of accidents at coal mines that cause death or serious bodily injury or of dangerous occurrences at mines. Once notified, a district inspector must visit the mine and complete examinations and inspections expeditiously.

Schedule 1 [29] requires a district inspector who is notified of an accident at a coal mine causing death or serious bodily injury to give a copy of the notice to the Director-General.

Schedule 1 [30] requires a district inspector who is notified of the death of a person as a result of an accident at a coal mine to notify the Director-General.

Schedule 1 [31] requires a district inspector who is notified of a dangerous occurrence at a coal mine to give a copy of the notice to the Director-General.

Schedule 1 [34] requires a district inspector who is notified of an accident at a coal mine causing death or serious bodily injury or of a dangerous occurrence at a coal mine to forward a preliminary written report about the accident or occurrence to an officer of the Department of Mineral Resources nominated by the Director-General. If it is a kind of accident or occurrence prescribed by the regulations, the nominated officer must give the Director-General a copy of the report. An inspector other than the district inspector or a mine safety officer may also be authorised to carry out the district inspector's functions in relation to the investigation. **Schedule 1 [32]** and **[33]** make consequential amendments.

Schedule 1 [35] inserts proposed sections 93A–93E which enable the Director-General to determine that particular accidents or occurrences may be investigated by investigators rather than by inspectors (who may have been involved in determining or advising on matters relating to the mines concerned). The Director-General must determine that an accident or occurrence is to be investigated by an investigator if it resulted in the death of a person. If a matter is to be continued to be investigated by an inspector, the inspector must report to the Chief Inspector of Coal Mines in relation to the causes and circumstances of the accident or occurrence. Investigators will have the function of investigating accidents and occurrences as determined by the Director-General, reporting on matters relating to the safety, health, conduct or discipline of persons in mines and other occurrences and practices and any other functions conferred or imposed on them by or under the Principal Act. Investigators will have the powers of inspectors for the purposes of carrying out their functions. Investigators are to report to the Director-General after completing investigations and may make interim reports. The Director-General may publish the reports and may appoint consultants to carry out investigations. Any such consultant will have the powers of an investigator while carrying out an investigation.

Schedule 1 [27] and **[28]** make it clear that an investigator who is also an inspector may not exercise the powers of inspectors to issue notices and to carry out other enforcement functions while acting as an investigator.

Schedule 1 [2], [44] and **[47]** make consequential amendments.

Special reports

Currently the Minister may require a special report to be prepared by an inspector with respect to an accident at a coal mine that causes death or serious bodily injury or a dangerous occurrence at a coal mine.

Schedule 1 [36] substitutes section 94 and enables the Minister to require a report to be prepared by an investigator or a mine safety officer, in addition to an inspector, and to request any other person to prepare a report. A report may additionally be required or requested in relation to matters relating to the safety, health, conduct or discipline of persons in mines, or in relation to any occurrence or practice at a mine. A person who is requested to prepare a report will have the powers of an inspector.

Boards of Inquiry

Currently investigations of accidents and occurrences at coal mines may be carried out by inspectors

or a Court of Coal Mines Regulation.

Schedule 1 [37] inserts sections 94A–94E, which enable investigations to be carried out by Boards of Inquiry. A person may be constituted by the Minister as a Board of Inquiry to conduct a special inquiry if it appears to the Minister to be necessary to investigate an accident or dangerous occurrence, a practice at a mine or any matter relating to the safety, health, conduct or discipline of persons in mines. A Board of Inquiry will have power to take evidence on oath, will not be bound by the rules of evidence, may enable persons to be represented, may be assisted by a barrister or solicitor and may summon persons to give evidence and produce documents at a special inquiry. A Board of Inquiry is to sit with assessors. It will be an offence to fail, without reasonable excuse, to attend to give evidence (maximum penalty \$550) and it will also be an offence to fail to comply with a requirement to be sworn or affirm and to fail to produce a document (maximum penalty \$550). The powers of inspectors relating to questions will apply to questions asked at special inquiries. A Board of Inquiry will have the powers of inspectors for the purpose of conducting a special inquiry. A Board of Inquiry is to report within the period specified by the Minister. No appeal will lie from any determination or decision of a Board of Inquiry.

Schedule 1 [38] enables the expenses of a special inquiry to be treated as part of the Minister's expenses in the execution of the Principal Act.

Schedule 1 [1] makes a consequential amendment.

Unused mine shafts and outlets

Currently the owner of a mine is required to cause any shaft or outlet at a mine that is not being used to be provided with an enclosure, barrier, plug or seal and to properly maintain the enclosure, barrier, plug or seal.

Schedule 1 [39] inserts a requirement that the shaft or outlet be fully sealed or filled in a manner approved by the Chief Inspector of Coal Mines or be provided with an enclosure, barrier, plug or seal approved by the Chief Inspector.

Schedule 1 [40] and **[41]** make consequential amendments.

Powers of assessors

Currently assessors are to sit with a Court of Coal Mines Regulation when it is hearing matters relating to certificates of competency, appointment of plant managers and appeals made to the Court.

Schedule 1 [42] requires assessors to sit with a Court of Coal Mines Regulation when it carries out investigations under the Principal Act. **Schedule 1 [43]** makes a consequential amendment.

Delegation by Director-General

Schedule 1 [45] inserts proposed section 167A which enables the Director-General to delegate his or her functions under the Principal Act, other than the power to delegate.

Protection of employees

Schedule 1 [46] inserts proposed section 168A which makes it an offence for an employer to dismiss an employee from his or her employment or to prejudice an employee in his or her employment for or on account of assisting an inspector, investigator, mine safety officer, Board of Inquiry or a Court of Coal Mines Regulation (maximum penalty \$11,000 for a corporation and \$4,400 for an individual).

Savings and transitional provisions

Schedule 1 [48] inserts proposed section 175 which gives effect to the Schedule of savings and transitional provisions.

Schedule 1 [49] inserts proposed Schedule 3, containing savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Mines Inspection Act 1901

Functions of investigators and mine safety officers

Schedule 2 [4] inserts proposed section 35 which confers the functions on mine safety officers that are conferred or imposed by or under the Principal Act. Mine safety officers are public servants who are appointed as mine safety officers (see **Schedule 2 [3]**). Mine safety officers will have the powers of inspectors to examine and investigate matters (see **Schedule 2 [5]** and **[7] – [9]**) and it will be an offence to fail to comply with a requirement of a mine safety officer (see **Schedule 2 [9]**). Mine safety officers will not have the powers of inspectors to issue notices relating to mines.

Schedule 2 [9] inserts proposed sections 36A–36C which confer on inspectors and mine safety officers the same powers as inspectors have under the *Coal Mines Regulation Act 1982* when carrying out inspections, examinations or inquiries. These include power to require a person to answer questions either orally or in writing immediately, or within such further time (not exceeding 24 hours) as the inspector or mine safety officer allows, to take samples, to take possession of machinery or other things, to require the production of registers, books and other documents, to require certain information to be marked on plan workings for mines and to require assistance to be given. These powers may be exercised in mines and other workplaces. An inspector or mine safety officer must inform mine management of any information or any practice relevant to the continued safe operation of the mine or the safety of persons at the mine, if the inspector or mine safety officer becomes aware of it while exercising his or her powers. It will be an offence to fail to comply with requirements imposed by an inspector or mine safety officer, to prevent a person from answering questions, to conceal or tamper with machinery and other things, to make a false statement in answering questions and to wilfully obstruct an inspector or mine safety officer (maximum penalty \$11,000 for a corporation and \$4,400 for an individual).

Investigation processes

Currently, inspectors are required to be notified of serious accidents at mines or dangerous incidents at mines. Once notified, an inspector may visit the mine.

Schedule 2 [12] requires an inspector who is notified of a serious accident or dangerous incident at a mine to give a copy of the notice to the Director-General.

Schedule 2 [15] requires an inspector who inspects a mine after a serious accident or dangerous incident to forward a preliminary written report about the accident or incident to an officer of the Department of Mineral Resources nominated by the Director-General. If it is a kind of accident or incident prescribed by the regulations, the nominated officer must give a copy to the Director-General. An inspector, other than the inspector who made the preliminary report, or a mine safety officer, may also be authorised to carry out an inspector's functions in relation to the investigation. **Schedule 2 [13]** and **[14]** make consequential amendments.

Schedule 2 [16] requires an inspector who is notified of a death resulting from a serious accident or other condition to give a copy of the notice to the Director-General.

Schedule 2 [17] inserts proposed sections 47F–47J, which enable the Director-General to determine that particular accidents or incidents may be investigated by investigators rather than by inspectors (who may have been involved in determining or advising on matters relating to the mines concerned). The Director-General must determine that an accident or incident is to be investigated by an investigator if it resulted in the death of a person. If a matter is to be continued to be investigated by an inspector, the inspector must report to the Chief Inspector of Mines in relation to the causes and circumstances of the accident or incident. Investigators will have the function of investigating accidents and incidents as determined by the Director-General, reporting on matters relating to the safety, health, conduct or discipline of persons in mines and other occurrences and practices and any other functions conferred or imposed on them by or under the Principal Act. Investigators will have the powers of inspectors for the purposes of carrying out their functions. Investigators are to report to

the Director-General after completing investigations and may make interim reports. The Director-General may publish the reports and may appoint consultants to carry out investigations. Any such consultant will have the powers of an investigator while carrying out an investigation.

Schedule 2 [10] and [11] make it clear that an investigator who is also an inspector may not exercise the powers of inspectors to issue notices and to carry out other enforcement functions while acting as an investigator.

Schedule 2 [2] makes a consequential amendment.

Special reports

Currently the Minister is (under section 48, as inserted by the *Mines Inspection Amendment Act 1998*) to direct a special report to be prepared by an inspector with respect to any serious accident or dangerous incident at a mine. This mandatory requirement to report is now being provided for in the amendments being made by **Schedule 2 [15]**.

Schedule 2 [17] inserts proposed section 47K and enables the Minister to require a special report to be prepared in relation to a serious accident or dangerous incident by an investigator or a mine safety officer, in addition to an inspector, and to request any other person to prepare a report. A report may additionally be required or requested in relation to matters relating to the safety, health, conduct or discipline of persons in mines, or in relation to any occurrence or practice at a mine. A person who is requested to prepare a report will have the powers of an inspector. The proposed provision reflects that inserted in the *Coal Mines Regulation Act 1982* by the proposed Act.

Boards of Inquiry

Currently investigations of serious accidents and dangerous incidents at mines may be carried out by inspectors.

Schedule 2 [17] inserts proposed sections 47L–47P, which enable investigations to be carried out by Boards of Inquiry. A person may be constituted by the Minister as a Board of Inquiry to conduct a special inquiry if it appears to the Minister to be necessary to investigate a serious accident or dangerous incident, a practice at a mine or any matters relating to the safety, health, conduct or discipline of persons in mines. A Board of Inquiry will have power to take evidence on oath, will not be bound by the rules of evidence, may enable persons to be represented, may be assisted by a barrister or solicitor and may summon persons to give evidence and produce documents at a special inquiry. Assessors are to sit with a Board of Inquiry. It will be an offence to fail, without reasonable excuse, to attend to give evidence (maximum penalty \$550) and it will also be an offence to fail to comply with a requirement to be sworn or affirm and to fail to produce a document (maximum penalty \$550). The powers of inspectors relating to questions will apply to questions asked at special inquiries. A Board of Inquiry will have the powers of inspectors for the purpose of conducting a special inquiry. A Board of Inquiry is to report within the period specified by the Minister. No appeal will lie from any determination or decision of a Board of Inquiry.

Schedule 2 [1] makes a consequential amendment.

Delegation by Director-General

Schedule 2 [18] inserts proposed section 76A which enables the Director-General to delegate his or her functions under the Principal Act, other than the power to delegate.

Regulation-making power

Schedule 2 [19] inserts a general regulation-making power.

Savings and transitional provisions

Schedule 2 [20] and [21] insert savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of Defamation Act 1974

Schedule 3 [1] substitutes section 17G to extend the defence of absolute privilege to publications by mine safety officers, investigators and Boards of Inquiry under the *Coal Mines Regulation Act 1982*.

Schedule 3 [2] substitutes section 17U to extend the defence of absolute privilege to publications by mine safety officers, investigators and Boards of Inquiry under the *Mines Inspection Act 1901*.

Schedule 3 [3] extends the defence of publication of a fair protected report to a report of proceedings at a special inquiry conducted by a Board of Inquiry under the *Coal Mines Regulation Act 1982* or the *Mines Inspection Act 1901*.