



New South Wales

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.



New South Wales

Mine Health and Safety Bill 2002

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New South Wales

Mine Health and Safety Bill 2002

No , 2002

A Bill for

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

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Mine Health and Safety Act 2002*.

2 Commencement

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

3 Definitions

In this Act:

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

Board means the Metalliferous Mines and Extractive Industries Competence Board constituted by section 124.

Board of Inquiry means a Board of Inquiry constituted under section 107.

certificate of competence means a certificate granted under section 131 that is in force.

Chief Inspector means the person appointed as Chief Inspector under section 140.

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

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

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

contractor management plan for a mine means a contractor management plan prepared for the mine under section 39.

Department means the Department of Mineral Resources.

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

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

<i>emergency plan</i> for a mine means an emergency plan prepared for the mine under section 44.	1 2
<i>employee</i> means an individual who works under a contract of employment or apprenticeship.	3 4
<i>employer</i> means a person who employs persons under contracts of employment or apprenticeship.	5 6
<i>evidence of competence</i> means a certificate of competence or other evidence of competence acceptable to the Minister.	7 8
<i>exercise</i> a function includes perform a duty.	9
<i>function</i> includes power, duty and authority.	10
<i>government official</i> means a person appointed under section 140 or 141.	11 12
<i>inspector</i> means a person appointed as an inspector under section 140.	13 14
<i>investigator</i> means a person appointed as an investigator under section 140 or 141.	15 16
<i>involved union</i> means a Federal or State industrial organisation of employees of which a person employed to engage in work at a mine is a member, where that person is qualified to be such a member by virtue of the work that the person performs in his or her employment at the mine.	17 18 19 20 21
<i>machinery</i> means any device or item of plant, whether fixed or mobile (however powered), that is used:	22 23
(a) to do work at or about a mine, or	24
(b) for the treatment of any product of a mine.	25
<i>management structure</i> for a mine means the management structure prepared for the mine under section 37.	26 27
<i>mine</i> —see section 8.	28
<i>mine holder</i> means:	29
(a) in relation to a mine holding that is registered—the person whose application for registration is accepted for the mine holding under the <i>Mining Act 1992</i> , or	30 31 32
(b) in relation to a mine holding that could be registered but is not registered—the person who holds an authority, mineral claim or opal prospecting licence issued for the site on which the	33 34 35

-
- mine holding stands under the *Mining Act 1992* or a licence issued for the site under the *Offshore Minerals Act 1999*, or
- (c) in relation to land where there is no requirement for authorisation of mines in the *Mining Act 1992* or the *Offshore Minerals Act 1999*—the person with the right to extract minerals or quarry product from the land.
- mine holding** means a mine holding registered in accordance with section 163A of the *Mining Act 1992*.
- mine plan** for a mine means a mine plan prepared under section 80.
- mine safety management plan** for a mine means a mine safety management plan prepared for the mine under section 29.
- mine safety officer** means a person appointed as a mine safety officer under section 140.
- mineral** means any substance that is for the time being a mineral within the meaning of the *Mining Act 1992* or the *Offshore Minerals Act 1999*, but does not include coal or shale.
- mining industry code of practice** means a mining industry code of practice under Part 11.
- open cut mine** means a mine in which persons are not employed underground when the mine is being worked.
- operator** means:
- (a) the mine holder, if the mine holder nominated himself, herself or itself as the operator of the mine under section 22, or
- (b) the person nominated by the mine holder as the operator of the mine, and accepted by the Chief Inspector, under section 22, or
- (c) the mine holder, if the mine holder has not nominated someone under section 22 or any nomination has been rejected, or
- (d) in any case, the person declared by the Chief Inspector to be the operator under section 23.
- place of work** means premises where persons work.
- plan** and **sections** include correct copies or tracings of any original plan and sections.

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

premises includes any place, and in particular includes:

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

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

- (a) this Act, or
- (b) the *Mines Inspection Act 1901*, or
- (c) the *Occupational Health and Safety Act 2000*, or
- (d) the *Occupational Health and Safety Act 1983*.

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

quarry includes any place, open cut, or excavation in which or by
which any operation is carried on above ground for or in connection
with the purpose of obtaining any quarry product and any place
adjoining that place on which any product of the quarry is stacked,
stored or treated.

quarry product means conglomerate, sandstone, shale, basalt,
andesite, trachyte, porphyry and any other rock, or sand, clay, shale,
gravel, soil, peat and any other material connected with the
formation or weathering of rock, extracted or treated for commercial
or industrial purposes but does not include coal.

risks—see section 6.

site check inspector, in relation to a mine, means a person elected
under section 151 as a site check inspector for the mine.

stop work order means an order under section 112.

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

treatment means:

- (a) the crushing, grinding, classifying, reducing, smelting, concentrating, precipitating or separating of any product of a mine or of any quarry product, 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 quarry product 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 quarry product.

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

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

4 Certain things are part of a mine

For the purposes of this Act, any building, structure, pit, shaft, drive, level, incline, decline, excavation or work within a mine holding:

- (a) that is in the course of construction and that is intended to be part of a mine, or
- (b) that is a part of a mine and that is in the course of being abandoned, or
- (c) that is a part of a mine the operations at or in which are in the course of being discontinued,

is taken to be part of a mine.

5 When an employee is at work

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

6 Risks arising from activities at work

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

- (a) the manner of conducting an undertaking, or

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

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7 Notes

Notes included in this Act do not form part of this Act.

Part 2 Application of Act

8 Application of Act

- (1) This Act applies to the following places of work (which are called *mines* in this Act):
- (a) any place within a mine holding,
 - (b) any place where any of the following activities take place:
 - (i) the extraction of material from land for the purpose of recovering minerals or quarry product,
 - (ii) the rehabilitation of land during or after mining or quarrying or the rehabilitation of any place that has been affected due to such a process of extraction or treatment of materials so extracted,
 - (iii) the exploration for minerals or quarry product,
 - (iv) the treatment of extracted material at or near the extraction site,
 - (v) the storage of waste from or treatment of the mineral or quarry material at or near a mine or quarry site,
 - (vi) recycling operations at or near a mine or quarry site that are reasonably connected with the extraction operations at that mine or quarry,
 - (vii) the treatment and separation of zircon, rutile, ilmenite, monazite and associated materials,
 - (c) ready-mix concrete or bitumen hot mix plants adjoining a quarry and with a directly shared workforce and management structure,
 - (d) any mine or quarry used for educational or tourist purposes, whether or not the mine or quarry is in operation,
 - (e) any area declared by the Minister to be a mine by notice published in the Gazette.
- (2) Part 6 also applies to abandoned mines or quarries and to operations associated with the care, security or maintenance of mines and quarries when mining or quarrying is suspended, including sites during restoration, decommissioning or abandonment.

9	Act does not apply to certain mines	1
	The Minister may, by notice published in the Gazette, declare that this Act does not apply to any mine, or any class of mines, specified in the notice.	2 3 4
10	Act does not apply to coal mines	5
	This Act does not apply to a place of work to which the <i>Coal Mine Health and Safety Act 2002</i> applies.	6 7
11	Act does not apply to civil engineering work	8
(1)	Subject to the regulations and any declaration made by the Minister under section 8 (1) (e), this Act does not apply to the extraction or treatment of quarry material where those activities are an integral part of any civil engineering work.	9 10 11 12
(2)	Subject to the regulations, this Act does not apply to underground work involving such activities even if they are an integral part of any civil engineering work.	13 14 15
(3)	In this section, <i>civil engineering work</i> means the construction, structural alteration, repair, maintenance and demolition of, for example, airports, docks, harbours, inland waterways, dams, river and avalanche and sea defence works, roads and highways, railways, bridges and tunnels, viaducts and works related to the provision of services such as communications, drainage, sewerage, water and energy supplies.	16 17 18 19 20 21 22
12	Act does not apply to certain other operations	23
	This Act does not apply to any part of a mine used for the purpose only of manufacturing bricks, tiles, pottery, earthenware pipes, terracotta, china ware, refractory material or cement.	24 25 26
13	Act to bind Crown	27
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.	28 29 30

Part 3 Objects of Act

14 Objects of Act

The objects of this Act are:

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

Note.

The *Occupational Health and Safety Act 2000* is the main Act that deals with the health, safety and welfare of persons at work, including persons at work at a mine. This Part explains how this Act fits in with the *Occupational Health and Safety Act 2000*. Basically, this Act creates additional protections, rights and obligations necessary because of the special risks associated with mines. It should be read as if it were part of the *Occupational Health and Safety Act 2000*. This Part makes it clear that this Act provides for an increase in the standard of protection of persons at work at mines and never results in lesser protection than the *Occupational Health and Safety Act 2000* would otherwise provide.

15 Act to be read as part of OH&S Act

This Act and the regulations made under this Act are to be read and interpreted as if they formed part of the *Occupational Health and Safety Act 2000*.

16 Act adds to protection provided by the OH&S Act

If a provision of the *Occupational Health and Safety Act 2000* or the regulations made under that Act applies to mines, that provision continues to apply, and must be observed, in addition to this Act or the regulations made under this Act.

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

17 OH&S Act prevails

- (1) If a provision of this Act or the regulations made under this Act is inconsistent with a provision of the *Occupational Health and Safety Act 2000* or the regulations made under that Act, the *Occupational Health and Safety Act 2000* or the regulations made under it prevail to the extent of the inconsistency.

Note. For example, if a provision of this Act deals with a certain matter and a provision of the *Occupational Health and Safety Act 2000* deals with the same matter and it is impossible to comply with both provisions, then a person must comply with the *Occupational Health and Safety Act 2000* and not with this Act. If provisions of both Acts deal with the same matter but it is possible to comply with both provisions, then a person must comply with both Acts.

- (2) This section is subject to section 116.

18	Compliance with this Act is no defence to prosecution under OH&S Act	1
		2
	Compliance with this Act or the regulations made under this Act, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the <i>Occupational Health and Safety Act 2000</i> or the regulations made under that Act.	3
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	Note. For example, a person may be guilty of an offence under the <i>Occupational Health and Safety Act 2000</i> in respect of any act or omission that is expressly required or permitted to be done or omitted by or under this Act or the regulations made under this Act.	8
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		11
19	Relationship between duties under this Act and OH&S Act	12
	Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against the <i>Occupational Health and Safety Act 2000</i> or the regulations made under that Act.	13
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20	No double jeopardy	17
	Where an act or omission constitutes an offence:	18
	(a) under this Act or the regulations made under this Act, and	19
	(b) under the <i>Occupational Health and Safety Act 2000</i> or the regulations made under that Act,	20
		21
	the offender is not liable to be punished twice in respect of the offence.	22
		23
21	Documents	24
	To avoid doubt, any documents or plans that by virtue of this Act or the regulations are required to be kept at the office of a mine are taken to be documents directly affecting the occupational health and safety of employees within the meaning of section 81 of the <i>Occupational Health and Safety Act 2000</i> .	25
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Part 5 Duties relating to health, safety and welfare at mines

Note.

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

This Part imposes extra duties.

Division 1 Duties of mine holders

Note.

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

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

This Division imposes some extra duties on mine holders.

22 Duty to nominate the operator of a mine

- (1) A mine holder must not undertake any work, or allow any other person to undertake any work, at a mine unless the mine holder has nominated one person who is the employer with the day to day control of the mine as the operator of the mine.
- (2) A nomination must be made in writing to the Chief Inspector.
- (3) A mine holder may nominate himself, herself or itself as the operator of a mine in the mine holding.
- (4) A nomination under this section must be in the form prescribed by the regulations.
- (5) The Chief Inspector must tell the mine holder who made the nomination if the nomination has been rejected. This must be done within 28 days of receiving the nomination.
- (6) The Chief Inspector may reject a nomination under this section:
 - (a) if the Chief Inspector believes that the nominated operator is not the employer with the day to day control of the mine, or
 - (b) in circumstances prescribed by the regulations.
- (7) If a nomination is rejected it is taken not to have been made.

(8)	If an operator whose nomination has not been rejected under this section ceases to be, or proposes to cease to be, the operator of the mine, the mine holder must not undertake any mining, or allow any other person to undertake any mining, at the mine unless the mine holder has nominated another operator of the mine. This section applies to a further nomination in the same way as it applies to an initial nomination.	1 2 3 4 5 6 7
(9)	This section does not require a mine holder to nominate an operator if a previous mine holder of the mine holding nominated an operator other than himself, herself or itself and that nomination was accepted.	8 9 10 11
23	Chief Inspector may declare person an operator	12
	If it appears to the Chief Inspector that there is no operator of a mine or no mine holder exists in relation to a mine, the Chief Inspector may declare by notice in writing that a specified person is the operator of a mine.	13 14 15 16
24	Mine holder must give operator health and safety information	17
(1)	If a mine holder nominates a person other than himself, herself or itself as the operator of a mine, the mine holder must provide the person nominated with all information available to the mine holder that may reasonably be relevant to the development and implementation of a mine safety management plan for the mine.	18 19 20 21 22
(2)	The regulations may prescribe the information that must be provided under this section.	23 24
25	Penalty for offence against this Division	25
	A mine holder who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.	26 27 28
	Maximum penalty: 250 penalty units.	29

Division 2 Duties of operators of mines

Note.

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

Subdivision 1 General duties

26 Identification of hazards and assessment of risks

- (1) The operator of a mine must ensure that work is not carried out by any person at the mine unless:
 - (a) the operator has identified all reasonably foreseeable hazards arising from the work at the operation, and
 - (b) the operator has assessed any risk of harm to any person from those hazards.
- (2) The regulations may make provision for or with respect to the conduct and documentation of the identification of hazards and assessment of risk under this section.

27 Elimination or control of risks

The operator of a mine must ensure that any reasonably foreseeable risk of harm to any person from the operation is eliminated or, where it is not reasonably practicable for that risk to be eliminated, that it is controlled.

28 Worker safety

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

Subdivision 2 Mine safety management plans

29 Duty of operator to prepare mine safety management plan

- (1) The operator of a mine at which work is carried out must prepare a statement in accordance with this Act and the regulations, stating how the health and safety of the persons who work at the mine, or who are directly affected by the mine, will be protected. This is a *mine safety management plan*.

(2)	For the purposes of this section, a person may be directly affected by a mine even if the person is not inside the mine.	1 2
(3)	The regulations may specify which persons or classes of persons are directly affected by a mine for the purposes of this Subdivision.	3 4
(4)	This section does not require an operator to prepare a mine safety management plan for a mine if a previous operator of the mine prepared a plan that complies with this Act and the regulations.	5 6 7
30	No work without mine safety management plan	8
	The operator of a mine must ensure that work is not carried out by any person at the mine unless a mine safety management plan that complies with this Act and the regulations is implemented for the mine.	9 10 11 12
31	Duty of operator to ensure compliance with mine safety management plan	13 14
	The operator of a mine must ensure that mining at the mine is carried out in compliance with the mine safety management plan for the mine. This includes activities undertaken by contractors who undertake work at the mine.	15 16 17 18
32	Contents of mine safety management plan	19
(1)	A mine safety management plan must include summaries of, or references to:	20 21
(a)	any regulations made under this Act in respect of the mine, and	22 23
(b)	any systems, policies, programs, plans and procedures developed and implemented under this Act or the regulations in respect of the mine, and	24 25 26
(c)	any codes, standards or guidelines that apply to the mine.	27
(2)	A mine safety management plan must include:	28
(a)	the document that sets out the management structure required under Subdivision 3, and	29 30
(b)	the contractor management plan required under Subdivision 4, and	31 32
(c)	the emergency plan required under Subdivision 5, and	33
(d)	any other matter required by the regulations.	34

33 Consultation

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

34 Obligations concerning mine safety management plan

The operator of a mine must:

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

35 Access to mine safety management plan

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

36 Former operator must return information

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

Subdivision 3	Management structure	1
37	Operator must prepare management structure	2
(1)	As part of the mine safety management plan for a mine, the operator of the mine must prepare a document that sets out the management structure of the mine.	3 4 5
(2)	The management structure must nominate persons within the structure by position and must outline their areas of responsibility and accountability.	6 7 8
(3)	The management structure must include competent persons with appropriate mining, electrical and mechanical engineering competence.	9 10 11
(4)	The management structure for a mine must include a competent person to perform the functions of a production manager.	12 13
(5)	The management structure for a mine must include competent persons to perform the functions of supervisors of the operation.	14 15
(6)	An operator must take the steps required by the regulations to maintain the management structure. This may include, but is not limited to, having others acting in, and the timely filling of, vacant positions in the structure.	16 17 18 19
(7)	During an emergency, the management structure of a mine may be suspended and a different management structure may be put into place for the duration of the emergency.	20 21 22
38	Register of persons occupying positions	23
(1)	The operator of a mine must keep a register at the site of the mine containing the names of persons occupying positions in the management structure for the operation.	24 25 26
(2)	The register must cover both current occupants of positions and occupants for the previous 5 years (including any period before the commencement of this section).	27 28 29
(3)	The register is to be made available for inspection on request by a government official, a site check inspector or by any person who works at the mine.	30 31 32

Subdivision 4 Duties regarding contractors

39 Operator to prepare contractor management plan

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

40 Content of contractor management plan

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

41 Operator to ensure contractor's familiarity with systems

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

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

42 Duties of operator regarding contractors

- (1) An operator of a mine must ensure:
 - (a) that every contractor who works at the mine is directed to comply with the requirements of this Act and the regulations, of the *Occupational Health and Safety Act 2000* and of the regulations made under that Act, and
 - (b) that the activities of the contractor are monitored to the extent necessary to determine whether or not the contractor is complying with the operator's mine safety management plan or with the contractor's safety management plan (if any has been accepted under section 65) and with the requirements of this Act and the regulations, of the *Occupational Health and Safety Act 2000* and of the regulations made under that Act, and
 - (c) if the contractor is not so complying, that the contractor is directed to take action immediately to comply with the safety management plan or the requirements of this Act and the

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- regulations, of the *Occupational Health and Safety Act 2000* 1
or of the regulations made under that Act, and 2
- (d) that if a risk to the health or safety of a person arises because 3
of the non-compliance, the contractor is directed to stop work 4
immediately and not to resume work until those requirements 5
are complied with, unless an immediate cessation of work is 6
likely to increase the risk to health and safety, in which event 7
the contractor must be directed to stop work as soon as it is 8
safe to do so, and 9
- (e) that the contractor and the contractor's employees receive 10
induction training with respect to occupational safety and 11
health as specified in the mine safety management plan for the 12
mine, and 13
- (f) that the contractor is provided with details of any changes 14
made to the mine safety management plan for the mine. 15
- (2) A failure by an operator to give a direction, or to ensure that a 16
direction is given, under this section does not affect any liability of 17
the contractor under this Act or the regulations or under the 18
Occupational Health and Safety Act 2000 or the regulations made 19
under that Act. 20

Subdivision 5 Emergency management 21

43 Meaning of "emergency" 22

For the purposes of this Subdivision, an *emergency* exists at a mine 23
when a situation is not envisaged or controlled and there is a threat 24
to the life or physical well-being of persons at or outside the mine. 25

44 Operator must prepare emergency plan 26

The operator of a mine must ensure that an emergency plan that 27
complies with this Subdivision is prepared for the mine. 28

45 No mining or quarrying without emergency plan 29

The operator of a mine must ensure that work is not carried out at 30
the mine unless an emergency plan that complies with this 31
Subdivision is implemented for the mine. 32

46	Contents of emergency plan	1
(1)	An emergency plan must contain an up-to-date plan of the mine and any other plan required by the regulations.	2
(2)	An emergency plan must adequately address, but is not limited to addressing, the following matters:	3
(a)	emergency evacuation,	4
(b)	any other matter prescribed by the regulations.	5
47	Review and testing	6
(1)	The operator of a mine must ensure that the emergency plan for the mine is reviewed and tested:	7
(a)	as soon as practicable after any emergency has occurred at the mine, and	8
(b)	whenever the mine safety management plan for the mine is reviewed.	9
(2)	The persons who work at the mine must be consulted, in the manner prescribed by the regulations, during the review.	10
(3)	A review under this section is required only to consider the relevant parts of the emergency plan.	11
Subdivision 6	Keeping of records and reporting	12
48	Keeping of records by operators	13
	The operator of a mine must keep the records concerning health and safety that are required by the Act or the regulations, in the manner required by the regulations and for at least the time required by the regulations.	14
49	Reporting by operators	15
	The operator of a mine must make the reports concerning health and safety that are required by the regulations, in the manner required by the regulations.	16

Subdivision 7 Penalties

50 Penalty for offence against this Division

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

Maximum penalty:

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

Subdivision 8 Saving of certain notices and directions

51 Saving of certain notices and directions

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

Division 3 Duties and rights of employees

Note.

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

52 Duties of employees

- (1) An employee who works at any mine:
 - (a) must comply with the mine safety management plan for the mine, and
 - (b) must follow the operator's procedures for emergencies as set out in the emergency plan for the mine, and

(c)	participate in the implementation of the occupational safety and health personnel development program applicable to the mine, if required to do so by the operator, and	1 2 3
(d)	must, before commencing work and at frequent intervals during the person's work day, carefully examine the working place and any machinery or system intended to be used so as to be satisfied that it is safe, and	4 5 6 7
(e)	must suspend work until any danger at the mine is remedied, and	8 9
(f)	must take any actions within his or her responsibility to control a danger at the mine, and	10 11
(g)	if he or she is the employee of a contractor, must comply with any safety management plan of the contractor that has been accepted under section 65.	12 13 14
(2)	An employee who works at a mine must inform the operator of any circumstances that the employee considers may lead to a loss of control of a major hazard.	15 16 17
(3)	An employee who works at a mine must immediately report to his or her immediate supervisor any situation that the employee believes could present a risk to health and safety and that is not within the employee's competence to control. If the employee's supervisor is not immediately available, the employee must instead immediately report to another senior person at the mine.	18 19 20 21 22 23
	Maximum penalty:	24
(a)	in the case of a previous offender—45 penalty units, or	25
(b)	in any other case—30 penalty units.	26
53	Rights of employees	27
	An employee who works at a mine has the right to remove himself or herself from any location at the mine when circumstances arise that appear to the employee, with reasonable justification, to pose a serious danger to his or her own health, safety or welfare.	28 29 30 31
54	Employees cannot be unlawfully dismissed or victimised	32
(1)	An employer of any person who works at a mine must not dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment for any one or more of the following reasons, or for reasons including any one or more of the following reasons:	33 34 35 36 37

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| (a) | the employee participates in a consultation process required by this Act or the regulations, | 1
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| (b) | the employee exercises rights under this Act or the regulations, | 3
4 |
| (c) | the employee reports a notifiable incident (within the meaning of section 100), | 5
6 |
| (d) | in connection with a health and safety matter, the employee seeks the assistance of, or reports a matter to, an authorised representative, | 7
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| (e) | the employee performs functions or complies with duties under this Act or the regulations or assists a government official, | 10
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| (f) | the employee is, or standing for election to be, a site check inspector. | 13
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| (2) | In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the dismissal, injury or alteration was not actuated by the reason alleged in the charge lies on the defendant. | 15
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| (3) | If a person is found guilty by a court of contravening this section, the court may order the person: | 20
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| (a) | to pay the employee a specified sum by way of reimbursement for the salary or wages lost by the employee, and | 22
23 |
| (b) | to reinstate the employee to his or her usual position or a similar position. | 24
25 |
| (4) | Such a person must give effect to an order of the court under subsection (3). | 26
27 |
| | Maximum penalty (subsections (1) and (3)): | 28 |
| (a) | in the case of a corporation (being a previous offender)—375 penalty units, or | 29
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| (b) | in the case of a corporation (not being a previous offender)—250 penalty units, or | 31
32 |
| (c) | in the case of an individual (being a previous offender)—225 penalty units, or | 33
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- (d) in the case of an individual (not being a previous offender)—
150 penalty units.

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

55 Division applies to employees of contractor

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

Division 4 Duties of those in management positions

Note.

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

56 Those in management positions must comply with mine safety management plan

- (1) A person who holds a management position at a mine must comply with the mine safety management plan for the mine.
- (2) A person who holds a management position at a mine and is an employee of a contractor must comply with any safety management plan of the contractor that has been accepted by the operator in accordance with section 65.

57 Those in management positions must inform operator of non-compliance

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

58	Further obligations	1
	A person who holds a management position at a mine:	2
	(a) must ensure that the workplace and work methods for which he or she is responsible are safe, and	3 4
	(b) must ensure that hazards at the workplace for which he or she is responsible are identified and that associated risks are controlled, and	5 6 7
	(c) must ensure that safety information concerning the workplace for which he or she is responsible is communicated to relevant persons, particularly other supervisors at the change of a shift, and	8 9 10 11
	(d) must ensure that safety matters at the workplace for which he or she is responsible but that he or she cannot resolve are reported to the relevant manager, and	12 13 14
	(e) must have regard to appropriate risk management standards at the workplace for which he or she is responsible, and	15 16
	(f) must implement risk management practices in areas that he or she controls.	17 18
59	Penalty for offence against this Division	19
	A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.	20 21
	Maximum penalty:	22
	(a) in the case of a previous offender—75 penalty units, or	23
	(b) in any other case—50 penalty units.	24
Division 5	Duties of supervisors	25
60	Supervisor must comply with mine safety management plan	26
	(1) A supervisor at a mine must comply with the mine safety management plan for the mine.	27 28
	(2) A supervisor at a mine who is an employee of a contractor must comply with any safety management plan of the contractor that has been accepted by the operator in accordance with section 65.	29 30 31

61	Supervisor must inform operator of non-compliance	1
(1)	A supervisor at a mine must inform the operator of the mine if he or she is aware that the conduct of the mine does not conform with the <i>Occupational Health and Safety Act 2000</i> or this Act or the regulations under either Act.	2
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(2)	A failure by a supervisor to inform the operator under this section does not affect any liability of the operator under the <i>Occupational Health and Safety Act 2000</i> or this Act or the regulations under either Act.	6
		7
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62	Further obligations	10
	A supervisor at a mine:	11
(a)	must ensure that safety information concerning that part or aspect of the workplace for which he or she is responsible is communicated to relevant persons, particularly other supervisors at the change of a shift, and	12
		13
		14
		15
(b)	must have regard to appropriate risk management standards, and	16
		17
(c)	must implement risk management practices in that part or aspect of the workplace for which he or she is responsible.	18
		19
63	Penalty for offence against this Division	20
	A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.	21
		22
	Maximum penalty:	23
(a)	in the case of a previous offender—75 penalty units, or	24
(b)	in any other case—50 penalty units.	25
Division 6	Duties of and in relation to contractors	26
	Note.	
	A contractor who works at a mine will have obligations as an employer under section 8 of the <i>Occupational Health and Safety Act 2000</i> or as a self-employed person under section 9 of that Act. This Division imposes extra duties on contractors in relation to mines.	27
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64	Contractor must comply with operator's mine safety management plan	31
		32
	A contractor who works at a mine must comply with the mine safety management plan of the operator for the mine to the extent that it applies to work done by the contractor.	33
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65 Contractor's safety management plan

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

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| (7) | A contractor or sub-contractor of the contractor who works at a mine must comply with the contractor's safety management plan, if that plan has been accepted by the operator in accordance with this section. | 1
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| (8) | Despite sections 52, 56, 60, 64 and 68, a contractor, employee of a contractor or subcontractor who works at a mine in compliance with the contractor's safety management plan accepted by the operator under this section only needs to comply with the mine safety management plan of the operator to the extent that they are required to do so by the contractor's mine safety management plan. | 5
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| (9) | A contractor must ensure that a copy of the contractor's safety management plan is available for inspection during the course of work: | 11
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| (a) | by any person working at the place of work concerned and by any person about to commence work at that place, and | 14
15 |
| (b) | by a representative of the operator, a government official, a site check inspector or an authorised representative. | 16
17 |
| 66 | Duties of contractors regarding safe work method statement | 18 |
| (1) | A contractor must not commence work at a mine unless the contractor: | 19
20 |
| (a) | has undertaken an assessment of the risks associated with the work to be carried out by the contractor, and | 21
22 |
| (b) | has prepared a written safe work method statement that includes a copy of the assessment of risks, and | 23
24 |
| (c) | has provided a copy of that statement to a person designated by the operator of the mine. | 25
26 |
| (2) | A safe work method statement must: | 27 |
| (a) | describe how work is to be carried out, and | 28 |
| (b) | identify the work activities assessed as having safety and health risks, and | 29
30 |
| (c) | identify the safety and health risks, and | 31 |
| (d) | describe the control measures that will be applied to the work activities, and | 32
33 |
| (e) | make provision for any matters that may be required by the regulations. | 34
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- (3) A contractor: 1
- (a) must maintain and keep up-to-date the contractor's safe work 2
 method statement for a place of work, and 3
- (b) must provide a person designated by the operator with any 4
 changes made to the safe work method statement. 5
- 67 Contractor to ensure work carried out in accordance with safe work 6
method statement 7**
- (1) A contractor must ensure that all work carried out by the contractor, 8
 or by an employee of the contractor, at a mine is carried out in 9
 accordance with the safe work method statement prepared by the 10
 contractor in relation to that mine. 11
- (2) If a risk to the health or safety of a person arises because of non- 12
 compliance with the statement, a contractor must ensure that work 13
 is stopped immediately and does not resume until the statement is 14
 complied with. 15
- (3) However, if the immediate cessation of work is likely to increase the 16
 risk to health or safety, the contractor is not required to stop the 17
 work immediately but must stop the work as soon as it is safe to do 18
 so. 19
- (4) If there is a conflict between the mine safety management plan for a 20
 mine and the safe work method statement of a contractor, the mine 21
 safety management plan prevails. 22
- 68 Contractor's duties regarding subcontractors 23**
- (1) A contractor who works at a mine must ensure that any 24
 subcontractor of the contractor provides the operator of the mine, or 25
 a person nominated by the operator, with a written safe work 26
 method statement for the work to be carried out by the 27
 subcontractor, before the subcontractor commences work at the 28
 mine. 29
- (2) A contractor who works at a mine must ensure that any 30
 subcontractor of the contractor complies with the mine safety 31
 management plan of the operator of the mine. 32
- (3) A contractor must ensure that, if any change is made to the safe 33
 work method statement during the course of work, a copy of any 34
 part of the statement that has been changed and that is relevant to a 35
 subcontractor or employee of the contractor is provided to the 36

subcontractor or employee as soon as practicable after the change is made.

69 Penalty for offence against this Division

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

Maximum penalty:

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

Division 7 Duties to give notice

70 Duty to give notice of drilling operations

- (1) A person must not commence drilling operations unless the person has given the Chief Inspector at least 7 days' written notice of the operations.
- (2) That notice must contain the details required by the regulations.
- (3) In this section, *drilling operation* means any drilling operation carried out in the course of searching for minerals or quarry product, and includes the preparation and restoration of drill sites.

71 Other duties to give notice

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

72 Penalty for offence against this Division	1
A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.	2
Maximum penalty:	3
(a) in the case of a corporation (being a previous offender)—750 penalty units, or	4
(b) in the case of a corporation (not being a previous offender)—500 penalty units, or	5
(c) in the case of an individual (being a previous offender)—375 penalty units or imprisonment for 2 years, or both, or	6
(d) in the case of an individual (not being a previous offender)—250 penalty units.	7
Division 8 General	8
73 Person may have more than one duty	9
A person on whom a duty is imposed under this Part may be subject to more than one duty under this Part.	10
74 Relationship between duties under this Part and regulations	11
(1) Compliance with the regulations is not in itself a defence in any proceedings for an offence against this Part.	12
(2) However, a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against this Part.	13
(3) This section is subject to any regulations under section 177.	14
Note. See Part 11 for provisions relating to the use of approved mining industry codes of practice in proceedings for offences against this Part.	15
75 Alternative verdicts	16
If in proceedings against a person for an offence against a provision of this Part the court is not satisfied that the person contravened that provision but is satisfied that the act or omission concerned constituted a contravention of another provision of this Part or of section 8 or 9 of the <i>Occupational Health and Safety Act 2000</i> , the court may convict the person of an offence against that other provision or section.	17

76	Multiple contraventions of general duties under this Part	1
(1)	More than one contravention of a provision of this Part by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.	2 3 4
(2)	This section does not authorise contraventions of 2 or more of those provisions to be charged as a single offence.	5 6
(3)	A single penalty only may be imposed in respect of more than one contravention of any such provision that is charged as a single offence.	7 8 9
77	Civil liability not affected by this Part	10
(1)	Nothing in this Part is to be construed:	11
(a)	as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Part, or	12 13 14
(b)	as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.	15 16 17
(2)	Subsection (1) does not affect the extent (if any) to which a breach of duty imposed by the regulations is actionable (including any regulation that adapts a provision of this Part).	18 19 20

Part 6	Safety of mines	1
Division 1	Mine plans	2
78	Application of Division	3
	This Division applies to:	4
	(a) a mine at which 20 or more persons are employed, and	5
	(b) a mine at which less than 20 persons are employed, if the	6
	Chief Inspector has advised the operator of the mine in	7
	writing that this Division applies to the mine.	8
79	References to plans	9
	A reference in this Division to a plan of a mine includes a reference	10
	to sections of the workings of the mine and to correct copies or	11
	tracings of any original plan and sections.	12
80	Mine plan must be prepared	13
	(1) The operator of a mine must, before the commencement of any	14
	operations at the mine, cause an accurate plan of the proposed	15
	workings of the mine (a <i>mine plan</i>) to be prepared in accordance	16
	with this Division by:	17
	(a) a qualified mining engineer, or	18
	(b) a production manager, or	19
	(c) a mining surveyor authorised by the Chief Inspector.	20
	(2) The operator of a mine is not guilty of an offence against this Act of	21
	failing to produce a full and accurate plan if the operator shows that	22
	he or she did not know or could not reasonably have known that the	23
	plan was not a full and accurate plan.	24
81	Contents of mine plan	25
	(1) A mine plan must include any previous workings at the mine if any	26
	part of the mine has been worked in the past or if the mine was an	27
	abandoned mine.	28
	(2) The plan must be drawn to a scale showing a distance of not more	29
	than 1:1 250 unless the Chief Inspector, in writing, permits the plan	30
	to be drawn to another scale.	31

82 Revision of mine plan

A mine 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.

83 Access to mine plan

The 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.

84 Inspection of mine plan by government officials

- (1) The operator of a mine must, if requested by a government official or by a person authorised by the Chief Inspector:
 - (a) mark on the mine plan, to the best of the operator'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 mine plan and to take a copy of it.
- (2) The operator of a mine must, if requested to do so by the Chief Inspector by notice in writing, provide a government official with a copy of a mine plan (or latest revision of a mine plan) as deposited at the office of the mine within the time specified in the notice.
- (3) A government official must file any copy of a mine plan provided to the inspector in accordance with this section in the records of the Department.
- (4) If a government official has reason to think that any mine plan produced to the inspector under this section is incorrect, the official must report the fact to the Chief Inspector who may cause a check survey to be made. If after that check survey is made the mine plan proves to be incorrect in any material respect, the operator of the mine is liable to pay all costs and charges of making such check survey, or in connection with the check survey, and such costs and charges may be recovered by any government official as a fine.

85 Government official may require plan of workings carried out

- (1) A government official may, by notice in writing (whether a penalty for such offence has or has not been imposed), require the operator

of a mine to cause an accurate plan of the workings that have been carried out or that are proposed to be carried out to be made and deposited at the office at the mine within a reasonable time at the expense of the operator.

- (2) The Chief Inspector may by notice in writing direct the operator of any mine to supply to a government official an accurate plan of all the mine workings.
- (3) An operator must, within 30 days or such further time as may be shown to be necessary after the requisition of the government official, or direction of the Chief Inspector, make and deposit or supply such a plan.

86 Plans to be deposited with Minister

- (1) If any mine (being a mine of which a plan and sections are required under the provisions of this Act to be deposited) is abandoned, the person who at the time of abandonment was the operator must, within 3 months after such abandonment, forward to the Minister an accurate plan of the workings of such mine up to the time of abandonment.
- (2) Proceedings for an offence under this section may be commenced at any time within 2 years after the abandonment of the mine, or after service on the operator concerned of a notice by an inspector to comply with the requirements of this section, whichever last happens.

87 Penalty for offence against this Division

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

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—
3,750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—
2,500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375
penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—
250 penalty units.

Division 2 Hours of work

88 Hours of work and associated working arrangements below ground

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

89 Chief Inspector may require alteration of hours of work

- (1) The Chief Inspector may, subject to section 88 and the regulations, direct the operator of a mine to limit working hours or to alter associated working arrangements at the mine if the Chief Inspector is of the opinion that existing hours of work or associated working arrangements are likely to affect adversely the health or safety of employees.
- (2) A direction under this section may be given in respect of a particular class of employees or in respect of a particular class of work, or may be given generally.
- (3) The operator of a mine must comply with a direction under this section.
- (4) This section does not affect any other powers of the Chief Inspector under this Act.

90	Regulations concerning hours of work	1
(1)	The regulations may make provision concerning the hours of work of persons working at mines.	2 3
(2)	A person other than an operator or a person acting in the management of the mine is not to be employed in a mine in contravention of any limitation on hours of work specified in the regulations for the purposes of this section.	4 5 6 7
(3)	Subsection (2) does not apply in the case of an emergency.	8
91	Display of shift roster regimes	9
	The operator of a mine at which persons are employed underground must keep prominently displayed in a place that is easily accessible to the employees of the mine details of shift roster regimes at the mine.	10 11 12 13
92	Recording of hours worked	14
(1)	The operator of a mine must keep records of the hours worked underground by each employee at the mine and must make the records available to a government official on request.	15 16 17
(2)	The regulations may make provision for or with respect to the keeping of records under this section.	18 19
93	Penalty for offence against this Division	20
	A person who contravenes, whether by act or omission, a provision of this Division, or who permits any person to contravene or fail to comply with any provision of this Division, is guilty of an offence against that provision.	21 22 23 24
	Maximum penalty:	25
(a)	in the case of a corporation (being a previous offender)— 3,750 penalty units, or	26 27
(b)	in the case of a corporation (not being a previous offender)— 2,500 penalty units, or	28 29
(c)	in the case of an individual (being a previous offender)—375 penalty units or imprisonment for 2 years, or both, or	30 31
(d)	in the case of an individual (not being a previous offender)— 250 penalty units.	32 33

94 Defence

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

Division 3 Tourist and educational activities

95 Definitions

In this Part:

mine includes an abandoned mine.

occupier, in relation to an abandoned mine, means the occupier of the land on which the abandoned mine is situated.

permit means a permit that has been issued under section 97 and that has not been revoked under section 98.

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

The occupier of a mine (not subject to a mining lease) must not allow tourist activities to be conducted in or about the mine or allow the mine to be used principally for educational purposes unless:

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

97 Issue of tourist and educational permits

- (1) The Minister may, on application being made to the Minister in writing, issue a permit to the occupier of a mine that:
 - (a) authorises tourist activities to be conducted in or about the mine, or
 - (b) authorises the mine to be used principally for educational purposes,

or both, subject to any conditions that the Minister may specify in the permit.

- (2) An application for a permit is to be accompanied by the fee determined by the Minister under section 198.
- (3) A permit must not be issued under this section in respect of a former mine unless the Minister is satisfied that all necessary precautions will be taken to protect the health or safety of persons entering the mine.

98 Revocation or variation of permits

- (1) The Minister may:
- (a) revoke a permit where a condition to which the permit is subject is breached or where the Minister is satisfied that persons cannot enter the mine to which the permit relates without risk to their safety or health, or
- (b) from time to time attach conditions or additional conditions to a permit or vary the conditions to which a permit is subject.
- (2) A revocation of a permit, a variation of conditions to which a permit is subject or the attachment of conditions or additional conditions to a permit does not take effect until notice of the revocation, variation or attachment is served on the occupier of the mine to which the permit relates.
- (3) A variation may be made under subsection (1) (b) by way of addition, amendment or deletion of conditions.

99 Penalty for offence against this Division

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

Maximum penalty:

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

Part 7 Notification of incidents

Division 1 Notification of certain incidents

100 Notification of certain incidents and other matters

- (1) The operator of a mine must give the Chief Inspector notice in accordance with this section of any of the following incidents (*notifiable incidents*):
 - (a) any incident at the mine that has resulted in a person being killed,
 - (b) any other incident at the mine of a kind prescribed by the regulations for the purposes of this paragraph,
 - (c) any incident or other matter occurring at or in relation to the mine that the regulations declare to be an incident or matter that is required to be notified.
- (2) Any notice under this section must be given:
 - (a) as soon as practicable (but not later than 7 days) after the operator becomes aware of the notifiable incident, and
 - (b) in writing and, if a form has been prescribed by the regulations, in that form.
- (3) Any notice must, in the case of a notifiable incident referred to in subsection (1) (a) or (b), also be given:
 - (a) immediately the operator becomes aware of the incident, and
 - (b) by the quickest available means.

This subsection does not apply if the operator is aware that another person has given the required notice of the incident.
- (4) The regulations may vary the obligations under this section with respect to the person required to give notice and the time and manner in which the notice is to be given.

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

- (1) This section applies if a notifiable incident referred to in section 100 (1) (a) or (b) has occurred at a mine.
- (2) The operator of a mine must take measures to ensure that:
 - (a) plant at that mine is not used, moved or interfered with after it has been involved in a notifiable incident, and

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- (b) the area and environment at that mine that is connected with the notifiable incident is not disturbed. 1
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- (3) If the regulations prescribe measures that satisfy the requirements of this section, the operator is taken to have satisfied those requirements if the operator has taken the measures so prescribed. 3
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- (4) This section does not prevent any action: 6
- (a) to help or remove a trapped or injured person or to remove a body, or 7
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- (b) to avoid injury to a person or damage to property, or 9
- (c) for the purposes of any police investigation, or 10
- (d) in accordance with a direction of an inspector or with the permission of an inspector, or 11
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- (e) in any other circumstances that may be prescribed by the regulations. 13
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- (5) The requirements of this section in relation to any particular occurrence apply only for the period ending 24 hours after notification of the incident in accordance with section 100 or only in any other period prescribed by the regulations. 15
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- 102 Records of notifications** 19
- (1) The operator of a mine must keep records at the mine of every notification given under this Part. 20
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- (2) Those records must be kept for at least 5 years. 22
- 103 Penalty for offence against this Division** 23
- A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision. 24
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- Maximum penalty: 26
- (a) in the case of a corporation (being a previous offender)—750 penalty units, or 27
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- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or 29
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- (c) in the case of an individual (being a previous offender)—375 penalty units, or 31
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- (d) in the case of an individual (not being a previous offender)—250 penalty units. 33
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Division 2 Health and safety

104 Records of medical and first aid treatment

- (1) The operator of a mine must keep records at the mine of every occasion on which medical or first aid treatment is provided by or on behalf of the operator to a person employed at the mine.
- (2) Those records must be kept for at least 5 years.

105 Offence relating to reporting of safety matters

- (1) The operator of a mine must not provide, directly or indirectly, any financial benefit or financial incentive to a person for the purpose of discouraging that person from reporting a safety matter to the person's supervisor, a site check inspector, an authorised representative, a government official or the Department.
- (2) In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the provision of a financial benefit or financial incentive was not actuated for the reason of discouraging the reporting of a safety matter lies on the defendant.

106 Penalty for offence against this Division

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

Maximum penalty:

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

Division 3 Inquiries

107 Boards of Inquiry

- (1) This section applies if it appears to the Minister that an investigation of any of the following is necessary:
 - (a) any event or dangerous occurrence causing death or serious injury at a mine and its causes and circumstances,
 - (b) any dangerous occurrence at a mine and its causes and circumstances,
 - (c) any practice at a mine that, in the opinion of the Minister, adversely affects or is likely to adversely affect the safety or health of persons employed at the mine,
 - (d) any matter relating to the safety, health, conduct or discipline of persons at or in relation to a mine.
- (2) If this section applies, the Minister may constitute a person as a Board of Inquiry to conduct a special inquiry into the event, occurrence, practice or matter.
- (3) A Board of Inquiry may, at a special inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, the person constituting the Board:
 - (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.
- (4) In conducting a special inquiry, a Board of Inquiry:
 - (a) is not bound to act in a formal manner, and
 - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.
- (5) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at the special inquiry.
- (6) A Board of Inquiry, when conducting, and making a determination in respect of, a special inquiry is to sit with an assessor or 2 or more assessors appointed by the Minister for the purposes of the inquiry.
- (7) An assessor sitting with a Board of Inquiry has the power to advise the Board of Inquiry but not to adjudicate on any matter before the Board of Inquiry.

(8)	A Board of Inquiry has the right to consult, either collectively or individually, and either in public or in private, with assessors sitting with it.	1 2 3
(9)	A Board of Inquiry conducting a special inquiry may be assisted by a legal practitioner appointed by the Minister for the purposes of the inquiry.	4 5 6
(10)	A Board of Inquiry is to determine its own procedure, except as provided by this Act.	7 8
108	Witnesses and evidence at special inquiries	9
(1)	A Board of Inquiry may summon a person to appear at a special inquiry conducted by the Board to give evidence and to produce any documents that are specified in the summons.	10 11 12
(2)	A Board of Inquiry may require a person appearing at a special inquiry to produce a document.	13 14
(3)	A person served with a summons to appear at a special inquiry and to give evidence must not, without reasonable excuse, fail to attend as required by the summons.	15 16 17
(4)	A person appearing at a special inquiry to give evidence must not, without reasonable excuse:	18 19
	(a) when required to be sworn or affirmed—fail to comply with the requirement, or	20 21
	(b) fail to produce a document that the person is required to produce under this section.	22 23
(5)	A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.	24 25 26
(6)	A Board of Inquiry may require a person appearing at a special inquiry to answer questions.	27 28
(7)	A person appearing at a special inquiry must answer any such questions.	29 30
(8)	A person is not excused from a requirement under this section to answer a question on the ground that the answer might incriminate the person or make the person liable to a penalty.	31 32 33
(9)	However, any answer given by a natural person in compliance with a requirement under this section is not admissible in evidence against the person in criminal proceedings (except proceedings for	34 35 36

an offence under this section) if the person objected at the time to answering the question on the ground that it might incriminate the person or the person was not warned on that occasion that the person may object to answering the question on the ground that it might incriminate the person.

- (10) Further information obtained as a result of an answer given under this section is not inadmissible on the ground that the answer had to be given or that the answer might incriminate the person.

109 Report by Board of Inquiry

- (1) A Board of Inquiry must, within the period required by the Minister, prepare a report as to:
- (a) the causes of the event or dangerous occurrence, if the special inquiry concerns an event or dangerous occurrence, or
 - (b) its findings in relation to the practice or matter, if the inquiry concerns a practice at a mine or a matter relating to the safety, health, conduct or discipline of persons in a mine.
- (2) The Minister may, if the Minister thinks fit, publish the report at the time and in the manner determined by the Minister.

110 No appeal against exercise of functions by Boards of Inquiry

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

111 Penalty for offence against this Division

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

Maximum penalty:

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

Part 8 Stop work orders

112 Minister may make stop work order

- (1) If the Minister is of the opinion that any action is being, or is about to be, carried out at a place of work to which this Act applies that involves, or is likely to result in, a serious breach of a provision of:
 - (a) the *Occupational Health and Safety Act 2000* or the regulations made under that Act, or
 - (b) this Act or the regulations made under this Act,the Minister may order that the action is to cease or is not to be carried out and that no action, other than any action that may be specified in the order, is to be carried out in or in the vicinity of the place, or a specified part of the place, within a period not exceeding 28 days after the day of the order.
- (2) An order takes effect on and from the date on which:
 - (a) if the order relates to a mine holding—a copy is provided to the mine holder, or
 - (b) if the order relates to a mine that is not a mine holding—a copy is provided to the operator of the mine, or
 - (c) a copy of the order is affixed in a conspicuous place in the mine, or
 - (d) the person carrying out or about to carry out the action the subject of the order is notified that the order has been made,whichever is the sooner.
- (3) In this Part, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Minister may make an order, in accordance with this Part, that any such action is to be carried out.

113 Prior notification of making of stop work order not required

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

114 Extension of stop work order

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

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- (2) An order extending a stop work order takes effect in the same way as the original order, that is, on and from the date referred to in section 112 (2).

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115 Consultation about modification of proposed detrimental action

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After the Minister makes a stop work order, the Director-General must immediately consult with the person proposing to carry out the action the subject of the order to determine whether any modification of the action may be sufficient to avoid a serious breach of a provision of any Act or regulation referred to in section 112.

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116 Stop work order prevails over other instruments

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

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117 Costs of enforcing stop work order

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- (1) If a person on whom a stop work order is imposed does not comply with the order within the period specified in the order, the Minister may cause work to be carried out for the purpose of stopping the work specified in the order.
- (2) Any costs or expenses incurred by or on behalf of the Minister under this section are a debt due to the Crown by the person on whom the stop work order was imposed.
- (3) In any proceedings instituted for the recovery from a person of a debt due by that person to the Crown under this section, a certificate of the Minister that a specified amount is the amount of the debt so due is evidence of that fact.

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| (4) | A debt due by any person to the Crown under this section is recoverable whether or not the person is convicted of an offence under section 118. | 1
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| (5) | A person on whom a stop work order is imposed, or any person directed by the Minister to take action for the purposes of subsection (1), may, upon giving reasonable notice to the occupier of the land, enter on or remain on any land for the purpose of complying with the direction of the Minister or with the stop work order, as the case may require. | 4
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| (6) | A court that convicts a person of an offence under section 118 may, on the application of the prosecutor, order the person to pay to the Crown the amount that the court is satisfied the Crown is entitled to recover from the person under this section in respect of the failure to which the offence relates. Any amount paid by a person under such an order is taken to have been recovered from the person under subsection (2) and is to be dealt with accordingly. | 10
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| (7) | For the purposes of subsection (6), a court that makes a finding that a person is guilty of an offence under section 118 without proceeding to a conviction is taken to have convicted the person of the offence. | 17
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| (8) | For the purposes of this section, a stop work order is taken to have been imposed on the person or persons to whom notice of the order was given under section 112 (2). | 21
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| 118 | Offence: failure to comply with a stop work order | 24 |
| | A person who, without reasonable excuse, fails to comply with a requirement imposed by a stop work order is guilty of an offence. | 25
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| | Maximum penalty: | 27 |
| (a) | in the case of a corporation (being a previous offender)—
1,500 penalty units and in the case of a continuing offence, a further penalty not exceeding 750 penalty units for each day the offence continues, or | 28
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| (b) | in the case of a corporation (not being a previous offender)—
1,000 penalty units and in the case of a continuing offence, a further penalty not exceeding 500 penalty units for each day the offence continues, or | 32
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| (c) | in the case of an individual not acting in the capacity of an employee (being a previous offender)—750 penalty units and | 1 |
| | in the case of a continuing offence, a further penalty not | 2 |
| | exceeding 375 penalty units for each day the offence | 3 |
| | continues, or | 4 |
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| (d) | in the case of an individual not acting in the capacity of an | 6 |
| | employee (not being a previous offender)—500 penalty units | 7 |
| | and in the case of a continuing offence, a further penalty not | 8 |
| | exceeding 250 penalty units for each day the offence | 9 |
| | continues, or | 10 |
| (e) | in the case of an individual acting in the capacity of an | 11 |
| | employee (being a previous offender)—45 penalty units and | 12 |
| | in the case of a continuing offence, a further penalty not | 13 |
| | exceeding 20 penalty units for each day the offence continues, | 14 |
| | or | 15 |
| (f) | in the case of an individual acting in the capacity of an | 16 |
| | employee (not being a previous offender)—30 penalty units | 17 |
| | and in the case of a continuing offence, a further penalty not | 18 |
| | exceeding 15 penalty units for each day the offence continues. | 19 |

Part 9 Competence standards

Division 1 Key obligations

119 Regulations may specify functions to which this Part applies

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

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

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

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

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

122 Only competent persons to perform specified functions

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

123 Penalty for offence against this Division

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

Maximum penalty:

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

Division 2	Metalliferous Mines and Extractive Industries	1
	Competence Board	2
124	Constitution of Metalliferous Mines and Extractive Industries Competence Board	3
		4
(1)	There is constituted by this Act a body corporate with the corporate name of the Metalliferous Mines and Extractive Industries Competence Board.	5
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(2)	The Board represents the Crown.	8
125	Ministerial control of Board	9
	The Board is subject to the control and direction of the Minister.	10
126	Membership of Board	11
(1)	The Board is made up of the following persons appointed by the Minister:	12
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(a)	the Chairperson of the Board (who is not to be an officer of the Department), and	14
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(b)	2 employer representatives selected from a panel of 4 submitted to the Minister by a body or bodies representing employers, and	16
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(c)	2 employee representatives selected from a panel of 4 submitted to the Minister by a body or bodies representing employees, and	19
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(d)	between 2 and 4 persons who have expertise in the development and assessment of competence of persons performing functions at mines, and	22
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(e)	2 officers of the Department.	25
(2)	The regulations may make provision for or with respect to the submission of representatives under this section and the appointment of members of the Board.	26
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127	Procedure of Board	29
(1)	The regulations may make provision for or with respect to the procedure of the Board.	30
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(2)	The Board may make rules about the procedure of the Board that are not inconsistent with this Act or the regulations. Those rules are subject to any direction of the Minister.	32
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Division 3 Functions of Board

128 Functions of Board

- (1) The Board has the functions conferred or imposed on it by or under this Act.
- (2) Without limiting subsection (1), the functions of the Board include the following:
 - (a) to oversee the development of competence standards for persons performing functions at mines that may impact on health and safety,
 - (b) to undertake initial and ongoing assessments of the competence of persons performing functions at mines,
 - (c) to advise the Minister on matters related to the competence required of persons to perform functions at mines,
 - (d) any other functions that the Minister may confer on the Board from time to time.
- (3) Without limiting subsection (2), the Board may do any or all of the following for the purpose of carrying out its functions:
 - (a) engage consultants,
 - (b) develop competence standards or cause competence standards to be developed,
 - (c) assess a person's competence, cause a person's competence to be assessed or accept an assessment of a person's competence.

129 Annual report

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

130 Review of competence arrangements

- (1) The Board must conduct a review of the status of competence setting and assessment in the mining and quarrying industry.
- (2) The review must be conducted 5 years after the commencement of this Part, or at any earlier time directed by the Minister.
- (3) The Board must report the results of the review to the Minister.

Division 4 Certificates of competence

131 Certificates of competence may be granted

The Minister may, in accordance with the regulations and any orders made under section 133, grant a certificate of competence to perform a specified function. That certificate may be granted unconditionally or subject to conditions.

132 Regulations concerning competence standards

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

- (a) the development of competence standards,
- (b) the assessment of the competence standards of persons, including the conduct of examinations,
- (c) the granting and replacement of certificates of competence,
- (d) the maintenance of competence by those to whom a certificate of competence has been granted,
- (e) the suspension or cancellation of certificates of competence, including suspension or cancellation by reason of incompetence or negligence,
- (f) the imposition of conditions on certificates of competence,
- (g) the restoration of certificates of competence that have been suspended or cancelled,
- (h) the circumstances in which a certificate of competence granted by an authority outside New South Wales will be accepted as being sufficient qualification for the grant of a certificate of competence under this Act and the circumstances in which it will not be accepted,
- (i) the range of specified functions that the holder of specified evidence of competence is allowed to perform without breaching this Part,
- (j) the keeping of a register of certificates of competence,
- (k) the appointment and functions of examiners,
- (l) the charging of fees for any service provided by the Minister, the Board or any other person in relation to this Part.

133 Ministerial orders

- (1) The Minister may make orders, not inconsistent with this Act or the regulations, for or with respect to any or all of the following:
 - (a) the qualifications to be held by a person in order for the grant to the person of a certificate of competence to be recommended,
 - (b) the experience that a person applying for a certificate of competence must have in order for the grant to the person of a certificate of competence to be recommended,
 - (c) the age that a person must have attained before the person may be granted a certificate of competence,
 - (d) the course of instruction to be undertaken by an applicant for a certificate of competence,
 - (e) the nature and type of examinations to be undertaken by an applicant for a certificate of competence and the manner of their conduct,
 - (f) the circumstances in which the Board may grant to an applicant for a certificate of competence an exemption from complying with the rules in respect of the undertaking of examinations, the holding of qualifications, the possession of experience and the attendance of courses of instruction,
 - (g) the matters to be included in an application for a certificate of competence,
 - (h) the declaration by the Minister that a person's competence is not recognised,
 - (i) any other matters that may be prescribed by the regulations.
- (2) The Board may make recommendations to the Minister concerning the making, amendment or revocation of orders under this section.
- (3) An order must be published in the Gazette. An order takes effect on the date on which it is published in the Gazette or on any later date specified in the order.
- (4) Sections 42–45 of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to statutory rules within the meaning of that Act.

Division 5 Offences

134 Offences: certificates of competence

A person must not, with intent to deceive:

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

135 Offence of forging or having forged document

A person must not:

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

136 False or misleading statements

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

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

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

- (1) A person whose competence has been declared by the Minister, in accordance with the regulations, as not recognised is guilty of an offence if the person continues to perform functions for which that competence was required.

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

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138 Penalty for offence against this Division

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

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Maximum penalty:

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

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Part 10 Oversight of mines

Division 1 Outline of this Part

139 Outline of this Part

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

Division 2 Inspections by government officials

Subdivision 1 Appointment of government officials

140 Appointment of government officials

- (1) The Minister may appoint a person employed under Chapter 2 of the *Public Sector Employment and Management Act 2002* as:
 - (a) the Chief Inspector, or
 - (b) an inspector, or
 - (c) a mine safety officer, or
 - (d) an investigator.
- (2) An instrument appointing a person under this section may limit the functions that the person has.
- (3) A person appointed under this section is to be issued with an identification card under section 48 of the *Occupational Health and Safety Act 2000*.

141 Appointment of consultants as investigators

- (1) The Minister may appoint a consultant:
 - (a) as an investigator for the purposes of carrying out investigations under this Act, or
 - (b) to assist an investigator in carrying out such investigations.

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- (2) A consultant appointed under this section has, while exercising the functions for which the consultant was appointed, the same functions as an investigator has under this Act and the regulations and the provisions of this Act and the regulations apply in respect of the consultant in the same way as they apply in respect of an inspector and anything done by an inspector.

Subdivision 2 Functions of government officials

142 Functions of Chief Inspector

- (1) The functions of the Chief Inspector are:
- (a) the oversight of the operations of inspectors, and
 - (b) reviewing appeals from notices issued by inspectors, and
 - (c) the other functions that are conferred on the Chief Inspector by this Act or the regulations, and
 - (d) any other function conferred by the Minister from time to time.
- (2) For the purposes of this Act, the Chief Inspector is an inspector.

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

- (1) This section applies if:
- (a) a government official exercises any of the powers conferred on him or her under this Part at or in connection with a mine, and
 - (b) as a result of the exercise of those powers, he or she obtains any information or becomes aware of any practice at a mine that may, in his or her opinion, be relevant to the continued safe operation of a mine or the health, safety or welfare at work of the persons who work at a mine.
- (2) In that case, the government official must, as soon as possible, so advise the most senior person in the management structure of the mine who is at work.

144 Consideration and investigation of complaints

- (1) A government official must consider any complaint made to the government official by a site check inspector for a mine, being a complaint concerning the health, safety or welfare at work of the persons who work at the mine.

(2)	A government official may investigate any such complaint if he or she considers it appropriate to do so.	1 2
(3)	A government official must report to the site check inspector who made a complaint to the government official concerning the results of the official's consideration or investigation of the complaint.	3 4 5
(4)	Nothing in this section prevents a site check inspector from raising matters directly with the operator of a mine.	6 7
145	Audit and review of mine safety management plans	8
(1)	A government official may at any time audit and review the mine safety management plan for a mine.	9 10
(2)	Such an audit and review may occur periodically, after the occurrence of an event prescribed by the regulations or at any other time that the government official thinks is appropriate.	11 12 13
146	Additional functions	14
	A government official has the following additional functions:	15
(a)	in the case of a government official other than the Chief Inspector, to provide advice to the Chief Inspector on matters relating to the health, safety and welfare of persons at work at mines,	16 17 18 19
(b)	to make reports on incidents or other matters at mines and to make recommendations for further action based on those reports.	20 21 22
Subdivision 3	Powers of government officials	23
147	Inspection powers	24
(1)	A government official has those powers that an inspector has under Part 5 of the <i>Occupational Health and Safety Act 2000</i> so as to make any examination and inquiry that may be necessary:	25 26 27
(a)	to ascertain whether this Act and the regulations, or the <i>Occupational Health and Safety Act 2000</i> and the regulations under it, have been complied with, or	28 29 30
(b)	to ascertain whether there is at a mine any matter or thing that affects or is likely to affect the health or safety of persons who work at the mine, or	31 32 33
(c)	to ascertain the causes and circumstances of any event or other occurrence at a mine, or	34 35

(d)	to investigate any complaint made to the government official by a site check inspector.	1 2
(2)	For the purposes of the application of Part 5 of the <i>Occupational Health and Safety Act 2000</i> to powers under this Act, a reference in that Part to an inspector is taken to be a reference to a government official.	3 4 5 6
148	Powers of entry at any time	7
	Despite Part 5 of the <i>Occupational Health and Safety Act 2000</i> , a government official may enter any mine at any time.	8 9
149	Power to cross land	10
	A government official may enter any land (including any residential premises) at any time if entering that land is the only way that the government official can gain entry to a mine for the purpose of making any examination and inquiry under section 147.	11 12 13 14
150	Power to require plan	15
(1)	A government official may require the operator of a mine to provide the government official with a plan of the mine marked with information that the government official considers necessary for an investigation or inquiry that the government official is making.	16 17 18 19
(2)	An operator must not fail to comply with a requirement made under this section.	20 21
	Maximum penalty: 100 penalty units.	22
Division 3	Inspections on behalf of work force	23
Subdivision 1	Site check inspectors	24
151	Site check inspectors	25
(1)	For the purpose of enabling inspections to be carried out at a mine on behalf of the persons at work at the mine, an individual may be elected as a site check inspector for the mine.	26 27 28
(2)	More than one person may be elected as a site check inspector if the operator agrees or the Chief Inspector directs.	29 30

152 Trigger for election

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

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

153 Conduct of election of site check inspectors

- (1) An election for a site check inspector for a mine may be conducted:
 - (a) if there is only one involved union in relation to the mine—by that involved union, or
 - (b) if there is more than one involved union and all the involved unions are in agreement that a specified one of those unions should conduct the election—by that specified union, or
 - (c) if there is no involved union in relation to the mine or agreement under paragraph (b) cannot be reached—by a person authorised by the Chief Inspector to conduct elections under this section.
- (2) A person employed in or about the mine may be a candidate in the election if and only if the person is employed at the mine.
- (3) Subject to the regulations, all individuals employed in or about the mine are entitled to vote in the election.
- (4) Where there is only one candidate for the election, that person is taken to have been elected.
- (5) Where a person is elected as the site check inspector for a mine, the involved union or other person authorised under subsection (1) to conduct the election must, as soon as practicable after the person has been so elected, inform the Chief Inspector, the industry check inspector and the operator of the mine.
- (6) As soon as practicable after being so informed, the operator of the mine must cause a notice that the person so elected is the site check inspector for the mine to be displayed in a prominent place at the mine, that will allow all of the persons working in or about the mine to be notified of the election.

Maximum penalty: 10 penalty units.

154 Term of office

Subject to section 155, a site check inspector for a mine holds office for 2 years after the date on which he or she was elected but is eligible to be elected for further terms of office.

155 Vacation of office of site check inspector

- (1) A person ceases to be the site check inspector for a mine if:
 - (a) the person resigns as the site check inspector, or
 - (b) the person ceases to be employed in or about the mine, or
 - (c) the person's term of office expires without the person having been elected to be the site check inspector for the mine for a further term.
- (2) A person may resign as the site check inspector for a mine:
 - (a) if the person was last elected as the site check inspector in an election conducted by an involved union in relation to the mine—by notice in writing delivered to the involved union that nominated the person as a candidate in the election, or
 - (b) in any case—by notice in writing delivered to the operator of the mine.
- (3) If a person has resigned as the site check inspector for a mine:
 - (a) if subsection (2) (a) applies—the involved union to which the notice of resignation was delivered, or
 - (b) in any other case—the operator of the mine,must notify the persons employed at or about the mine, and, in a case to which subsection (2) (a) applies, the operator of the mine, of the resignation.
- (4) If a person has ceased to be the site check inspector for a mine because of subsection (1) (b), the person must notify the following persons in writing that the person has ceased to be the site check inspector for that mine:
 - (a) the persons employed at or about the mine,
 - (b) the operator of the mine,
 - (c) if the person was last elected as the site check inspector in an election conducted by an involved union in relation to the mine—the involved union, in relation to the mine, that nominated the person as a candidate in the election.

156 Notification of election

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

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

Maximum penalty: 5 penalty units.

157 Functions of site check inspectors

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

- (a) to keep under review the measures taken to ensure the health, safety and welfare of persons at the mine, including procedures to control risks,
- (b) to investigate any matter that may be a risk to health and safety at the mine,
- (c) to request an investigation by an inspector if a health, safety or welfare matter is not resolved after attempts to do so,
- (d) to inspect the mine to assess the level of risk to which employees are exposed,
- (e) to inspect documents and plans relating to health, safety and welfare that are required to be kept at the mine by this Act or the regulations or by the *Occupational Health and Safety Act 2000* or the regulations made under that Act,
- (f) to attempt to resolve matters concerning health, safety or welfare at the mine or to request an investigation into those matters by a government official,
- (g) to accompany a government official on an inspection or investigation at the mine and to observe any reports made by a government official to an employer,
- (h) to accompany employees in discussion with an employer about health, safety or welfare matters at the mine and to observe any in-house investigations of injuries or incidents,
- (i) to assist in the development of record-keeping arrangements and make recommendations about training for occupational health and safety representatives and occupational health and safety committees under the *Occupational Health and Safety Act 2000*,

	(j)	to accompany an employee at the mine during any interview with his or her employer or the operator about a health, safety or welfare issue,	1 2 3
	(k)	to assist in-house investigations of notifiable injuries and incidents at the mine,	4 5
	(l)	to assist in the development of arrangements for recording hazards and incidents at the mine,	6 7
	(m)	to assist in the formation of safety plans and study safety plans at the mine,	8 9
	(n)	any other functions prescribed by the regulations.	10
158	Training of site check inspectors		11
	(1)	A site check inspector for a mine must undertake a course of training relating to occupational health and safety that is accredited by the Minister for the purposes of this section.	12 13 14
	(2)	The operator of a mine must permit the site check inspector for the mine to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.	15 16 17
159	Rights of site check inspectors		18
	(1)	A site check inspector:	19
		(a) has 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, and	20 21 22
		(b) has the right to accompany an employee, at the request of the employee, during any interview with the operator or a contractor about a health, safety or welfare matter at the mine, and	23 24 25 26
		(c) has the right to observe any formal in-house investigation of an event or other occurrence at the mine that must be notified to the Chief Inspector, and	27 28 29
		(d) has the right to require assistance and access to facilities that are reasonably necessary for the exercise of his or her functions.	30 31 32
	(2)	A person must not obstruct a site check inspector in the exercise of any right conferred on the inspector by this Act.	33 34
		Maximum penalty: 100 penalty units.	35

160 Duties of operators in relation to site check inspectors

The operator of a mine must:

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

Maximum penalty: 100 penalty units.

161 Duties of contractors in relation to site check inspectors

A contractor carrying out work at a mine must:

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

Maximum penalty: 100 penalty units.

162 Assistance to site check inspectors

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

Maximum penalty: 100 penalty units.

Subdivision 2 Inspections on behalf of work force

163 Inspections by site check inspectors

A site check inspector for a mine may:

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

164 Site check inspector may be accompanied by operator's representative

For the purposes of an inspection of a mine under section 163, a site check inspector may be accompanied by the operator or a representative of the operator, if the operator thinks fit.

165 Site check inspector must not leave work without prior notice

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

Maximum penalty: 20 penalty units.

166 Power to cross land

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

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Part 11 Mining industry codes of practice

167 Purpose of industry codes of practice

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

168 Minister may prepare draft codes

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

169 Consultation on draft codes

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

170 Approval of codes by Minister

The Minister may approve a mining industry code of practice.

171 Publication, commencement and availability of codes

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

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

172 Amendment or revocation of codes

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

173 Use of codes

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

Part 12 Regulations

174 Regulations: general power

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the objects of this Act.
- (2) Any specific power to make regulations under this Act does not limit the generality of subsection (1).

175 Regulations: specific miscellaneous powers

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

- (a) the safety, health, welfare, convenience and conduct of persons at mines,
- (b) critical controls for major hazards at mines,
- (c) the records that must be kept and the reports that must be made by an operator of a mine to the Chief Inspector concerning the health and safety performance of the mine,
- (d) the matters in a mine safety management plan,
- (e) the matters in an emergency plan,
- (f) the matters in a contractor's safety management plan,
- (g) regulating or prohibiting:
 - (i) the design, manufacture, supply or use of any plant at or in relation to a mine, and
 - (ii) the design, manufacture, supply, storage, transport or use of any substance at or in relation to a mine, and
 - (iii) the carrying on of any process or the carrying out of any activity at or in relation to a mine,
- (h) requiring persons to identify hazards to the health and safety of persons, and to assess risks, arising from work at or in relation to a mine (including risks arising from the place of work or from any plant or substance for use at work),
- (i) designating the persons (whether employers, self-employed persons, contractors or other persons) who are to be responsible for compliance with the obligations imposed by the regulations,
- (j) the register of persons occupying positions,

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| (k) | requiring a person, before commencing to carry out work of a particular kind at a place of work at or in relation to a mine, to give the Minister or other persons notice of the proposed work in accordance with the regulations, | 1
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| (l) | requiring persons at a mine, in any circumstances involving a risk to their health, to undergo a biological, hearing or other test, | 5
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| (m) | requiring persons at a mine to not eat, drink or smoke in any circumstances involving an increased risk to their health, | 8
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| (n) | measures for detecting and investigating cases in which the health of persons has been affected, including medical examinations, the making of biological, hearing or other tests and the notification of absences from work, | 10
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| (o) | prohibiting, absolutely or conditionally, the use of specified materials or classes or types of materials at or in relation to mines, | 14
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| (p) | the design, construction, installation, maintenance, use, testing, repair, adjustment, alteration and examination of plant used at or in relation to mines, | 17
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| (q) | the design, use, construction and maintenance of buildings and structures at mines, | 20
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| (r) | the design, use, construction and maintenance of equipment used in connection with shafts and roadways in mines, | 22
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| (s) | the provision of security measures at a mine to prevent access to shafts, declines and surface buildings when unattended, | 24
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| (t) | the circumstances in which consultation must be undertaken by an operator of a mine or by a contractor, | 26
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| (u) | the mode of consultation by the operator of a mine or by a contractor, | 28
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| (v) | the requirements to be observed and the precautions to be taken in mining any location, including: | 30
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| | (i) under the ocean, a river, a lake, an estuary, a reservoir or an aquifer, and | 32
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| | (ii) near any place or strata that is likely to contain a dangerous accumulation of gas or water or material that flows when wet, | 34
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| (w) | the control of the supply, storage and use of blasting materials, blasting devices and inflammable materials at a mine, | 37
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| (x) | requiring the surveying, and the preparation of plans, of barriers and protective pillars in a mine and prescribing the time in which any such surveys or plans must be made or prepared, | 1
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| (y) | the waiver, remission or refund of fees charged under the Act or the regulations and the interest payable for late payment of such fees, | 5
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| (z) | the registration of any plant, material or thing before it may be used in, installed in or taken into a mine or connected to, or used with, any other plant, material or thing used or installed in a mine, | 8
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| (aa) | the generation, storage, transformation, transmission and use of electricity at a mine, | 12
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| (ab) | requiring communication systems to be provided in a mine, | 14 |
| (ac) | the supply and maintenance of first aid equipment, facilities and locations at a mine, | 15
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| (ad) | the employment at a mine of persons trained to administer first aid to persons injured, | 17
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| (ae) | the conveyance of persons injured within a mine from the mine to their homes or hospital, | 19
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| (af) | the supply of drinking water at a mine, | 21 |
| (ag) | the provision of facilities for the taking of meals both on the surface and underground at a mine, | 22
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| (ah) | the supply and maintenance of safety equipment for the use of persons employed at a mine, | 24
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| (ai) | the transport of persons and materials in a mine, | 26 |
| (aj) | requiring persons employed in a mine who carry out prescribed functions that may affect the safety or health of other persons to hold any evidence of competence that may be prescribed, | 27
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| (ak) | the ventilation of underground mines, | 31 |
| (al) | the environmental working conditions in a mine, | 32 |
| (am) | the control of the temperature and humidity to which persons may be exposed in a mine, | 33
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| (an) | lighting in or about mines, | 35 |
| (ao) | prohibiting the taking into mines of items that may affect the safety of persons at mines, | 36
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| (ap) | searching persons, before entry into mines, for items referred to in paragraph (ao) and the confiscation and disposal of any such items found, | 1
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| (aq) | the fencing, enclosing or sealing of abandoned or discontinued mines or parts of mines, | 4
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| (ar) | requiring the provision of information, and the means of information provision, at a mine and prescribing: | 6
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| | (i) the number, design, construction, size and location of those means of information provision, and | 8
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| | (ii) the matters that must be displayed or provided, and | 10 |
| | (iii) the class or classes of persons to whom information is to be provided, | 11
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| (as) | the preparation, maintenance, keeping and preservation of plans, sections and drawings of mines (including abandoned mines) and of workings in or about mines and of related documents, including provisions for or with respect to the preparation of those plans, sections and drawings by the Director-General and the recovery of the cost of their preparation, maintenance, keeping and preservation, | 13
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| (at) | surveys of mines (including abandoned mines), | 20 |
| (au) | the furnishing or production of copies of plans, sections and drawings of mines (including abandoned mines) and the furnishing of information relevant to the preparation of those plans, sections or drawings to the Director-General, to inspectors and to other persons, | 21
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| (av) | the supply of, or the furnishing of information from, copies of plans, sections or drawings filed with the Director-General to persons, | 26
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| (aw) | prescribing, in respect of tailings disposal areas, engineering, environmental and safety standards and practices to be adopted in constructing and using emplacement areas and steps to be taken to keep emplacement areas secure, | 29
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| (ax) | the provision, retention, maintenance and inspection of records at a mine, | 33
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| (ay) | the obligations of land owners and land occupiers at or in the vicinity of mines or abandoned or former mines, | 35
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| (az) | the functions of the Chief Inspector, | 37 |
| (ba) | the functions of inspectors, investigators or mine safety officers, including provisions for or with respect to the | 38
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	production of identification cards by inspectors, investigators or mine safety officers and the warnings to be administered to persons in the course of an inspection,	1 2 3
(bb)	the functions of site check inspectors including provisions for or with respect to the production of identification cards by such persons,	4 5 6
(bc)	the analysis of any substance,	7
(bd)	the fees chargeable or payable for doing any act or providing any service in connection with this Act or the regulations,	8 9
(be)	forms for the purposes of this Act or the regulations,	10
(bf)	the manner of serving notices under this Act or the regulations,	11 12
(bg)	any information to be provided to any person by an inspector or other person exercising functions under this Act,	13 14
(bh)	the persons, or class of persons, entitled to vote at an election under this Act,	15 16
(bi)	the manner in which an election under this Act must be held,	17
(bj)	the fitness for work of those who work at mines,	18
(bk)	the setting and variation of working time arrangements of those who work at mines,	19 20
(bl)	the consumption of alcohol or other drugs by those who work at mines,	21 22
(bm)	the content and operation of a management structure for a mine,	23 24
(bn)	supervision of those who work at mines,	25
(bo)	the duties of an operator of mines in relation to subcontractors,	26 27
(bp)	periodic performance reports by operators of mines concerning the occurrence of notifiable incidents within the meaning of section 100.	28 29 30

176	Regulations may prescribe decisions that are to be reviewable by Administrative Decisions Tribunal	1 2
(1)	The regulations may authorise a person to apply to the Administrative Decisions Tribunal for a review of a decision of a class prescribed by the regulations that is made under this Act or the regulations.	3 4 5 6
(2)	The regulations may require any person who applies to the Administrative Decisions Tribunal for a review of a decision under this Act to notify any person of that application.	7 8 9
(3)	Despite section 60 of the <i>Administrative Decisions Tribunal Act 1997</i> , the regulations may make provision for the operation and implementation of a decision under review, or pending review, by the Administrative Decisions Tribunal.	10 11 12 13
(4)	Any such regulation cannot be made without the concurrence of the Minister administering the <i>Administrative Decisions Tribunal Act 1997</i> .	14 15 16
177	Regulations: adapting duties under Part 5	17
	The regulations may adapt the provisions of Part 5 to meet the circumstances of any specified class of case.	18 19
178	Regulations concerning application of Part 5 to contractors	20
(1)	The regulations may specify contractors or classes of contractors:	21
(a)	in relation to whom some or all of Subdivision 4 of Division 2 of Part 5 does not create any duties or creates duties subject to conditions, or	22 23 24
(b)	to whom some or all of Division 6 of Part 5 does not apply or applies subject to conditions.	25 26
(2)	Any regulation made under this section applies only to contractors who do not undertake mining activities as part of the work that they undertake in connection with a coal operation.	27 28 29
179	Regulations may adopt other publications	30
	The regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time.	31 32
180	Regulations may create criminal offences	33
	The regulations may create offences punishable by a penalty not exceeding 250 penalty units.	34 35

181 Exemptions

- (1) The regulations may exempt persons, or persons of a prescribed class, or any act, matter or thing, or any prescribed class of act, matter or thing, either absolutely or subject to conditions, from any provision of the regulations.
- (2) The regulations may exempt an operator, or a class of operators, from the requirement to prepare a mine safety management plan and from requirements relating to that plan under Subdivision 2 of Division 2 of Part 4.

182 Regulations relating to consultation

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

Part 13 Miscellaneous

Division 1 Enforcement

Note.

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

183 Offences by corporations

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

184 Aiding or abetting the commission of offences

A person:

- (a) who aids, abets, counsels or procures, or
 - (b) who, by act or omission, is in any way directly or indirectly knowingly concerned in or a party to,
- the commission of an offence against this Act or the regulations is taken to have committed that offence and is punishable accordingly.

185 Defence

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

- (a) it was not reasonably practicable for the person to comply with the provision, or
- (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

186 Defences to criminal proceedings not affected by this Act

It is not a defence to an action in any criminal proceedings that a given course of action was not objected to by the Chief Inspector or the Department, even if this Act gives the Chief Inspector or the Department an opportunity to object to that course of action.

Division 2 Information

187 Disclosure of information

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

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

Maximum penalty: 20 penalty units.

188 False or misleading statements

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

Maximum penalty:

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

189 Defence

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

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

Division 3 Exercise and delegation of functions

190 Chief Inspector subject to Ministerial control

The Chief Inspector is, in the exercise of his or her functions, subject to Ministerial control and direction.

191 Minister may exercise function of Chief Inspector

The Minister may, at his or her discretion, exercise a function conferred on the Chief Inspector by this Act or the regulations.

192 Delegation of functions by the Minister

- (1) The Minister may, by instrument in writing, delegate to the Director-General any of the functions conferred or imposed on the Minister by or under this Act (other than this power of delegation).
- (2) The Minister may, by instrument in writing, delegate to the Board any of the functions conferred or imposed on the Minister under Part 10.

193 Delegation of functions by Chief Inspector	1
The Chief Inspector may, by instrument in writing, delegate to any	2
inspector any of the functions conferred or imposed on the Chief	3
Inspector by or under this Act (other than this power of delegation).	4
194 Delegation of functions by Director-General	5
(1) The Director-General may, by instrument in writing, delegate to an	6
authorised person any function conferred or imposed on the	7
Director-General by or under this Act, including this power of	8
delegation.	9
(2) The Director-General may subdelegate to any authorised person any	10
function delegated to the Director-General by the Minister if the	11
Director-General is authorised to do so by the Minister.	12
(3) In this section:	13
<i>authorised person</i> means:	14
(a) an officer of the Department, or	15
(b) any other person prescribed by the regulations.	16
Division 4 Service of documents	17
195 Service of documents	18
(1) A document that is authorised or required by this Act or the	19
regulations to be served on any person may be served by:	20
(a) in the case of a natural person:	21
(i) delivering it to the person personally, or	22
(ii) sending it by post to the address specified by the person	23
for the giving or service of documents or, if no such	24
address is specified, the residential or business address	25
of the person last known to the person giving or serving	26
the document, or	27
(iii) sending it by facsimile transmission to the facsimile	28
number of the person, or	29
(b) in the case of a body corporate:	30
(i) leaving it with a person apparently of or above the age	31
of 16 years at, or by sending it by post to, the head	32
office, a registered office or a principal office of the	33
body corporate or to an address specified by the body	34
corporate for the giving or service of documents, or	35

	(ii) sending it by facsimile transmission to the facsimile number of the body corporate.	1 2
	(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.	3 4 5
196	Supply of documents to an operator	6
	If this Act or the regulations requires something to be sent or given to the operator of a mine it is enough that it is sent or given to the most senior person identified in the operator's management structure who is at work or given to a person at the on-site office of the mine or at the premises at which the relevant part of the work of the mine is carried out.	7 8 9 10 11 12
197	Supply of documents to Chief Inspector	13
	If this Act or the regulations requires something to be sent or given to the Chief Inspector, it is enough that it is sent or given to a person, or left at a place, specified by the Chief Inspector by order published in the Gazette.	14 15 16 17
Division 5	Fees	18
198	Fees	19
	(1) The Minister may determine the fees and charges payable:	20
	(a) by an applicant for a certificate of competence, and	21
	(b) by a candidate for an examination conducted by the Board, and	22 23
	(c) for any service provided by the Board, and	24
	(d) for the testing of plant or material for registration for the purpose of this Act or the regulations, and	25 26
	(e) for the issue of any tourist or educational permit, and	27
	(f) for any other purpose in connection with this Act authorised by the regulations.	28 29
	(2) Any determination made under this section is subject to the regulations.	30 31

Division 6 General

199 Protection from liability

(1) A matter or thing done or omitted to be done by a protected person does not, if the matter or thing was done or omitted in good faith for the purpose of executing any provision of this or any other Act, subject such person personally to any action, liability, claim or demand.

(2) In this section, *protected person* means the following:

- (a) the Minister,
- (b) the Director-General,
- (c) the Chief Inspector,
- (d) a member of the Board,
- (e) a site check inspector,
- (f) an inspector,
- (g) a mine safety officer,
- (h) an investigator,
- (i) a person who constitutes a Board of Inquiry,
- (j) an assessor sitting with a Board of Inquiry.

200 No obligation to exercise power

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

Part 14 Repeals and amendments

201 Repeals

The following are repealed:

- (a) the *Mines Inspection Act 1901* No 75,
- (b) the *Mines Inspection Amendment Act 1998* No 69,
- (c) the *Mines Inspection General Rule 2000*,
- (d) the *Mines Inspection Regulation 1999*.

202 Amendment of Mining Act 1992 No 29

The *Mining Act 1992* is amended as set out in Schedule 1.

203 Amendment of Occupational Health and Safety Act 2000 No 40

The *Occupational Health and Safety Act 2000* is amended as set out in Schedule 2.

204 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in that Schedule.

205 Savings, transitional and other provisions

Schedule 4 has effect.

206 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Amendment of Mining Act 1992

(Section 202)

Section 163A

Insert after section 163:

163A Mine holdings

- (1) The Director-General is to cause to be kept a register of mine holdings (referred to in this section as *the register*) in such form as may be prescribed by the regulations.
- (2) The Director-General is to cause to be recorded in the register:
 - (a) such particulars as are necessary to give effect to a direction given under this section, and
 - (b) such other particulars as may be prescribed by the regulations.
- (3) A person who has a right (whether under a mining lease or otherwise) to mine for minerals other than coal or to carry out mining purposes in relation to minerals other than coal on any land may apply to have the land registered as a mine holding or recorded on the register as part of an existing mine holding.
- (4) A person who has an interest in a mine holding may apply to have the registration of the mine holding cancelled or amended so as to exclude land from the mine holding.
- (5) An application under this section:
 - (a) must be lodged with the Director-General, and
 - (b) must be accompanied by the particulars prescribed by the regulations.
- (6) The Minister may, by order in writing, direct that specified land (being land in which a person has, in the Minister's opinion, a right to mine for minerals other than coal or to carry out mining purposes in connection with mining for minerals other than coal) be registered as a mine holding or recorded on the register as part of an existing mine holding.
- (7) The Minister may, by order in writing, direct that the registration of a mine holding be cancelled or amended so as to exclude specified land from the mine holding.

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- (8) A direction may be given under subsection (6) or (7) whether or not an application has been made under subsection (3) or (4) in respect of the same land.
- (9) The Director-General is to cause copies of any direction under subsection (6) or (7) to be served on such persons as, in the Director-General's opinion, have a right to mine minerals other than coal or to carry out mining purposes in connection with mining for minerals other than coal in the land or mine holding to which the instrument relates.

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Schedule 2 Amendment of Occupational Health and Safety Act 2000

(Section 203)

[1] Section 4 Definitions

Omit paragraph (c) of the definition of *associated occupational health and safety legislation*.

[2] Section 4, definition of “mine”

Omit the definition.

[3] Section 4

Insert in alphabetical order:

mining or quarrying operation means a place to which the
Mine Health and Safety Act 2002 applies.

[4] Section 5 Application of Act

Omit “mines” from Note 1 to the section.

Insert instead “mining or quarrying operations”.

[5] Section 17 Establishment of OHS committees, election of OHS representatives and other agreed arrangements

Insert after section 17 (6):

(7) In relation to a mining or quarrying operation:

(a) a site check inspector (within the meaning of the *Mine Health and Safety Act 2002*) for a mining or quarrying operation, must be a member of any OHS committee for the mining or quarrying operation, and

(b) subsection (2) does not apply.

Note. The *Mine Health and Safety Act 2002* makes provision for the election or appointment of certain persons to carry out inspections and perform other functions on behalf of persons who work at a mining or quarrying operation.

[6] Section 30 Alternative verdicts

Insert after section 30 (2):

- (3) If in proceedings for an offence against a provision of section 8 or 9 the court is not satisfied that the person contravened that provision but is satisfied that the act or omission concerned constituted a contravention of a provision of Part 5 of the *Mine Health and Safety Act 2002*, the court may convict the person of an offence against that other provision.

[7] Section 47 Appointment of inspectors (otherwise than in connection with mining or quarrying operations or coal workplaces)

Omit “mine” from section 47 (2).

Insert instead “mining or quarrying operation”.

[8] Section 47A

Omit the section. Insert instead:

47A Appointment of inspectors in connection with mining or quarrying operations

A person appointed as a government official under the *Mine Health and Safety Act 2002* is taken to have been appointed as an inspector for the purposes of this Act and the regulations. Such a person is only authorised to exercise functions under this Act in relation to a mining or quarrying operation, but may exercise functions under Division 2 in relation to premises other than a mining or quarrying operation for the purpose of investigating any matter under this Act in relation to a mining or quarrying operation.

[9] Section 48 Identification of inspectors

Omit “*Mines Inspection Act 1901*” from section 48 (3).

Insert instead “*Mine Health and Safety Act 2002*”.

[10] Sections 77 and 81

Insert “or the *Mine Health and Safety Act 2002*,” after “legislation” wherever occurring.

[11] Sections 86 (5) and 87 (6)	1
Omit “mine” wherever occurring.	2
Insert instead “mining or quarrying operation”.	3
[12] Section 104A Application of this Part	4
Insert after section 104A (2):	5
(2A) This Part extends to proceedings in connection with the <i>Mine Health and Safety Act 2002</i> and the regulations under that Act.	6 7 8
[13] Section 104A (3)	9
Insert “or (2A)” after “(2)”.	10
[14] Section 104A (3) (d)	11
Insert “or the <i>Mine Health and Safety Act 2002</i> ” after “ <i>Coal Mine Health and Safety Act 2002</i> ”.	12 13
[15] Section 104A (4)	14
Insert “or the <i>Mine Health and Safety Act 2002</i> ” after “ <i>Coal Mine Health and Safety Act 2002</i> ”.	15 16
[16] Section 104A (4)	17
Omit “that Act”. Insert instead “those Acts”.	18
[17] Section 133 Application of Act to mining and quarrying operations and coal workplaces: references to WorkCover	19 20
Omit “ <i>Mines Inspection Act 1901</i> ”.	21
Insert instead “ <i>Mine Health and Safety Act 2002</i> ”.	22

Schedule 3 Amendment of other Acts

(Section 204)

3.1 Coroners Act 1980 No 27

[1] Schedule 1 Special provisions—inquests concerning deaths or suspected deaths in mines

Omit “*Mines Inspection Act 1901*” wherever occurring from the definitions of *investigator* and *mine* in clause 1.

Insert instead “*Mine Health and Safety Act 2002*”.

[2] Schedule 1, clause 2

Omit “*Mines Inspection Act 1901*” from clause 2 (a).

Insert instead “*Mine Health and Safety Act 2002*”.

3.2 Dangerous Goods Act 1975 No 68

Sections 5 (3) and 41 (2)

Omit “*Mines Inspection Act 1901*” wherever occurring.

Insert instead “*Mine Health and Safety Act 2002*”.

3.3 Defamation Act 1974 No 18

Section 17U and clause 2 (19B) of Schedule 2

Omit “*Mines Inspection Act 1901*” wherever occurring.

Insert instead “*Mine Health and Safety Act 2002*”.

3.4 Electricity Safety Act 1945 (1946 No 13)

Section 4 Definitions

Omit “*Mines Inspection Act 1901*” from the definition of *Electrical installation* in section 4 (1).

Insert instead “*Mine Health and Safety Act 2002*”.

3.5 Industrial Relations Act 1996 No 17

Section 197A Appeals against acquittals in proceedings for offences against occupational health and safety legislation

Insert after paragraph (d) of the definition of *occupational health and safety legislation* in section 197A (10):

(d1) the *Mines Inspection Act 1901*, and

(d2) the *Mines Health and Safety Act 2002*, and

3.6 Offshore Minerals Act 1999 No 42

Sections 123, 183, 259 and 308

Omit “*Mines Inspection Act 1901*” wherever occurring in the note to each section.

Insert instead “*Mine Health and Safety Act 2002*”.

3.7 Petroleum (Onshore) Act 1991 No 84

Sections 113 (1) and 128 (1)

Omit “*Mines Inspection Act 1901*” wherever occurring.

Insert instead “*Mine Health and Safety Act 2002*”.

3.8 Radiation Control Act 1990 No 13

[1] Section 5 Application of Act to radioactive ore being mined or treated

Omit “mine (as defined in section 4 (1) of the *Mines Inspection Act 1901*) or is the subject of treatment (as so defined)”.

Insert instead “mine as defined in the *Mine Health and Safety Act 2002* or is the subject of treatment”.

[2] Section 38 Consultation and co-operation between Ministers

Omit “*Mines Inspection Act 1901*” from section 38 (b).

Insert instead “*Mine Health and Safety Act 2002*”.

3.9 Rail Safety Act 1993 No 50	1
Section 8 Railways to which Act applies	2
Omit “ <i>Mines Inspection Act 1901</i> ” from section 8 (2) (a).	3
Insert instead “ <i>Mine Health and Safety Act 2002</i> ”.	4
3.10 Rail Safety Act 2002 No 96	5
Section 6 Railways to which Act applies	6
Omit “ <i>Mines Inspection Act 1901</i> ” from section 6 (2) (a).	7
Insert instead “ <i>Mine Health and Safety Act 2002</i> ”.	8
3.11 Surveying Act 2002 No 83	9
Sections 3 (1) and 13 (4) (f)	10
Omit “ <i>Mines Inspection Act 1901</i> ” wherever occurring.	11
Insert instead “ <i>Mine Health and Safety Act 2002</i> ”.	12
3.12 Surveyors Act 1929 No 3	13
Section 25 Saving	14
Omit “ <i>Mines Inspection Act 1901</i> ”.	15
Insert instead “ <i>Mine Health and Safety Act 2002</i> ”.	16

Schedule 4 Savings, transitional and other provisions 1
(Section 205) 2

Part 1 General 3

1 Regulations 4

- (1) The regulations may contain provisions of a savings or transitional 5
nature consequent on the enactment of the following Acts: 6
this Act 7
- (2) Any such provision may, if the regulations so provide, take effect 8
from the date of assent to the Act concerned or a later date. 9
- (3) To the extent to which any such provision takes effect from a date 10
that is earlier than the date of its publication in the Gazette, the 11
provision does not operate so as: 12
- (a) to affect, in a manner prejudicial to any person (other than the 13
State or an authority of the State), the rights of that person 14
existing before the date of its publication, or 15
- (b) to impose liabilities on any person (other than the State or an 16
authority of the State) in respect of anything done or omitted 17
to be done before the date of its publication. 18

Part 2 Provisions consequent on the enactment of 19
this Act 20

Division 1 Interpretation 21

2 Definition 22

In this Part: 23

former Act means the *Mines Inspection Act 1901*. 24

Division 2 Phasing-in of plans and systems 25

3 Phasing-in of plans and systems 26

Without limiting clause 1, the regulations may make provision for 27
plans, systems or other arrangements developed under the former 28
Act and in force or effect immediately before the repeal of the 29
former Act to be acceptable as fulfilling any requirement imposed 30

by or under this Act for the duration of any phasing-in period prescribed by the regulations.	1 2
4 Saving of occupational safety and health policies	3
Without limiting clause 3, an occupational safety and health policy prepared for a mine under the <i>Mines Inspection General Rule 2000</i> as in force immediately before the repeal of the former Act continues to have effect in respect of the mine after that date and until replaced by an occupational health and safety policy prepared under this Act.	4 5 6 7 8 9
Division 3 Employment	10
5 Agreement concerning hours of work	11
An agreement under section 29 (2) of the former Act in force immediately before the repeal of the former Act continues to have effect despite the provisions of section 88 of this Act. The agreement cannot be varied but may be terminated by the operator concerned or by the Chief Inspector.	12 13 14 15 16
6 Approvals concerning hours of work	17
Despite the provisions of section 88 of this Act, an approval under section 29 (4) of the former Act in force immediately before the repeal of the former Act is taken to be an approval permitting employment contrary to the provisions of section 88. Such an approval continues in effect until it expires, or is revoked by the Chief Inspector, whichever occurs sooner.	18 19 20 21 22 23
7 Requirement of alteration of work hours	24
A requirement imposed by the Chief Inspector under section 30 of the former Act in force immediately before the repeal of the former Act is taken to be a requirement imposed under section 89 of this Act.	25 26 27 28
Division 4 Certificates and permits under former Act	29
8 Certificates of competency saved	30
On and from the repeal of the former Act:	31
(a) a certificate of competency as a production manager granted under section 7 of the former Act is taken to have been granted under section 131 of this Act in relation to the	32 33 34

functions ordinarily required to be exercised by the holder of a position prescribed by the regulations for the purposes of this clause, and	1 2 3
(b) a certificate of competency as shotfirer granted under section 18G of the former Act is taken to have been granted under section 131 of this Act in relation to the functions ordinarily required to be exercised by the holder of a position prescribed by the regulations for the purposes of this clause, and	4 5 6 7 8
(c) a certificate of competency as an engine driver relating to winders and hoists granted under section 14 of the former Act, is taken to have been granted under section 131 of this Act in relation to the functions ordinarily required to be exercised by the holder of a position prescribed by the regulations for the purposes of this clause.	9 10 11 12 13 14
9 Saving of tourist and educational permits	15
A permit issued under section 48C of the former Act that was in force immediately before the repeal of the former Act is taken to be a permit under section 97 of this Act.	16 17 18
Division 5 Holders of positions in management structure	19
10 Holders of positions in management structure	20
Without limiting clause 1, the regulations may make provision for a person who held a position in the management of a mine immediately before the repeal of the former Act to be taken to hold a prescribed position in the management structure of a mining or quarrying operation under this Act.	21 22 23 24 25
Division 6 References	26
11 References to former Act	27
On and from the commencement of this clause, a reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the former Act is to be read as a reference to this Act.	28 29 30 31

Division 7	Notification of events	1
12	Place of accident or occurrence not to be disturbed	2
	Division 4 of Part 4 of the former Act continues to apply for 3 days after the repeal of the former Act as if it had not been repealed.	3 4
13	Notification of certain events and other matters	5
	Part 7 extends to an event that occurred in the 2 days immediately before the commencement of the Part.	6 7
Division 8	Boards of Inquiry	8
14	Boards of Inquiry continue	9
	A Board of Inquiry constituted under the former Act and active immediately before the repeal of the former Act continues under this Act as if it were constituted under this Act and may continue any special inquiry under that Act as if the Act had not been repealed. In particular, section 47L of the former Act continues to apply to such a special inquiry as if it had not been repealed.	10 11 12 13 14 15
Division 9	Office holders	16
15	Site check inspectors	17
	A person who held office under the former Act as a check inspector or employee representative for a mine immediately before the repeal of the former Act is taken to have been appointed as a site check inspector under this Act for the mining or quarrying operation that includes that mine. The person's appointment as a site check inspector under this Act is taken to have commenced when the person was elected to the office concerned under the former Act.	18 19 20 21 22 23 24

Division 10 Miscellaneous

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16 Operation of Part

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The operation of this Part is subject to the regulations.

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