



Western Australia

Mines Safety and Inspection Act 1994

Compare between:

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Mines Safety and Inspection Act 1994

An Act to consolidate and amend the law relating to the safety of mines and mining operations and the inspection and regulation of mines, mining operations and plant and substances supplied to or used at mines; to promote and improve the safety and health of persons at mines and for connected purposes.

[Long title amended by No. 30 of 1995 s. 52.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Mines Safety and Inspection Act 1994*¹.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation¹.

3. Objects

(1) The objects of this Act are —

- (a) to promote, and secure the safety and health of persons engaged in mining operations; and
- (b) to assist employers and employees to identify and reduce hazards relating to mines, mining operations, work systems and plant at mines; and
- (c) to protect employees against the risks associated with mines, mining operations, work systems at mines, and plant and hazardous substances at mines by eliminating those risks, or imposing effective controls in order to minimize them; and
- (d) to foster and facilitate cooperation and consultation between employers and employees, and associations representing employers and employees, and to provide for the participation of those persons and associations in the formulation and implementation of safety and health standards and optimum working practices; and
- (e) to provide procedures for employers and employees to contribute to the development and formulation of safety legislation for mines and mining operations and to consult regarding its administration.

- (2) In subsection (1) —

employer and **employee** include a person taken to be an employer and an employee respectively by operation of section 15A, 15B or 15C.

[Section 3 amended by No. 30 of 1995 s. 76(2) and (4); No. 68 of 2004 s. 4.]

4. Terms used in this Act

- (1) In this Act, unless the contrary intention appears —

adit has the same meaning as “tunnel”;

alternate registered manager means an alternate registered manager for a mine appointed by the principal employer under section 34;

apprentice means a person who is an apprentice under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2;

assistant inspector means an assistant inspector of mines appointed under section 20;

Australian Standard means a document having that title published by Standards Australia;

Australian/New Zealand Standard means a document having that title published jointly by —

- (a) Standards Australia; and
- (b) the Standards Council of New Zealand;

Board of Examiners means the Board of Examiners established under section 48;

certificate of competency means a certificate of competency issued by the Board of Examiners;

commute schedule means a schedule specifying the periods when registered managers and other managers and their alternates are to assume their duties at a mine and when they are to be absent from the mine;

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competent person means a person who is appointed or designated by the employer to perform specified duties which the person is qualified to perform by knowledge, training and experience;

decline means a development opening driven down from the surface to any level or between any 2 levels in a mine at gradients permitting the use of trackless equipment;

department means the department of the Public Service of the State principally assisting the Minister in the administration of this Act;

deputy in relation to an underground coal mine, means a person who has the immediate supervision of employees and the direction of mining operations under the control of an underground manager, or other officer responsible to the manager;

development in relation to a mining operation, includes all work undertaken to open up a mine by driving development openings or pre-stripping an open-cut body of ore;

development opening or **development heading** in relation to an underground mine, means any drive, cross-cut, tunnel, adit, incline, decline, ramp, winze, rise, or shaft which is driven to provide access and services to underground operations, however excavated;

district inspector means a district inspector of mines appointed under section 17 in accordance with section 18;

Electoral Commissioner means the Electoral Commissioner appointed under the *Electoral Act 1907*;

employee means —

- (a) a person by whom work is done at a mine under a contract of employment; and
- (b) an apprentice who works at a mine;

employee's inspector means an employee's inspector of mines appointed under section 17 in accordance with section 19;

employer means —

- (a) a person who employs an employee at a mine under a contract of employment; and
- (b) in relation to an apprentice, a person who employs the apprentice at a mine under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2;

exploration manager, in relation to particular exploration operations, means a person who is appointed exploration manager for those operations under section 46A;

exploration operations means any exploration activity which is undertaken on a mining tenement, whether offshore or on land, but does not include —

- (a) any development work involving underground operations; or
- (b) the excavation of any trial pits beyond the extent permitted under the tenement conditions; or
- (c) remote sensing activity carried out using airborne or satellite mounted equipment (except for ground based activity in support of such remote sensing activity);

explosives means a substance or article used or manufactured with the purpose of producing a practical effect by explosion or a pyrotechnic effect;

foreman in relation to underground metal mining operations, means a person directly responsible to the underground manager or underground superintendent who has, under the direction of that manager or superintendent, the immediate charge of mining operations and supervisors for designated areas;

hazard in relation to a person, means anything that may result in injury to the person or harm to the health of the person;

hoist means a single undivided drum winding engine driven by a motor or engine having a capacity not exceeding 25 kilowatts;

import means to bring into the State, whether from outside Australia or otherwise;

improvement notice means an improvement notice issued under Part 3 Division 3;

incline means a development opening driven up from any level to the surface or between any 2 levels in a mine at gradients permitting the use of trackless equipment;

inspector means an inspector of mines appointed under this Act or whose appointment under a repealed Act is continued under this Act;

manager in relation to a mine, means the registered manager for the mine;

mine means a place at which mining operations are carried on and, where mining operations are being carried on in conjunction with one another at 2 or more places, those places are to be taken to constitute one mine unless the State mining engineer notifies the principal employer in writing otherwise in accordance with subsection (3); and ***to mine*** includes to carry on any manner or method of mining operations;

mineral does not include natural gas or mineral oil in a free state;

Mines Survey Board means the Mines Survey Board continued in existence for the purposes of this Act by section 82;

Mining Industry Advisory Committee means the committee referred to in section 14A(2) of the *Occupational Safety and Health Act 1984*;

mining operations means any method of working by which the earth or any rock structure, coal seam, stone, fluid, or mineral bearing substance is disturbed, removed, washed, sifted, crushed, leached, roasted, floated, distilled, evaporated, smelted, refined, sintered, pelletized, or dealt with for the purpose of obtaining any mineral or rock from it for commercial purposes or for subsequent use in industry, whether it has been previously disturbed or not, and includes —

- (a) exploration operations; and
- (b) developmental and construction work associated with opening up or operating a mine; and
- (c) the removal and disposal of overburden or waste or residues by mechanical or other means and the stacking, depositing, storage, and treatment of any substance considered to contain any mineral; and
- (d) the operation of blast furnaces and direct reduction furnaces; and
- (e) the operation of privately owned railways to transport ore or other mining products, or to provide related services; and
- (ea) the transport of ore or other mining product that takes place on a road that is not a road as defined in the *Road Traffic Act 1974*; and
- (f) the crushing, screening, sorting, stacking, and loading and handling of ore or other mining products at any rail or road terminal or any loading or transshipment points, including seaports; and
- (g) the operation of any support facilities on the minesite, including mine administration offices, workshops, and services buildings; and
- (h) borefields remote from the minesite but an integral part of the mining operation; and
- (i) operations by means of which salt or other evaporites are harvested; and
- (j) operations by means of which any mineral is recovered from the sea or sea bed or a natural water supply; and
- (k) operation of residential facilities and recreational facilities and the ground used for that purpose, where such facilities are located on a mining tenement and are used solely in connection with mining operations; and

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- (l) the operation of any project which is for the time being declared by the Governor to be a mining operation under section 6; and
- (m) operations undertaken for the environmental rehabilitation of the minesite during production operations and after their completion; and
- (n) operations for the care, security and maintenance of a mine and plant at the mine undertaken during any period when production or development operations at the mine are suspended; and
- (o) operations undertaken to leave a mine safe to be abandoned,

but does not include the operation of —

- (p) steel making plants; or
- (q) rolling mills; or
- (r) facilities for the manufacture of goods from mining products; or
- (s) residential facilities or recreational facilities and the ground used for the purpose where such facilities are not located on a mining tenement and directly associated with mining operations; or
- (t) sand, gravel, limestone, or rock excavation carried on by or for any State agency or instrumentality or any local government for the use or disposition by any such agency, instrumentality or local government; or
- (u) excavation activities on private land by and for the use of the owner of the land;

plan includes a correct copy or tracing of an original or section of a plan;

plant includes machinery, equipment, appliance, implement, or tool and any component or fitting of or accessory to any such article;

practicable means reasonably practicable having regard, where the context permits, to —

- (a) the severity of any potential injury or harm to health that may be involved and the degree of risk of such injury or harm occurring; and
 - (b) the state of knowledge about —
 - (i) the injury or harm to health referred to in paragraph (a); and
 - (ii) the risk of that injury or harm to health occurring; and
 - (iii) means of removing or mitigating the potential injury or harm to health;
- and
- (c) the availability, suitability, and cost of the means referred to in paragraph (b)(iii);

principal employer —

- (a) in relation to a mine (other than a mine where only exploration operations are being carried out), means the employer who is the proprietor, lessee, or occupier of the mine and who has overall control and supervision of the mine, mining operations at the mine and the manager of the mine; and
- (b) in relation to a mine where only exploration operations are being carried out, means the employer who has overall control and supervision of the exploration operations at the mine and the exploration manager appointed for those operations;

prohibition notice means a prohibition notice issued under Part 3 Division 3;

provisional improvement notice means a provisional improvement notice issued under Part 3 Division 4;

quarry or **open cut** or **open pit** means a surface mining operation in which mineral or rock is extracted from the earth by excavating into a natural surface gradient and includes —

- (a) harvesting evaporites;
- (b) strip mining;
- (c) extraction of sand, clay and gravel;
- (d) hydraulic mining; and
- (e) solution mining through bore holes or existing openings within the earth, whether natural or resulting from previous mining;

quarry manager means the person who has, under the general direction and control of the registered manager, the immediate direction and control of the quarry operations of a mine;

quarry operations include activities associated with the extraction of minerals or rock from the open pit but do not include administrative or engineering services or the operation of a treatment plant;

radiation means ionising radiation, that is, electromagnetic or corpuscular radiation capable of producing ions directly or indirectly;

radioactive means spontaneously emitting radiation by nuclear transformation;

receiver includes a receiver and manager;

record book means the record book referred to in section 23;

registered manager means a person who is appointed registered manager of a mine under section 33;

repealed Acts means the *Mines Regulation Act 1946* and the *Coal Mines Regulation Act 1946* repealed by this Act;

rise means a vertical or steeply inclined development opening driven upward from any level in an underground mine;

risk in relation to any injury or harm, means the probability of that injury or harm occurring;

rock means any portion of the earth's crust, whether consolidated or not;

safety and health committee means a safety and health committee established under section 65 or 67A;

safety and health magistrate means a person holding office as a safety and health magistrate under section 51B of the *Occupational Safety and Health Act 1984*;

safety and health representative means a safety and health representative elected under section 56;

self-employed person means an individual who works for gain or reward otherwise than —

- (a) under a contract of employment; or
- (b) as an apprentice,

whether or not the individual is an employer;

senior inspector means a person who is a district inspector and has been appointed by the State mining engineer as the senior inspector responsible for all, or a specified part, of the State;

shaft means —

- (a) a vertical or inclined development opening into or within a mine through which persons and materials are raised and lowered using winding engines and through which services including ventilation may be provided; and
- (b) a vertical or inclined development opening into or within a mine used for ventilation,

but does not include a winze constructed from the surface or an underground level which may be used temporarily for the raising and lowering of persons or materials unless, in the opinion of an inspector, the winze is used as a shaft;

special inspector means a special inspector of mines appointed under section 17 in accordance with section 18;

State coal mining engineer means the State coal mining engineer appointed under section 16;

State mining engineer means the State mining engineer appointed under section 16;

supervisor in relation to underground mining operations or to a quarry, means a person who has the immediate supervision of employees and the direction of mining operations under the control of an underground manager, underground superintendent, quarry manager, or foreman;

supply, in relation to any plant or substance, includes supply and re-supply by way of —

- (a) sale (including by auction), exchange, lease, hire, or hire-purchase, whether as principal or agent;
- (b) the disposal in a manner referred to in paragraph (a) of assets of a business that include any plant or substance; and
- (c) the disposal of all of the shares in a company that owns any plant or substance;

trade union means —

- (a) an organisation registered under section 53 of the *Industrial Relations Act 1979*; or
- (b) an organisation registered under the *Industrial Relations Act 1988* of the Commonwealth and having employees as some or all of its members, or a branch of such an organisation;

Tribunal has the meaning given by section 51G(2) of the *Occupational Safety and Health Act 1984*;

tunnel or **adit** means a horizontal or moderately graded development opening into a mine through which persons and materials are transported and services, including ventilation, are maintained, or any combination of these functions or services is maintained;

underground in relation to mining operations, means any operations beneath the natural surface of the earth which are covered overhead by natural rock or earth, or by any earth, rock, fill, timber, or other material placed in the course of mining

operations, and includes tunnels, drifts, shafts, and winzes that are used in mining operations and are more than 2 metres deep sunk from the surface;

underground manager means the person who has, under the general direction and control of the registered manager, the immediate direction and control of the underground operations of a mine;

underground superintendent means an underground manager or assistant underground manager of a mine, or a section of a mine, to whom the underground foreman or underground supervisor is responsible;

winding engine means any machinery used to raise or lower, by means of a rope or ropes, conveyances in a shaft or winze for the transport of persons, material, or rock but does not include any lifting machine, endless rope haulage or scraper winch installation;

winze means a vertical or steeply inclined development opening sunk downward from any level in an underground mine, or from the surface into a mine;

workmen's inspector means a workmen's inspector of mines appointed under a repealed Act;

workplace in relation to a mine, means a place, whether or not in a vehicle, building, or other structure, where employees or self-employed persons work or are likely to be in the course of their work, but does not include catering, residential, or recreational facilities for employees or self-employed persons except in the case of persons who are employed to service and maintain those facilities.

- (2) Unless the contrary intention appears, a reference in this Act to a mine is to be taken to include a reference to any part of the mine.
- (3) Where mining operations are being carried on in conjunction with one another at 2 or more places, the State mining engineer may notify the principal employer in writing that each of those

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places or such of those places as are specified in the notice are to be regarded as separate mines for the purposes of this Act.

- (4) For the purposes of sections 8B(2), 9A(2), 10A(2), 12A(2), 12C(2), 13A(2), 15(2), 15E(2), 99A(2)(a)(iv) and 100A(2)(a)(iii) a contravention causes serious harm to a person if it causes any bodily injury to the person, or causes the person to have a disease, of such a nature as to —
- (a) endanger, or be likely to endanger, the person's life; or
 - (b) result, or be likely to result, in permanent injury or harm to the person's health.

[Section 4 amended by No. 30 of 1995 s. 53 and 76(1); No. 79 of 1995 s. 67(4); No. 14 of 1996 s. 4; No. 16 of 2002 s. 3; No. 7 of 2004 s. 70; No. 51 of 2004 s. 115(2); No. 68 of 2004 s. 14, 49, 73, 80 and 88; No. 16 of 2008 s. 4; No. 44 of 2008 s. 55.]

4A. Penalty levels defined

- (1) Where a person is liable to a level one penalty for an offence against this Act the person is liable —
- (a) if the offence was committed by the person as an employee —
 - (i) for a first offence, to a fine of \$5 000; and
 - (ii) for a subsequent offence, to a fine of \$6 250;
 - (b) if paragraph (a) does not apply —
 - (i) in the case of an individual —
 - (I) for a first offence, to a fine of \$25 000; and
 - (II) for a subsequent offence, to a fine of \$31 250;
 - or
 - (ii) in the case of a corporation —
 - (I) for a first offence, to a fine of \$50 000; and

- (II) for a subsequent offence, to a fine of \$62 500.
- (2) Where a person is liable to a level 2 penalty for an offence against this Act the person is liable —
- (a) in the case of an individual —
 - (i) for a first offence, to a fine of \$100 000; and
 - (ii) for a subsequent offence, to a fine of \$125 000;or
 - (b) in the case of a corporation —
 - (i) for a first offence, to a fine of \$200 000; and
 - (ii) for a subsequent offence, to a fine of \$250 000.
- (3) Where a person is liable to a level 3 penalty for an offence against this Act the person is liable —
- (a) in the case of an individual —
 - (i) for a first offence, to a fine of \$200 000; and
 - (ii) for a subsequent offence, to a fine of \$250 000;or
 - (b) in the case of a corporation —
 - (i) for a first offence, to a fine of \$400 000; and
 - (ii) for a subsequent offence, to a fine of \$500 000.
- (4) Where a person is liable to a level 4 penalty for an offence against this Act the person is liable —
- (a) in the case of an individual —
 - (i) for a first offence, to a fine of \$250 000 and imprisonment for 2 years; and
 - (ii) for a subsequent offence, to a fine of \$312 500 and imprisonment for 2 years;or
 - (b) in the case of a corporation —

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- (i) for a first offence, to a fine of \$500 000; and
- (ii) for a subsequent offence, to a fine of \$625 000.

[Section 4A inserted by No. 68 of 2004 s. 15.]

4B. Meaning of “first offence” and “subsequent offence”

- (1) In this section —

relevant day means the day on which section 15 of the *Mines Safety and Inspection Amendment Act 2004* comes into operation.

- (2) For the purposes of this Act —

- (a) an offence is a first offence committed by a person if, at the time when the offence is committed, the person has not previously been convicted of any offence against this Act committed on or after the relevant day; and
- (b) an offence is a subsequent offence committed by a person if, at the time when the offence is committed, the person has previously been convicted of one or more offences against this Act committed on or after the relevant day.

[Section 4B inserted by No. 68 of 2004 s. 15.]

5. Crown bound

This Act binds the Crown.

6. Application to certain excavations, shafts, or tunnels

- (1) The Governor may, by order published in the *Gazette*, declare any surface or underground excavation, shaft, or tunnel constructed for purposes other than those set out in the definition of “mining operations” in section 4(1) to be deemed a mining operation for the purposes of this Act during any period of the construction of the excavation, shaft or tunnel.

- (2) In an order published under subsection (1), the Governor may exempt the excavation, shaft, or tunnel from such provisions of this Act as are specified in the order and may prescribe conditions under which the project is to be carried on.
- (3) This Act applies to an excavation, shaft, or tunnel referred to in an order under subsection (1) subject to the terms of that order.

6A. Application of this Act to a workplace under the Occupational Safety and Health Act 1984

- (1) In this section —
specified means specified in an instrument under this section;
workplace has the meaning given by the *Occupational Safety and Health Act 1984*.
- (2) The Minister and the Minister for the time being administering the *Occupational Safety and Health Act 1984* may, by instrument in writing, jointly declare that for a specified period —
 - (a) this Act; or
 - (b) any specified provision of this Act,applies, to the exclusion of any inconsistent provision of the *Occupational Safety and Health Act 1984*, to or in relation to —
 - (c) a specified workplace, or a specified part of a workplace, as if it were a mine or a part of a mine;
 - (d) a specified activity as if it were a mining operation; and
 - (e) a specified act, matter or thing as if it were an act, matter or thing to which this Act applies.
- (3) The reference in subsection (2) to any inconsistent provision of the *Occupational Safety and Health Act 1984* does not include any provision of Part II of that Act.
- (4) An instrument under this section may contain provisions of a savings or transitional nature in relation to the application of this

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Act or the *Occupational Safety and Health Act 1984* to any person, activity, matter or thing.

- (5) An instrument under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

[Section 6A inserted by No. 68 of 2004 s. 89.]

7. Relationship with other Acts

- (1) If a provision of this Act is inconsistent with a provision of the *Radiation Safety Act 1975*, the latter provision prevails to the extent of the inconsistency.

- (2) This Act does not apply to or in relation to a railway to which the *Rail Safety Act 1998* applies or to the ownership or operation of such a railway.

[Section 7 amended by No. 32 of 1998 s. 64(2).]

8. Power to exempt

- (1) The Governor may by order published in the *Gazette* exempt a mine or class of mine from all or any of the provisions of this Act for such period as is specified in the order and may by further order so published revoke or amend such an order.
- (2) The Governor may specify in the order any conditions to which the exemption is to be subject and if any of those conditions is not complied with, the order ceases to have effect.
- (3) Section 42 of the *Interpretation Act 1984* applies to an order made under this section as if that order were regulations within the meaning of that section of that Act, except that the reference in section 42(1) of that Act to 6 sitting days is for the purposes of this section to be construed as a reference to 9 sitting days.

Part 2 — General duties relating to occupational safety and health

[Heading amended by No. 30 of 1995 s. 76(1).]

Division 1 — Preliminary

[Heading inserted by No. 68 of 2004 s. 17.]

8A. General and particular duties

- (1) A duty imposed on a person under this Part —
 - (a) does not affect the application of any other more specific duty imposed on that person under this Act; and
 - (b) applies despite any other more specific duty imposed on that person under this Act.
- (2) Subsection (1) has effect subject to section 101A.

[Section 8A inserted by No. 68 of 2004 s. 17.]

8B. Meaning of gross negligence in relation to certain breaches of this Part

- (1) This section applies to a contravention of section 9(1), 10(1) or (3), 12(1) or (2), 12B(2), 13, 14(1), (2), (3) or (4) or 15D(2).
- (2) For the purposes of this Part, a contravention of a provision mentioned in subsection (1) is committed in circumstances of gross negligence if —
 - (a) the offender —
 - (i) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty is owed under that provision; but
 - (ii) acted or failed to act in disregard of that likelihood;and

- (b) the contravention did in fact cause the death of, or serious harm to, such a person.

[Section 8B inserted by No. 68 of 2004 s. 17.]

Division 2 — General duties

[Heading inserted by No. 68 of 2004 s. 5.]

9. Duties of employers

- (1) An employer must, so far as is practicable, provide and maintain at a mine a working environment in which that employer's employees are not exposed to hazards and, in particular, but without limiting the generality of that general obligation, an employer must —
 - (a) provide and maintain workplaces, plant, and systems of work of a kind that, so far as is practicable, the employer's employees are not exposed to hazards; and
 - (b) provide such information, instructions and training to and supervision of employees as is necessary to enable them to perform their work in such a manner that they are not exposed to hazards; and
 - (c) consult and cooperate with safety and health representatives, if any, and other employees at the mine where that employer's employees work, regarding occupational safety and health at the mine; and
 - (d) where it is not practicable to avoid the presence of hazards at the mine, provide employees with, or otherwise provide for the employees to have, such adequate personal protective clothing and equipment as is practicable to protect them against those hazards, without any cost to the employees; and
 - (e) make arrangements for ensuring, so far as is practicable, that —
 - (i) the use, cleaning, maintenance, transportation, and disposal of plant; and

- (ii) the use, handling, processing, storage, transportation, and disposal of substances, at the mine is carried out in such a manner that that employer's employees are not exposed to hazards.
- (2) In determining the training required to be provided in accordance with subsection (1)(b), regard must be had to the functions performed by employees and the capacities in which they are employed.

[(3)-(4) deleted]

- (5) The duties imposed under subsection (1) on an employer who is the principal employer at a mine are not taken to be carried out only by the appointment of a manager for the mine.
- (6) Notwithstanding subsection (1), any duty imposed under that subsection on an employer who is not the principal employer at the mine applies only in relation to matters over which the employer who is not the principal employer has control, or but for an agreement between the 2 employers, would have had control.

[Section 9 amended by No. 30 of 1995 s. 54 and 76(2) and (4); No. 68 of 2004 s. 6 and 18.]

9A. Breaches of section 9(1)

- (1) If an employer contravenes section 9(1) in circumstances of gross negligence, the employer commits an offence and is liable to a level 4 penalty.
 - (2) If —
 - (a) an employer —
 - (i) contravenes section 9(1); and
 - (ii) by the contravention causes the death of, or serious harm to, an employee;
- and

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- (b) subsection (1) does not apply,
the employer commits an offence and is liable to a level 3 penalty.
- (3) If —
 - (a) an employer contravenes section 9(1); and
 - (b) neither subsection (1) nor subsection (2) applies,the employer commits an offence and is liable to a level 2 penalty.
- (4) An employer charged with an offence under —
 - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

[Section 9A inserted by No. 68 of 2004 s. 19.]

10. Duties of employees

- (1) An employee at a mine must take reasonable care —
 - (a) to ensure his or her own safety and health at work; and
 - (b) to avoid adversely affecting the safety or health of any other person through any act or omission at work.
- (2) Without limiting the generality of subsection (1), an employee contravenes that subsection if that employee —
 - (a) fails to comply, so far as the employee is reasonably able, with instructions given by that employee's employer or the manager of the mine for the employee's own safety or health or for the safety or health of other persons; or
 - (b) fails to use such protective clothing and equipment as is provided, or provided for, by the employer as mentioned

- in section 9(1)(d) in a manner in which the employee has been properly instructed to use it; or
- (c) misuses or damages any equipment provided in the interests of safety or health; or
 - (d) being an underground worker, fails on leaving work at the end of a shift to report to the person in immediate authority over that employee and, where practicable, the person relieving that employee, on the state of that part of the works where the employee has been working.
- (3) An employee must cooperate with his or her employer and the manager of the mine in the carrying out by those persons of the obligations imposed on those persons under this Act.

[Section 10 amended by No. 30 of 1995 s. 55 and 76(1), (3) and (4); No. 68 of 2004 s. 20.]

10A. Breaches of section 10(1) or (3)

- (1) If an employee contravenes section 10(1) or (3) in circumstances of gross negligence, the employee commits an offence and is liable —
 - (a) for a first offence, to a fine of \$25 000; and
 - (b) for a subsequent offence, to a fine of \$31 250.
 - (2) If —
 - (a) an employee —
 - (i) contravenes section 10(1) or (3); and
 - (ii) by the contravention causes the death of, or serious harm to, a person;
 - and
 - (b) subsection (1) does not apply,
- the employee commits an offence and is liable —
- (c) for a first offence, to a fine of \$20 000; and
 - (d) for a subsequent offence, to a fine of \$25 000.

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- (3) If —
- (a) an employee contravenes section 10(1) or (3); and
 - (b) neither subsection (1) nor subsection (2) applies,
- the employee commits an offence and is liable —
- (c) for a first offence, to a fine of \$10 000; and
 - (d) for a subsequent offence, to a fine of \$12 500.
- (4) An employee charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

[Section 10A inserted by No. 68 of 2004 s. 21.]

11. Reporting of dangerous situations or occurrences

- (1) Every person working in a mine must report immediately to the person in immediate authority over that person —
- (a) any potentially serious occurrence that arises in the course of or in connection with that person's work; and
 - (b) any situation at the mine that the person has reason to believe could constitute a hazard to any person,
- and a person receiving a report under this subsection must convey the information in that report immediately to the manager of the mine or to a person designated for the purpose by the manager.
- (2) If a person who is required by subsection (1) to make a report does not have a person in immediate authority over that person, the report must be made to the manager of the mine.
- (3) Every person working at a mine must, unless a similar report has to his or her knowledge already been made, report immediately to the manager of the mine any injury or harm to

health suffered by any other person in connection with work at the mine.

- (4) A person who contravenes subsection (1), (2) or (3) commits an offence and is liable to a fine of \$10 000.

11A. Duty of manager to inform person who makes a report under section 11

- (1) Where a report is made under section 11(1)(a) or (b) or (3) in relation to a mine, the manager of the mine must, within a reasonable time after the report is received by him or her —
- (a) investigate the occurrence, situation, injury or harm that was reported;
 - (b) determine the action, if any, that the manager intends to take in respect of the matter; and
 - (c) notify the person who made the report of the determination so made.
- (2) A manager who contravenes subsection (1) commits an offence.
[Section 11A inserted by No. 68 of 2004 s. 7.]

12. Duties of employers and self-employed persons

- (1) A self-employed person working at a mine must take reasonable care to ensure his or her own safety and health at work.
- (2) An employer or self-employed person at a mine must, so far as is practicable, ensure that the safety or health of a person, not being (in the case of an employer) an employee of the employer, is not adversely affected wholly or in part as a result of —
- (a) work that has been or is being undertaken by —
 - (i) the employer or any employee of the employer;
or
 - (ii) the self-employed person;
- or

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- (b) any hazard that arises from or is increased by —
 - (i) the work referred to in paragraph (a); or
 - (ii) the system of work that has been or is being operated by the employer or the self-employed person.

[Section 12 amended by No. 30 of 1995 s. 56 and 76(4); No. 68 of 2004 s. 8 and 22.]

12A. Breaches of section 12

- (1) If an employer or a self-employed person contravenes section 12(1) or (2) in circumstances of gross negligence, the employer or the self-employed person commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) an employer or self-employed person —
 - (i) contravenes section 12(1) or (2); and
 - (ii) by the contravention causes the death of, or serious harm to, a person;
 - and
 - (b) subsection (1) does not apply,the employer or self-employed person commits an offence and is liable to a level 3 penalty.
- (3) If —
 - (a) an employer or self-employed person contravenes section 12(1) or (2); and
 - (b) neither subsection (1) nor subsection (2) applies,the employer or self-employed person commits an offence and is liable to a level 2 penalty.

- (4) An employer or self-employed person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

[Section 12A inserted by No. 68 of 2004 s. 23.]

12B. Duties placed on corporation to which section 15A, 15B or 15C applies

- (1) If section 15A, 15B or 15C makes any other provision of this Act apply to a corporation as if it were the employer of a particular person, this section and section 12C apply to the corporation at such times as the other provision is made to apply.
- (2) A corporation to which this section applies that carries on operations at a mine must, so far as is practicable, ensure that the safety or health of a person is not adversely affected wholly or in part as a result of —
- (a) work that has been or is being undertaken by —
 - (i) the corporation; or
 - (ii) a person carrying out work under the direction of the corporation;
- or
- (b) any hazard that arises from or is increased by —
 - (i) the work referred to in paragraph (a); or
 - (ii) the system of work that has been or is being operated by the corporation.

[Section 12B inserted by No. 68 of 2004 s. 9.]

12C. Breaches of section 12B

- (1) If a corporation contravenes section 12B(2) in circumstances of gross negligence, the corporation commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) a corporation —
 - (i) contravenes section 12B(2); and
 - (ii) by the contravention causes the death of, or serious harm to, a person;
 - and
 - (b) subsection (1) does not apply,the corporation commits an offence and is liable to a level 3 penalty.
- (3) If —
 - (a) a corporation contravenes section 12B(2); and
 - (b) neither subsection (1) nor subsection (2) applies,the corporation commits an offence and is liable to a level 2 penalty.
- (4) A corporation charged with an offence under —
 - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

[Section 12C inserted by No. 68 of 2004 s. 9.]

13. Duties of principal employers and managers

The principal employer at and the manager of a mine must take such measures as are practicable to ensure that the mine and the means of access to and egress from the mine are such that

persons who are at the mine, or use the means of access to or egress from the mine, are not exposed to hazards.

[Section 13 amended by No. 30 of 1995 s. 57; No. 68 of 2004 s. 24.]

13A. Breaches of section 13

- (1) If a person contravenes section 13 in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.
- (2) If —
 - (a) a person —
 - (i) contravenes section 13; and
 - (ii) by the contravention causes the death of, or serious harm to, a person —
 - (I) who is at; or
 - (II) who is using the means of access to or egress from,
the workplace;
 - (b) subsection (1) does not apply,the person commits an offence and is liable to a level 3 penalty.
- (3) If —
 - (a) a person contravenes section 13; and
 - (b) neither subsection (1) nor subsection (2) applies,the person commits an offence and is liable to a level 2 penalty.
- (4) A person charged with an offence under —
 - (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or

- (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

[Section 13A inserted by No. 68 of 2004 s. 25.]

14. Duties of manufacturers etc.

- (1) A person who designs, manufactures, imports or supplies any plant for use at a mine must, so far as is practicable —
 - (a) ensure that the design and construction of the plant is such that persons who properly install, maintain or use the plant are not, in doing so, exposed to hazards; and
 - (b) test and examine, or arrange for the testing and examination of, the plant so as to ensure that its design and construction are as mentioned in paragraph (a); and
 - (c) ensure that adequate information in respect of —
 - (i) any dangers associated with the plant; and
 - (ii) the specifications of the plant and the data obtained on the testing of the plant as mentioned in paragraph (b); and
 - (iii) the conditions necessary to ensure that persons properly using the plant are not, in doing so, exposed to hazards; and
 - (iv) the proper maintenance of the plant,is provided when the plant is supplied, and subsequently whenever requested.
- (2) A person who erects or installs any plant for use at a mine must, so far as is practicable, ensure that it is so erected or installed that persons who properly use the plant are not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.
- (3) A person who designs or constructs any building or structure, including a temporary structure, for use at a mine must, so far as

is practicable, ensure that the design and construction of the building or structure is such that —

- (a) persons who properly construct, maintain, repair or service the building or structure; and
 - (b) persons who properly use the building or structure, are not, in doing so, exposed to hazards.
- (4) A person who manufactures, imports, or supplies any substance for use at a mine must, so far as is practicable, ensure that adequate toxicological data in respect of the substance and such other data as is relevant to the safe use, handling, processing, storage, transportation, and disposal of the substance is provided when the substance is supplied, and subsequently whenever requested.

[Section 14 amended by No. 30 of 1995 s. 58; No. 68 of 2004 s. 26.]

15. Breaches of section 14

- (1) If a person contravenes section 14(1), (2), (3) or (4) in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.
- (2) If —
- (a) a person —
 - (i) contravenes section 14(1), (2), (3) or (4); and
 - (ii) by the contravention causes the death of, or serious harm to, a person to whom a duty is owed under that subsection;
- and
- (b) subsection (1) does not apply,
- the person commits an offence and is liable to a level 3 penalty.
- (3) If —
- (a) a person contravenes section 14(1), (2), (3) or (4); and

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- (b) neither subsection (1) nor subsection (2) applies,
the person commits an offence and is liable to a level 2 penalty.
- (4) A person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
- (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

[Section 15 inserted by No. 68 of 2004 s. 27.]

Division 3 — Certain workplace situations to be treated as employment

[Heading inserted by No. 68 of 2004 s. 10.]

15A. Contract work arrangements

- (1) This section applies where a person (the *principal*) in the course of mining operations engages a contractor (the *contractor*) to carry out work for the principal.
- (2) Where this section applies, sections 9 and 9A have effect —
- (a) as if the principal were the employer of —
- (i) the contractor; and
- (ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned,
- in relation to matters over which the principal has the capacity to exercise control; and
- (b) as if —
- (i) the contractor; and

- (ii) any person referred to in paragraph (a)(ii),
were employees of the principal in relation to matters
over which the principal has the capacity to exercise
control.
- (3) Where this section applies, the further duties referred to in
subsection (4) apply, and sections 10A and 15E have effect —
- (a) as if the principal were the employer of —
- (i) the contractor; and
- (ii) any person employed or engaged by the
contractor to carry out or assist in carrying out
the work concerned;
- and
- (b) as if —
- (i) the contractor; and
- (ii) any person referred to in paragraph (a)(ii),
were employees of the principal.
- (4) The further duties mentioned in subsection (3) are —
- (a) the duties of an employee under section 10; and
- (b) the duties of an employer under section 15D(2).
- (5) An agreement or arrangement is void for the purposes of this
section if it purports to give control to —
- (a) a contractor; or
- (b) a person referred to in subsection (2)(a)(ii),
- of any matter that —
- (c) comes within section 9 or 15D(2); and
- (d) is a matter over which the principal has the capacity to
exercise control,
- but this subsection does not prevent the making of a written
agreement as mentioned in section 15D(3).

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- (6) A purported waiver by a contractor of a right that arises directly or indirectly under this section is void.
- (7) Nothing in this section derogates from —
 - (a) the duties of the principal to the contractor; or
 - (b) the duties of the contractor to any person employed or engaged by the contractor.

[Section 15A inserted by No. 68 of 2004 s. 10; amended by No. 16 of 2008 s. 5.]

15B. Labour arrangements in general

- (1) This section applies where —
 - (a) a person (the *worker*) for remuneration carries out work for another person (the *person mentioned in subsection (1)(a)*) in the course of mining operations;
 - (b) that person has the power of direction and control in respect of the work in a similar manner to the power of an employer under a contract of employment;
 - (c) there is no contract of employment between the worker and that person; and
 - (d) neither section 15A nor section 15C applies.
- (2) Where this section applies, sections 9 and 9A have effect as if —
 - (a) the person mentioned in subsection (1)(a) were the employer of the worker; and
 - (b) the worker were the employee of that person,in relation to any matter that —
 - (c) comes within section 9; and
 - (d) is a matter over which that person has the capacity to exercise control.

- (3) Where this section applies, sections 10 and 10A have effect as if —
- (a) the person mentioned in subsection (1)(a) were the employer of the worker; and
 - (b) the worker were the employee of that person.
- (4) An agreement or arrangement is void for the purposes of this section to the extent that it purports to give control to the worker of any matter that —
- (a) comes within section 9; and
 - (b) is a matter over which the person mentioned in subsection (1)(a) has the capacity to exercise control.
- (5) This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing.
- (6) A purported waiver by a worker of a right that arises directly or indirectly under this section is void.

[Section 15B inserted by No. 68 of 2004 s. 10; amended by No. 16 of 2008 s. 6.]

15C. Labour hire arrangements

- (1) In this section —
- agent** —
- (a) means a person who carries on a business of providing workers to carry out work for clients of the person; and
 - (b) includes a group training organisation as defined in section 7(1) of the *Industrial Relations Act 1979*;
- worker** includes an employee or a contractor.
- (2) This section applies where, under a labour hire arrangement, work is carried out for remuneration by a worker for a client of an agent (the **client**) in the course of mining operations carried on by the client.

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- (3) A labour hire arrangement exists where —
- (a) an agent has for remuneration agreed with the client to provide a worker to carry out work for the client;
 - (b) there is no contract of employment between the worker and the client in relation to the work;
 - (c) there is an agreement (which may be a contract of employment) between the worker and the agent as to the carrying out of work including in respect of remuneration and other entitlements; and
 - (d) that agreement applies to the carrying out of the work by the worker for the client.
- (4) Where this section applies, sections 9 and 9A have effect as if —
- (a) each of the agent and the client were the employer of the worker; and
 - (b) the worker were an employee of each of the agent and the client,
- in relation to any matter that —
- (c) comes within section 9; and
 - (d) as regards —
 - (i) the agent, is a matter over which the agent has the capacity to exercise control; or
 - (ii) the client, is a matter over which the client has the capacity to exercise control.
- (5) Where this section applies, sections 10 and 10A have effect as if —
- (a) each of the agent and the client were the employer of the worker; and
 - (b) the worker were an employee of each of the agent and the client.

- (6) This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing.
- (7) A purported waiver by a worker of a right that arises directly or indirectly under this section is void.

[Section 15C inserted by No. 68 of 2004 s. 10; amended by No. 16 of 2008 s. 7.]

Division 4 — Other duties

[Heading inserted by No. 68 of 2004 s. 10.]

15D. Duty of employer in respect of certain residential accommodation

- (1) In this section —
- residential premises*** —
- (a) means residential premises that are situated outside —
 - (i) a townsite within the meaning in section 26(1) of the *Land Administration Act 1997*; and
 - (ii) the metropolitan region as defined in the *Planning and Development Act 2005*;and
 - (b) includes land and outbuildings that are intended to be used in connection with the occupation of the premises; but
 - (c) does not include any premises that come within paragraph (k) of the definition of “mining operations” in section 4(1).
- (2) Where —
- (a) an employee who is employed in mining operations occupies residential premises that are owned by or under the control of the employee’s employer; and

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- (b) the occupancy is necessary for the purposes of the employment because other accommodation is not reasonably available in the area concerned,

the employer must, so far as is practicable, maintain the premises so that the employee occupying the premises is not exposed to hazards at the premises.

- (3) Subsection (2) does not apply if the occupancy is pursuant to a written agreement containing terms that might reasonably be expected to apply to a letting of the residential premises to a tenant.

[Section 15D inserted by No. 68 of 2004 s. 10; amended by No. 38 of 2005 s. 15.]

15E. Breaches of section 15D

- (1) If an employer contravenes section 15D(2) in circumstances of gross negligence, the employer commits an offence and is liable to a level 4 penalty.

- (2) If —

- (a) an employer —

- (i) contravenes section 15D(2); and
(ii) by the contravention causes the death of, or serious harm to, an employee occupying premises as mentioned in that section;

and

- (b) subsection (1) does not apply,

the employer commits an offence and is liable to a level 3 penalty.

- (3) If —

- (a) an employer contravenes section 15D(2); and

- (b) neither subsection (1) nor subsection (2) applies, the employer commits an offence and is liable to a level 2 penalty.
- (4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence if the person proves that the death or serious harm, as the case may be, would not have occurred if the employee had taken reasonable care to ensure the employee's own safety and health at the premises concerned.
- (5) An employer charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

[Section 15E inserted by No. 68 of 2004 s. 10.]

15F. Notification of hazard to the principal employer and manager

- (1) In this section —
mine includes the means of access to and egress from a mine.
- (2) If —
- (a) the employer of any employee; or
 - (b) a self-employed person carrying out work,
- at a mine becomes of the opinion that —
- (c) a situation exists at the mine that could constitute a hazard to any person;
 - (d) the hazard is one that the principal employer at, and the manager of, the mine have a duty to remedy under section 13; and

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- (e) the situation has not come to the attention of either of those persons,

the employer or self-employed person must, so far as it is reasonably practicable to do so, give notice of the situation to either the principal employer or the manager.

- (3) A notice under subsection (2) must be given as soon as is reasonably practicable after the employer or self-employed person becomes of the opinion mentioned in that subsection.
- (4) An employer or self-employed person who fails to comply with subsection (2) commits an offence.

[Section 15F inserted by No. 68 of 2004 s. 10.]

Part 3 — Administration of Act

Division 1 — Inspectors of mines

16. State mining engineer and State coal mining engineer

- (1) A person shall be appointed under and subject to the *Public Sector Management Act 1994* to be the State mining engineer.
- (2) A person shall be appointed under and subject to the *Public Sector Management Act 1994* to be the State coal mining engineer.
- (3) To be eligible for appointment as the State mining engineer or the State coal mining engineer, a person must hold a first class mine manager's certificate of competency.
- (4) The State mining engineer, the State coal mining engineer, and the deputy State mining engineer have the powers conferred on an inspector by Division 2.
- (5) The State mining engineer may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing delegate to any person any power or duty conferred or imposed on the State mining engineer under this Act other than this power of delegation.
- (6) Any act or thing done by a delegate under a delegation under this section has the same force and effect as if it had been done by the State mining engineer.
- (7) Subject to the control and direction of the State mining engineer, the State coal mining engineer is responsible for the administration of this Act and the regulations in relation to coal mines and has the control and direction of inspectors engaged in matters relating to coal mines.

17. Appointment of inspectors of mines

- (1) The Minister may appoint suitable persons to be inspectors of mines.
- (2) There are to be 3 categories of inspectors, namely, district inspectors, special inspectors, and employee's inspectors.
- (3) Subject to section 16(7), inspectors are subject to the control and direction of the State mining engineer and are to act in such areas of the State as the State mining engineer directs.

18. District and special inspectors

- (1) District and special inspectors, including district inspectors who are senior inspectors or hold administrative positions in the inspectorate structure of the department, are to be appointed under and subject to the *Public Sector Management Act 1994*.
- (2) To be eligible for appointment as a district inspector, a person must hold a first class mine manager's certificate of competency.
- (3) Special inspectors may be appointed for the purpose of making inspections, inquiries, and investigations that require technical or scientific training or knowledge as directed by the State mining engineer.
- (4) Notwithstanding subsection (1), persons who are employed elsewhere in the Public Service or otherwise in the public sector may, with the approval of the Minister concerned, be appointed as special inspectors; and persons so appointed may continue to be employed on the terms appropriate to the agency or authority from which they are seconded.

19. Employee's inspectors

- (1) Employee's inspectors are to be appointed following their election in accordance with the regulations by a majority of persons who are employed at the mines in the regions designated for the purpose by the State mining engineer and who exercise their vote.

- (2) To be eligible for appointment as an employee's inspector, a person must hold a certificate of competency as an underground supervisor or, in relation to underground coal mines, a deputy and have been engaged in general practical underground mining work as a working miner for not less than 5 years, but the State mining engineer may, in respect of a particular sector of the mining industry or a particular region of the State and in special circumstances, accept the eligibility of persons with lesser qualifications or experience.
- (3) Every employee's inspector is to be appointed for a term of not more than 4 years and employed on such terms and conditions as are determined by the Minister after consultation with the Minister for Public Sector Management.
- (4) An employee's inspector is eligible for reappointment following re-election.
- (5) An employee's inspector may be removed from office by the Minister on the grounds of misconduct, neglect of duty or incompetence.

20. Assistant inspectors

- (1) The Minister may appoint eligible persons to be assistant inspectors of mines.
- (2) A person is eligible to be appointed as an assistant inspector of mines if that person has served not less than 12 years in total as an employee's inspector or a workmen's inspector.
- (3) An assistant inspector is to be employed on such terms and conditions as are determined by the Minister after consultation with the Minister for Public Sector Management.

Division 2 — Inspections

20A. Extended meaning of “employer” and “employee”

In this Division —

employer and *employee* include a person taken to be an employer and an employee respectively by operation of section 15A, 15B or 15C.

[Section 20A inserted by No. 68 of 2004 s. 11.]

21. Powers of inspectors

- (1) A district inspector or special inspector may, for the purposes of this Act —
 - (a) at all times of the day or night, enter, inspect, and examine any mine and examine any plant, substance, or other thing whatsoever at the mine (but must do so in such a manner as not unnecessarily to impede or obstruct the working of the mine);
 - (b) when entering a mine, take with the inspector such equipment and materials as the inspector considers appropriate;
 - (c) conduct such examination and inquiry as the inspector considers necessary to ascertain whether the provisions of this Act have been and are being complied with in respect of a mine or a mining operation;
 - (ca) provide information to any person for the purpose of facilitating compliance with this Act;
 - (d) take and remove samples of any substance or thing whatsoever at a mine without paying for them;
 - (e) take possession of any plant or thing for further examination or testing or for use as evidence;
 - (f) take photographs and measurements, and make sketches and recordings;

- (g) require the production of, examine, and take copies of or extracts from, any document;
- (h) require that the mine, or any part of it, be left undisturbed for as long as is specified in the requirement;
- (i) in accordance with subsections (1a) and (1b), interview any person who the district inspector or special inspector (the *inspector*) has reasonable grounds to believe —
 - (i) is, or was at any time during the preceding 3 years —
 - (I) an employee working at a mine; or
 - (II) an employee occupying residential premises mentioned in section 15D(2), in relation to which the inspector is inquiring;
 - (ii) was at such a mine or such residential premises at a time that is relevant to a matter about which the inspector is inquiring; or
 - (iii) may otherwise be able to provide information relevant to a matter about which the inspector is inquiring;
- (ia) require the attendance of any person for an interview under paragraph (i);
- (j) require any person whom the inspector interviews under paragraph (i) to answer any question put to that person and, if the inspector considers it appropriate, to verify any such answer by statutory declaration;
- (k) require any person to state his or her name and address;
- (l) require the employer or the manager or any person who works at a mine to give such assistance to the inspector as the inspector considers necessary for the performance of the inspector's functions under this Act;
- (m) initiate and conduct prosecutions of persons for offences under this Act;

- (n) obtain written statements from potential witnesses, and appear at inquiries held regarding mining accidents, and at inquests and call and examine witnesses and cross-examine witnesses;
 - (o) exercise such other powers as are conferred on an inspector by the regulations or as may be necessary for the performance of the inspector's functions under this Act and for carrying this Act into effect.
- (1a) An interview referred to in subsection (1)(i) is to be conducted in private if —
- (a) the inspector considers that to be appropriate; or
 - (b) the person to be interviewed so requests,
- but this subsection does not limit the operation of subsection (3).
- (1b) Subsection (1a) may be invoked during an interview by —
- (a) the inspector; or
 - (b) the person being interviewed,
- in which case that subsection applies to the remainder of the interview.
- (2) An employee's inspector or an assistant inspector may, for the purposes of this Act —
- (a) exercise any of the powers conferred on a district inspector by subsection (1) except for those conferred by paragraphs (m) and (n) of that subsection;
 - (b) with the authority of the State mining engineer, initiate and conduct prosecutions of persons for offences under this Act;
 - (c) if a district inspector so directs, obtain written statements from potential witnesses, and appear at inquiries held regarding mining accidents, and at inquests and call and examine witnesses and cross-examine witnesses.

- (3) In exercising any power under this Act, an inspector or an assistant inspector may be accompanied by any other person whose assistance the inspector or assistant inspector considers necessary, and that person may do such things as are necessary to assist the inspector or assistant inspector in the performance of his or her functions, and anything so done is deemed to have been done by the inspector or assistant inspector, as the case may require.
- (4) Where a district inspector, special inspector, employee's inspector, or assistant inspector intends to inspect and examine a mine under the powers conferred by this section, the inspector or assistant inspector must, where practicable on entering the mine, give notice of his or her intention to do so, either to the principal employer or to the manager, or in their absence to another responsible person.
- (5) A person to whom an inspector or assistant inspector has given notice under subsection (4) of intention to inspect and examine a mine must, where practicable, immediately notify the safety and health representative of that mine of that intention, or if there is more than one safety and health representative for that mine, such of them as have functions relevant to the matter or area with which the inspector or assistant inspector is concerned.
- Penalty: \$25 000 in the case of a corporation and \$5 000 in the case of an individual.
- (5a) In subsection (5) —
the safety and health representative of that mine includes a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine.
- (6) For the purposes of this section a mine is to be taken to include —
- (a) a workplace that relates to but is not a mine or part of a mine; and

- (b) in relation to a particular mine, residential premises that an employer at the mine is or was under a duty to maintain by virtue of section 15D(2).

[Section 21 amended by No. 30 of 1995 s. 76(4); No. 68 of 2004 s. 12, 50 and 90.]

[22. Deleted by No. 68 of 2004 s. 74.]

23. Notice of result of inspection

- (1) After inspecting a mine, an inspector or assistant inspector must —
 - (a) enter in a record book approved for the purpose by the State mining engineer and kept at the mine or, in the case of exploration operations, such other place as is prescribed, a record of —
 - (i) the parts of the mine inspected by that inspector or assistant inspector; and
 - (ii) the nature of the inspection; and
 - (iii) every defect which the inspector or assistant inspector observed in the state and condition of the mine and the plant;
 - and
 - (b) notify the person to whom notice was given under section 21(4) and, where practicable, any safety and health representative or safety and health committee concerned, of any action the inspector or assistant inspector has taken and any further action the inspector or assistant inspector requires to be taken in relation to the mine as a result of the inspection.
- (2) The record book referred to in subsection (1) is to be open at all reasonable times to the examination of —
 - (a) an inspector or assistant inspector; and
 - (b) every person working at the mine; and

(c) every other person authorised in writing by the State mining engineer.

- (3) Where it is not practicable for an inspector or assistant inspector to notify any safety and health representative or safety and health committee concerned of the results of an inspection in accordance with subsection (1)(b), the person to whom notice was given under section 21(4) must bring the entry in the record book to the attention of the safety and health representative or safety and health committee concerned.

Penalty: \$25 000 in the case of a corporation and \$5 000 in the case of an individual.

[Section 23 amended by No. 30 of 1995 s. 76(4); No. 68 of 2004 s. 75.]

24. Inspector must inquire into complaints

- (1) A person working at a mine may complain to an inspector about anything which an inspector is under a duty to report on or remedy.
- (2) An inspector must inquire into any complaint made under subsection (1) and take such steps as the inspector considers necessary to investigate the matter, but the name of the person who complained is not to be disclosed.

25. Liaison between employee's inspectors and safety and health representatives

- (1) An employee's inspector who performs any function with respect to safety and health matters at a mine must liaise with the safety and health representative (if any) and the safety and health committee (if any) at the mine.
- (1a) In subsection (1) —
the safety and health representative —

- (a) if there is more than one safety and health representative for the mine, means any such representative who has functions relevant to the matters concerned; and
 - (b) includes a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine.
- (2) An employee's inspector may report to a trade union on matters concerning safety factors and the safety of working conditions at a mine if a member of that trade union is employed at the mine and the subject matter of the report concerns the member or the member's work at the mine.

[Section 25 amended by No. 30 of 1995 s. 76(2) and (4); No. 68 of 2004 s. 51.]

26. Use and misuse of information by inspectors and assistant inspectors

- (1) A person who is, or formerly was, an inspector, an assistant inspector or a person assisting such an inspector must not —
- (a) use for the gain of any person confidential knowledge or confidential information obtained by that person in the course of or as a result of that person's employment as an inspector or assistant inspector or as a result of that person assisting such an inspector (as the case requires); or
 - (b) except in the proper performance of a function under this Act, intentionally or negligently disclose to any person information of a commercial nature concerning a mine or mining operations or information that is detrimental to or likely to be detrimental to the mining operations.
- (2) A person who is, or was formerly, an inspector, an assistant inspector or a person assisting such an inspector must not disclose to any person a report prepared by an inspector or

assistant inspector, including information in the report supplied under the Act from an employer or other person, concerning an accident at a mine which either resulted in death or injury to any person or had the potential to cause fatal or serious disabling injury to any person, unless the disclosure is made —

- (a) under or in connection with the administration of this Act; or
 - (b) to a court in accordance with a subpoena issued by the court; or
 - (c) in accordance with a requirement of some other Act.
- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine of \$10 000.
- (4) Notwithstanding subsections (1) and (2), an inspector, an assistant inspector or a person assisting such an inspector may —
- (a) with the approval of the State mining engineer, disclose to a coroner a report of an investigation into a fatal accident occurring at a mine; and
 - (b) provide a coroner with information that the inspector or assistant inspector has grounds to believe to be accurate which appears likely to assist the coroner's investigation of a fatal accident at a mine.
- (5) In this section, *inspector* includes a workmen's inspector.

[Section 26 amended by No. 24 of 2000 s. 25.]

27. Certificates of appointment

- (1) Every inspector or assistant inspector must be provided with a certificate of his or her appointment signed by the State mining engineer and must, if requested to do so, produce that certificate to any person in relation to whom the inspector or assistant inspector is about to exercise, or has exercised, any power under this Act.

- (2) A certificate purporting to have been provided under subsection (1) is, without proof of the signature of the person purporting to have signed it, or of that person's authority to have signed it, evidence in any court of the appointment to which the certificate purports to relate.

28. Provision of facilities for inspection

- (1) An employer at a mine and a manager of a mine must provide an inspector or assistant inspector and any person accompanying the inspector or assistant inspector under section 21(3) with the means of making an entry, inspection, examination or inquiry at the mine for the purposes of this Act.
- (2) An employer or a manager who contravenes subsection (1) commits an offence.

29. Obstruction

- (1) A person must not —
- (a) obstruct, hinder, or interfere with an inspector or assistant inspector lawfully acting in the execution or performance of a function conferred or imposed on an inspector or assistant inspector under this Act; or
 - (b) fail, without reasonable excuse, to answer any question put to that person for the purposes of this Act by an inspector or assistant inspector or give a false or misleading answer to any such question, or refuse to make any statutory declaration that the person is required under this Act to make; or
 - (c) use any threat or any abusive or insulting language to an inspector or assistant inspector lawfully acting in the execution or performance of a function conferred or imposed on an inspector or assistant inspector under this Act; or

- (d) fail, without reasonable excuse, to comply in any respect with a lawful request, requirement or direction made or given by an inspector or assistant inspector.
- (2) A person must not, without reasonable excuse, fail to provide to an inspector or assistant inspector acting in the execution or performance of a function under this Act access to a mine, building, structure, plant, data or records, or any other assistance which that person may lawfully and reasonably be required to provide.
- (3) A statement made in response to a requirement made under this Act is not admissible in evidence in a prosecution against the person for an offence, other than an offence under this section, if the person making the statement objected to doing so at the time he or she made the statement on the ground that it might tend to incriminate that person.
- (4) A person who contravenes subsection (1) or (2) commits an offence.

Division 3 — Improvement notices and prohibition notices

[Heading inserted by No. 68 of 2004 s. 76.]

Subdivision 1 — Improvement notices

[Heading inserted by No. 68 of 2004 s. 76.]

30. Issue of improvement notice

- (1) Subsection (2) applies where an inspector or an assistant inspector is of the opinion that a person —
 - (a) is contravening any provision of this Act; or
 - (b) has contravened any provision of this Act in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector or assistant inspector may issue to the person an improvement notice requiring the person to remedy —

- (a) the contravention or likely contravention; or
 - (b) the matters or activities occasioning the contravention or likely contravention.
- (3) The issue of an improvement notice in respect of a contravention at a mine is to be notified as follows —
- (a) if the manager of the mine is not the person to whom the notice is issued, the inspector or assistant inspector who issues the notice must, as soon as is practicable, give a copy of the notice to the manager;
 - (b) the manager must then give a copy of the notice to the principal employer at the mine, if the principal employer is not the person to whom it is issued;
 - (c) the manager of a mine must give to the principal employer at the mine a copy of any improvement notice issued to the manager.
- (4) A manager who fails to comply with subsection (3)(b) or (c) commits an offence.

[Section 30 inserted by No. 68 of 2004 s. 76.]

31. Contents of improvement notice

An improvement notice must —

- (a) state the opinion of the inspector or assistant inspector in terms of section 30(1)(a) or (b), as the case may be;
 - (b) state reasonable grounds for that opinion;
 - (c) specify the provision of this Act in respect of which that opinion is held;
 - (d) state the time before which the person is required to remedy —
 - (i) the contravention or likely contravention; or
 - (ii) the matters or activities occasioning the contravention or likely contravention;
- and

- (e) contain a brief summary of the right to have the notice reviewed under Subdivision 7.

[Section 31 inserted by No. 68 of 2004 s. 76.]

31A. Failure to comply with improvement notice

- (1) If a person —
 - (a) is issued with an improvement notice; and
 - (b) does not comply with the notice within the time specified in it,the person commits an offence.
- (2) Subsection (1) has effect subject to —
 - (a) the provisions in sections 31B and 31BC for the suspension of notices; and
 - (b) the exercise of the power conferred by section 31BE.
- (3) No person is precluded by a contract from doing such acts and things as are necessary to comply with an improvement notice or is liable under any contract to any penalty for doing such acts and things.

[Section 31A inserted by No. 68 of 2004 s. 76.]

31AA. Notification of compliance

- (1) As soon as is practicable after the requirements of an improvement notice in relation to a mine have been complied with, the manager of the mine must give written notice of the compliance —
 - (a) to the inspector or assistant inspector who issued the notice; or
 - (b) if that officer is not reasonably available at the relevant time, to the district inspector for the region in which the mine is situated.

- (2) A manager who fails to comply with subsection (1) commits an offence.

[Section 31AA inserted by No. 68 of 2004 s. 76.]

Subdivision 2 — Prohibition notices in respect of mines

[Heading inserted by No. 68 of 2004 s. 76.]

31AB. Grounds for prohibition notice

This Subdivision applies where an inspector or an assistant inspector is of the opinion that —

- (a) a contravention of any provision of this Act —
- (i) is occurring at a mine; or
 - (ii) has occurred at a mine in circumstances that make it likely that the contravention will continue or be repeated,
- and any matter or activity occasioning the contravention constitutes or is likely to constitute a hazard to any person; or
- (b) a mine, or any plant, mining practice or hazardous substance at or related to a mine —
- (i) is dangerous; or
 - (ii) is likely to become dangerous,
- so as to constitute a hazard to any person.

[Section 31AB inserted by No. 68 of 2004 s. 76.]

31AC. Issue of prohibition notice for hazard arising from breach of Act

- (1) Where section 31AB(a) applies, the inspector or assistant inspector may issue a prohibition notice —
- (a) to the person who —
- (i) is carrying on the activity or is in control of the matter or activity; or

- (ii) has or may be reasonably presumed to have control over the matter or activity,
(which may be the principal employer or the manager);
and
 - (b) in every case to the principal employer or the manager.
- (2) The notice is to —
 - (a) require the person referred to in subsection (1)(a) to remedy the matter or activity; and
 - (b) in accordance with section 31AE, impose requirements to be complied with by the principal employer or the manager until an inspector or assistant inspector is satisfied that the relevant matters and activities have been remedied.

[Section 31AC inserted by No. 68 of 2004 s. 76.]

31AD. Issue of prohibition notice for other hazards

- (1) Where section 31AB(b) applies, the inspector or assistant inspector may issue a prohibition notice —
 - (a) to the person who has, or may be reasonably presumed to have, control over the plant, mining practice or hazardous substance concerned (which may be the principal employer or the manager); and
 - (b) in every case to the principal employer or the manager.
- (2) The notice is to —
 - (a) require the person referred to in subsection (1)(a) to remove the hazard or likely hazard; and
 - (b) in accordance with section 31AE, impose requirements to be complied with by the principal employer or the manager until an inspector or assistant inspector is satisfied that the hazard or likely hazard has been removed.

[Section 31AD inserted by No. 68 of 2004 s. 76.]

31AE. Prohibition of mining operations

In exercise of the powers conferred by sections 31AC(2)(b) and 31AD(2)(b) an inspector or assistant inspector may require the principal employer or the manager —

- (a) to stop work at the mine or any specified part of the mine;
- (b) to refrain from doing any specified thing at or in relation to the mine;
- (c) to remove all persons from the mine or any specified part of the mine; or
- (d) to take any combination of steps under paragraphs (a), (b) and (c),

except to the extent that provision is made in the prohibition notice either with or without conditions or restrictions for —

- (e) any specified work, practice or activity to be carried out or any specified thing to be done at the mine; or
- (f) any person to be at the mine or the part concerned.

[Section 31AE inserted by No. 68 of 2004 s. 76.]

31AF. Contents of prohibition notice under this Subdivision

A prohibition notice under this Subdivision must —

- (a) state the opinion of the inspector or assistant inspector in terms of section 31AB(a) or (b), as the case may require;
- (b) state reasonable grounds for that opinion;
- (c) specify —
 - (i) where section 31AB(a) applies, the provision of this Act; or
 - (ii) where section 31AB(b) applies, the mine, or the plant, mining practice or hazardous substance,

in respect of which that opinion is held; and

- (d) contain a brief summary of the right to have the notice reviewed under Subdivision 7.

[Section 31AF inserted by No. 68 of 2004 s. 76.]

31AG. Failure to comply with prohibition notice

- (1) A person issued with a prohibition notice under this Subdivision commits an offence if the person does not comply with —
 - (a) the notice; or
 - (b) such of the provisions of the notice as are applicable to the person,as the case may require.
- (2) Subsection (1) has effect subject to —
 - (a) the provisions in sections 31B and 31BC for the suspension of notices; and
 - (b) the exercise of the power conferred by section 31BE.
- (3) No person is precluded by a contract from doing such acts and things as are necessary to comply with a prohibition notice under this Subdivision or is liable under any contract to any penalty for doing such acts and things.

[Section 31AG inserted by No. 68 of 2004 s. 76.]

Subdivision 3 — Prohibition notices in relation to occupation of residential premises by employee

[Heading inserted by No. 68 of 2004 s. 76.]

31AH. Issue of prohibition notice

- (1) Subsection (2) applies where an inspector or an assistant inspector is of the opinion that —
 - (a) an employee is, or is likely to be, in occupation of residential premises as mentioned in section 15D(2); and

- (b) the employer concerned is contravening, or is likely to contravene, that section in relation to such occupation.
- (2) The inspector or assistant inspector may issue to the employer, and any employee, concerned a prohibition notice prohibiting the occupation of the premises by an employee of the employer until an inspector or assistant inspector is satisfied that an employee occupying the premises is not, or will not be, exposed to any hazard at the premises.
- (3) An inspector or assistant inspector who issues a prohibition notice under subsection (2) must, as soon as is practicable, give a copy of the notice to the manager of the mine at which the employee concerned is employed.

[Section 31AH inserted by No. 68 of 2004 s. 76.]

31AI. Contents of prohibition notice under this Subdivision

A prohibition notice under this Subdivision must —

- (a) state the opinion of the inspector or assistant inspector in terms of section 31AH(1);
- (b) state reasonable grounds for that opinion;
- (c) specify the premises and any hazard in respect of which that opinion is held; and
- (d) contain a brief summary of the right to have the notice reviewed under Subdivision 7.

[Section 31AI inserted by No. 68 of 2004 s. 76.]

31AJ. Failure to comply with prohibition notice

- (1) If an employee occupies residential premises in contravention of a prohibition notice under section 31AH —
 - (a) the employer issued with the notice commits an offence unless the employer shows that all reasonably practicable steps were taken by the employer to prevent the occupation; and

- (b) the employee who occupies the premises commits an offence unless the employee shows that there was reasonable excuse for that occupation.
- (2) Subsection (1) has effect subject to —
 - (a) the provisions in sections 31B and 31BC for the suspension of notices; and
 - (b) the exercise of the power conferred by section 31BE.
- (3) No person is precluded by a contract from doing such acts and things as are necessary to comply with a prohibition notice under this Subdivision or is liable under any contract to any penalty for doing such acts and things.

[Section 31AJ inserted by No. 68 of 2004 s. 76.]

Subdivision 4 — Display of improvement notices and prohibition notices

[Heading inserted by No. 68 of 2004 s. 76.]

31AK. Improvement notices

The manager of a mine who —

- (a) is issued with an improvement notice; or
- (b) is given a copy of an improvement notice under section 30(3),

must, as soon as is practicable, cause the notice, or a copy of it, to be displayed in accordance with the prescribed requirements.

[Section 31AK inserted by No. 68 of 2004 s. 76.]

31AL. Prohibition notices in respect of mines

The manager of a mine who is issued with a prohibition notice under Subdivision 2 must, as soon as is practicable, cause the notice, or a copy of it, to be displayed in accordance with the prescribed requirements.

[Section 31AL inserted by No. 68 of 2004 s. 76.]

31AM. Prohibition notices in respect of residential premises

An employer who is issued with a prohibition notice under Subdivision 3 must, as soon as is practicable, cause the notice, or a copy of it, to be displayed at the residential premises concerned.

[Section 31AM inserted by No. 68 of 2004 s. 76.]

31AN. Offence to remove displayed notice

- (1) A person must not remove an improvement notice or a prohibition notice displayed under this Subdivision before the requirements of the notice have been satisfied, taking into account any modification made under section 31AZ or 31BB.
- (2) Subsection (1) does not apply in respect of a notice that —
 - (a) is suspended under section 31B or 31BC; or
 - (b) has ceased to have effect.

[Section 31AN inserted by No. 68 of 2004 s. 76.]

31AO. Modifications of notice to be displayed

- (1) This section applies where an improvement notice or a prohibition notice is modified under section 31AZ or 31BB.
- (2) The manager of the mine concerned, or the employer concerned, must cause a copy of the decision of the State mining engineer or the Tribunal to be displayed with, and in the same manner as is required for, the improvement notice or prohibition notice.

[Section 31AO inserted by No. 68 of 2004 s. 76.]

31AP. Failure to comply with provision of this Subdivision

A person who fails to comply with a duty imposed on the person by this Subdivision commits an offence.

[Section 31AP inserted by No. 68 of 2004 s. 76.]

Subdivision 5 — General duty of principal employer and manager in respect of notices

[Heading inserted by No. 68 of 2004 s. 76.]

31AQ. General duty, improvement notices

- (1) Subsection (2) applies where —
 - (a) an improvement notice is issued in relation to a mine; and
 - (b) the person issued with the notice is not the principal employer at, or the manager of, the mine.
- (2) The principal employer and the manager must take all reasonably practicable steps to ensure that the person issued with the notice complies with it.
- (3) A principal employer or manager who fails to comply with subsection (2) commits an offence.

[Section 31AQ inserted by No. 68 of 2004 s. 76.]

31AR. General duty, prohibition notices

- (1) In subsection (2) —

other responsible person means a person who —

 - (a) is required to comply with any provision of a prohibition notice issued in respect of a mine; but
 - (b) is not the principal employer at, or the manager of, the mine.
- (2) The principal employer at, and the manager of, a mine in relation to which a prohibition notice is issued must take all reasonably practicable steps to ensure that any other responsible person complies with such of the provisions of the notice as are applicable to the person.

- (3) A principal employer or manager who fails to comply with subsection (2) commits an offence.

[Section 3QAR inserted by No. 68 of 2004 s. 76.]

31AS. Other provisions relating to general duty

- (1) The duties imposed by this Subdivision —
- (a) have effect subject to —
 - (i) the provisions in sections 31B and 31BC for the suspension of notices; and
 - (ii) the exercise of the power conferred by section 31BE;
 - and
 - (b) are in addition to any duty that a principal employer or a manager has under section 32(2) or 43(2)(c).
- (2) A principal employer or manager is not precluded by a contract from doing such acts and things as are necessary to comply with a duty imposed by this Subdivision and is not liable under any contract to any penalty for doing such acts and things.

[Section 31AS inserted by No. 68 of 2004 s. 76.]

Subdivision 6 — Entry of notices and related matters in mine record book

[Heading inserted by No. 68 of 2004 s. 76.]

31AT. Improvement and prohibition notices

The manager of a mine who —

- (a) is issued with —
 - (i) an improvement notice; or
 - (ii) a prohibition notice under Subdivision 2;
- or
- (b) is given a copy of —

- (i) an improvement notice under section 30(3); or
- (ii) a prohibition notice under section 31AH(3),

must securely affix a copy of the notice to a page in the record book for the mine.

[Section 31AT inserted by No. 68 of 2004 s. 76.]

31AU. Referrals for review

The manager of a mine who —

- (a) under section 31AY(1) or 31BA(1) refers an improvement notice or a prohibition notice for review; or
- (b) is given a copy of a duly completed prescribed form under section 31AY(4) or 31BA(3),

must securely affix a copy of the duly completed prescribed form to a page in the record book for the mine.

[Section 31AU inserted by No. 68 of 2004 s. 76.]

31AV. Decisions on review

The manager of a mine who is given a notice under section 31AZ(3) or 31BB(3) of a decision and reasons must securely affix a copy of the notice to a page in the record book for the mine.

[Section 31AV inserted by No. 68 of 2004 s. 76.]

31AW. Permissions for continuation of work

The manager of a mine who, under section 31B(3) or 31BC(3), is given a copy of a permission referred to in that section must securely affix the copy to a page in the record book for the mine.

[Section 31AW inserted by No. 68 of 2004 s. 76.]

31AX. Failure to comply with provision of this Subdivision

A manager who fails to comply with a duty imposed on the manager by this Subdivision commits an offence.

[Section 31AX inserted by No. 68 of 2004 s. 76.]

Subdivision 7 — Review of improvement notices and prohibition notices

[Heading inserted by No. 68 of 2004 s. 76.]

31AY. Notice may be referred for review

- (1) An improvement notice or prohibition notice issued in relation to a mine may, in accordance with subsection (3), be referred to the State mining engineer for review.
- (2) A referral may be made by —
 - (a) a person issued with the notice; or
 - (b) the principal employer at, or the manager of, the mine.
- (3) A reference under subsection (1) must be made in writing and —
 - (a) in the case of an improvement notice, within the time specified in the notice as the time before which the notice is required to be complied with; or
 - (b) in the case of a prohibition notice —
 - (i) not later than 7 days after the day on which the notice was issued; or
 - (ii) within such further period as the State mining engineer may allow.
- (4) A person, other than the manager of a mine concerned, that refers a notice for review must, as soon as is practicable, give a copy of the reference to such manager.

- (5) If a person fails to comply with subsection (4), the person commits an offence.

[Section 31AY inserted by No. 68 of 2004 s. 76; amended by No. 16 of 2008 s. 8.]

31AZ. Review by State mining engineer

- (1) On a reference under section 31AY, the State mining engineer is to inquire into the circumstances relating to the improvement notice or prohibition notice, and may —
- (a) affirm the notice;
 - (b) affirm the notice with such modifications as the State mining engineer considers appropriate; or
 - (c) cancel the notice,

and, subject to section 31BB and the exercise of the power conferred by section 31BE, the notice has effect or, as the case may be, ceases to have effect accordingly.

- (2) In dealing with a reference for the review of a prohibition notice the State mining engineer may —
- (a) refer to an expert chosen by the State mining engineer such matters as appear to him or her to be appropriate; and
 - (b) accept the advice of that expert.
- (3) The State mining engineer is to give notice in writing of —
- (a) the decision on the reference; and
 - (b) the reasons for the decision,
- to —
- (c) the person who referred the notice for review; and
 - (d) if that person is not the manager of a mine concerned, to such manager.

[Section 31AZ inserted by No. 68 of 2004 s. 76.]

31B. Effect of notice pending review by State mining engineer

- (1) Pending the decision of the State mining engineer on a reference under section 31AY —
 - (a) the operation of an improvement notice is suspended; and
 - (b) the operation of a prohibition notice continues, except to the extent that the State mining engineer —
 - (i) permits any work, practice or activity to be carried out or any thing to be done;
 - (ii) permits any person to be at the mine concerned or at a part of the mine; or
 - (iii) in the case of a prohibition notice under Subdivision 3, permits any occupation of the premises concerned.
- (2) A permission given by the State mining engineer under subsection (1)(b) —
 - (a) is to be in writing;
 - (b) may be subject to such restrictions and conditions as the State mining engineer thinks fit to impose for the safety of —
 - (i) employees and other persons at a mine; or
 - (ii) in the case of a prohibition notice under Subdivision 3, any employee occupying the premises concerned;and
 - (c) is to be taken to be of no effect during any period when any such condition or restriction is not being observed according to its tenor.
- (3) The State mining engineer is to give a copy of any permission given under subsection (1)(b) to the manager of a mine concerned.

[Section 31B inserted by No. 68 of 2004 s. 76.]

31BA. Decision may be referred to Tribunal

- (1) If a person given notice of a decision under section 31AZ(3) is not satisfied with the State mining engineer's decision under that section, the person may refer the matter to the Tribunal for further review.
- (2) A reference under subsection (1) must be made in writing and within —
 - (a) 7 days after the day on which the person received notice of the decision; or
 - (b) such further period as the Tribunal may allow.
- (3) A person, other than the manager of a mine concerned, who refers a matter for review under this section must, as soon as is practicable, give a copy of the reference to such manager.
- (4) If a person fails to comply with subsection (3), the person commits an offence.

[Section 31BA inserted by No. 68 of 2004 s. 76; amended by No. 16 of 2008 s. 9.]

31BB. Determination by Tribunal

- (1) On a reference under section 31BA, the Tribunal is to inquire into the circumstances relating to the improvement notice or prohibition notice, and may —
 - (a) affirm the decision of the State mining engineer;
 - (b) affirm the decision of the State mining engineer with such modifications as the Tribunal considers appropriate; or
 - (c) revoke the decision of the State mining engineer and make such other decision with respect to the notice as the Tribunal thinks fit,

and the notice has effect or, as the case may be, ceases to have effect accordingly.

- (2) A review under this section —
 - (a) is to be in the nature of a rehearing; and
 - (b) is to be completed by the Tribunal as quickly as is practicable.
- (3) The Tribunal is to give notice in writing of —
 - (a) its decision on the reference; and
 - (b) the reasons for the decision,to —
 - (c) the person who referred the matter for review; and
 - (d) if that person is not the manager of a mine concerned, to such manager.

[Section 31BB inserted by No. 68 of 2004 s. 76.]

31BC. Effect of notice pending review by Tribunal

- (1) Pending the decision on a reference under section 31BA, irrespective of the decision of the State mining engineer under section 31AZ —
 - (a) the operation of an improvement notice is suspended; and
 - (b) the operation of a prohibition notice continues, except to the extent that the Tribunal —
 - (i) permits any work, practice or activity to be carried out or any thing to be done;
 - (ii) permits any person to be at the mine concerned or at a part of the mine; or
 - (iii) in the case of a prohibition notice under Subdivision 3, permits any occupation of the premises concerned.

- (2) A permission given by the Tribunal under subsection (1)(b) —
- (a) is to be in writing;
 - (b) may be subject to such restrictions and conditions as the Tribunal thinks fit to impose for the safety of —
 - (i) employees and other persons at a mine; or
 - (ii) in the case of a prohibition notice under Subdivision 3, any employee occupying the premises concerned;
- and
- (c) is to be taken to be of no effect during any period when any such condition or restriction is not being observed according to its tenor.
- (3) The Tribunal is to give a copy of any permission given under subsection (1)(b) to the manager of a mine concerned.

[Section 31BC inserted by No. 68 of 2004 s. 76.]

Subdivision 8 — General

[Heading inserted by No. 68 of 2004 s. 76.]

31BD. Notices may include directions

- (1) An inspector or assistant inspector who issues an improvement notice or a prohibition notice may include in the notice directions as to the measures to be taken to remedy any contravention, likely contravention, hazard, matters or activities to which the notice relates.
- (2) A direction under subsection (1) may —
- (a) refer to any code of practice; and
 - (b) offer the person issued with the notice a choice of ways in which to remedy the contravention, likely contravention, hazard, matters or activities to which the notice relates.

[Section 31BD inserted by No. 68 of 2004 s. 76.]

s. 31BE

31BE. Further power of State mining engineer to cancel notice

- (1) The State mining engineer may, on his or her own initiative, cancel an improvement notice or a prohibition notice in respect of a mine by giving notice in writing of —
 - (a) the cancellation; and
 - (b) the reasons for the cancellation,to —
 - (c) the person who was issued with the notice;
 - (d) the principal employer at a mine if the principal employer is not the person referred to in paragraph (c); and
 - (e) the manager of the mine if the manager is not the person referred to in paragraph (c).
- (2) The State mining engineer may, on his or her own initiative, cancel a prohibition notice issued under section 31AH by giving notice in writing of —
 - (a) the cancellation; and
 - (b) the reasons for the cancellation,to the employer and the employee concerned.
- (3) The power conferred by subsection (1) or (2) is not to be exercised in respect of a notice —
 - (a) during a period when a referral of the notice is awaiting a determination of the State mining engineer under section 31AZ; or
 - (b) after a decision in respect of the notice has been referred to the Tribunal under section 31BA,

but otherwise may be exercised at any time and whether or not the notice concerned has been affirmed under section 31AZ(1).

[Section 31BE inserted by No. 68 of 2004 s. 76.]

Division 4 — Issue of provisional improvement notices by safety and health representative

[Heading inserted by No. 68 of 2004 s. 76.]

31BF. Term used in this Division

In this Division —

qualified representative means a safety and health representative who has completed a course of training prescribed for the purposes of this definition.

[Section 31BF inserted by No. 68 of 2004 s. 76.]

31BG. Issue of provisional improvement notices

- (1) Subsection (2) applies where a qualified representative —
 - (a) is of the opinion that a person —
 - (i) is contravening any provision of this Act; or
 - (ii) has contravened any provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
 - and
 - (b) has undertaken the consultations required by section 31BH.
- (2) The qualified representative may issue to the person a provisional improvement notice requiring the person to remedy —
 - (a) the contravention or likely contravention; or
 - (b) the matters or activities occasioning the contravention or likely contravention.
- (3) A qualified representative may exercise the power conferred by subsection (2) only —
 - (a) in respect of a mine for which the qualified representative was elected; or

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- (b) if, pursuant to a scheme under section 55A, the qualified representative was elected for a group of employees, in respect of a mine at which any member of the group works.
- (4) The issue of a provisional improvement notice in respect of a contravention at a mine is to be notified as follows —
 - (a) if the manager of the mine is not the person to whom the notice is issued, the qualified representative who issues the notice must, as soon as is practicable, give a copy of the notice to the manager;
 - (b) the manager must then give a copy of the notice to the principal employer at the mine, if the principal employer is not the person to whom it is issued;
 - (c) the manager of a mine must give to the principal employer at the mine a copy of any provisional improvement notice issued to the manager.
- (5) A manager who fails to comply with subsection (4)(b) or (c) commits an offence.

[Section 31BG inserted by No. 68 of 2004 s. 76.]

31BH. Consultation required before issue

- (1) In this section —

consult means consult about the matters or activities to which an intended notice will relate.
- (2) Before issuing a provisional improvement notice a qualified representative must —
 - (a) consult with the person who is to be issued with the notice; and
 - (b) if there is any other safety and health representative for the mine concerned, consult with another representative for that mine so far as it is reasonably practicable to do so.

- (3) The reference in subsection (2) to a safety and health representative includes a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine concerned.
- (4) The regulations may make provision requiring a qualified representative, in specified circumstances, to consult with a person who holds a prescribed office in the department before issuing a provisional improvement notice.

[Section 31BH inserted by No. 68 of 2004 s. 76.]

31BI. Contents of notice

- (1) A provisional improvement notice must —
 - (a) state the opinion of the qualified representative in terms of section 31BG(1)(a)(i) or (ii), as the case may be;
 - (b) state reasonable grounds for that opinion;
 - (c) specify the provision of this Act in respect of which the opinion is held;
 - (d) state the day before which the person is required to remedy —
 - (i) the contravention or likely contravention; or
 - (ii) the matters or activities occasioning the contravention or likely contravention;and
 - (e) contain a brief summary of the right to have the notice reviewed by an inspector under section 31BN.
- (2) The day specified for the purposes of subsection (1)(d) must be more than 7 days after the day on which the notice is issued.

[Section 31BI inserted by No. 68 of 2004 s. 76.]

s. 31BJ

31BJ. Provisional improvement notices may include directions

- (1) A qualified representative may include in a provisional improvement notice directions as to the measures to be taken to remedy —
 - (a) any contravention or likely contravention; or
 - (b) matters or activities,to which the notice relates.
- (2) Any direction under subsection (1) may —
 - (a) refer to any code of practice; and
 - (b) offer the person issued with the notice a choice of ways in which to effect the remedy.

[Section 31BJ inserted by No. 68 of 2004 s. 76.]

31BK. Display of provisional improvement notices

- (1) The manager of a mine who —
 - (a) is issued with a provisional improvement notice; or
 - (b) is given a copy of a provisional improvement notice under section 31BG(4),must, as soon as is practicable, cause the notice, or a copy of it, to be displayed in accordance with the prescribed requirements.
- (2) A person commits an offence if the person removes a provisional improvement notice displayed under subsection (1) before the requirements of the improvement notice have been satisfied, taking into account any modification made under section 31BN(4).
- (3) Subsection (2) does not apply in respect of a provisional improvement notice that has ceased to have effect.

- (4) If a provisional improvement notice is modified by an inspector under section 31BN(4), the manager must cause a copy of the inspector's decision to be displayed with, and in the same manner as is required for, the provisional improvement notice.
- (5) A manager who fails to comply with subsection (1) or (4) commits an offence.
[Section 31BK inserted by No. 68 of 2004 s. 76.]

31BL. Failure to comply with notice

- (1) If a person —
 - (a) is issued with a provisional improvement notice; and
 - (b) does not comply with the notice within the time specified in it,the person commits an offence.
- (2) Subsection (1) does not apply if the right conferred by section 31BN(1) is exercised.

[Section 31BL inserted by No. 68 of 2004 s. 76.]

31BM. General duty of principal employer and manager in respect of provisional improvement notice

- (1) Subsection (2) applies where —
 - (a) a provisional improvement notice is issued in relation to a mine; and
 - (b) the person issued with the notice is not the principal employer at, or the manager of, the mine.
- (2) The principal employer and the manager must take all reasonably practicable steps to ensure that the person issued with the notice complies with it.
- (3) Subsection (2) does not apply if the right conferred by section 31BN(1) is exercised.

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- (4) The duty imposed by subsection (2) is in addition to any duty that the principal employer or the manager may have under section 32(2) or 43(2)(c).
- (5) A principal employer or manager who fails to comply with subsection (2) commits an offence.
- (6) A principal employer or manager is not precluded by a contract from doing such acts and things as are necessary to comply with subsection (2) and is not liable under any contract to any penalty for doing such acts and things.

[Section 31BM inserted by No. 68 of 2004 s. 76.]

31BN. Review of notice by an inspector

- (1) A person issued with a provisional improvement notice in relation to a mine, or the principal employer at, or manager of, the mine may, in writing delivered or sent to the department (a **review notice**), require that an inspector review the notice.
- (2) A review notice —
 - (a) may be sent —
 - (i) by letter addressed to, and posted to a place of business of, the department;
 - (ii) by transmission to a facsimile number used by the department; or
 - (iii) by electronic data transmission to an email address used by the department;
 - and
 - (b) must be received by the department not later than the day specified in the provisional improvement notice for the purposes of section 31BI(1)(d).
- (3) The operation of the provisional improvement notice is suspended by the receipt by the department of a review notice in accordance with this section.

- (4) Where a review notice is received by the department in accordance with this section, an inspector must as soon as is practicable —
- (a) attend at the mine; and
 - (b) inquire into the circumstances relating to the notice,
- and having done so may —
- (c) affirm the notice;
 - (d) affirm the notice with modifications; or
 - (e) cancel the notice.
- (5) If an inspector affirms a provisional improvement notice, with or without modifications, the notice as so affirmed has effect as if it had been issued by the inspector under section 30.
- (6) Where an inspector reviews a provisional improvement notice he or she is to give notice in writing —
- (a) of the result of the review; and
 - (b) of any modifications to the notice,
- to —
- (c) the person who required an inspector to review the notice; and
 - (d) if that person is not the manager of the mine concerned, to such manager.

[Section 31BN inserted by No. 68 of 2004 s. 76.]

31BO. Entries in mines record book

- (1) The manager of a mine who —
- (a) is issued with a provisional improvement notice under section 31BG(2); or
 - (b) is given a copy of a provisional improvement notice under section 31BG(4),

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must securely affix a copy of the notice to a page in the record book for the mine.

- (2) The manager of a mine who is given notice under section 31BN(6) of the result of a review must securely affix a copy of the notice to a page in the record book for the mine.
- (3) A manager of a mine who fails to comply with subsection (1) or (2) commits an offence.

[Section 31BO inserted by No. 68 of 2004 s. 76.]

Part 4 — Management of mines

Division 1 — Duties of employers and managers

32. Principal employer

- (1) Before mining operations begin at a mine, the name and address of the principal employer at the mine must be provided in writing to the district inspector for the region where the mine is situated.
- (1a) If mining operations begin at a mine and subsection (1) has not been complied with, an offence against subsection (1) is committed by the person who the State mining engineer determines to have been the principal employer at the mine when the mining operations began.
- (1b) In proceedings against a person under subsection (1a) it is a defence if the person proves that there were no reasonable grounds for the State mining engineer's determination that the person was the principal employer at the mine when the mining operations began.
- (2) The principal employer at a mine must make such financial and other provisions as are necessary to ensure, so far as is practicable, that the mine is planned, laid out, managed, and worked in accordance with relevant statutory provisions; and the imposition of a duty by this Act on some other person does not derogate from the duties imposed on principal employers by this section.
- (3) A principal employer may be an individual, a corporation, a partnership, or a syndicate or other association of persons.
- (4) If mining operations are to be carried out by a syndicate or other association of persons in such a way that no person is employed at the mine, the name and address of an entity, partnership, or person who is to assume the duties and responsibilities of principal employer in respect of those mining operations must

be provided in writing, before mining operations begin, to the district inspector for the region in which the mine is situated; and that entity, partnership or person is deemed to be the principal employer for the purposes of this Act.

- (5) If mining operations begin at a mine and subsection (4) has not been complied with, each person who is a member of the syndicate or other association of persons concerned commits an offence.
- (6) Where a duty arises under subsection (1) or (4) to provide to the district inspector the name and address of a partnership, syndicate or other association of persons (an *association*) there is also a duty to provide the name and address of each member of the association.

[Section 32 amended by No. 68 of 2004 s. 40.]

32A. Change of principal employer or of particulars provided

- (1) If there is a change in the identity of the principal employer at a mine, the new principal employer must, not later than 7 days after the change occurs, provide to the district inspector for the region where the mine is situated particulars of —
 - (a) the name and address of —
 - (i) the new principal employer; or
 - (ii) each person who is a member of the partnership, syndicate or other association of persons that comprises the new principal employer,as the case may be; and
 - (b) the day on which the change occurred.
- (2) If there is a change to the name or address of a principal employer at a mine, the principal employer must, not later than 7 days after the change occurs, provide particulars of the change to the district inspector for the region where the mine is situated.

- (3) If —
- (a) the principal employer at a mine, or the person who under section 32(4) has assumed the duties of the principal employer at a mine, is a partnership, syndicate or other association of persons (the *association*); and
 - (b) there is a change —
 - (i) in the membership of the association; or
 - (ii) to the name or address of any member of the association,

the principal employer must, not later than 7 days after the change occurs, provide particulars of the change to the district inspector for the region where the mine is situated.

- (4) A principal employer who contravenes subsection (1), (2) or (3) commits an offence.

[Section 32A inserted by No. 68 of 2004 s. 41.]

33. Registered manager

- (1) Before mining operations begin at a mine, the principal employer must appoint a registered manager for the mine and subsequently must ensure that at all times a registered manager is appointed for the mine.
- (2) The principal employer must inform the district inspector for the region in which the mine is situated within 24 hours (by electronic document transmission confirmed by hard copy within 7 days) of every appointment of a registered manager for the mine and the name and address of the appointee.
- (3) The registered manager for a mine is responsible on a daily basis for the control and supervision of the mine and mining operations at the mine in accordance with this Act and, except for absences on a regular scheduled basis (referred to in this Act as a *commute schedule*), must reside at a location in relation to

the mine which will allow the registered manager to control and supervise the mine effectively as required by this section.

- (4) A person who contravenes subsection (1), (2), or (3) commits an offence.
- (5) A person who is the registered manager for a mine is not eligible while holding that position to be the registered manager or deputy to the registered manager for another mine except with the approval in writing of the State mining engineer.
- (6) If mining operations are carried out by a syndicate or other association of persons in such a way that no person is employed at the mine, no registered manager is required and the members of that entity or partnership or those persons are jointly and severally responsible for the performance of those duties and responsibilities which are imposed on registered managers by this Act so far as those duties and responsibilities apply to an operation without employees.
- (7) Notwithstanding subsection (1), a registered manager need not be appointed for mining operations that consist only of exploration operations unless the State mining engineer, having regard to the scale and nature of the exploration operations, directs that such an appointment must be made.

33A. Registered manager may make appointments on behalf of principal employer

- (1) It is sufficient compliance with a provision of section 34(1) or (2), 35(1), 36(1) or (2), 37(1), 38(1), (2) or (3) or 39(2) (a *relevant provision*) that requires the principal employer in relation to a mine —
 - (a) to make a particular managerial appointment for the mine; or
 - (b) to inform the district inspector for the region in which the mine is situated concerning the appointment,

if the appointment is made, or the information is given, on behalf of the principal employer by the registered manager in accordance with authority given by the principal employer to do so.

- (2) It is open to the registered manager of a mine in exercising a power to appoint —

- (a) an underground manager; or
- (b) a quarry manager,

for the mine under section 35 or 37, to appoint himself or herself to that position.

- (3) If the registered manager —

- (a) makes an appointment; or
- (b) gives information to a district inspector,

for the purposes of a relevant provision the registered manager is conclusively presumed to do so under and in accordance with authority given by the principal employer.

- (4) Nothing in this section affects the obligation of the principal employer to comply with a relevant provision.

[Section 33A inserted by No. 68 of 2004 s. 42.]

34. Alternate and deputy registered managers

- (1) If the registered manager is to control and supervise the mine in accordance with a commute schedule, the principal employer must appoint an alternate registered manager to assume the duties of the registered manager during the absences of the registered manager in accordance with that commute schedule and must inform the district inspector for the region in which the mine is situated of the name and address of the alternate manager before the schedule has effect.
- (2) The principal employer must inform the district inspector for the region in which the mine is situated within 24 hours (by

electronic document transmission confirmed by hard copy within 7 days) of every appointment of an alternate registered manager for a mine.

- (3) If the registered manager or an alternate registered manager of a mine is incapacitated from performing his or her duties or is expected to be absent from the mine for more than a day (otherwise than in accordance with a commute schedule), the registered manager or the alternate registered manager must appoint a fit and proper person to act as the deputy of the registered manager or the alternate registered manager during the incapacity or absence.

- (4) Each —

- (a) alternate registered manager; and
- (b) deputy appointed under subsection (3),

is deemed to be the registered manager, and has the powers, functions and duties of a registered manager under this Act, during any period of duty of the alternate or deputy.

- (5) The appointment of —

- (a) a deputy or alternate of a registered manager; or
- (b) a deputy of an alternate registered manager,

does not relieve the registered manager, or the alternate registered manager, from responsibility for the exercise and performance of powers, functions and duties under this Act except during a period of duty mentioned in subsection (4).

- (6) A person who contravenes subsection (1), (2) or (3) commits an offence.

[Section 34 amended by No. 68 of 2004 s. 43; No. 16 of 2008 s. 10.]

35. Certificated underground manager

- (1) The principal employer of every mine employing any person underground must appoint a person qualified for appointment in respect of that mine under subsection (2) or (3) to be the underground manager for the mine with responsibility to control and supervise the underground mining operations on a daily basis.
- (1a) A principal employer who contravenes subsection (1) commits an offence.
- (2) An underground manager for a mine employing 25 or more persons underground —
 - (a) may be the registered manager for the mine; and
 - (b) must be the holder of a first class mine manager's certificate of competency or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners.
- (3) An underground manager for a mine employing fewer than 25 persons underground —
 - (a) may be the registered manager for the mine; and
 - (b) must be the holder of an underground supervisor's certificate of competency, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners; or
 - (c) if the State mining engineer so directs, having determined that the scope and nature of the underground mining operations so requires, must be the holder of a first class mine manager's certificate of competency under this Act, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners.
- (4) Notwithstanding subsection (1), a district inspector may agree in writing that, in the case of the mining operations of a small

syndicate consisting of self-employed persons, an appointment of an underground manager need not be made.

[Section 35 amended by No. 16 of 2008 s. 11.]

36. Alternate and deputy underground managers

- (1) If the underground manager is to control and supervise the underground mining operations in accordance with a commute schedule, the principal employer must appoint a person who is eligible to be appointed underground manager for those mining operations to be an alternate underground manager to assume the duties of the underground manager during the absences of the underground manager in accordance with that commute schedule and must inform the district inspector for the region in which the mine is situated of the name and address of the alternate manager before the schedule has effect.
- (2) The principal employer must inform the district inspector for the region in which the mine is situated within 24 hours (by electronic document transmission confirmed by hard copy within 7 days) of every appointment of an alternate underground manager for a mine.
- (3) If the underground manager or alternate underground manager of a mine is incapacitated from performing his or her duties or is expected to be absent from the mine (otherwise than in accordance with a commute schedule) or unavailable to perform the duties of underground manager, the principal employer must appoint an eligible person to act as the deputy of the underground manager or alternate underground manager during the period of incapacity, absence or unavailability.
- [(4) deleted]*
- (5) A person who contravenes subsection (1), (2) or (3) commits an offence.
- (6) A person is eligible to be appointed as a deputy underground manager if that person is eligible to be appointed underground

manager for the mining operations or holds an underground supervisor's certificate of competency, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners, but a person who holds an underground supervisor's certificate of competency (or equivalent) is not eligible to be appointed or to hold office as deputy underground manager of a mine employing 25 or more persons underground for more than 4 weeks on any occasion without the approval of the State mining engineer.

[(7) deleted]

- (8) Each deputy underground manager and alternate underground manager appointed under this section is deemed to be the underground manager and has the powers, functions and duties of an underground manager under this Act for such periods of duty as the deputy or alternate has been appointed, but the appointment of a deputy or an alternate underground manager does not relieve the underground manager from responsibility for the exercise and performance of powers, functions and duties while serving as underground manager.

[Section 36 amended by No. 68 of 2004 s. 44.]

37. Certificated quarry manager

- (1) The principal employer of every mine employing any person in quarry operations must appoint a person qualified for appointment in respect of those quarry operations under subsection (2) or (3) to be the quarry manager for the mine with responsibility to control and supervise the quarry operations on a daily basis.
- (1a) A principal employer who contravenes subsection (1) commits an offence.
- (2) A quarry manager for quarry operations where 25 or more persons are employed, including persons employed in the quarry's associated roads, waste dumps and tailings dams —

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- (a) may be the registered manager for the mine; and
 - (b) must be the holder of —
 - (i) a first class mine manager's certificate of competency; or
 - (ii) a quarry manager's certificate of competency; or
 - (iii) in a quarry in which explosives are not used, a restricted quarry manager's certificate of competency.
- (3) A quarry manager for quarry operations where fewer than 25 persons are employed, including persons employed in the quarry's associated roads, waste dumps and tailings dams —
- (a) may be the registered manager for the mine; and
 - (b) must be the holder of —
 - (i) a first class mine manager's certificate of competency; or
 - (ii) a quarry manager's certificate of competency; or
 - (iii) a restricted quarry manager's certificate of competency.
- (4) Notwithstanding subsection (1) —
- (a) in the case of quarry operations in which fewer than 25 persons are employed and in which no explosives are used, the district inspector for the region in which the mine is situated may, upon the written application of the principal employer, agree that an appointment need not be made under this section of a quarry manager; and
 - (b) in the case of small quarry operations where explosives are used, the State mining engineer may, upon the written application of the principal employer and if satisfied that the scale and nature of the quarry operation do not warrant control by a certificated quarry manager, agree that an appointment need not be made under this section of a quarry manager.

- (5) If the district inspector or the State mining engineer agrees under subsection (4) that a quarry manager need not be appointed in respect of quarry operations, the registered manager is responsible for the control and supervision of the quarry operations on a daily basis and for such duties as would otherwise have been performed by the quarry manager.
- (6) Notwithstanding subsection (1), a quarry manager need not be appointed for quarry operations that consist only of exploration operations unless the State mining engineer, having regard to the scale and nature of the exploration operations, directs that such an appointment must be made.

[Section 37 amended by No. 16 of 2008 s. 12.]

38. Alternate and deputy quarry managers

- (1) If the quarry manager is to control and supervise the quarry operations in accordance with a commute schedule, the principal employer must appoint a person who is eligible to be appointed quarry manager for the quarry operations to be an alternate quarry manager to assume the duties of the quarry manager during the absences of the quarry manager in accordance with that commute schedule and must inform the district inspector for the region in which the mine is situated of the name and address of the alternate manager before the schedule begins.
- (2) The principal employer must inform the district inspector for the region in which the mine is situated within 24 hours (by electronic document transmission confirmed by hard copy within 7 days) of every appointment of an alternate quarry manager for a mine.
- (3) If the quarry manager or alternate quarry manager of a mine is incapacitated from performing his or her duties or is expected to be absent from the mine (otherwise than in accordance with a commute schedule) or unavailable to perform the duties of quarry manager, the principal employer must appoint an eligible

person to act as the deputy of the quarry manager or alternate quarry manager during the period of incapacity, absence or unavailability.

[(4) deleted]

(5) A person who contravenes subsection (1), (2) or (3) commits an offence.

(6) A person is eligible to be appointed as a deputy quarry manager if that person is eligible to be appointed quarry manager for the quarry operations or holds a restricted quarry manager's certificate of competency, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners, but a person who holds a restricted quarry manager's certificate of competency (or equivalent) is not eligible to be appointed or to hold office as deputy quarry manager of a quarry operation employing 25 or more persons for more than 4 weeks on any occasion without the approval of the State mining engineer.

[(7) deleted]

(8) Each deputy quarry manager and alternate quarry manager appointed under this section is deemed to be the quarry manager and has the powers, functions and duties of a quarry manager under this Act for such periods of duty as the deputy or alternate has been appointed, but the appointment of a deputy or an alternate quarry manager does not relieve the quarry manager from responsibility for the exercise and performance of powers, functions and duties while serving as quarry manager.

[Section 38 amended by No. 68 of 2004 s. 45.]

38A. Periods of duty and related matters to be shown in record book

(1) The registered manager for a mine and any alternate registered manager for a mine must each maintain a log in the record book of his or her periods of duty as registered manager for the mine.

- (2) Without limiting subsection (1), the log maintained by the registered manager and the log maintained by any alternate registered manager must include, in accordance with the regulations, particulars of —
 - (a) each period during which a person appointed under section 34(3) acted as deputy of the registered manager or the alternate registered manager, as the case may be; and
 - (b) the name of the person who so acted during the period.
- (3) The underground manager and any alternate underground manager must each maintain a log in the record book of his or her periods of duty as underground manager for the mine.
- (4) Without limiting subsection (3), the log maintained by the underground manager and the log maintained by any alternate underground manager must include, in accordance with the regulations, particulars of —
 - (a) each period during which a person appointed under section 36(3) acted as deputy of the underground manager or the alternate underground manager, as the case may be; and
 - (b) the name of the person who so acted during the period.
- (5) The quarry manager and any alternate quarry manager must each maintain a log in the record book of his or her periods of duty as quarry manager for the mine.
- (6) Without limiting subsection (5), the log maintained by the quarry manager and the log maintained by any alternate quarry manager must include, in accordance with the regulations, particulars of —
 - (a) each period during which a person appointed under section 38(3) acted as deputy of the quarry manager or the alternate quarry manager, as the case may be; and
 - (b) the name of the person who so acted during the period.

- (7) A person who contravenes subsection (1), (3) or (5) commits an offence.

[Section 38A inserted by No. 68 of 2004 s. 46; amended by No. 16 of 2008 s. 13.]

39. Requirement for appointment of more than one certificated manager

- (1) If the State mining engineer is of the opinion that the mining operations of a mine, whether underground or quarry operations, extend over or are separated by such a distance that control and supervision on a daily basis by one underground manager or quarry manager is inadequate, the State mining engineer may, by written notice given to the principal employer of the mine, require the principal employer to appoint an underground manager or a quarry manager to control and supervise on a daily basis such of those operations as the State mining engineer may specify in the notice.

- (1a) A notice is sufficiently given to the principal employer at a mine for the purposes of subsection (1) if it is given to the registered manager of the mine.

- (2) A principal employer who fails to comply promptly with a requirement under subsection (1) commits an offence.

[Section 39 amended by No. 68 of 2004 s. 47.]

40. Managers to notify assumption of control

- (1) Every registered manager must, within 7 days of assuming the control and supervision of a mine as registered manager, notify the district inspector for the region in which the mine is situated accordingly and acknowledge, by signature in the notification, his or her appointment as registered manager.
- (2) Every underground manager and quarry manager must, within 7 days of assuming the control and supervision on a daily basis of underground operations or quarry operations as underground

manager or quarry manager, as the case may be, notify the district inspector for the region in which the mine is situated accordingly and acknowledge, by signature in the notification, his or her appointment as underground manager or quarry manager.

- (2a) A person who contravenes subsection (1) or (2) commits an offence.
- (3) A district inspector must confirm in writing receipt of every notification that the inspector receives under this section.
- (4) Where a commute schedule is established and the assumption of control and supervision of the registered manager, underground manager, quarry manager and alternate managers, as the case may require, has been notified to the district inspector as required by this Part, the assumption of control by those persons for the periods of duty provided for in the commute schedule may, instead of being notified to the district inspector, be entered in the record book in accordance with section 38A.

[Section 40 amended by No. 68 of 2004 s. 48; No. 16 of 2008 s. 14.]

41. Offence to work mine without appointed managers

- (1) If a mine is worked for more than 14 days other than —
 - (a) under the control and supervision of a registered manager when such a manager is required to be appointed under section 33; or
 - (b) in the case of underground operations and quarry operations, under the control and supervision on a daily basis of an underground manager or a quarry manager when such a manager is required to be appointed under section 35 or 37; or
 - (c) in the case of exploration operations where a registered manager need not be appointed because of section 33(7) (other than operations to which section 33(6) applies),

under the control and supervision of a registered manager or an exploration manager,

the principal employer commits an offence.

- (2) Where the principal employer commits an offence against subsection (1), the offence is deemed to continue while the mine is so worked and section 95(2) applies in respect of that continuing offence.

[Section 41 amended by No. 16 of 2008 s. 15.]

42. Commencement or suspension of mining

- (1) The principal employer or the manager of a mine must, in accordance with the regulations, notify the district inspector for the region in which the mine is situated —
- (a) before mining operations are commenced at the mine; or
 - (b) before mining operations are recommenced after their suspension; or
 - (c) before mining operations are abandoned; or
 - (d) before mining operations are suspended.
- (2) The principal employer or the manager must at the same time as giving notice under subsection (1) provide such evidence as is necessary to satisfy the district inspector for the region in which the mine is situated that the obligations under the Act as to commencement, recommencement, abandonment, or suspension of mining operations, as the case may require, have been complied with; and on receiving such a notice the district inspector must inspect the mine and verify the evidence provided with the notice and make a record accordingly.
- (3) A principal employer or manager must procure the approval in writing of the State mining engineer before mining operations are commenced at a mine.
- (4) A principal employer or manager who contravenes subsection (1), (2) or (3) commits an offence.

- (5) In this section, *mining operations* do not include exploration operations.

43. Duties and responsibilities of manager

- (1) The manager of a mine has the management and control of the mine subject to any instructions given to the manager by or on behalf of the principal employer.
- (2) The manager of a mine must, so far as is practicable —
- (a) manage and control the operation of the mine in accordance with this Act; and
 - (b) ensure that every person who is appointed to perform any duty under this Act understands the nature and scope of that duty; and
 - (c) ensure that every person, other than the principal employer and persons acting on behalf of the principal employer, performs all duties imposed on that person under this Act.
- (3) A manager who contravenes subsection (2) commits an offence.
[Section 43 amended by No. 16 of 2008 s. 16.]

43A. Duties and responsibilities of underground manager or quarry manager

- (1) An underground manager is responsible for the immediate direction and control, on a daily basis, of the underground operations of the mine for which the holder of that office is the underground manager, subject to any instructions given to the underground manager by the registered manager or by or on behalf of the principal employer.
- (2) The underground manager of a mine must, so far as is practicable —
- (a) control and supervise, on a daily basis, the underground operations of the mine; and

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- (b) ensure that every person who is appointed to perform any duty under this Act underground understands the nature and scope of that duty; and
 - (c) ensure that, when underground, every person, other than the registered manager, the principal employer, or any person acting on behalf of the principal employer, performs all duties imposed on that person under this Act.
- (2a) An underground manager who contravenes subsection (2) commits an offence.
- (3) A quarry manager is responsible for the immediate direction and control, on a daily basis, of the quarry operations of the mine for which the holder of that office is the quarry manager, subject to any instructions given to the quarry manager by the registered manager or by or on behalf of the principal employer.
- (4) The quarry manager of a mine must, so far as is practicable —
 - (a) control and supervise, on a daily basis, the quarry operations of the mine; and
 - (b) ensure that every person who is appointed to perform any duty under this Act in the course of quarry operations understands the nature and scope of that duty; and
 - (c) ensure that, when engaged in quarry operations, every person, other than the registered manager, the principal employer, or any person acting on behalf of the principal employer, performs all duties imposed on that person under this Act.
- (5) A quarry manager who contravenes subsection (4) commits an offence.

[Section 43A inserted by No. 16 of 2002 s. 4; amended by No. 16 of 2008 s. 17.]

44. Management appointments

- (1) A principal employer, manager or other person authorised for the purpose who appoints a person to perform duties or assist that person to perform duties imposed under this Act must make the appointment in writing and must provide the person appointed with a written summary of responsibilities and duties.
- (2) A registered manager must appoint or ensure the appointment of such competent persons as are necessary to assist the registered manager to carry out his or her duties under this Act and, except where this Act or the regulations require the appointment to be notified in some other way, must record the facts and nature of each such appointment in the record book.
- (3) A person who is appointed as provided in subsection (1) or (2) must, within 7 days of the appointment, acknowledge his or her appointment by signing —
 - (a) the record book next to the record of the appointment; and
 - (b) the instrument of appointment if there is such an instrument.
- (4) A person who contravenes subsection (1), (2) or (3) commits an offence.

45. Provision of engineering report

- (1) If at any time the State mining engineer so requires by notice in writing, the principal employer or the manager of a mine must, without delay, procure and provide to the State mining engineer, at the principal employer's expense, an independent study —
 - (a) concerning safety and health at the mine, generally or in some particular respect specified by the State mining engineer, or safety of all or some specified part of the mine's plant, buildings, operations, or structures; or
 - (b) with respect to an accident or a dangerous occurrence at the mine that an inspector is investigating.

- (2) The State mining engineer must state in any notice referred to in subsection (1) the reasons why the independent study is required.
- (3) An independent study required under this section must be prepared by a professionally qualified engineer or some other qualified professional person who is approved for the purpose by the State mining engineer.
- (4) A principal employer or manager who contravenes subsection (1) commits an offence.

[Section 45 amended by No. 30 of 1995 s. 76(4).]

46. Principal employer's instructions to manager

- (1) If the manager of a mine so requests, the principal employer of the mine must confirm in writing an instruction given by or on behalf of the principal employer to the manager concerning the performance of any duty imposed on the manager under this Act.
- (2) The principal employer of a mine, or a person on behalf of the principal employer, must not instruct any person (other than the manager) at work at the mine concerning any duty imposed on the manager under this Act except with the consent of the manager or in an emergency.
- (3) If any instruction referred to in subsection (2) is given in an emergency, the principal employer must, if the manager of the mine so requests, confirm the instruction in writing.
- (4) The principal employer of a mine must not hinder or compromise the manager in the performance of a duty or responsibility imposed on the manager under this Act.
- (5) A principal employer who contravenes subsection (1), (2), (3), or (4) commits an offence.
- (6) A person purporting to act on behalf of a principal employer who contravenes subsection (2) commits an offence.

46A. Appointment of exploration manager

- (1) Before exploration operations begin at a mine, the principal employer must appoint an exploration manager for those operations and, while those operations continue, must ensure that an exploration manager is appointed for those operations.
- (2) If exploration operations are carried out by a syndicate or other association of persons in such a way that no person is employed in those operations, no exploration manager is required and the members of that entity or partnership or those persons are jointly and severally responsible for the performance of those duties and responsibilities which are, in the circumstances described in section 47A(1), imposed on exploration managers under this Act, so far as those duties and responsibilities apply to an operation without employees.
- (3) Subsection (1) does not prevent the registered manager for the mine (if there is one) from being appointed as the exploration manager for those operations.
- (4) A principal employer who contravenes subsection (1) commits an offence.

[Section 46A inserted by No. 16 of 2008 s. 18.]

47. Management of exploration operations

- (1) If exploration operations are carried out on a mining tenement which is held by a person who holds an adjoining mining tenement or mining tenements on one or more of which mining operations are being carried out, the registered manager of the mine at which those mining operations are being carried out may notify in writing the senior inspector responsible for the region of the State in which those exploration operations are being carried out that all such exploration operations are under the control of that registered manager.
- (2) If exploration operations at a mine are not under the control of a registered manager because a registered manager is not required

under section 33(7) for those operations and, for a mine to which subsection (1) applies, no notice has been given under that subsection, the principal employer must —

- (a) notify, without delay and in writing, the senior inspector responsible for the region of the State in which those exploration operations are being carried out of the name and address of the person who is the exploration manager for those operations; and
 - (b) notify, without delay and in writing, that senior inspector of the name and address of the person who is responsible to the principal employer for the management of all activity in carrying out such exploration operations (and that person may, but need not, be the person notified under paragraph (a) as exploration manager); and
 - (c) take all reasonable steps to ensure that the exploration operations are carried out in accordance with all applicable provisions under this Act.
- (3) An exploration manager must inform the senior inspector for the region of the State in which the exploration operations are to take place of the location, scope, and nature of the exploration operations in accordance with the regulations.
- (4) A person notified as being responsible for the management of exploration activity under subsection (2)(b) must take all reasonable steps to liaise effectively with the district inspector for the region where that activity is taking place concerning the location, scope and nature of the exploration operations.
- (5) Notwithstanding subsections (1) and (2), in the case of exploration operations carried out by a syndicate or other association of persons in such a way that no person is employed in those operations, no notification under subsection (2) is required, but the members of that entity or partnership or those persons are jointly and severally responsible for the performance of those duties and responsibilities which are —

- (a) in the circumstances described in section 47A(1), imposed on exploration managers under this Act; or
 - (b) imposed on persons referred to in subsection (2)(b) under this Act.
- (6) A person who contravenes subsection (2), (3) or (4) commits an offence.
- [Section 47 amended by No. 16 of 2008 s. 19.]*

47A. Exploration manager to be treated as a manager in certain circumstances

- (1) If exploration operations at a mine are not under the control of a registered manager because a registered manager is not required under section 33(7) for those operations and no notice has been given under section 47(1), then, for the purposes of this Act, the exploration manager appointed for those operations is to be treated as a manager of a mine in respect of those operations, to the extent to which that is relevant to those operations.
 - (2) Subsection (1) does not apply to exploration operations to which section 46A(2) applies.
- [Section 47A inserted by No. 16 of 2008 s. 20.]*

Division 2 — Certificates of competency

48. Board of Examiners

- (1) There is established a Board of Examiners which is to be constituted in the manner provided in the regulations; and the regulations may provide for the Board to be constituted differently for different purposes.
- (2) The functions of the Board of Examiners are —
 - (a) to examine in accordance with the regulations the qualifications, experience and character of applicants for certificates of competency and issue such certificates where appropriate; and

- (b) to receive, consider and inquire into complaints concerning holders of certificates of competency and to suspend or cancel such certificates where appropriate; and
 - (c) to perform such other functions as may be conferred in the regulations.
- (3) Members of the Board of Examiners are entitled to be paid such remuneration and travelling and other allowances as the Minister determines on the recommendation of the Minister for Public Sector Management.

49. Complaint to Board of Examiners

- (1) An inspector or other interested person may lodge a written complaint with the Board of Examiners if the inspector or person has reason to believe that the holder of a certificate of competency —
 - (a) has acted in an incompetent, negligent, or improper manner in performing any duty under this Act; or
 - (b) has been convicted of an offence under this Act; or
 - (c) is incompetent or unfit to perform his or her duties.
- (2) A complaint under this section must specify the reasons for the belief on which the complaint is based.
- (3) On receiving a complaint, the Board of Examiners must meet promptly and decide whether to hold an inquiry.

50. Inquiry by Board of Examiners

- (1) After considering a complaint under section 49, the Board of Examiners may hold an inquiry into that complaint where it considers an inquiry is desirable and justified.
- (2) The Board of Examiners must —

- (a) give the holder of the certificate of competency (the respondent) at least 21 days written notice of the time and place of the inquiry; and
 - (b) at least 10 days before the inquiry, give the respondent a written summary of what is alleged against him or her; and
 - (c) give the respondent a reasonable opportunity to be heard or make written representations.
- (3) The respondent —
- (a) may attend the inquiry; and
 - (b) may be represented by a legal practitioner; and
 - (c) may examine and cross-examine witnesses and otherwise offer evidence.
- (4) The Board of Examiners may conduct an inquiry in whatever manner that it considers appropriate and equitable and is not bound by the rules of evidence.
- (5) A person who attends an inquiry to give evidence or produce documents is entitled to the expenses allowable correspondingly in criminal trials in the Supreme Court.
- (6) The Board of Examiners may make an order of costs in favour of the respondent or the department and such an order may be registered in a court of competent jurisdiction as a judgment debt.

51. Disciplinary action following inquiry

- (1) If after holding an inquiry the Board of Examiners is satisfied that the substance of any complaint is made out, the Board may —
- (a) reprimand the respondent; or
 - (b) suspend the respondent's certificate of competency for a stated period; or
 - (c) cancel the respondent's certificate of competency.

- (2) A suspension or cancellation under this section takes effect after the time for an appeal under section 52 expires.
- (3) When the Board of Examiners suspends or cancels a certificate of competency, the respondent must return the certificate to the Board within a period specified by the Board when suspending or cancelling the certificate.
- (4) A person who contravenes subsection (3) commits an offence.
[Section 51 amended by No. 16 of 2008 s. 21.]

52. Appeal to Tribunal

- (1) A person whose certificate of competency is suspended or cancelled by the Board of Examiners may appeal in writing to the Tribunal within 30 days of receiving notice of the suspension or cancellation.
- (2) If an appeal is lodged, the suspension or cancellation does not take effect pending determination of the appeal unless the Tribunal orders otherwise.
- (3) The Tribunal may dismiss the appeal or may make any decision in relation to the matter of the appeal that the Board of Examiners might have made when inquiring into the complaint.
[Section 52 amended by No. 68 of 2004 s. 85(1).]

Part 5 — Safety and health representatives and committees

[Heading amended by No. 30 of 1995 s. 76(1).]

Division 1 — Safety and health representatives

[Heading amended by No. 30 of 1995 s. 76(1).]

53. Functions of safety and health representatives

- (1) The functions of a safety and health representative are, in the interests of safety and health at the mine for which the representative was elected —
- (a) to inspect the mine, or any part of the mine —
 - (i) at such times as are agreed with the manager of the mine; or
 - (ii) where the representative has not inspected the mine, or that part of the mine, in the preceding 30 days, at any time upon giving reasonable notice to the manager;
 - and
 - (b) in the event of an accident, a dangerous occurrence, or a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, immediately to carry out an appropriate investigation in respect of the matter; and
 - (c) to keep informed as to the safety and health information provided by the manager of the mine or an employer in accordance with this Act and liaise as necessary with the department and other public sector and private bodies; and
 - (d) immediately to report to the employer concerned and to the manager of the mine any hazard or potential hazard to which any person is, or might be, exposed at the mine that comes to the representative's notice; and

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- (e) where there is a safety and health committee for the mine, to refer to that committee any matters that the representative thinks the safety and health committee should consider; and
 - (f) to consult and cooperate with the manager of the mine and employers on all matters relating to the safety or health of persons at the mine; and
 - (g) to liaise with the employees, employers, and employee's inspectors in accordance with section 25, regarding matters concerning the safety or health of persons at the mine.
- (2) A safety and health representative for a mine has such powers as are necessary for the carrying out of the representative's functions under this Act and in particular, but without limiting the generality of the preceding statement, may, where requested to do so by an inspector, accompany an inspector while the inspector is carrying out, at the mine, any of the inspector's functions under this Act.
- (3) A safety and health representative incurs no civil liability arising from the representative's performance of, or failure to perform, in good faith any function of a safety and health representative under this Act.
- (4) If a scheme has been established under section 55A, the references in this section to *the mine* and *a mine* include —
- (a) if the scheme applies to more than one mine, each mine to which the scheme applies; and
 - (b) if under the scheme a safety and health representative is elected for a group of employees, each mine or part of a mine at which any member of the group works.

[Section 53 amended by No. 30 of 1995 s. 61 and 76(2), (3) and (4); No. 68 of 2004 s. 52; No. 16 of 2008 s. 22.]

54. Notice requiring election of safety and health representatives

- (1) An employee who works at a mine may give notice to his or her employer at the mine requiring the election of a safety and health representative for the mine.
- (2) The fact that a notice under subsection (1) requires an election for the mine at which the employee works does not prevent —
 - (a) the establishment of a scheme under section 55A that extends beyond that mine; or
 - (b) the making of a determination under section 55(4a) for that purpose.

[Section 54 amended by No. 30 of 1995 s. 76(4); No. 68 of 2004 s. 53.]

55. Consultation on election matters

- (1) An employer must, within 21 days of being given notice under section 54 requiring the election of a safety and health representative, invite the employees who work at the mine in respect of which the notice is given to appoint a delegate or delegates in accordance with subsection (3).
- (2) An employer may, at any time the employer requires the election of a safety and health representative for a mine, invite the employees who work at the mine to appoint a delegate or delegates in accordance with subsection (3).
- (3) The employees who work at a mine may, upon being invited under this section to do so, appoint a delegate or delegates from amongst their number to represent them.
- (3a) An employer must consult with the delegate or delegates, as the case requires, appointed under this section as to the matters which are required to be determined under this section.

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- (4) The matters which are required to be determined under this section in relation to an election are —
- (a) the number of safety and health representatives to be elected for the mine; and
 - [(b) *deleted*]
 - (ba) the matters, areas or kinds of work in respect of which each safety and health representative is to perform functions, so far as those things are not to be dealt with by provision of a kind mentioned in section 55B(2) or (3); and
 - (bb) how a vacancy in an office of safety and health representative that occurs in the circumstances mentioned in section 57(2)(b), (ba), (c) or (d) is to be dealt with; and
 - (c) the person by whom and the manner in which the election is to be conducted.
- (4a) The employer and the delegate or delegates consulting under subsection (3a) may determine that provision of a kind mentioned in section 55B(2) or (3) should be made.
- (5) For the purposes of subsection (4)(c), but without limiting the generality of that provision, the employer and the delegate or delegates consulting under subsection (3a) may determine that —
- (a) the Electoral Commissioner; or
 - (b) an organisation registered under Part II Division 4 of the *Industrial Relations Act 1979*,
- is to be requested to conduct an election.
- (6) Any matter mentioned in subsection (4) that remains unresolved notwithstanding attempts to resolve it under subsection (3a) may be referred to the State mining engineer who must, if unable to resolve the matter to the satisfaction of each of the parties concerned, refer the matter to the Tribunal for determination.

- (7) An employer who contravenes subsection (1) or (3a) commits an offence.

[Section 55 amended by No. 30 of 1995 s. 62 and 76(4); No. 68 of 2004 s. 54 and 84(1); No. 16 of 2008 s. 23.]

55A. Election scheme may be established

- (1) In this section —
consulting parties means the employer and the delegate or delegates consulting under section 55(3a), and includes any delegate or delegates appointed under section 55C.
- (2) If the consulting parties in respect of a mine have made a determination referred to in section 55(4a), a written agreement may be made between the consulting parties establishing a scheme under this section.
- (3) If the consulting parties cannot reach agreement on any matter for the purposes of subsection (2) they may refer the matter to the State mining engineer, who is to attempt to resolve it to the satisfaction of the consulting parties.
- (4) If the State mining engineer is unable to resolve the matter, he or she is to refer it to the Tribunal for determination.
- (5) If subsection (4) applies, references in this Division to a scheme under this section are references to a scheme consisting of the provisions of —
- (a) an agreement under subsection (2); and
 - (b) the determination of the Tribunal under subsection (4).

[Section 55A inserted by No. 68 of 2004 s. 55.]

55B. What may be included in a scheme

- (1) In this section —
contractor and *principal* have the meanings given to those terms in section 15A(1).

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- (2) A scheme under section 55A (a *scheme*) may include provision for the election of one or more safety and health representatives for —
- (a) one or more mines in addition to the mine referred to in section 55A(2); or
 - (b) any group of employees of the employer concerned that constitutes a distinct unit of the employer's workforce,
- or may make provision for both of those matters, as the case may require.
- (3) A scheme may despite any provision of this Part —
- (a) provide for —
 - (i) a contractor; and
 - (ii) any person employed by a contractor, to be treated, for the purposes of this Part, as employees of the principal who engages the contractor; and
 - (b) provide for the principal who engages a contractor to be treated, for the purposes of this Part, as the employer of —
 - (i) the contractor; and
 - (ii) any person employed by the contractor.
- (4) A scheme may make provision for —
- (a) the scheme to apply to any subsequent election of one or more safety and health representatives; and
 - (b) the manner in which an amendment may be made to the scheme after it has been determined.

[Section 55B inserted by No. 68 of 2004 s. 55.]

55C. Appointment of further delegates may be required

- (1) In this section —
- additional employees*** means employees who have not been invited to appoint a delegate or delegates under section 55(1) or

- (2) because that subsection has not become applicable to the mine at which they work.
- (2) A scheme under section 55A cannot make provision of the kind mentioned in section 55B(2) that will affect additional employees unless subsection (3) of this section is complied with.
- (3) If it is proposed that such provision be made the employer must invite any additional employees at a mine to appoint a delegate or delegates in accordance with subsection (4).
- (4) Additional employees who work at a mine may, upon being invited under subsection (3) to do so, appoint a delegate or delegates from amongst their number to represent them for the purposes of making an agreement under section 55A(2).

[Section 55C inserted by No. 68 of 2004 s. 55.]

56. Election of safety and health representatives

- (1) In this section —
- election*** means an election required for the purpose of electing one or more safety and health representatives following —
- (a) the giving of a notice under section 54 in relation to a mine; or
 - (b) a decision of an employer under section 55(2);
- relevant employee***, in relation to an election, means —
- (a) an employee who works at the mine to which the election relates; or
 - (b) if a scheme has been established under section 55A for the election, an employee who —
 - (i) works at a mine; or
 - (ii) is a member of a group of employees, to which the scheme applies.

[(2)-(5) deleted]

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- (6) Subject to this section, an election is to be conducted and safety and health representatives are to be elected in accordance with —
- (a) any determination under section 55; and
 - (b) if applicable, a scheme established under section 55A.
- (7) If there is any inconsistency between a determination under section 55 and a scheme established under section 55A, the latter prevails.
- (8) An election is to be by secret ballot.
- (8a) Every relevant employee is entitled to vote at an election.
- (8b) A person is not eligible to be elected as a safety and health representative for a mine unless the person —
- (a) is a relevant employee; and
 - (b) where the representative to be elected will be required to perform his or her functions in relation to underground mining operations, has had a total of at least 12 months' experience as a person engaged in underground mining operations.
- (9) If, after the relevant steps provided for by or under this Division have been taken, only one eligible candidate is nominated for election to an office of safety and health representative, a ballot need not be held and that candidate is deemed to have been duly elected.
- (10) The person conducting an election must —
- (a) give notice of the result to —
 - (i) a person elected as a safety and health representative; and
 - (ii) the employer concerned;and
 - (b) give notice of the result to the State mining engineer in the form approved by the State mining engineer and

provide such further particulars as are required by that form.

- (10a) A notice under subsection (10)(a) must be in writing and must —
- (a) specify the day on which the election was completed; and
 - (b) be given not later than the 7th day after that day.
- (11) Where a question relating to an election arises, the matter may be referred by any person interested in the question to the State mining engineer who must, if unable to resolve the matter to the satisfaction of the persons concerned, refer the matter to the Tribunal for determination.

[Section 56 amended by No. 30 of 1995 s. 63 and 76(4); No. 68 of 2004 s. 56 and 84(1); No. 16 of 2008 s. 24.]

57. Terms of office

- (1) A person who is elected as a safety and health representative holds office, subject to this Act, for a term of 2 years commencing on the 10th day after the day specified for the purposes of section 56(10a)(a) in respect of that person.
- (2) A person ceases to hold office as a safety and health representative if —
- (a) the term of office of the person expires and the person is not re-elected; or
 - (b) the person ceases to be an employee who works at a mine for which the person was elected; or
 - (ba) if the person was elected for a group of employees pursuant to a scheme under section 55A, the person ceases to be an employee who belongs to that group of employees; or
 - (c) the person resigns office by notice given to his or her employer; or

(d) the person is disqualified under section 59.

[Section 57 amended by No. 30 of 1995 s. 76(4); No. 68 of 2004 s. 58.]

58. Manager to ensure safety of safety and health representative

(1) The manager of a mine must ensure that whenever a safety and health representative is carrying out an inspection of the mine in accordance with section 53(1)(a), a suitably experienced person has been given responsibility for ensuring the safe conduct of the representative through the mine.

(2) A manager who contravenes subsection (1) commits an offence.

[Section 58 amended by No. 30 of 1995 s. 76(4).]

59. Disqualification of safety and health representative

(1) A person specified in subsection (2) may refer to the Tribunal the question of whether a safety and health representative should be disqualified on the ground that the representative —

(a) has done anything under this Act with the intention only of causing harm to an employer at the mine or the manager of the mine, or a commercial or business undertaking of one of those persons; or

(b) has used or disclosed any information acquired from an employer at the mine or the manager of the mine in the representative's capacity as a safety and health representative for a purpose that is not connected with the performance of the representative's functions under this Act with the intention of causing harm to an employer at the mine or the manager of the mine, or a commercial or business undertaking of one of those persons; or

(c) has failed adequately to perform the functions of a safety and health representative under this Act,

or on more than one of those grounds.

- (2) A reference under subsection (1) concerning the disqualification of a safety and health representative may be made by —
- (a) an employer at the mine or the manager of the mine; or
 - (b) a relevant employee; or
 - (c) the State mining engineer.
- (3) If, upon a reference under subsection (1), the Tribunal is satisfied that grounds for the disqualification of the safety and health representative exist, the Tribunal may disqualify the representative for a specified period or permanently from holding office as a safety and health representative.
- (4) In determining what disqualification, if any, should be imposed under subsection (3), the Tribunal must take into account —
- (a) the harm, if any, caused to the employer, or manager of the mine, or a commercial or business undertaking of one of those persons; and
 - (b) the past record of the safety and health representative in performing the functions of a safety and health representative under this Act; and
 - (c) whether the safety and health representative acted contrary to the public interest,

and may take into account any other matters that the Tribunal considers relevant.

- (5) In subsection (2)(b) —

relevant employee means —

- (a) an employee who works at the mine concerned;
- (b) if the safety and health representative was elected for more than one mine pursuant to a scheme established under section 55A, an employee who works at any such mine; or
- (c) if under a scheme referred to in paragraph (b) the safety and health representative was elected for a group of employees, an employee who is a member of the group.

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Part 5 Safety and health representatives and committees

Division 1 Safety and health representatives

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[Section 59 amended by No. 30 of 1995 s. 64 and 76(4); No. 68 of 2004 s. 59 and 84.]

60. Duties of employers and manager regarding safety and health representatives

- (1) This section applies in relation to a mine if there is a safety and health representative for that mine.
- (1a) This section also applies in relation to a mine or a part of a mine if —
 - (a) pursuant to a scheme under section 55A, a safety and health representative has been elected for a group of employees; and
 - (b) any member of the group works at that mine or at that part of a mine.
- (2) The manager of a mine and every employer at the mine must make available to each safety and health representative such information as each of those persons has, or could reasonably be expected to have, relating to —
 - (a) hazards to persons that arise or may arise at the mine; and
 - (b) so far as it is relevant to the hazards mentioned in paragraph (a), the plant and substances used at the mine and the systems of work at the mine; and
 - (c) the safety and health of employees who work at the mine.
- (3) Where an employee so requests at an interview concerning occupational safety or health between an employer at the mine, the manager, or a representative of either of those persons, and the employee, that employer or manager must permit a safety and health representative to be present.
- (4) The manager of the mine and every employer at the mine must consult with safety and health representatives on intended changes to the mine or the plant or substances used at the mine

where those changes may reasonably be expected to affect the safety or health of employees at the mine.

- (5) The employer of a safety and health representative must ensure that the safety and health representative receives any entitlement that becomes due to him or her under subsection (7a) or section 62.
- (6) Where any accident or dangerous occurrence takes place in a part of the mine where employees who are represented by a safety and health representative work, the employer of the safety and health representative must ensure that the safety and health representative is notified without delay of the accident or occurrence.
- (7) Every employer at a mine must provide such facilities and assistance as are necessary or prescribed for the purposes of the performance by safety and health representatives of their functions under this Act.
- (7a) Where a safety and health representative attends a course of training —
 - (a) for which, under section 62, the representative is entitled to take time off work; and
 - (b) that is prescribed for the purposes of this paragraph,
the employer is liable to pay, to the extent that is prescribed —
 - (c) the tuition fee for the course; and
 - (d) other costs incurred by the representative in connection with attendance at the course.
- (8) A person who contravenes subsection (2), (3), (4), (5), (6) or (7) commits an offence.

*[Section 60 amended by No. 30 of 1995 s. 76(1), (3) and (4);
No. 68 of 2004 s. 60; No. 16 of 2008 s. 25.]*

61. Duties of employers regarding safety and health representatives

- (1) An employer at a mine —
- (a) must not make available to a safety and health representative any medical information concerning an employee unless —
 - (i) the employee has consented to the employer doing so; or
 - (ii) the information is in a form that does not identify, nor permit the identification of, the employee;
- and
- (b) is not required by section 60(2) to make available information disclosing a trade secret.
- (2) An employer who contravenes subsection (1)(a) commits an offence.

[Section 61 amended by No. 30 of 1995 s. 76(4).]

62. Regulations regarding time off work for safety and health representatives

- (1) The regulations may prescribe the entitlements of a safety and health representative for the purposes of —
- (a) performing the functions that the representative is required to perform under this Act; and
 - (b) the attendance of the representative at courses of training in occupational safety and health accredited under section 14(1)(h) of the *Occupational Safety and Health Act 1984*,

but the entitlements for those purposes may be varied, in a way not less favourable to the safety and health representative than that prescribed in the regulations, by agreement with the employer concerned or by a determination made by the Tribunal

upon a reference made to the Tribunal under this section by the employer, the safety and health representative, or the State mining engineer.

(2) In subsection (1) —

entitlements means —

- (a) the time that a safety and health representative is to be permitted to take off work with pay and other benefits; and
- (b) payments to which a safety and health representative is entitled for attendance at a course of training in his or her own time.

[Section 62 amended by No. 30 of 1995 s. 65 and 76(1) and (4); No. 68 of 2004 s. 61 and 84.]

Division 2 — Safety and health committees

[Heading amended by No. 57 of 1997 s. 88(1).]

62A. Terms used in this Division

(1) In this Division —

allowed period means —

- (a) 3 months; or
- (b) such longer period as the State mining engineer may allow on application by a consultation party;

consultation party means a person who comes within section 67B(2)(a), (b) or (c);

prescribed requirements means —

- (a) the provisions of —
 - (i) an agreement under section 67B(2); and
 - (ii) section 67B(3);
- (b) the terms of a determination of —
 - (i) the State mining engineer, under section 67C; or

- (ii) the Tribunal, under section 67F,
in respect of the mine concerned or, if any agreement
under section 67D applies, any mine concerned; and
 - (c) any requirement of the regulations.
- (2) In this Division references to a *safety and health representative for the mine* or a *safety and health representative for a mine* include a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine concerned.

[Section 62A inserted by No. 68 of 2004 s. 62.]

63. Functions of safety and health committees

- (1) In this section —
mine, where an agreement under section 67B(2) applies to the establishment of a safety and health committee, means any mine in relation to which the committee may perform functions.
- (2) The functions of a safety and health committee are —
 - (a) to facilitate consultation and cooperation between the manager of the mine, employers and employees in initiating, developing, and implementing measures designed to ensure the safety and health of employees at the mine; and
 - (b) to keep itself informed as to standards relating to safety and health generally recommended or prevailing in mines of a comparable nature and to review, and make recommendations to the manager of the mine, and any employer at the mine, on rules and procedures at the mine relating to the safety and health of the employees; and
 - (c) to recommend to the manager, employers and employees at the mine the establishment, maintenance, and monitoring of programmes, measures and procedures at

the mine relating to the safety and health of the employees; and

- (d) to keep in a readily accessible place and form such information as is provided under this Act by the manager and employers regarding the hazards to persons that arise or may arise at the mine; and
- (e) to consider any changes or intended changes to or at the mine that may reasonably be expected to affect the safety or health of employees at the mine and make such recommendations as the committee considers appropriate to the manager and any employer at the mine in respect of those changes or intended changes; and
- (f) to consider such matters as are referred to the committee by a safety and health representative; and
- (g) to perform such other functions as may be prescribed in the regulations or given to the committee, with its consent, by an employer at the mine or the manager of the mine.

[Section 63 amended by No. 30 of 1995 s. 76(2), (3) and (4); No. 68 of 2004 s. 63.]

64. Employees to appoint representatives

Whenever required for the purpose of making an agreement under section 67B(2) or 67D(1) in respect of a mine, the employees who work at the mine are to appoint, from amongst their number, one or more employees —

- (a) to represent them for that purpose; or
- (b) as may be required, to replace any employee previously appointed under this section.

[Section 64 inserted by No. 68 of 2004 s. 64.]

65. Obligation of employer to establish a safety and health committee

- (1) An employer must, in accordance with the prescribed requirements, establish a safety and health committee for a mine within the allowed period after —
- (a) the coming into operation of a regulation requiring the employer to do so;
 - (b) service on the employer of a notice by the State mining engineer requiring the employer to do so; or
 - (c) being requested under section 66(1) to do so,

unless, in the case mentioned in paragraph (c), the State mining engineer has decided under section 67 that a safety and health committee is not required to be established for the mine concerned.

- (2) If an employer contravenes subsection (1), the employer commits an offence.

[Section 65 inserted by No. 68 of 2004 s. 64.]

66. Request for establishment of safety and health committee

- (1) An employee who works at a mine may request an employer at the mine to establish a safety and health committee for the mine.
- (2) If a request is made under subsection (1), the employer must within 21 days after the request is received either —
- (a) notify —
 - (i) the employee who made the request; and
 - (ii) any safety and health representative for the mine, that the employer agrees to the request; or
 - (b) under section 67, refer to the State mining engineer the question whether a safety and health committee should be established for the mine.

- (3) If an employer contravenes subsection (2), the employer commits an offence.

[Section 66 inserted by No. 68 of 2004 s. 64.]

67. Referral of question to State mining engineer

- (1) If —
- (a) a request has been made to an employer under section 66(1) in respect of a mine; and
 - (b) the employer considers that the circumstances of the case are such that the employer should not be required to establish a safety and health committee for the mine,
- the employer may refer to the State mining engineer the question of whether a safety and health committee should be so established.
- (2) The employer must give notice of a referral under this section to —
- (a) the employee concerned; and
 - (b) any safety and health representative for the mine.
- (3) The State mining engineer is to —
- (a) decide a question referred to the State mining engineer under subsection (1); and
 - (b) notify the employer and the employee concerned of the decision.

[Section 67 inserted by No. 68 of 2004 s. 64.]

67A. Employer may establish a safety and health committee

An employer at a mine may, on the employer's own initiative and in accordance with the prescribed requirements, establish a safety and health committee for the mine if —

- (a) a regulation referred to in section 65(1)(a) has not come into operation;

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(b) a notice referred to in section 65(1)(b) has not been served on the employer; or

(c) a request has not been made under section 66(1),

in respect of the mine.

[Section 67A inserted by No. 68 of 2004 s. 64.]

67B. How safety and health committee to be constituted

(1) In this section —

mine, where an agreement under section 67D applies, includes 2 or more mines.

(2) Subject to subsection (3), the composition, and the manner in which persons become members, of a safety and health committee for a mine are to be determined by agreement in writing between —

(a) the employer or employers at the mine;

(b) any safety and health representative for the mine; and

(c) the employees appointed under section 64 in respect of the mine.

(3) At least one half of the members of a safety and health committee for a mine must be persons each of whom is —

(a) a safety and health representative for the mine; or

(b) an employee who works at the mine and holds office as a member representing other employees.

[Section 67B inserted by No. 68 of 2004 s. 64.]

67C. State mining engineer may make determination in certain cases

(1) This section applies if —

(a) a consultation party considers that discussions for the purpose of making an agreement under section 67B —

- (i) cannot commence or continue because there are no employees appointed under section 64 in respect of the mine concerned;
 - (ii) have not been commenced or continued in good faith by any party;
 - (iii) are being unreasonably delayed; or
 - (iv) have broken down;
 - or
 - (b) the employer concerned considers that for some other reason it is unlikely that the employer will be able to comply with section 65 within the allowed period under that section.
- (2) The employer or other consultation party may refer to the State mining engineer for determination —
- (a) the matters that are required to be settled by agreement under section 67B; or
 - (b) any particular matter mentioned in paragraph (a) on which the parties cannot agree.
- (3) On such a referral, the State mining engineer is to —
- (a) make any necessary determination; and
 - (b) notify the employer or other party concerned of the determination.

[Section 67C inserted by No. 68 of 2004 s. 64.]

67D. Functions of committee may cover more than one mine

- (1) If —
- (a) an employer —
 - (i) is under an obligation by operation of section 65(1); or
 - (ii) wishes to take action for the purposes of section 67A,

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in respect of more than one mine; and

- (b) a safety and health committee has not been established for one or more of those mines,

the parties concerned may agree in writing that one safety and health committee is to be established to perform functions in relation to each of the mines to which paragraph (b) applies.

- (2) For the purposes of subsection (1) the parties concerned are —

- (a) the employer or employers at;
- (b) any safety and health representative for; and
- (c) the employees appointed under section 64 in respect of,

any mine to which subsection (1)(b) applies.

- (3) An agreement under subsection (1) may provide —

- (a) for the establishment of a safety and health committee to perform functions in relation to more than one mine; and
- (b) for that committee to have subcommittees for each mine —

- (i) to advise the committee on the performance of its functions in relation to that mine; and
- (ii) to perform some or all of those functions as the delegate of the committee in accordance with the terms of a delegation to it.

- (4) The composition of any subcommittee referred to in subsection (3) is to be determined by the parties referred to in subsection (2).

[Section 67D inserted by No. 68 of 2004 s. 64.]

67E. Amendment of agreement and abolition of committee

- (1) In this section —

relevant parties, in respect of a mine, means —

- (a) the employer or employers at the mine; and

- (b) each member for the time being of the safety and health committee for the mine.
- (2) Where —
- (a) an agreement has been made under section 67B(2); or
 - (b) the matters referred to in section 67B(2) are governed by provisions consisting —
 - (i) wholly of a determination made under section 67C, whether or not it has been varied or confirmed under section 67F; or
 - (ii) partly of an agreement under section 67B(2) and partly of a determination made under section 67C, whether or not it has been varied or confirmed under section 67F,
- the relevant parties may by agreement in writing made between them —
- (c) vary —
 - (i) the agreement or provisions; or
 - (ii) if applicable, the agreement or provisions as previously varied under this subsection;
- and
- (d) make any transitional provision that is necessary or expedient in respect of the variation.
- (3) Where a safety and health committee has been established for a mine, the relevant parties may by agreement in writing —
- (a) abolish the committee; and
 - (b) make any transitional provision that is necessary or expedient in respect of the abolition.
- (4) If the relevant parties cannot agree on the exercise of a power referred to in subsection (2) or (3), any such party may refer to the State mining engineer for determination any question —

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- (a) whether the agreement or provisions concerned should be varied;
- (b) as to the manner in which the agreement or provisions should be varied; or
- (c) whether a safety and health committee should be abolished,

or as to transitional provisions that should be made in respect of such a matter.

- (5) On such a referral, the State mining engineer is to —
 - (a) make any necessary determination; and
 - (b) notify the relevant parties of the determination.

[Section 67E inserted by No. 68 of 2004 s. 64.]

67F. Review of State mining engineer's decision

- (1) Where the State mining engineer has made a decision under section 67(3) in respect of a mine —
 - (a) an employer at the mine;
 - (b) a safety and health representative for the mine; or
 - (c) an employee who works at the mine,may refer the decision to the Tribunal for review.
- (2) Where the State mining engineer has made a determination under section 67C(3) in respect of one or more mines —
 - (a) an employer at;
 - (b) a safety and health representative for; or
 - (c) an employee appointed under section 64 in respect of,a mine concerned, may refer the determination to the Tribunal for review.
- (3) Where the State mining engineer has made a determination under section 67E(5) in respect of —
 - (a) an agreement; or

- (b) a safety and health committee,
a relevant party, within the meaning in that section, in relation to the mine concerned may refer the determination to the Tribunal for review.
- (4) The Tribunal may confirm, vary or revoke a decision or determination of the State mining engineer referred to it under this section.

[Section 67F inserted by No. 68 of 2004 s. 64.]

68. Procedure of safety and health committees

Except as provided in the regulations, a safety and health committee may determine its own procedure.

[Section 68 inserted by No. 68 of 2004 s. 66.]

Division 3 — Discrimination

68A. Discrimination against safety and health representative in relation to employment

- (1) An employer or a prospective employer at a mine must not cause disadvantage to a person for the dominant or substantial reason that the person —
- (a) is or was a safety and health representative; or
 - (b) is performing or has performed any function as a safety and health representative.
- (2) For the purposes of subsection (1) an employer causes disadvantage to a person if the employer —
- (a) dismisses the person from employment;
 - (b) demotes the person or fails to give the person a promotion that the person could reasonably have expected;
 - (c) detrimentally alters the person's employment position;
or

- (d) detrimentally alters the person's pay or other terms and conditions of employment.
- (3) For the purposes of subsection (1) a prospective employer causes disadvantage to a person if the prospective employer refuses to employ the person.
- (4) An employer or prospective employer who contravenes subsection (1) commits an offence.

[Section 68A inserted by No. 68 of 2004 s. 67.]

68B. Discrimination against safety and health representative in relation to contract for services

- (1) In this section —
contractor and *principal* have the meanings given to those terms in section 15A(1).
- (2) Where a scheme under section 55A makes provision of the kind described in section 55B(3), a principal must not —
 - (a) terminate the engagement of a contractor; or
 - (b) subject a contractor to any other detriment,
for the dominant or substantial reason that the contractor or a person employed by the contractor —
 - (c) is or was a safety and health representative; or
 - (d) is performing or has performed any function as a safety and health representative.
- (3) A principal who contravenes subsection (2) commits an offence.

[Section 68B inserted by No. 68 of 2004 s. 67.]

68C. Claim may be referred to the Tribunal

- (1) A person may —
 - (a) refer to the Tribunal —

- (i) a claim that the person's employer or a prospective employer has caused disadvantage to the person in contravention of section 68A; or
 - (ii) in the case of a contractor referred to in section 68B, a claim that the principal has contravened that section;
- and
- (b) request the Tribunal to make one or more of the orders provided for by section 68D.
- (2) Subsection (1) applies whether or not —
- (a) the employer or prospective employer has been convicted of an offence under section 68A(4); or
 - (b) the principal has been convicted of an offence under section 68B(3).
- (3) A referral under subsection (1) may also be made on a person's behalf by an agent or legal practitioner referred to in section 31 of the *Industrial Relations Act 1979*.

[Section 68C inserted by No. 68 of 2004 s. 67.]

68D. Remedies that may be granted

- (1) If, on the hearing of a claim under section 68C(1)(a)(i), the Tribunal is satisfied that an employer or a prospective employer has contravened section 68A, the Tribunal may —
- (a) in the case of an employer, order the employer —
 - (i) to reinstate the claimant if the claimant was dismissed from employment;
 - (ii) to pay to the claimant such sum of money as the Tribunal considers adequate as compensation for loss of employment or loss of earnings; or
 - (iii) both to reinstate the claimant and to pay the claimant the sum of money referred to in subparagraph (ii),

- as the Tribunal thinks fit; or
- (b) in the case of a prospective employer, order that person to pay the claimant such sum of money as the Tribunal thinks fit.
- (2) If, on the hearing of a claim under section 68C(1)(a)(ii), the Tribunal is satisfied that a principal has contravened section 68B, the Tribunal may order the principal to pay the claimant such sum of money as the Tribunal thinks fit.
- (3) In determining a claim under section 68C(1)(a)(i) the Tribunal may make any order of the kind mentioned in section 23A(3), (4) and (5)(a) of the *Industrial Relations Act 1979* as if the claim were a claim to which section 23A of that Act applies.
- (4) In the determination of the amount of compensation for any loss of employment, loss of earnings or detriment —
- (a) the Tribunal is to have regard to any redress the claimant has obtained under another enactment; and
- (b) the claimant is not entitled to compensation both under this section and otherwise for the same loss of employment, loss of earnings or detriment.

[Section 68D inserted by No. 68 of 2004 s. 67.]

69. Other discriminatory treatment of employees or prospective employees

- (1) An employer or prospective employer at a mine who in any way treats an employee or prospective employee less favourably than that employer or prospective employer otherwise would have done for the dominant or substantial reason that the employee or prospective employee —
- (a) is or has been a member of a safety and health committee; or
- (b) performs or has performed any function as a member of a safety and health committee; or

- (c) gives or has given assistance or information to an inspector, safety and health representative or any member of a safety and health committee; or
- (d) makes or has made a complaint in relation to safety or health to a person who is or was his employer, fellow employee, an inspector, a safety and health representative, or a member of a safety and health committee,

commits an offence.

- (2) A trade union that in any way treats a person less favourably than it otherwise would have done for the dominant or substantial reason of the manner in which that person performs or has performed any function as a safety and health representative or a member of a safety and health committee commits an offence.

[Section 69 amended by No. 30 of 1995 s. 76(3) and (4); No. 68 of 2004 s. 68.]

Part 6 — Resolution of safety and health issues

[Heading amended by No. 57 of 1997 s. 88(2).]

70. Resolution of issues at the mine

- (1) Where an issue relating to occupational safety or health arises in relation to a mine, the employer concerned, or where the employer is not at the mine, the manager of the mine must, in accordance with the relevant procedure, attempt to resolve the issue with —

- (a) the safety and health representative; or
- (b) the safety and health committee; or
- (c) the employees; or
- (d) where relevant, any employer,

whichever is specified in the relevant procedure.

- (2) In subsection (1) —

the relevant procedure means —

- (a) the procedure agreed between the manager of the mine and the employers and employees at the mine as applying in respect of the mine concerned; or
- (b) if no procedure is so agreed, the procedure prescribed for that purpose in the regulations;

the safety and health representative —

- (a) if there is more than one safety and health representative for a mine, means any such representative provided for in the relevant procedure; and
- (b) may, in respect of a mine, include a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine.

- (3) Where attempts to resolve an issue as mentioned in subsection (1) do not succeed and —
- (a) one or more safety and health representatives are provided for in the relevant procedure under subsection (1); and
 - (b) there is a safety and health committee,
- in respect of the mine concerned, the safety and health representative or representatives must refer the issue to the safety and health committee for it to attempt to resolve the issue.
- (4) A person who contravenes subsection (1) or (3) commits an offence.

[Section 70 amended by No. 30 of 1995 s. 76(3) and (4); No. 68 of 2004 s. 69.]

71. Inspector may be notified where issue unresolved

- (1) Where attempts to resolve an issue in accordance with section 70 are unsuccessful, and where there is a risk of imminent and serious injury to or imminent and serious harm to the health of any person, the manager of the mine, any employer or employee involved, or a safety and health representative may notify the district inspector for the region in which the mine is situated of the unresolved issue.
- (2) A district inspector, upon being notified of an unresolved issue under subsection (1), must attend without delay at the mine and either —
- (a) take such action under this Act, including action under Part 3 Division 3, as the inspector considers appropriate; or
 - (b) determine that in the circumstances no action is required to be taken under this Act.

[Section 71 amended by No. 30 of 1995 s. 76(4); No. 68 of 2004 s. 78.]

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72. Refusal by employee to work in certain cases

- (1) Nothing in section 71 prevents an employee from refusing to work where that employee has reasonable grounds to believe that to continue to work would expose that employee or any other person to a risk of imminent and serious injury or imminent and serious harm to the health of that employee or other person.
- (1a) In determining whether an employee has reasonable grounds for the belief referred to in subsection (1) it is relevant to consider whether a district inspector has attended the workplace upon being notified under section 71(1) of the risk and whether —
- (a) the measures, if any, required by the district inspector to be taken to remedy the matters giving rise to the risk have been taken;
 - (b) the requirements, if any, of the district inspector to remedy the matters giving rise to the risk have ceased to have effect; or
 - (c) the district inspector has determined that no action is required to be taken under this Act.
- (2) An employee who refuses to work as mentioned in subsection (1) must immediately notify —
- (a) that person's employer; and
 - (b) if that person's employer is not at the mine, the manager of the mine; and
 - (c) if there is a safety and health representative for the mine, such safety and health representative,

and the matter shall be regarded as an issue to which section 70(1) applies.

- (2aa) In subsection (2) —
safety and health representative —

- (a) if there is more than one safety and health representative for the mine, means any such representative whose functions are relevant to the issues involved; and
 - (b) includes a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if the employee is a member of the group.
- (2a) An employee who refuses to work as mentioned in subsection (1) must not leave the mine concerned until the employee has notified the employer under subsection (2) and that employer has authorised the employee to leave that mine.
- (2b) Subsection (2a) does not apply if the employee has reasonable grounds to believe that to remain at the mine concerned would expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health.
- (3) An employee who contravenes subsection (2) or (2a) commits an offence.

[Section 72 amended by No. 30 of 1995 s. 69 and 76(4); No. 68 of 2004 s. 70.]

73. Assignment of other work

An employee who refuses to work as mentioned in section 72(1) may be given reasonable alternative work to do until that employee resumes his or her usual work.

74. Entitlements to continue

- (1) An employee who refuses to work as mentioned in section 72(1) is entitled to receive the same pay and other benefits, if any, which that employee would have been entitled to receive if the employee had continued to do his or her usual work.
- (1a) Subsection (1) does not apply if —
 - (a) the employee leaves the mine without the authorisation of the employer as required under section 72(2a); or

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(b) the employee refuses to do reasonable alternative work that the employee is given under section 73.

(2) A dispute arising as to —

(a) whether a person is entitled to pay and other benefits; or

(b) what pay or benefits a person is entitled to receive,

in accordance with subsection (1), may be referred by any party to the dispute to the Tribunal for determination.

[Section 74 amended by No. 30 of 1995 s. 70; No. 68 of 2004 s. 84(1).]

74A. Offences — refusal to work

(1) In this section *disentitled employee* means an employee who refuses to work for any period —

(a) on the grounds that to do so would involve a risk of injury or harm to the health of any person; or

(b) on the grounds that another employee refuses to work because to do so would involve a risk of injury or harm to the health of any person,

but does not include a person who has refused to work as mentioned in section 72(1) and who is entitled to pay and other benefits under section 74(1).

(2) An employee who accepts from his or her employer, in respect of any period during which that employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work commits an offence.

(3) An employer who pays or provides to an employee, in respect of any period during which the employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work commits an offence.

- (4) In subsections (2) and (3) a reference to pay and other benefits does not include a reference to any payment or benefit prescribed for the purposes of this section.
- (5) This section has effect despite any provision of any other written law, including the *Industrial Relations Act 1979*, and any order, award or agreement made or registered under that Act.

[Section 74A inserted by No. 30 of 1995 s. 71.]

Part 7 — Specific duties relating to occupational safety and health

[Heading amended by No. 30 of 1995 s. 76(1).]

Division 1 — Health surveillance

75. Health surveillance of mine employees

- (1) The principal employer and every employer at a mine must establish and maintain a system for the surveillance of the health of their employees in accordance with the regulations.
- (2) The principal employer and every employer at a mine must provide information to the State mining engineer on the surveillance of the health of their employees in accordance with the regulations.
- (3) A principal employer or employer who contravenes subsection (1) or (2) commits an offence.
- (4) The regulations may provide that this section does not apply to any category of employees specified in the regulations.

Division 2 — Accidents and occurrences

76. Notice of accident to be given

- (1) Where a person suffers injury in an accident at a mine and is disabled by that accident from performing his or her duties of employment as they were being performed at the time the accident occurred, the manager must cause notice of the accident to be given —
 - (a) in accordance with the regulations, to the district inspector for the region in which the mine is situated; and
 - (b) if the injured person so requests, to the secretary or local representative of a trade union of which that person is a member.

- (2) The notice required to be given under subsection (1) must —
- (a) if the injury appears to be serious, be given by the fastest practicable method of communication as soon as it is reasonably practicable to do so, and must subsequently be confirmed in writing; and
 - (b) if the injury appears not to be serious, be given in writing at the end of the month.
- (3) A manager who —
- (a) omits to give a notice required to be given by subsection (1); or
 - (b) fails without reasonable excuse to give a notice required to be given by subsection (1) in accordance with subsection (2),
- commits an offence, unless the required notice was given by the principal employer at the mine.
- (4) An injury is a serious injury for the purposes of this section if the injury —
- (a) results in the injured person being disabled from following his or her ordinary occupation for a period of 2 weeks or more; or
 - (b) involves unconsciousness arising from inhalation of fumes or poisonous gases or asphyxiation due to lack of oxygen or displacement of oxygen by an inert gas; or
 - (c) results from an accident, including fuming, arising out of the use of explosives.

[Section 76 amended by No. 7 of 2004 s. 70; No. 68 of 2004 s. 85A.]

77. Recording of accidents in accident log book

- (1) The manager must cause to be kept at the mine a book of a type approved by the State mining engineer and called the accident

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log book, and must after the occurrence of any accident cause a record of the accident to be entered without delay in the book.

- (2) The manager must ensure that the accident log book is kept open at all reasonable times to the examination of an inspector, an assistant inspector, a safety and health representative for the mine, a representative of a trade union any member of which is employed at the mine, and of any other person authorised by the State mining engineer.
- (2a) A manager who contravenes subsection (1) or (2) commits an offence.
- (3) In subsection (2) —
safety and health representative for the mine includes a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine.

[Section 77 amended by No. 57 of 1997 s. 88(3); No. 68 of 2004 s. 71; No. 16 of 2008 s. 26.]

78. Recording of occurrences in the record book

- (1) The manager must immediately give notice to the district inspector for the region in which the mine is situated of an occurrence to which this section applies, whether or not any bodily injury to any person or damage to property has resulted from the occurrence, and must give to the district inspector such particulars in respect of the occurrence as the inspector may require.
- (2) The manager must without delay record particulars of an occurrence to which this section applies in the record book.
- (2a) A manager who contravenes subsection (1) or (2) commits an offence.
- (3) This section applies to an occurrence of —

- (a) any extensive subsidence, settlement or fall of ground or any major collapse of any part of the operations of a mine, or any earth movement caused by a seismic event; or
- (b) any outbreak of fire above or below ground in any mine; or
- (c) any breakage of a rope, cable, chain or other gear by which persons are raised or lowered; or
- (d) any inrush of water from old underground operations or other source; or
- (e) any accidental ignition of dust below ground or the discovery of the presence of potentially harmful or asphyxiant gas or an outburst of such gas in any part of a mine; or
- (f) any accidental ignition or detonation of explosives, or any delayed or fast ignition of explosives; or
- (g) any explosion or bursting of compressed air receivers, boilers, or pressure vessels; or
- (h) every electric shock or burn to a person and every dangerous occurrence involving electricity; or
- (i) any incidence of a person being affected by poisoning or exposure to toxic gas or fumes; or
- (j) any loss of control of heavy earth moving equipment, including failure of braking or steering.

[Section 78 amended by No. 16 of 2008 s. 27.]

79. Manager to report potentially serious occurrences

- (1) The manager must inform the district inspector for the region in which the mine is situated of any occurrence at the mine which in the manager's opinion had the potential to cause serious injury or harm to health (other than an occurrence referred to in section 78) although no injury or harm in fact happened.

- (2) The manager must inform the district inspector as required by subsection (1) as soon as practicable after the manager has ascertained the facts and circumstances of the occurrence and, if required by the district inspector, must provide a written report on that occurrence.

80. Examination of accident location by trade union representatives

Where an accident has occurred at a mine and any employee involved in that accident is a member of a trade union, a representative of that trade union is entitled to examine the place where the accident occurred.

81. Place of accident not to be disturbed

- (1) A person must not disturb a place at a mine where an accident causing death or serious injury has occurred except with —
- (a) a view to saving life or preventing injury to any person; or
 - (b) the permission of an inspector or, in the case of a fatal accident, the permission of a coroner.
- (2) A person who contravenes subsection (1) commits an offence.
[Section 81 amended by No. 10 of 1998 s. 51; No. 16 of 2008 s. 28.]

Division 3 — Plans and records

82. Mines Survey Board

- (1) The Mines Survey Board established and constituted under the *Mines Regulation Act 1946* (repealed by this Act) is preserved and continues in existence for the purposes of this Act.
- (2) The Mines Survey Board is to be constituted in the manner provided in the regulations.
- (3) The functions of the Mines Survey Board are —

- (a) to advise the Minister on survey matters relating to mines and mining operations, including quarries and quarry operations; and
 - (b) to examine the qualifications, experience and character of persons applying for authorised mine surveyor's certificates and issue such certificates where appropriate; and
 - (c) to deal with complaints concerning the holders of authorised mine surveyor's certificates and to suspend or cancel such certificates where appropriate.
- (4) Except as provided in the regulations, the Mines Survey Board may determine its own procedure.
- (5) Members of the Mines Survey Board are entitled to be paid such remuneration and travelling and other allowances as the Minister determines on the recommendation of the Minister for Public Sector Management.

83. Complaint to Mines Survey Board

- (1) An inspector or other interested person may lodge a written complaint with the Mines Survey Board if the inspector or person has reason to believe that the holder of an authorised mine surveyor's certificate —
- (a) has acted in an incompetent, negligent, or improper manner in performing any duty under this Act; or
 - (b) has been convicted of an offence under this Act; or
 - (c) is incompetent or unfit to perform his or her duties.
- (2) A complaint under this section must specify the reasons for the belief on which the complaint is based.
- (3) On receiving a complaint, the Mines Survey Board must meet promptly and decide whether to hold an inquiry.

84. Inquiry by Mines Survey Board

- (1) After considering a complaint under section 83, the Mines Survey Board may hold an inquiry where it considers an inquiry is desirable and justified.
- (2) The Mines Survey Board must —
 - (a) give the holder of the authorised mine surveyor's certificate (the respondent) at least 21 days written notice of the time and place of the inquiry; and
 - (b) at least 10 days before the inquiry, give the respondent a written summary of what is alleged against him or her; and
 - (c) give the respondent a reasonable opportunity to be heard or make written representations.
- (3) The respondent —
 - (a) may attend the inquiry; and
 - (b) may be represented by a legal practitioner; and
 - (c) may examine and cross-examine witnesses and otherwise offer evidence.
- (4) The Mines Survey Board may conduct an inquiry in whatever manner that it considers appropriate and equitable and is not bound by the rules of evidence.
- (5) A person who attends an inquiry to give evidence or produce documents is entitled to the expenses allowable correspondingly in criminal trials in the Supreme Court.
- (6) The Mines Survey Board may make an order of costs in favour of the respondent or the department and such an order may be registered in a court of competent jurisdiction as a judgment debt.

85. Disciplinary action following inquiry

- (1) If after holding an inquiry the Mines Survey Board is satisfied that the substance of any complaint is made out, the Board may —
 - (a) reprimand the respondent; or
 - (b) suspend the respondent's authorised mine surveyor's certificate for a stated period; or
 - (c) cancel the respondent's authorised mine surveyor's certificate.
- (2) A suspension or cancellation under this section takes effect after the time for an appeal under section 86 expires.
- (3) When the Mines Survey Board suspends or cancels an authorised mine surveyor's certificate, the respondent must return the certificate to the Board within a period specified by the Board when suspending or cancelling the certificate.
- (4) A person who contravenes subsection (3) commits an offence.
[Section 85 amended by No. 16 of 2008 s. 29.]

86. Appeal to Tribunal

- (1) A person whose authorised mine surveyor's certificate is suspended or cancelled by the Mines Survey Board may appeal in writing to the Tribunal within 30 days of receiving notice of the suspension or cancellation.
- (2) If an appeal is lodged, the suspension or cancellation does not take effect pending determination of the appeal unless the Tribunal orders otherwise.
- (3) The Tribunal may dismiss the appeal or may make any decision in relation to the matter of the appeal that the Mines Survey Board might have made.
[Section 86 amended by No. 68 of 2004 s. 86(1).]

87. Plans to be furnished

- (1) The manager of a mine must procure and keep in the office of the mine accurate plans of the mine that —
 - (a) in accordance with the regulations, are kept up to date; and
 - (b) are prepared on a scale that accords with good engineering practice; and
 - (c) contain the particulars required by the regulations.
- (2) The manager of a mine must provide to the State mining engineer free of charge copies of the plans referred to in subsection (1) in accordance with the regulations.
- (3) If the State mining engineer has reason to believe that a plan provided under this section is inaccurate or incomplete, the State mining engineer may direct the principal employer to have a check survey conducted at the principal employer's own cost and the principal employer must comply with such a direction without delay.
- (4) The plans referred to in subsection (1) must be produced by the manager at the mine to an inspector, an assistant inspector, or any other person authorised for the purpose in writing by the State mining engineer, and the manager must, if requested by that inspector, assistant inspector, or other person, mark on such plans the progress of the operations of the mine up to the time the plans are produced to the inspector, assistant inspector, or other person, and must allow that person to examine and take a copy of those plans.
- (5) A person who contravenes subsection (1), (2), (3), or (4) commits an offence.
- (6) A manager who knowingly causes or permits to be omitted from any plan prepared for the purposes of this section any part of the workings of a mine commits an offence.

- (7) This section does not apply to mines at which the mining operations consist only of exploration operations.

88. Plans for abandonment or suspension

- (1) Where mining operations are about to be abandoned or suspended, the principal employer, or if a receiver has been appointed in respect of a principal employer, that receiver, or the manager must cause to be prepared to the satisfaction of the district inspector for the region in which the mine is situated an accurate plan or plans of the mining operations to the time of abandonment or discontinuance and must furnish that plan or those plans to the State mining engineer in accordance with the regulations before the mining operations are abandoned or suspended.
- (2) A principal employer, receiver, or manager who contravenes subsection (1) commits an offence.

89. Record books

- (1) Where a record book or a log book is required under this Act to be kept at a mine or any other place, the manager must ensure that —
- (a) the book is kept solely for the purpose of making the entries required under this Act; and
 - (b) every entry required to be made in the book is made in ink; and
 - (c) the book is kept safely in good order and condition.
- (1a) Subsection (1)(b) has effect subject to the provisions of —
- (a) Part 3 Division 3 Subdivision 6; and
 - (b) section 31BO.
- (1b) A manager who contravenes subsection (1) commits an offence.
- (2) The principal employer for the time being at a mine must keep all record books and log books that have been kept under this

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Act in respect of the mine for so long as mining operations continue at that mine and must record in the record book the particulars, including the date, of any change in principal employer.

- (3) If mining operations are abandoned or suspended, the principal employer at the mine at that time must keep all record books and log books that have been kept under this Act in respect of the mine for a period of 6 years from the time of abandonment or suspension; and if the principal employer appears likely to go into liquidation or receivership must take steps to ensure that such record books and log books are safely kept for that period.
- (4) A principal employer or a person who was a principal employer who contravenes subsection (2) or (3) commits an offence.

[Section 89 amended by No. 68 of 2004 s. 79; No. 16 of 2008 s. 30.]

Part 8 — Ministerial safety and health powers

[Heading amended by No. 30 of 1995 s. 76(1).]

[90. Deleted by No. 51 of 2004 s. 115(3).]

91. Minister may publish report

The Minister may cause a report prepared for the purposes of this Act by any inspector to be published at such time and in such manner as the Minister thinks appropriate.

92. Delegation of ministerial functions

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing delegate to any person any power or duty conferred or imposed on the Minister under this Act, other than this power of delegation.
- (2) Any act or thing done by a delegate under a delegation under this section has the same force and effect as if it had been done by the Minister.

93. Codes of practice

- (1) The Minister may approve a code of practice which has been considered by the Mining Industry Advisory Committee, for the purpose of providing practical guidance to employers, self-employed persons and employees and other persons on whom a duty of care is imposed under this Act.
- (2) A code of practice may consist of any code, standard, rule, specification or provision relating to occupational safety or health that is prepared by any appropriate body and may incorporate by reference any other such document either as it is in force at the time the code of practice is approved or as it may from time to time subsequently be amended.

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- (3) The Minister may approve any revision of the whole or any part of a code of practice or revoke the approval of a code of practice.
- (4) The Minister shall cause to be published in the *Gazette* notice of every approval or revocation under this section and the approval or revocation comes into force on the day of such publication.
- (5) The Minister shall cause a copy of every code of practice, and any document incorporated in it by reference, and any revision or revocation of a code of practice to be laid before each House of Parliament within 14 sitting days of such House.
- (6) The Minister shall cause a copy of every code of practice, including any revision of the code and any document incorporated in it by reference, to be made available, without charge, for public inspection.
- (7) Where it is alleged in a proceeding under this Act that a person has contravened a provision of this Act or the regulations in relation to which a code of practice was in effect at the time of the alleged contravention —
 - (a) the code of practice is admissible in evidence in that proceeding; and
 - (b) demonstration that the person complied with the provision of the Act or regulations otherwise than observing that provision of the code of practice is a satisfactory defence.
- (8) A person is not liable to any civil or criminal proceeding only because the person has not complied with a provision of a code of practice.

[Section 93 amended by No. 30 of 1995 s. 76(1) and (3); No. 51 of 2004 s. 115(4).]

Part 9 — Offences, penalties and legal proceedings

Division 1 — General provisions

[Heading inserted by No. 68 of 2004 s. 28.]

94. General penalty

If a person commits an offence against this Act for which a penalty is not otherwise provided, the person is liable to a level one penalty.

[Section 94 inserted by No. 68 of 2004 s. 29.]

95. Continuing offences

- (1) Where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is deemed to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.
- (2) Where an offence is deemed to continue, the person who committed the offence, whether by act or omission, commits an additional offence on each day during which the offence is deemed to continue and is liable to a fine not exceeding —
 - (a) \$200, where the offence is committed by a person as an employee;
 - (b) \$1 000, where the offence is committed by an individual and paragraph (a) does not apply; and
 - (c) \$2 000, where the offence is committed by a corporation,

for every day on which the offence is so continued.

[Section 95 amended by No. 30 of 1995 s. 72; No. 68 of 2004 s. 30.]

96. Proceedings to be taken by inspector or authorised officer

- (1) Every proceeding for an offence under this Act may be instituted and conducted by an inspector or by some member of the Public Service authorised in writing for the purpose by the Minister.
- (2) An inspector or officer is not to be personally responsible for any costs incurred by or awarded against the inspector or officer in connection with any proceeding for an offence under this Act.

96A. Proceedings to be determined by safety and health magistrate

- (1) Every proceeding for an offence under this Act is to be heard and determined by a safety and health magistrate.
- (2) When exercising jurisdiction under subsection (1) a safety and health magistrate constitutes a court of summary jurisdiction.

[Section 96A inserted by No. 30 of 1995 s. 73; amended by No. 68 of 2004 s. 81.]

97. Time limit for prosecutions

Proceedings for an offence against this Act must be commenced within 3 years after the offence was committed.

[Section 97 inserted by No. 68 of 2004 s. 31(1).]

98. Evidentiary provisions

- (1) In a proceeding for an offence under this Act, an averment in the charge that at a particular time —
 - (a) a particular place was a mine;
 - (b) a particular person was an employer at a particular mine or was the principal employer at a mine;
 - (ba) a particular person was an employer of a particular person or particular persons at a mine;

- (bb) a particular person was a principal or a contractor, within the meaning given by section 15A(1), at a mine;
- (bc) a particular person was, at a mine, a principal, within the meaning given by section 15A(1), in relation to a particular contractor or particular contractors within the meaning so given;
- (c) a particular person was the registered manager of a mine or the underground manager or quarry manager for a mine or had been appointed to and held some other position at a mine;
- (d) a notice required under this Act to be given had been given or had not been given;
- (e) a prescribed fee had not been paid;
- (f) a particular person was an employee or an inspector or assistant inspector,

is deemed to have been proved in the absence of proof to the contrary.

- (2) In a proceeding for an offence under this Act, proof is not required as to any of the following matters, unless evidence is given to the contrary —
 - (a) a delegation by the Minister to the State mining engineer or by the State mining engineer to any person for a particular purpose or to do a particular act;
 - (b) the authority of an inspector or a member of the Public Service to institute and conduct a proceeding for an offence under this Act.
- (3) In any proceeding in which it is necessary or expedient to prove the service or content of any notice or other document required or authorised to be served under this Act, the notice or document and its proper service may be sufficiently proved by the production of a purported copy of the notice or document bearing a certificate signed by a member of the Public Service authorised by the State mining engineer that the copy is a true

copy of the original and that the original was served in the manner set out in the certificate.

- (4) In proceedings for an offence against this Act, production of a copy of —
- (a) a code of practice;
 - (b) an Australian Standard; or
 - (c) an Australian/New Zealand Standard,

purporting to be certified by the State mining engineer to be a true copy as at any date or during any period is, without proof of the signature of the State mining engineer, sufficient evidence of the contents of the code of practice or Standard as at that date or during that period.

[Section 98 amended by No. 16 of 2002 s. 5; No. 68 of 2004 s. 32; No. 84 of 2004 s. 80.]

99. Vicarious responsibility of employers, managers, and supervisors

- (1) Where an offence under this Act, other than an offence to which section 99A applies, is committed by a person and an employer or manager is proved knowingly to have permitted or employed that person to commit the offence, or where the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an employer, manager or supervisor, or any person who was purporting to act in that capacity, he or she as well as the person who committed the offence commits the offence and each of them is severally liable to conviction.
- (2) In this section, *manager* includes underground manager, quarry manager, and their alternates and deputies, underground superintendent, foreman (in relation to an underground metal mine), and deputy (in relation to an underground coal mine).

[Section 99 amended by No. 68 of 2004 s. 33.]

99A. Vicarious responsibility for offences involving gross negligence

- (1) In this section —
manager has the meaning given by section 99(2);
superior officer, except as otherwise provided, means an employer, manager or supervisor or a person purporting to act in that capacity.
- (2) Where a person commits an offence under section 9A(1), 10A(1), 12A(1) or 15(1), the following provisions apply —
- (a) a superior officer in relation to the person also commits that offence if it is proved that —
- (i) the superior officer, being an employer or manager or a person purporting to act in that capacity, knowingly permitted or employed the person to commit the offence;
 - (ii) the offence was attributable to any neglect on the part of the superior officer; or
 - (iii) the superior officer consented to or connived in the acts or omissions to which section 8B(2)(a)(ii) applied that were proved against the person,
- in circumstances where the superior officer —
- (iv) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty was owed; but
 - (v) acted or failed to act as mentioned in subparagraph (i), (ii) or (iii) in disregard of that likelihood;
- (b) if paragraph (a) does not apply, a superior officer in relation to the person commits an offence under section 9A(2), 10A(2), 12A(2) or 15(2), as the case may require, if it is proved that —

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- (i) the superior officer, being an employer or manager or a person purporting to act in that capacity, knowingly permitted or employed the person to commit the offence; or
- (ii) the offence of the person —
 - (I) occurred with the consent or connivance of the superior officer; or
 - (II) was attributable to any neglect on the part of the superior officer.

[Section 99A inserted by No. 68 of 2004 s. 34.]

100. Offences by corporations

- (1) Where a corporation commits an offence under this Act, other than an offence to which section 100A applies, and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity, that person, as well as the corporation, commits that offence.
- (2) Where the affairs of a corporation are managed by its members, subsection (1) and section 100A apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the corporation.
- (3) A person convicted of an offence by virtue of this section is liable to the penalty to which an individual who is convicted of that offence is liable.

[Section 100 amended by No. 68 of 2004 s. 35.]

100A. Responsibility of officers of corporation for offences involving gross negligence

- (1) In this section —

officer means a director, manager, secretary or other officer of a corporation or a person purporting to act in that capacity.

- (2) Where a corporation commits an offence under section 9A(1), 12A(1), 12C(1), 13A(1) or 15E(1) the following provisions apply —
- (a) an officer also commits that offence if it is proved that —
 - (i) the offence was attributable to any neglect on the part of the officer; or
 - (ii) the officer consented to or connived in the acts or omissions to which section 8B(2)(a)(ii) applied that were proved against the corporation,
in circumstances where the officer —
 - (iii) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty was owed; but
 - (iv) acted or failed to act as mentioned in subparagraph (i) or (ii) in disregard of that likelihood;
 - (b) if paragraph (a) does not apply, an officer commits an offence under section 9A(2), 12A(2), 12C(2), 13A(2) or 15E(2), as the case may require, if it is proved that the offence of the corporation —
 - (i) occurred with the consent or connivance of the officer; or
 - (ii) was attributable to any neglect on the part of the officer.
- (3) A person convicted of an offence by virtue of this section is liable to the penalty to which an individual who is convicted of that offence is liable.

[Section 100A inserted by No. 68 of 2004 s. 36.]

101. False or misleading information

A person who knowingly or recklessly —

- (a) in relation to an application for a certificate of competency or an authorised mine surveyor's certificate under this Act; or
- (b) in response to a requirement, direction, inquiry, or request made by an inspector or assistant inspector for the purposes of this Act,

makes a statement, or furnishes or causes to be furnished any report, or makes an entry in a record or log book that is false or misleading because of the inclusion in the statement, report or book of false or misleading matter or of the omission from the statement, report or book of any matter that is required or may be material commits an offence.

101A. No double jeopardy

A person is not liable to be punished twice under this Act in respect of any act or omission.

[Section 101A inserted by No. 68 of 2004 s. 37.]

Division 2 — Undertaking by offender in lieu of payment of fine

[Heading inserted by No. 68 of 2004 s. 38.]

101B. Terms used in this Division

In this Division —

convicted means found guilty of an offence, whether after a plea of guilty or otherwise;

court means a safety and health magistrate exercising jurisdiction under section 96A;

relevant offence means an offence against —

- (a) section 21(5), 29(4), 55(7), 60(8), 61(2), 65(2), 66(3) or 70(4);

- (b) any provision of Part 3 Division 3; or
- (c) the regulations.

[Section 101B inserted by No. 68 of 2004 s. 38.]

101C. Court may allow offender to make election

- (1) Where —
 - (a) a person (the *offender*) is convicted of one or more relevant offences; and
 - (b) the court has fined the offender,the court may, subject to subsection (2), make an order allowing the offender to elect either —
 - (c) to pay the fine or fines; or
 - (d) as an alternative, to enter into an undertaking with the State mining engineer under section 101G not later than a day specified by the court.
- (2) A court is not to make an order under this section unless the court is satisfied that —
 - (a) the breach of the relevant offence did not result in physical harm to any person;
 - (b) the offender wishes an order to be made and the prosecutor does not oppose that being done;
 - (c) the offender and the State mining engineer are likely to reach agreement on the provisions of the proposed undertaking within the time that the court proposes to specify under subsection (1)(d); and
 - (d) the cost to the offender of complying with the proposed undertaking will be substantially equivalent to the amount of the fine or fines imposed.
- (3) After the court has fined the offender, the court may adjourn the proceedings to allow —

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- (a) the offender time to consider whether the offender wishes an order to be made; and
- (b) the prosecutor time to consider whether to oppose that being done,

as mentioned in subsection (2)(b).

- (4) Nothing in this Division limits the powers of a court under the *Sentencing Act 1995*.

[Section 101C inserted by No. 68 of 2004 s. 38.]

101D. Making of election

- (1) An election is made, pursuant to an order under section 101C(1), by the offender —
 - (a) lodging an election in writing with the court in which the order was made; and
 - (b) serving a copy of the election on the State mining engineer,

not later than 28 days after the day on which the order was made.

- (2) If —
 - (a) an order is made under section 101C(1); but
 - (b) the offender fails to make an election in accordance with subsection (1),

the offender is taken, at the expiry of the period mentioned in subsection (1), to have elected to pay the fine or fines.

[Section 101D inserted by No. 68 of 2004 s. 38.]

101E. Failure to enter into undertaking

An election under section 101D to enter into an undertaking lapses if the undertaking is for any reason not entered into before the time allowed under section 101C(1)(d).

[Section 101E inserted by No. 68 of 2004 s. 38.]

101F. Time for payment of fines

- (1) The liability of the offender to pay the fine or fines in connection with which an order is made under section 101C(1) is suspended by the making of the order.
- (2) If the offender elects to pay the fine or fines, for the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the fine or fines are taken to have been imposed on the day on which the election is made.
- (3) If the offender is taken by section 101D(2) to have elected to pay the fine or fines, for the purposes of the section referred to in subsection (2) the fine or fines are taken to have been imposed at the time mentioned in section 101D(2).
- (4) If —
 - (a) the offender elects to enter into an undertaking; but
 - (b) the election lapses under section 101E,for the purposes of the section referred to in subsection (2) the fine or fines are taken to have been imposed on the day specified under section 101C(1)(d).

[Section 101F inserted by No. 68 of 2004 s. 38.]

101G. Nature and terms of undertaking

- (1) An undertaking for the purposes of this Division is a document by which the offender gives undertakings to the State mining engineer that the offender will —
 - (a) take the action specified in the undertaking;
 - (b) bear the costs and expenses of doing so; and
 - (c) complete all of the required action before a day specified in the document.

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Part 9 Offences, penalties and legal proceedings

Division 2 Undertaking by offender in lieu of payment of fine

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- (2) The action required to be taken by the offender is to come within the provisions described in section 101H(2) or (3).
- (3) The provisions of the undertaking are to be such as are agreed between the State mining engineer and the offender.
- (4) The State mining engineer is to furnish a copy of an undertaking, and of any amendment made under section 101K, to the court concerned.

[Section 101G inserted by No. 68 of 2004 s. 38.]

101H. What may be included in undertaking

- (1) In this section —
specified means specified in the undertaking;
specified mine includes a specified class of mine.
- (2) An undertaking is to provide for the offender to do one or more of the following —
 - (a) to take specified steps for the improvement of occupational safety and health —
 - (i) at or in respect of —
 - (I) any specified mine; or
 - (II) any specified part or parts of any specified mine;
 - or
 - (ii) in connection with the business or operations of the offender;
 - (b) to take specified steps to publicise details of —
 - (i) any specified offence;
 - (ii) its consequences;
 - (iii) the amount of the fine or fines imposed and the fact that the undertaking has been entered into under this Division; or

- (iv) any other related matter;
 - (c) to remedy any consequence of a specified offence, so far as it is practicable to do so, but not in a way that is excluded by subsection (4);
 - (d) to carry out a specified project or activity for the improvement of occupational safety and health —
 - (i) in the community;
 - (ii) in a particular section of the community; or
 - (iii) in connection with a particular kind of activity in the State.
- (3) The State mining engineer may require that an undertaking contain any incidental or supplementary provision that the State mining engineer considers necessary or expedient to achieve its purpose, including provision for —
- (a) the reporting of matters; and
 - (b) providing proof of compliance,
- to the State mining engineer.
- (4) An undertaking cannot provide for the offender to take any action —
- (a) that the offender has a duty to take in order to comply with any provision of this Act; or
 - (b) for the taking of which an improvement notice or a prohibition notice could be issued under Part 3 Division 3.

[Section 101H inserted by No. 68 of 2004 s. 38.]

101I. Effect of undertaking

The liability of the offender to pay the fine or fines in connection with which the undertaking is given —

- (a) is suspended by the giving of the undertaking; and

- (b) is cancelled by the full discharge of the offender's obligations under the undertaking.

[Section 101I inserted by No. 68 of 2004 s. 38.]

101J. Failure to comply with undertaking

- (1) An offender commits an offence if the offender fails to fully discharge the obligations under an undertaking before the day specified in the undertaking in accordance with section 101G(1)(c).
- (2) A court that convicts an offender of an offence against subsection (1) must order that the fine or fines to which the undertaking relates be paid in addition to any penalty imposed for the offence against subsection (1).
- (3) For the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the fine or fines to which an order under subsection (2) applies are taken to be imposed on the day on which that order is made.

[Section 101J inserted by No. 68 of 2004 s. 38.]

101K. Amendment of undertaking

An undertaking may be amended by an instrument in writing signed by the offender and the State mining engineer.

[Section 101K inserted by No. 68 of 2004 s. 38.]

101L. Undertaking may be published

The State mining engineer may cause an undertaking to be published in any manner the State mining engineer thinks fit including —

- (a) by publication in a newspaper; or
- (b) by posting a copy of the undertaking on an internet website maintained by the department.

[Section 101L inserted by No. 68 of 2004 s. 38.]

Division 3 — Jurisdiction of Occupational Safety and Health Tribunal

[Heading inserted by No. 68 of 2004 s. 82.]

102. Determination of certain matters and appeals by Tribunal

- (1) This section applies where —
 - (a) under section 31BA, 55(6), 55A(4), 56(11), 59(1), 62(1), 67F(1), (2) or (3), 74(2) or 102AA(2) a matter is referred to the Tribunal;
 - (b) under section 68C a claim is referred to the Tribunal; or
 - (c) under section 52 or 86 a person appeals to the Tribunal.
- (2) Where this section applies —
 - (a) the matter, claim or appeal may be heard and determined; and
 - (b) a determination made by the Tribunal on the matter, claim or appeal has effect, and may be —
 - (i) appealed against; and
 - (ii) enforced,as if it were —
 - (c) a matter in respect of which jurisdiction is conferred on the Tribunal by Part VIB of the *Occupational Safety and Health Act 1984* (**Part VIB**); or
 - (d) a determination made for the purposes of Part VIB.
- (3) The provisions of —
 - (a) Part VIB; and
 - (b) the *Industrial Relations Act 1979* applied by that Part,have effect for the purposes of this section with all necessary changes.
- (4) In the operation of subsection (3), section 51J(1) of the *Occupational Safety and Health Act 1984* has effect as if it were

expressed to apply where a matter has been referred to the Tribunal for determination under section 55(6), 55A(4), 56(11), 62(1), 67F or 74(2) of this Act.

[Section 102 inserted by No. 68 of 2004 s. 83(1); amended by No. 16 of 2008 s. 31.]

102AA. Review of State mining engineer's decisions under the regulations

- (1) In this section —
- reviewable decision*** means a decision of the State mining engineer under a provision of the regulations that is specified in the regulations for the purposes of this definition.
- (2) If a person is not satisfied with a reviewable decision the person may refer the decision to the Tribunal for review.
- (3) A reference under subsection (2) must be made in writing and within 14 days after that day on which the person received notice of the decision.
- (4) On a reference under subsection (2), the Tribunal is to inquire into the circumstances relating to the decision and may —
- (a) affirm the decision; or
 - (b) affirm the decision with such modifications as the Tribunal thinks fit; or
 - (c) revoke the decision and substitute for the decision any decision that the Tribunal thinks fit.
- (5) A review of a reviewable decision is to be in the nature of a rehearing.
- (6) Pending the decision on a reference under subsection (2), the operation of the reviewable decision continues, unless the Tribunal orders otherwise.

[Section 102AA inserted by No. 16 of 2008 s. 32.]

Part 10 — Final provisions

102A. Visitors to comply with directions

(1) In this section —

authorised person, in relation to a mine, means —

- (a) a managerial officer at the mine;
- (b) an employer of any employee at the mine, including a person who is an employer by operation of section 15A, 15B or 15C; and
- (c) any self-employed person carrying out work at the mine;

conduct includes a failure to do a particular act or thing;

employee includes a person who is an employee by operation of section 15A, 15B or 15C;

managerial officer, in relation to a mine, means —

- (a) the principal employer at the mine;
- (b) the registered manager and any underground manager or quarry manager at the mine; and
- (c) a person appointed as an alternate or deputy of an officer referred to in paragraph (b).

(2) Subsection (3) applies if —

- (a) a person (a **visitor**) is at a mine otherwise than in the capacity of —
 - (i) a managerial officer;
 - (ii) an employer;
 - (iii) an employee; or
 - (iv) a self-employed person;and
- (b) an authorised person believes on reasonable grounds that —
 - (i) any conduct of the visitor at the mine; or

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- (ii) the presence of the visitor at the mine or a particular part of the mine, constitutes a hazard to any person.
- (3) The authorised person may direct the visitor —
 - (a) to immediately cease engaging in the conduct concerned; or
 - (b) to immediately leave the mine and not to return as a visitor to the mine until permitted by the authorised person to do so.
- (4) A person who, without reasonable excuse, fails to comply with a direction given to the person under subsection (3) commits an offence.

[Section 102A inserted by No. 68 of 2004 s. 91.]

103. Exemption from personal liability

A person who is or was the State mining engineer, the deputy of the State mining engineer, the State coal mining engineer, an inspector, or a member of the Board of Examiners, the Mines Survey Board, or the Mining Industry Advisory Committee is not personally liable for any matter or thing done or omitted to be done in good faith in the intended performance of any duty or the intended exercise of any power under this Act.

[Section 103 amended by No. 30 of 1995 s. 76(1); No. 51 of 2004 s. 115(5).]

104. Power to make regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for achieving the objects and giving effect to the purposes of this Act, and in particular —

- (a) regulating the appointment and functions of inspectors and assistant inspectors and defining the regions in which they are to carry out their duties;
- (b) regulating methods of inspection of mines;
- (ba) regulating the conduct of elections under this Act by secret ballot;
- (bb) dealing with the establishment of safety and health committees by employers;
- (c) dealing with and imposing duties on employers, managers, supervisors, superintendents, deputies, foremen and employees under this Act;
- (ca) without limiting paragraph (c), imposing duties on persons in relation to —
 - (i) the identification of hazards at mines;
 - (ii) the assessment of risks resulting from such hazards; and
 - (iii) the taking of remedial or other action;
- (d) regulating and otherwise dealing with —
 - (i) the transport, storage, handling, use, and disposal of explosives and blasting initiation systems; and
 - (ii) the testing and evaluation of performance of explosives and blasting initiation systems; and
 - (iii) the assessment of and means of dealing with residual fumes from blasting;
- (e) regulating matters relating to noise at mines;
- (f) providing for the safety and health standards and procedures to be complied with —
 - (i) at any mine;
 - (ii) in the performance of any work in connection with a mine;

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- (iii) in the use, cleaning, maintenance, disposal or transportation of any plant in connection with a mine;
- (iv) in the use, handling, treatment, removal, processing, storing, transport or disposal of any substance in connection with a mine;
- (v) in the design, importing or supplying of any plant in connection with a mine; or
- (vi) in the design, manufacture, importing or supplying of any substance in connection with a mine;
- (g) prescribing measures or precautions to avoid any accident or dangerous occurrence at a mine;
- (h) prescribing action to be taken in the event of any accident, injury to the person or harm to the health of any person, or dangerous occurrence in connection with a mine;
- (i) dealing with protective clothing, safety appliances and equipment for use in and about mines;
- (j) dealing with the fencing, securing and protection of shafts, entrances, and development openings and regulating matters connected with ladders and travelling ways at mines;
- (k) regulating construction and demolition of buildings and other structures at mines;
- (l) dealing with all matters connected with winding, winding engines, signals and testing of winding ropes at mines;
- (m) dealing with the employment and training of persons having charge of winding machinery, and providing for their periodical medical examination;
- (n) dealing with cages or skips, safety hooks, safety grippers and all other matters connected with the proper and safe running of cages and skips in shafts;

- (o) dealing with matters connected with railways or other mechanical transport in or at a mine;
- (p) dealing with matters connected with dredging in mining operations;
- (q) dealing with matters connected with machinery in or at mines;
- (r) dealing with the employment, training and examination of persons having charge of machinery at mines;
- (s) providing for the classification of mines and dealing with matters connected with the issue, suspension, and cancellation of certificates, permits or other authorisations or exemptions required or permitted under this Act;
- (t) dealing with wilful damage to or unauthorised removal of timber, plant, or any other thing provided at a mine for the proper working of the mine;
- (u) dealing with the installation and use of electricity in mines and with lighting at mines;
- (v) regulating and otherwise dealing with the provision and control of ventilation in mines, including the quantity, quality and velocity of ventilation flows, the methods of eliminating, extracting or dealing with atmospheric contaminants, the measuring, recording and reporting of data relevant to ventilation of mines, and the use of compressed air for ventilation purposes;
- (w) prescribing measures to control and deal with spontaneous combustion and dust explosions in mines and dealing with the prevention and laying of dust in mines;
- (x) dealing with the connection of workings for ventilation purposes, including —
 - (i) the sinking of winzes in mines concurrently with shaft sinking;

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- (ii) the connection of adjoining mines by crosscuts and levels;
- (iii) the connection of various workings in the same mine by crosscuts, levels, winzes and rises;
- (iv) the heights to which rises may be carried and the methods to be used in rising and the distances permissible between higher and lower levels and between air connections from one level to another;
- (y) dealing with the drainage of mines, both surface and underground, the discharge of water over land adjacent to mines, the manner in which such drainage or discharge of water is to be carried out, the persons who may or must carry out, or permit the carrying out, of that drainage or discharge of water, the persons who are to be liable for the costs or part of the costs of that drainage, arbitration in respect of those costs in default of agreement and the qualifications of persons who conduct such arbitrations, and proceedings in respect of the recovery of those costs and other remedies;
- (z) dealing with the age limits of employees for certain classes of employment;
- (za) regulating and otherwise dealing with hygiene and sanitation in underground and surface mining operations, including —
 - (i) the provision of potable drinking water at underground and surface mines; and
 - (ii) the standard, location, distribution and maintenance of hygiene and sanitation facilities; and
 - (iii) the removal and disposal of waste, refuse and stagnant water;
- (zb) prohibiting the treatment, handling or use of any substance at a mine;

- (zc) regulating the surveillance of the health and the biomedical monitoring of employees at mines and providing for the keeping of records concerning the health of employees and the provision of those records to the department and providing, where required by the State mining engineer, for the medical examination of persons employed or proposed to be employed at mines;
- (zd) dealing with the provision of shelter for surface workers;
- (ze) dealing with the notification and recording of accidents;
- (zf) dealing with the provision of ambulance rooms with such attendants and such first aid facilities for use in case of accident as may be required by the State mining engineer;
- (zg) requiring and regulating the environmental rehabilitation of mine sites;
- (zh) dealing with the making of plans and surveys of mines;
- (zi) dealing with the number of hours that a person may operate a winding engine in or about a mine and dealing with the hours of work in a 24 hour period for an air leg miner working underground (but not so as to restrict the hours of a shift worked by a person who uses an air leg drill on an occasional basis during a shift);
- (zj) dealing with literacy and language requirements for persons working in or about mines, and in particular prescribing requirements of that kind for —
 - (i) persons employed to work in positions of responsibility in or about mines; and
 - (ii) persons employed to work underground in mines;
- (zk) dealing with radiation safety in mines, including prescribing —
 - (i) measures for the protection from radiation of employees, other persons at mines, and the members of the public; and

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- (ii) requirements and procedures for the management of radioactive waste and the establishment of waste management systems; and
 - (iii) subject to subsection (5), maximum levels of radiation to which employees, other persons at mines and members of the public may be exposed;
 - (zl) prescribing —
 - (i) minimum standards governing rescue operations or emergency operations for adoption at mines;
 - (ii) the number of trained rescue personnel to be available to the manager of a mine;
 - (iii) rescue training programmes and standards;
 - (iv) standard procedures for emergency response;
 - (zm) prescribing the measures which must be taken before mining operations are suspended and during any period of suspension or before a mine is closed or abandoned and after closure or abandonment;
 - (zn) making provision for the issue, unconditionally or subject to conditions, of certificates of competency in respect of metalliferous mines to persons who immediately before the commencement of this Act held certificates of competency in respect of coal mines;
 - (zo) providing for the review by the State mining engineer of decisions of other persons under the regulations, including decisions of other persons as delegates of the State mining engineer.
- (1a) In subsection (1)(c), (z), (zc) and (zk) —
employer and *employee* include a person taken to be an employer and an employee respectively by operation of section 15A, 15B or 15C, and *employed* has a corresponding meaning.

- (2) Regulations may be made under this Act —
- (a) so as to apply —
 - (i) generally, or in a particular class of case or in particular classes of cases or in relation to all mines, to specified mines or to mines of a particular class; or
 - (ii) at all times or at a specified time or at specified times; or
 - (iii) throughout the State or in a specified part or specified parts of the State; or
 - (iv) subject to specified exceptions; or
 - (v) in respect of a particular coal mine in order to enhance safety and health at that mine;and
 - (b) so as to require a matter affected by them to be —
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;and
 - (c) so as to confer on a specified person or body, or a specified class of person or body, a discretionary authority; and
 - (d) so as to provide that, in specified cases or a specified class of case or specified classes of cases, whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.
- (3) In subsection (2), *specified* means specified in the regulations.

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- (4) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding —
- (a) in the case of an offence committed by a person as an employee —
 - (i) for a first offence, a fine of \$5 000; and
 - (ii) for a subsequent offence, a fine of \$6 250;
 - (b) in the case of an offence committed by an individual where paragraph (a) does not apply —
 - (i) for a first offence, a fine of \$25 000; and
 - (ii) for a subsequent offence, a fine of \$31 250;
- or
- (c) in the case of an offence committed by a corporation —
 - (i) for a first offence, a fine of \$50 000; and
 - (ii) for a subsequent offence, a fine of \$62 500,

and if the offence is a continuing one a further penalty not exceeding —

- (d) \$200, in the case of an offence committed by a person as an employee;
- (e) \$1 000, in the case of an offence committed by an individual where paragraph (d) does not apply; and
- (f) \$2 000, in the case of an offence committed by a corporation,

for each day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of an inspector to the offender.

- (4a) In subsection (4)(a) and (d) —

employee includes a person who is taken to be an employee by operation of section 15A, 15B or 15C to the extent that a regulation applies to such a person.

- (5) Regulations under subsection (1)(zk) in relation to the prescription of maximum levels of radiation to which persons may be exposed are only to be made on the recommendation of the Radiological Council established under the *Radiation Safety Act 1975*.
- (6) Regulations made under this Act may adopt either wholly or in part and either specifically or by reference, any of the standards, rules, codes or specifications of Standards Australia, and other Australian and international bodies of well established high repute.

[Section 104 amended by No. 30 of 1995 s. 75 and 76(2) and (4); No. 74 of 2003 s. 83; No. 7 of 2004 s. 70; No. 68 of 2004 s. 13, 39, 72 and 92; No. 16 of 2008 s. 33.]

105A. Regulations for cost recovery

- (1) Regulations may be made under section 104 to provide for a levy, which may be of the nature of a tax, to be payable to the State for the costs of administering this Act.
- (2) To the extent that the regulations provide for a levy that is a tax, the regulations may impose the tax.
- (3) The regulations may deal with —
 - (a) the circumstances in which liability to pay the levy is imposed;
 - (b) how the amount of the liability is to be assessed;
 - (c) on whom liability is imposed to pay the amount assessed, when payment becomes due, and how payment is to be made;
 - (d) who is exempt or partially exempt from liability to pay the amount assessed and the conditions to which an exemption, or partial exemption, is subject;
 - (e) rights to object to an assessment and how the objection is to be dealt with;

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- (f) the consequences of failure to pay an amount in accordance with the regulations, which may include the imposition of an increase in the amount of an outstanding liability and may include interest;
 - (g) how an amount outstanding may be recovered.
- (4) The regulations may —
- (a) provide for the keeping of records and the provision of information to facilitate the administration of the provisions for the levy;
 - (b) provide for the authorisation of persons to perform functions for the purpose of investigating and enforcing compliance with the provisions for the levy and, for those purposes, give authorised persons functions, which may include functions of a kind comparable to a kind of functions that this Act gives to an inspector.

[Section 105A inserted by No. 45 of 2009 s. 4.]

105AB. Mines Safety Account

- (1) An agency special purpose account under the *Financial Management Act 2006* section 16 is to be established for the department and called the Mines Safety Account.
- (2) The Mines Safety Account is to be credited with any levy paid under regulations mentioned in section 105A(1) including any additional outstanding liability and interest as mentioned in section 105A(3)(f).
- (3) Moneys held in the Mines Safety Account are to be applied in payment of the costs of administering this Act.

[Section 105AB inserted by No. 45 of 2009 s. 4.]

105. Publication of regulations at mine

- (1) In order to make the provisions of all the regulations applicable to a mine known to all employees at a mine, the principal employer or the manager of the mine —
 - (a) must cause a correct copy in legible characters of all the regulations applicable to that mine to be posted up in some conspicuous place, or kept in some readily accessible place, at or near the mine where they may be conveniently read by the employees at the mine; and
 - (b) so often as the copy referred to in paragraph (a) becomes defaced, obliterated or destroyed, must cause that copy to be renewed without delay.

- (2) A person who contravenes subsection (1) commits an offence.

[Section 105 amended by No. 16 of 2008 s. 34.]

106. Application of regulations to self-employed persons

Regulations made under this Act are, subject to any necessary modifications, to be construed to apply to self-employed persons who are engaged in mining operations as if they were employees.

107. Repeals

The following Acts are repealed —

- (a) the *Mines Regulation Act 1946*; and
- (b) the *Coal Mines Regulation Act 1946*.

108. Savings and transitional

Schedule 1 (which contains savings and transitional provisions for the purpose of the transition from the Acts repealed in section 107 to the provisions of this Act) has effect.

[109. Omitted under the Reprints Act 1984 s. 7(4)(e).]

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110. Review of Act

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after 1 December 2009 and every fifth anniversary of that day, and in the course of such a review the Minister shall consider and have regard to —
 - (a) the attainment of the objects of this Act; and
 - (b) the effectiveness of the operations of the department, the Board of Examiners, and the Mines Survey Board; and
 - (c) the need for the continuation of the functions of the Boards referred to in paragraph (b); and
 - (d) such other matters as appear to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on such a review and shall, as soon as practicable after the report is prepared, cause it to be laid before each House of Parliament.

[Section 110 amended by No. 30 of 1995 s. 76(1); No. 51 of 2004 s. 115(6); No. 68 of 2004 s. 93.]

Schedule 1 — Savings and transitional provisions

[s. 108]

[Heading amended by No. 19 of 2010 s. 4.]

1. Interpretation Act not restricted

Nothing in this Schedule is to be construed so as to restrict the operation of the *Interpretation Act 1984*.

2. General transitional provision

- (1) Except so far as is inconsistent with this Act, all persons, things and circumstances appointed, created or established under a repealed Act and having effect immediately before the commencement of this Act, are to have the same status, operation, and effect for the purposes of this Act.
- (2) Without affecting the generality of subclause (1), the commencement of this Act is not to disturb the continuity of status, operation or effect of any agreement, arbitration, direction, requisition, instruction, notice, appointment, approval, authorised mine surveyor's certificate, certificate of competency, document, charge, fee, liability, obligation, proceeding, matter or thing done, given, entered into, commenced, existing or acquired under a repealed Act and having effect immediately before the commencement of this Act unless or until the effect is altered under a provision of this Act.

3. Act in substitution for repealed Acts

For the purposes of section 16 of the *Interpretation Act 1984*, it is declared that this Act is in substitution for the repealed Acts.

4. Workmen's inspectors

A person who immediately before the commencement of this Act was a workmen's inspector under a repealed Act continues as an employee's inspector under and for the purposes of this Act as if that person had been appointed under this Act on the same terms and conditions for a term expiring 2 years after the commencement of this Act.

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5. Inspectors

A person who immediately before the commencement of this Act was an inspector (other than a workmen's inspector) under a repealed Act continues as an inspector under and for the purposes of this Act as if appointed an inspector of the same category and for the same purposes under this Act.

6. Board members

A person who was a member of a Board of Examiners or the Mines Survey Board under a repealed Act immediately before the commencement of this Act continues as a member of the Board of Examiners or the Mines Survey Board, as the case may be, under and for the purposes of this Act for a term expiring on the day on which the appointment of the person would have expired under the repealed Act.

7. Certificates of competency

- (1) If, within 2 years after the commencement of this Act, the Board of Examiners is satisfied that the holder of the certificate had adequate relevant experience and a district inspector is satisfied that the holder of the certificate has an adequate understanding of the relevant regulations relating to metalliferous mining —
- (a) an open cut mine under manager's certificate of competency issued under the *Coal Mines Regulation Act 1946* may be regarded and accepted in all respects as if it were a quarry manager's certificate of competency issued under this Act;
 - (b) a deputy's (open cut) certificate of competency issued under the *Coal Mines Regulation Act 1946* may be regarded and accepted in all respects as if it were a restricted quarry manager's certificate of competency issued under this Act;
 - (c) a first class mine manager's certificate of competency issued under the *Coal Mines Regulation Act 1946* may be regarded and accepted in all respects as if it were a first class mine manager's certificate of competency issued under this Act;
 - (d) a second class mine manager's certificate of competency issued under the *Coal Mines Regulation Act 1946* and held by the occupier of a management position in an open cut coal

- mine may be regarded and accepted in all respects as if it were a quarry manager's certificate issued under this Act;
- (e) a third class certificate of competency issued under the *Coal Mines Regulation Act 1946* and held by the occupier of a management position in an open cut coal mine may be regarded and accepted in all respects as if it were a restricted quarry manager's certificate issued under this Act;
 - (f) a deputy's (open cut) certificate of competency issued under the *Coal Mines Regulation Act 1946* and held by the occupier of a management position in an open cut coal mine may be regarded and accepted in all respects as if it were a restricted quarry manager's certificate issued under this Act; and
 - (g) a third class certificate of competency issued under the *Coal Mines Regulation Act 1946* may be regarded and accepted in all respects as if it were an underground supervisor's certificate of competency issued under this Act.
- (2) A person who immediately before the commencement of this Act holds a mine under manager's certificate of competency issued under the *Coal Mines Regulation Act 1946* may, within 2 years after the commencement of this Act, sit the examination for a first class mine manager's certificate of competency under this Act if that person would not be qualified to do so under the regulations.

8. Exemptions

An exemption granted by the Governor under and in respect of a provision of a repealed Act continues to have effect according to its substance as if it had been made under section 8 in respect of an equivalent provision of this Act.

9. Notification of principal employer

- (1) This clause applies to a mine that is being operated immediately before the commencement of this Act.
- (2) The name and address of the principal employer at a mine to which this clause applies must be provided in writing to the district inspector for the region where the mine is situated within 3 months after the commencement of this Act.

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(3) Sections 32(3) and (4) apply, with appropriate changes, to this clause.

(4) If this clause is contravened, the principal employer and the manager at the mine commit an offence.

Penalty: in the case of a corporation, \$25 000 or, in the case of an individual, \$5 000.

[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]

Notes

- ¹ This is a compilation of the *Mines Safety and Inspection Act 1994* and includes the amendments made by the other written laws referred to in the following table^{1a, 2, 3}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Mines Safety and Inspection Act 1994</i>	62 of 1994	7 Nov 1994	s. 1 and 2: 7 Nov 1994; Act other than s. 1 and 2: 9 Dec 1995 (see s. 2 and <i>Gazette</i> 8 Dec 1995 p. 5935)
<i>Occupational Safety and Health Legislation Amendment Act 1995 Pt. 3</i>	30 of 1995	11 Sep 1995	20 Jan 1996 (see s. 2 and <i>Gazette</i> 19 Jan 1996 p. 201)
<i>Industrial Relations Legislation Amendment and Repeal Act 1995 s. 67(4)</i>	79 of 1995	16 Jan 1996	16 Jan 1996 (see s. 3(1))
Reprint of the <i>Mines Safety and Inspection Act 1994</i> as at 6 Feb 1996 (includes amendments listed above)			
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 88</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 51</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Rail Safety Act 1998 s. 64(2)</i>	32 of 1998	6 Jul 1998	3 Feb 1999 (see s. 2 and <i>Gazette</i> 2 Feb 1999 p. 351)
Reprint of the <i>Mines Safety and Inspection Act 1994</i> as at 17 Mar 2000 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2000 s. 25</i>	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
<i>Mines Safety and Inspection Amendment Act 2002</i>	16 of 2002	8 Jul 2002	5 Aug 2002

Mines Safety and Inspection Act 1994

Short title	Number and year	Assent	Commencement
<i>Statutes (Repeals and Minor Amendments) Act 2003</i> s. 83 and 87(7)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Dangerous Goods Safety Act 2004</i> s. 70	7 of 2004	10 Jun 2004	1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)
<i>Occupational Safety and Health Legislation Amendment and Repeal Act 2004</i> s. 115 ⁴	51 of 2004	12 Nov 2004	4 Apr 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000)
<i>Mines Safety and Inspection Amendment Act 2004</i> ⁵⁻⁹	68 of 2004	8 Dec 2004	s. 1 and 2: 8 Dec 2004; Act other than s. 1 and 2: 4 Apr 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000 and <i>Gazette</i> 11 Feb 2005 p. 695)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 3: The Mines Safety and Inspection Act 1994 as at 10 Jun 2005 (includes amendments listed above, except those in the <i>Dangerous Goods Safety Act 2004</i>)			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Mines Safety and Inspection Amendment Act 2008</i>	16 of 2008	16 Apr 2008	s. 1 and 2: 16 Apr 2008 (see s. 2(a)); Act other than s. 1 and 2: 17 Apr 2008 (see s. 2(b))
Reprint 4: The Mines Safety and Inspection Act 1994 as at 16 May 2008 (includes amendments listed above)			
<i>Training Legislation Amendment and Repeal Act 2008</i> s. 55	44 of 2008	10 Dec 2008	10 Jun 2009 (see s. 2(2))
<i>Mines Safety and Inspection Amendment Act 2009</i>	45 of 2009	3 Dec 2009	4 Dec 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Rail Safety Act 2010</i> Pt. 11 Div. 2 ¹⁰	18 of 2010	28 Jun 2010	To be proclaimed (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89 ¹¹	39 of 2010	1 Oct 2010	To be proclaimed 1 Dec 2010 (see s. 2(b)) and Gazette 5 Nov 2010 p. 5563

² The amendment in the *Coroners Act 1996* Sch. 1 it. 11 is not included because of an error in the reference to the provision to be amended. The amendment intended was made in the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 51.

³ The *Courts Legislation Amendment and Repeal Act 2004* Sch. 1 cl. 100 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(10).

⁴ The *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* s. 115(7) reads as follows:

“

115. Mines Safety and Inspection Act 1994 amended and saving provision

(7) The amendment made by subsection (5) does not affect the operation of section 103 of the *Mines Safety and Inspection Act 1994*, before the commencement of that subsection, in relation to members of the Mines Occupational Safety and Health Advisory Board established under the section repealed by subsection (3).

”

⁵ The *Mines Safety and Inspection Amendment Act 2004* s. 31(2) reads as follows:

“

(2) Section 97 of the *Mines Safety and Inspection Act 1994* as in force immediately before the commencement of subsection (1) applies to an offence against that Act committed before that commencement as if subsection (1) had not been enacted.

”

⁶ The *Mines Safety and Inspection Amendment Act 2004* s. 57, 65 and 77 read as follows:

“

57. Saving provision for existing safety and health representatives

The amendments made by section 56 do not affect the continuation in office of any safety and health representative who held office under Part 5 Division 1 of the *Mines Safety and Inspection Act 1994* immediately before the commencement of that section.

65. Savings and transitional provisions for existing safety and health committees

- (1) The repeal of sections 65 and 66 of the *Mines Safety and Inspection Act 1994* (the “**MSI Act**”) by section 64 does not affect the status of a safety and health committee that is in existence under the MSI Act immediately before that repeal.
- (2) Any such committee is to be taken, after the commencement of section 64, to have been established under section 65 or 67A of the MSI Act inserted by section 64, as the case may require.
- (3) If before the commencement of section 64 —
 - (a) a request was made in respect of a mine under section 64(1) of the MSI Act repealed by section 64; but
 - (b) a safety and health committee had not been established for the mine under section 65 of the MSI Act so repealed,the duty of the employer under section 65 of the MSI Act to establish a safety and health committee for the mine lapses on that commencement.

77. Transitional provision for directions given before commencement

Sections 22, 23(1)(a)(iv), 30 and 31 of the *Mines Safety and Inspection Act 1994* continue to have effect for the purposes of a direction under section 22 of that Act given before the commencement of this Part as if sections 74, 75 and 76 had not been enacted.

”

⁷ The *Mines Safety and Inspection Amendment Act 2004* s. 83(2) and (3) read as follows:

“

- (2) A matter referred to a safety and health magistrate under the *Mines Safety and Inspection Act 1994* and not finally determined before the commencement of subsection (1) —
- (a) may continue to be dealt with; and
 - (b) any order made in such a proceeding may be appealed against and enforced,
- as if subsection (1) had not been enacted.
- (3) A determination or decision of a safety and health magistrate made before the commencement of subsection (1) may be the subject of —
- (a) an application for leave to appeal; and
 - (b) an appeal for which leave is granted,
- under section 54B(2) of the *Occupational Safety and Health Act 1984*, as applied by the section repealed by subsection (1), as if subsection (1) had not been enacted.

”

⁸ The *Mines Safety and Inspection Amendment Act 2004* s. 85(2) reads as follows:

“

- (2) An appeal brought under section 52 of the *Mines Safety and Inspection Act 1994* but not finally determined before the commencement of subsection (1), may be dealt with and determined under that section as if subsection (1) had not been enacted.

”

⁹ The *Mines Safety and Inspection Amendment Act 2004* s. 86(2) reads as follows:

“

- (2) An appeal brought under section 86 of the *Mines Safety and Inspection Act 1994* but not finally determined before the commencement of subsection (1), may be dealt with and determined under that section as if subsection (1) had not been enacted.

”

¹⁰ On the date as at which this compilation was prepared, the *Rail Safety Act 2010* Pt. 11 Div. 2 had not come into operation. It reads as follows:

Division 2 — *Mines Safety and Inspection Act 1994* amended

263. Act amended

This Division amends the *Mines Safety and Inspection Act 1994*.

264. Section 7 amended

In section 7(2) delete “*Rail Safety Act 1998*” and insert:

Rail Safety Act 2010

¹¹ On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:

89. Various references to “Minister for Public Sector Management” amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

Table

<i>Mines Safety and Inspection Act 1994</i>	s. 19(3), 20(3), 48(3), 82(5)
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