

## **Mine Health and Safety Bill 2002**

### **Explanatory note**

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

#### **Overview of Bill**

This Bill is about the health, safety and welfare of persons who work at metalliferous and opal mines, at quarries and at certain other places. (These places are called **mines** in the proposed Act.) The *Occupational Health and Safety Act 2000* is the main Act that deals with the health, safety and welfare of persons at work. It covers persons at work at a mine. This Bill puts in place special additional obligations, protections and procedures necessary for the control of particular risks arising from a mine. The obligations, protections and procedures in the *Occupational Health and Safety Act 2000* will continue to apply to mines.

#### **Outline of provisions**

##### **Part 1 Preliminary**

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

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

**Clause 3** defines terms used in the proposed Act.

**Clause 4** clarifies that certain places are part of a mine.

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

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

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

##### **Part 2 Application of Act**

**Clause 8** specifies the places of work to which the proposed Act applies.

**Clause 9** provides that the Minister may, by notice published in the Gazette, declare that the proposed Act does not apply to any mine, or any class of mines, specified in the notice

**Clause 10** provides that the proposed Act does not apply to coal mines.

**Clause 11** provides that the proposed Act does not apply to any mine used for the purpose of manufacturing bricks, tiles, pottery, earthenware pipes, terracotta, china ware, refractory material or cement.

**Clause 12** provides that the proposed Act does not apply to civil engineering works.

**Clause 13** provides that the proposed Act binds the Crown.

##### **Part 3 Objects of Act**

**Clause 14** sets out the objects of the proposed Act, which are to assist in securing the objects of the *Occupational Health and Safety Act 2000* in relation to mines, to ensure that the particular hazards associated with mines are identified and that any risks associated with those hazards are assessed, identified, eliminated or controlled, to ensure that effective emergency provisions are developed and maintained at mines and to ensure that appropriate health and safety competencies are defined and implemented in the mining and quarrying industry.

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

**Clause 15** provides for the proposed Act and the regulations made under it to be read and interpreted as if they formed part of the *Occupational Health and Safety Act 2000* (the **OH&S Act**).

**Clause 16** makes it clear that the proposed Act adds to the protection provided

by the OH&S Act. The clause provides that if a provision of the OH&S Act or the regulations made under it applies to a mine, that provision continues to apply, and must be observed, in addition to the proposed Act or the regulations made under it.

**Clause 17** provides that the OH&S Act and the regulations made under it always prevails if there is an inconsistency between the OH&S Act or the regulations made under it and the proposed Act or the regulations made under it.

**Clause 18** makes it clear that compliance with the proposed Act or the regulations made under it is not in itself a defence in any proceedings for an offence against the OH&S Act or the regulations made under it.

**Clause 19** provides that evidence of a relevant contravention of the proposed Act or the regulations made under it is admissible in any proceedings for an offence against the OH&S Act or the regulations made under it.

**Clause 20** prevents a person being punished twice in respect of an act or omission that constitutes an offence under the proposed Act or the regulations made under it and under the OH&S Act or the regulations made under it.

**Clause 21** makes it clear that documents or plans that by virtue of the proposed Act or the regulations are required to be kept at the office of the mine are taken to be documents directly affecting the occupational health and safety of employees within the meaning of section 81 of the OH&S Act.

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

### **Division 1 Duties of mine holders**

**Clause 22** imposes a duty on a mine holder to nominate a person who is the employer with the day to day control of each mine within the mine holding as the operator of the mine. A mine holder must not undertake any work, or allow any other person to undertake any work, at the mine unless the nomination has been made. The nomination is to be made to the Chief Inspector, who may reject it. Many of the significant obligations imposed under the proposed Act are imposed on the operator of a mine. A mine holder must not carry on any operations in relation to a mine unless an operator has been nominated.

**Clause 23** provides for the Chief Inspector to declare a person to be the operator of a mine.

**Clause 24** requires a mine holder to provide an operator with all information available to the mine holder that may reasonably be relevant to the development and implementation of a mine safety management plan for the mine.

**Clause 25** sets out the maximum penalty for offences against the proposed Division.

### **Division 2 Duties of operators of mines**

#### **Subdivision 1 General duties**

**Clause 26** imposes a duty on the operator of a mine to ensure that work is not carried out by any person at the mine unless the operator has identified all reasonably foreseeable hazards arising from the work and its operations and the operator has assessed any risks of harm to any person from those hazards.

**Clause 27** requires the operator of a mine to ensure that any foreseeable risk of harm to any person from the mine is eliminated or, where it is not reasonably practicable for that risk to be eliminated, that it is controlled.

**Clause 28** requires the operator of a mine to ensure that all persons who work at the mine (including managers and supervisors) have the necessary skills, competence and resources to undertake their work safely and to ensure the safety of others.

#### **Subdivision 2 Mine safety management plans**

**Clause 29** imposes a duty on the operator of a mine to prepare a mine safety management plan in accordance with the proposed Act and the regulations

stating how the health and safety of the persons who work at the mine, or who are directly affected by the mine, will be protected.

**Clause 30** requires the operator of a mine to ensure that work is not carried out at the mine unless a mine safety management plan that complies with the proposed Act, and that has been registered, is in effect for the mine.

**Clause 31** requires an operator to ensure compliance with the mine safety management plan.

**Clause 32** provides that a mine safety management plan must include system elements, the management structure of the mine and any other matters that may be prescribed by the regulations.

**Clause 33** requires the persons who work at a mine to be consulted in the preparation of the mine safety management plan.

**Clause 34** requires the operator of a mine to communicate the mine safety management plan, or a summary of the plan, to the persons working at the mine, to regularly review the plan and to ensure that no contractor starts work at the mine without having been provided with a copy of the mine safety management plan.

**Clause 35** requires a copy of the mine safety management plan for a mine to be kept at the office of the mine and be made available for inspection by a government official, a site check inspector or a worker.

**Clause 36** requires a person who ceases to be the operator of a mine to return to the mine holder any information provided to the person or obtained by the person in the course of exercising prescribed functions.

#### **Subdivision 3 Management structure**

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

**Clause 38** requires the operator of a mine to keep a register of the names of persons occupying positions in the management structure for the mine.

#### **Subdivision 4 Duties regarding contractors**

**Clause 39** requires the operator of a mine to prepare a contractor management plan, stating how the risks arising from the use of contractors at the mine will be managed.

**Clause 40** provides for the regulations to specify the contents of a contractor management plan.

**Clause 41** requires the operator of a mine to consult with any contractor proposing to work at the mine for the purpose of ensuring that the contractor is familiar with the relevant parts of any mine safety management plan and that the contractor's arrangements for mine safety management are consistent with any mine safety management plan for the mine.

**Clause 42** specifies the duties of an operator regarding contractors.

#### **Subdivision 5 Emergency management**

**Clause 43** defines an **emergency** as existing at a mine when the situation is not envisaged or controlled and there is a threat to the life or physical well-being of persons at or outside the mine.

**Clause 44** imposes a duty on the operator of a mine to ensure that an emergency plan is prepared for the mine.

**Clause 45** requires the operator of a mine to ensure that work is not carried out at the mine unless an emergency plan is implemented for the mine.

**Clause 46** describes the contents of an emergency plan, which must include an up-to-date plan of the mine.

**Clause 47** provides for the review of an emergency plan whenever the mine safety management plan for the mine is reviewed.

#### **Subdivision 6 Keeping of records and reporting**

**Clause 48** requires the operator of a mine to keep the records concerning health and safety that are required by the regulations.

**Clause 49** requires the operator to make reports concerning health and safety as required by the regulations.

#### **Subdivision 7 Penalties**

**Clause 50** sets out the maximum penalty for offences against the proposed Division.

#### **Subdivision 8 Saving of certain notices and directions**

**Clause 51** provides that if a notice or direction is given under the proposed Act to a person as the operator of a mine and that person is replaced as operator by another person, any notice or direction is taken to have been given to the new operator.

#### **Division 3 Duties and rights of employees**

**Clause 52** requires an employee who works at a mine to comply with the operator's mine safety management plan. An employee is required to inform the operator of any circumstances that the employee considers may lead to a loss of control of a major hazard and is required to immediately report to a supervisor any situation that he or she believes could present a risk to health and safety that is not within the employee's competence to control.

**Clause 53** provides that every employee has a right to remove himself or herself from any location at the mine when circumstances arise that appear to the employee, with reasonable justification, to pose a serious danger to his or her own safety or welfare.

**Clause 54** protects employees from being unlawfully dismissed or victimised. The clause makes it an offence for an employer of any person who works at a mine to dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because the employee participates in a consultation process required by or under the proposed Act, exercises rights under the proposed Act or is a site check inspector or for certain other reasons.

**Clause 55** makes it clear that the proposed Division applies to employees of a contractor who work at a mine.

#### **Division 4 Duties of those in management positions**

**Clause 56** requires a person who holds a management position at a mine to comply with the mine safety management plan for the mine.

**Clause 57** requires a person who holds a management position at a mine to inform the operator of the mine if he or she is aware that the conduct of the mine does not conform with the *Occupational Health and Safety Act 2000* or the proposed Act or the regulations under either Act.

**Clause 58** sets out further obligations on those who hold management positions, including to ensure that the workplace and work methods for which they are responsible are safe.

**Clause 59** sets out the maximum penalty for offences against the proposed Division.

#### **Division 5 Duties of supervisors**

**Clause 60** requires a supervisor at a mine to comply with the mine safety management plan for the mine.

**Clause 61** requires a supervisor at a mine to inform the operator if he or she is aware that the conduct of the mine does not conform with the *Occupational Health and Safety Act 2000* or the proposed Act or the regulations under either Act.

**Clause 62** imposes further obligations on a supervisor at a mine.

**Clause 63** sets out the maximum penalty for offences against the proposed Division.

## **Division 6 Duties of and in relation to contractors**

**Clause 64** requires a contractor to comply with the mine safety management plan for the mine.

**Clause 65** gives a contractor the option to prepare a safety management plan.

**Clause 66** requires a contractor to prepare a safe work method statement and to comply with the statement.

**Clause 67** requires a contractor to ensure that work is carried out in accordance with the safe work method statement.

**Clause 68** specifies a contractor's duties regarding subcontractors.

**Clause 69** sets out the maximum penalty for offences against the proposed Division.

## **Division 7 Duties to give notice**

**Clause 70** imposes a duty on a person not to commence drilling operations unless the Chief Inspector has been given notice of the operations.

**Clause 71** allows for the regulations to require a person, or a person of a specified class, to give notice of the commencement or discontinuation of prescribed operations or activities at a mine.

**Clause 72** sets out the maximum penalty for offences against the proposed Division.

## **Division 8 General**

**Clause 73** makes it clear that a person can have more than one duty under the proposed Part.

**Clause 74** provides that compliance with the regulations is not in itself a defence in any proceedings for an offence against the proposed Part but that a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against the proposed Part.

**Clause 75** provides that if in proceedings against a person for an offence against a provision of the proposed Part, the court is not satisfied that the person contravened the provision but is satisfied that the act or omission concerned constituted a contravention of another provision of the proposed Part or of section 8 or 9 of the *Occupational Health and Safety Act 2000*, the court may convict the person of an offence against that other provision.

**Clause 76** deals with multiple contraventions of general duties under the proposed Part. It provides that more than one contravention of a provision of the proposed Part that arises out of the same factual circumstances may be charged as a single offence or as separate offences but that contraventions of 2 or more provisions may not be charged as a single offence.

**Clause 77** makes it clear that nothing in the proposed Part confers a right of action in any civil proceedings in respect of any contravention of any provision of the proposed Part and that nothing in the proposed Part confers a defence to an action in any civil proceedings or otherwise affects a right of action in any civil proceedings.

## **Part 6 Safety of mines**

### **Division 1 Mine plans**

**Clause 78** provides that the proposed Division applies to a mine at which 20 or more persons are employed. The Chief Inspector may also advise the operator of any other mine that the proposed Division applies to the mine.

**Clause 79** clarifies what is meant by a reference to a plan.

**Clause 80** requires a plan of the proposed workings of a mine to be prepared for each mine.

**Clause 81** specifies the contents of a mine plan.

**Clause 82** requires the revision of a mine plan every 3 months.

**Clause 83** provides for access to a mine plan.

**Clause 84** provides for the inspection of a mine plan by a government official.

**Clause 85** provides for a government official to require a plan of workings carried out to be made.

**Clause 86** requires the plan of workings of an abandoned mine to be deposited with the Minister.

**Clause 87** sets out the maximum penalty for offences against the proposed Division.

#### **Division 2 Hours of work**

**Clause 88** limits the hours that a person can work underground at a mine.

**Clause 89** provides for the Chief Inspector to direct the operator of a mine to limit working hours or to alter associated working arrangements.

**Clause 90** provides for the regulations to make provision concerning the hours of work of persons working at mines.

**Clause 91** requires shift roster regimes to be displayed at a mine.

**Clause 92** requires the operator of a mine to keep records of the hours worked underground by each employee at the mine.

**Clause 93** sets out the maximum penalty for offences against the proposed Division.

**Clause 94** creates a defence to offences under the proposed Division.

#### **Division 3 Tourist and educational activities**

**Clause 95** defines terms used in the proposed Division.

**Clause 96** provides that tourist activities cannot be conducted in or about a mine without a permit. The clause also provides that a mine must not be used principally for educational purposes without a permit.

**Clause 97** provides for the issue of permits authorising tourist activities or the use of the mine principally for educational purposes or both.

**Clause 98** provides for the revocation or variation of such permits.

**Clause 99** sets out the maximum penalty for offences against the proposed Division.

### **Part 7 Notification of incidents**

#### **Division 1 Notification of certain incidents**

**Clause 100** requires the operator of a mine to give the Chief Inspector notice of certain notifiable incidents, namely any incident that has resulted in a person being killed or any incident or other matter that the regulations declare to be required to be notified.

**Clause 101** ensures the non-disturbance of plant involved in a notifiable incident. If such an incident has occurred at a mine, the operator must ensure that plant at the mine is not used, moved or interfered with, and that the area around the notifiable incident is not disturbed, for 24 hours.

**Clause 102** requires the keeping of records of notifications under the proposed Division.

**Clause 103** sets out the maximum penalty for offences against the proposed Division.

#### **Division 2 Health and safety**

**Clause 104** requires the operator of a mine to keep records of medical or first aid treatment.

**Clause 105** prevents an operator from providing a financial benefit or incentive to a person for not reporting a safety matter.

**Clause 106** sets out the maximum penalty for offences against the proposed Division.

#### **Division 3 Inquiries**

**Clause 107** provides for the constitution of a Board of Inquiry to conduct a special inquiry into any event or dangerous occurrence causing death or serious bodily injury, any dangerous occurrence, certain practices at a mine or any matters relating to the safety, health, conduct or discipline of persons at or in

relation to a mine.

**Clause 108** makes provision regarding witnesses and evidence at special inquiries.

**Clause 109** provides for a Board of Inquiry to report to the Minister.

**Clause 110** provides that no appeal lies from any decision or determination of a Board of Inquiry on a special inquiry.

**Clause 111** sets out the maximum penalty for offences against the proposed Division.

#### **Part 8 Stop work orders**

**Clause 112** provides that if the Minister is of the opinion that any action is being, or is about to be, carried out at a mine that is likely to result in a serious breach of a provision of the *Occupational Health and Safety Act 2000* or of the regulations made under that Act or the proposed Act or the regulations made under it, the Minister may order that the action is to cease and that no action, other than any specified action, is to be carried out in or in the vicinity of the mine, or a specified part of the mine, for a period not exceeding 28 days.

**Clause 113** makes it clear that the Minister is not required to notify any person before making a stop work order.

**Clause 114** provides for the Minister to extend the duration of a stop work order.

**Clause 115** requires consultation about the possible modification of proposed detrimental action to avoid the need for a stop work order to continue.

**Clause 116** provides that a stop work order prevails over any approval, notice, order or other instrument made or issued under the *Occupational Health and Safety Act 2000* or under any other Act that requires or permits work.

**Clause 117** provides for the Minister to enforce a stop work order by carrying out work for the purpose of stopping the work specified in the order and provides for the Minister to recover any costs or expenses incurred in doing so.

**Clause 118** makes it an offence to fail to comply with a requirement imposed by a stop work order.

#### **Part 9 Competence standards**

##### **Division 1 Key obligations**

**Clause 119** provides for the regulations to specify functions to which the proposed Part applies and to specify, or authorise the Minister to determine, what is sufficient evidence of competence to perform those functions.

**Clause 120** provides that the operator of a mine must not employ a person at the mine to perform a specified function unless the person holds specified evidence of competence to perform that function.

**Clause 121** provides that a contractor must not employ a person at a mine to perform a specified function unless the person holds specified evidence of competence to perform that function.

**Clause 122** provides that a person must not perform at a mine a specified function unless the person holds specified evidence of competence to perform that function.

**Clause 123** sets out the maximum penalty for offences against the proposed Division.

##### **Division 2 Metalliferous Mines and Extractive Industries**

###### **Competence Board**

**Clause 124** constitutes the Metalliferous Mines and Extractive Industries Competence Board.

**Clause 125** provides that the Board is subject to Ministerial control and direction.

**Clause 126** sets out the membership of the Board.

**Clause 127** provides that the regulations may make provision for the procedure of the Board.

### **Division 3 Functions of Board**

**Clause 128** sets out some of the functions of the Board. These include to oversee the development of competence standards for persons performing functions at mines that may impact on health and safety, to undertake initial and ongoing assessments of the competence of persons and to advise the Minister on certain matters.

**Clause 129** requires the Board to prepare an annual report.

**Clause 130** requires the Board to conduct a review of the status of competence setting and assessment in the mining and quarrying industry.

### **Division 4 Certificates of competence**

**Clause 131** provides for the Minister to grant certificates of competence to perform specified functions.

**Clause 132** provides for the making of regulations concerning competence standards and certificates of competence.

**Clause 133** provides for the making of Ministerial orders concerning competence standards and certificates of competence. These orders have no effect if they are inconsistent with the proposed Act or the regulations.

### **Division 5 Offences**

**Clause 134** makes it an offence to use another person's certificate of competence, lend a certificate of competence or allow it to be used by another person.

**Clause 135** makes it an offence to forge a certificate of competence or to possess a forged certificate.

**Clause 136** makes it an offence to make false or misleading statements in relation to the grant of any certificate of competence, the issue of a duplicate certificate, the restoration of a certificate or for the purpose of obtaining employment at a mine to perform functions for which a certificate is required.

**Clause 137** makes it an offence for a person whose competence has been declared as not recognised to continue to perform functions for which that competence was required.

**Clause 138** sets out the maximum penalty for offences against the proposed Division.

## **Part 10 Oversight of mines**

### **Division 1 Outline of this Part**

**Clause 139** outlines the proposed Part which provides for the appointment, functions and powers of government officials (namely, the Chief Inspector, inspectors, mine safety officers and investigators) as well as persons to carry out inspections as representatives of the work force at a mine (namely, site check inspectors).

### **Division 2 Inspections by government officials**

#### **Subdivision 1 Appointment of government officials**

**Clause 140** provides for the appointment of public servants as the Chief Inspector and as inspectors, mine safety officers and investigators.

**Clause 141** provides for the appointment of consultants as investigators.

#### **Subdivision 2 Functions of government officials**

**Clause 142** specifies the functions of the Chief Inspector.

**Clause 143** requires a government official to bring certain concerns regarding the health, safety or welfare at work of persons at the mine to the attention of a senior person at the mine.

**Clause 144** requires a government official to consider any complaint made to him or her by a site check inspector for a mine, being a complaint concerning the health, safety and welfare at work of persons at the mine. A government official may investigate a complaint and is required to report to the site check inspector who made the complaint as to the results of his or her consideration or



investigation.

**Clause 145** provides for a government official to audit and review the mine safety management plan for a mine.

**Clause 146** provides for a government official to provide advice to the Chief Inspector on matters relating to the health, safety and welfare of persons at work at mines and to make reports on incidents or other matters at mines.

### **Subdivision 3 Powers of government officials**

**Clause 147** provides that a government official has those powers that an inspector has under Part 5 of the *Occupational Health and Safety Act 2000* so as to make any examination and inquiry that may be necessary to ascertain whether the proposed Act and the regulations have been complied with, to ascertain whether there is at a mine any matter or thing that affects or is likely to affect the safety or health of persons employed at the mine, to ascertain the causes and circumstances of any event or other occurrence at a mine or to investigate any complaint made to the government official by a site check inspector.

**Clause 148** empowers a government official to enter any mine at any time.

**Clause 149** empowers a government official to cross private land to get to a mine.

**Clause 150** provides that a government official may require the operator of a mine to provide the government official with a plan of the mine marked with information that the government official considers necessary for an investigation.

## **Division 3 Inspections on behalf of work force**

### **Subdivision 1 Site check inspectors**

**Clause 151** provides for the election of site check inspectors for the purpose of enabling inspections to be carried out at a mine on behalf of the persons at the mine.

**Clause 152** provides that an election of a site check inspector for a mine must be held if one or more positions is vacant and an employee of the operator requests in writing that an election be held or the Chief Inspector directs that an election be held.

**Clause 153** provides for the conduct of elections of site check inspectors.

**Clause 154** provides that a site check inspector for a mine holds office for 2 years.

**Clause 155** sets out when a site check inspector ceases to hold office and sets out notification requirements.

**Clause 156** requires a person elected as a site check inspector to notify the operator of the mine of his or her election and contact details.

**Clause 157** lists the functions of a site check inspector, which include to keep under review the measures taken to ensure the health, safety and welfare of persons at the mine, including procedures to control risks, and to investigate any matter that may be a risk to health and safety at the mine.

**Clause 158** provides for the training of site check inspectors in matters of occupational health and safety.

**Clause 159** sets out the rights of site check inspectors, which include the right to be present when an inspector makes a formal report to the operator concerning a health, safety or welfare matter at the mine.

**Clause 160** sets out the duties of operators in relation to site check inspectors.

**Clause 161** sets out the duties of contractors in relation to site check inspectors.

**Clause 162** requires the operator of a mine and all other persons at the mine to afford every facility and assistance to a site check inspector for the purposes of an inspection of the mine by the site check inspector.

### **Subdivision 2 Inspections on behalf of work force**

**Clause 163** makes provision for inspections by site check inspectors on behalf

of the work force.

**Clause 164** provides that a site check inspector may be accompanied by the operator or a representative of the operator, if the operator thinks fit.

**Clause 165** provides that a site check inspector must not leave his or her place of work for the purposes of making an inspection under the proposed Subdivision unless he or she has given notice to the operator or a supervisor.

**Clause 166** empowers a site check inspector or an authorised representative to cross land to gain entry to a mine.

#### **Part 11 Mining industry codes of practice**

**Clause 167** specifies that the purpose of a mining industry code of practice is to provide practical guidance to operators, employers and others who have duties under Part 5 of the proposed Act or Part 2 of the *Occupational Health and Safety Act 2000* with respect to occupational health, safety and welfare at mines.

**Clause 168** provides that the Minister may prepare, or cause to be prepared, draft mining industry codes of practice.

**Clause 169** requires the Minister to arrange consultation about a draft mining industry code of practice.

**Clause 170** provides for the Minister to approve a mining industry code of practice.

**Clause 171** provides for the publication of an approved mining industry code of practice in the Gazette, specifies when a code commences and provides that a code must be made available for public inspection without charge.

**Clause 172** provides for the amendment or revocation of an approved mining industry code of practice.

**Clause 173** provides that in any proceedings for an offence against the proposed Act or the regulations or against the *Occupational Health and Safety Act 2000* or the regulations under that Act, an approved mining industry code of practice that is relevant to any matter that it is necessary for the prosecution to prove or to establish the commission of the offence by a person is admissible evidence in those proceedings. A person's failure to observe the code at any material time is evidence of the matter to be established in those proceedings. A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe an approved mining industry code of practice.

#### **Part 12 Regulations**

**Clause 174** empowers the Governor to make regulations under the proposed Act.

**Clause 175** lists specific matters that the regulations may deal with.

**Clause 176** empowers the regulations to prescribe decisions that are to be reviewable by the Administrative Decisions Tribunal.

**Clause 177** provides for the regulations to adapt the provisions of Part 5.

**Clause 178** provides for the regulations to modify the application of the Act to contractors.

**Clause 179** provides for the regulations to apply, adopt or incorporate any publication as in force at a particular time or from time to time.

**Clause 180** provides for the regulations to create offences.

**Clause 181** provides for the regulations to create exemptions from obligations created by the regulations.

**Clause 182** provides for the regulations to modify obligations regarding consultation required by the proposed Act.

#### **Part 13 Miscellaneous**

##### **Division 1 Enforcement**

**Clause 183** imposes liability on directors of corporations, and those concerned in the management of corporations, for certain contraventions by corporations.

**Clause 184** makes it an offence for a person to aid, abet, counsel, procure or to

be directly or indirectly concerned with the commission of an offence.

**Clause 185** provides that it is a defence to any proceedings against a person for an offence under the proposed Act if the person proves that it was not reasonably practicable for the person to comply with the provision or the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable to make provision.

**Clause 186** provides that it is not a defence to an action in any criminal proceedings that a given course of action was not objected to by the Chief Inspector or the Department, even if the proposed Act gives the Chief Inspector or the Department an opportunity to object to that course of action.

#### **Division 2 Information**

**Clause 187** protects information obtained in connection with the administration or execution of the proposed Act from disclosure except in specified circumstances.

**Clause 188** prohibits the making of false or misleading statements in purported compliance with the proposed Act.

**Clause 189** specifies when a person has a defence to a charge under the proposed Division.

#### **Division 3 Exercise and delegation of functions**

**Clause 190** provides that the Chief Inspector is subject to Ministerial control and direction.

**Clause 191** provides that the Minister may exercise any function of the Chief Inspector.

**Clause 192** provides for the delegation of functions by the Minister to the Director-General or the Board (in relation to functions under proposed Part 9).

**Clause 193** provides for the delegation of functions by the Chief Inspector.

**Clause 194** provides for the delegation of functions by the Director-General.

#### **Division 4 Service of documents**

**Clause 195** provides for the service of documents under the proposed Act.

**Clause 196** provides for the supply of documents and other things to an operator of a mine.

**Clause 197** provides for the supply of documents and other things to the Chief Inspector.

#### **Division 5 Fees**

**Clause 198** provides for the Minister to determine certain fees and charges.

#### **Division 6 General**

**Clause 199** protects certain persons from liability in relation to things done or omitted in good faith for the purpose of executing any provision of the proposed Act or any other Act.

**Clause 200** makes it clear that nothing in the proposed Act imposes an obligation on a person to exercise any power because the person is a site check inspector.

#### **Part 14 Repeals and amendments**

**Clause 201** repeals the *Mines Inspection Act 1901* and the regulations and rules made under it and an amending Act.

**Clause 202** gives effect to the amendment to the *Mining Act 1992* in Schedule 1.

**Clause 203** gives effect to the amendments to the *Occupational Health and Safety Act 2000* in Schedule 2.

**Clause 204** gives effect to the amendments, required as a consequence of the enactment of the proposed Act, to the Acts set out in Schedule 3.

**Clause 205** gives effect to the Schedule of savings and transitional provisions set out in Schedule 4.

**Clause 206** provides for Ministerial review of the proposed Act.

#### **Schedule 1 Amendment of Mining Act 1992**

**Schedule 1** amends the *Mining Act 1992* to provide for the registration of mine holdings under that Act.

#### **Schedule 2 Amendment of Occupational Health and Safety Act 2000**

**Schedule 2** amends the *Occupational Health and Safety Act 2000* (as proposed to be amended by the *Mining Legislation Amendment (Health and Safety) Act 2002* and the *Coal Mine Health and Safety Act 2002*) as a consequence of the enactment of the proposed Act.

**Schedule 2 [1]** omits the repealed *Mines Inspection Act 1901* from the list of associated occupational health and safety legislation. The proposed *Mine Health and Safety Act 2002* is not included in that list because it contains sufficient provisions regarding the regulation of health and safety at mines.

**Schedule 2 [2]** omits the definition of *mine*

**Schedule 2 [3]** inserts the definition of *mining or quarrying operation*, which is defined to mean a place to which the proposed Act applies.

**Schedule 2 [4]** amends a note to extend its application to mining or quarrying operations.

**Schedule 2 [5]** amends section 17 of the OH&S Act, which deals with the establishment of OHS committees and the election of OHS representatives. The amendment provides that, in relation to a mining or quarrying operation, a site check inspector for the operation must be a member of any OHS committee for the operation. The amendment also provides that the subsection requiring an OHS representative to be elected does not apply to a mine, since the proposed Act makes provision for the election of site check inspectors for mining or quarrying operations.

**Schedule 2 [6]** provides for the reaching of alternative verdicts if a court is satisfied that provision of Part 5 of the proposed Act has been contravened.

**Schedule 2 [7]** removes mining and quarrying operations from the scope of a section concerning inspections.

**Schedule 2 [8]** provides that a person appointed as a government official under the proposed Act is taken to have been appointed as an inspector for the purposes of the OH&S Act and the regulations made under it. Such a person is only authorised to exercise functions under the OH&S Act in relation to mining or quarrying operations, but may exercise certain functions in relation to certain other places.

**Schedule 2 [9], [10] and [16]** update references to an Act.

**Schedule 2 [11]** removes mining or quarrying operations from the scope of provisions dealing with the notification of accidents and other dangerous incidents. Such matters are dealt with in relation to mining or quarrying operations in Part 7 of the proposed Act.

**Schedule 2 [12]–[16]** provide for the prosecution of offences under the proposed Act.

#### **Schedule 3 Amendment of other Acts**

**Schedule 3** makes consequential amendments to provisions of other Acts that refer to the *Mines Inspection Act 1901*.

#### **Schedule 4 Savings, transitional and other provisions**

**Schedule 4** makes savings and transitional provisions consequent on the enactment of the proposed Act.