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MINES SAFETY AND INSPECTION ACT 1994

**MINES SAFETY AND
INSPECTION AMENDMENT
REGULATIONS 2005**

Mines Safety and Inspection Act 1994

Mines Safety and Inspection Amendment Regulations 2005

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Mines Safety and Inspection Amendment Regulations 2005*.

2. Commencement

These regulations come into operation on 4 April 2005.

3. The regulations amended

The amendments in these regulations are to the *Mines Safety and Inspection Regulations 1995**.

[* Reprinted as at 5 April 2002.

For amendments to 18 March 2005 see *Western Australian Legislation Information Tables for 2003, Table 4, p. 246, and Gazette 13 February and 29 June 2004 and 7 January 2005.*]

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4. Regulation 1.3A inserted

After regulation 1.3 the following regulation is inserted —

“

1.3A. Persons who are trainees for the purposes of the Act

- (1) This regulation relates to the definition of “trainee” in section 4(1) of the Act.
- (2) The class of persons who are trainees for the purposes of the Act are persons who are taking part in a traineeship scheme within the meaning of that term in the *Industrial Training Act 1975*.

”

5. Part 2 Division 1A inserted

After regulation 2.4 the following Division is inserted —

“

Division 1A — Improvement notices, prohibition notices and provisional improvement notices**2.4A. Prescribed requirements for sections 31AK, 31AL and 31BK(1) of the Act**

- (1) In this regulation —
“**employee**” includes a person taken to be an employee by operation of section 15A, 15B or 15C of the Act;
“**notice**” means an improvement notice, a prohibition notice or a provisional improvement notice, as the case may require.
- (2) It is a prescribed requirement for sections 31AK, 31AL and 31BK(1) of the Act that the manager of a mine post a notice, or a copy of it, on —
 - (a) a notice board at the mine that is conspicuous to and accessible by employees at the mine; or

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- (b) 2 or more notice boards at the mine, so long as one of the notice boards is conspicuous to and accessible by any particular employee at the mine.
- (3) If a notice relates to any plant at or related to a mine and the inspector issuing the notice —
 - (a) identifies the plant in the notice; and
 - (b) specifies in the notice that this subregulation applies to it,

it is also a prescribed requirement for sections 31AK, 31AL and 31BK(1) of the Act that the manager cause a copy of the notice to be displayed in a conspicuous position on or near the plant.

2.4B. Form for referral of improvement notice or prohibition notice for review

- (1) Form 1 in Schedule 1A is prescribed, for the purposes of section 31AY(3) of the Act, as the form to be used for the referral under that section of an improvement notice for review by the State mining engineer.
- (2) Form 2 in Schedule 1A is prescribed, for the purposes of section 31AY(3) of the Act, as the form to be used for the referral under that section of a prohibition notice for review by the State mining engineer.

2.4C. Form for referral of matter for review by Tribunal

Form 1A in the Schedule to the *Industrial Relations Commission Regulations 1985* in the form in which it is in force on 4 April 2005 is prescribed, for the purposes of section 31BA(2)(a) of the Act, as the form to be used for the referral under that section of a matter for review by the Tribunal.

”.

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6. Regulation 2.6 amended

- (1) Regulation 2.6(1) and (2) are repealed and the following subregulations are inserted instead —

“

- (1) In this regulation —

“**introductory course**” means a course of a kind referred to in subregulation (2)(a) that is accredited as referred to in that provision;

“**transitional course**” means a course of a kind referred to in subregulation (2)(b) that is accredited as referred to in that provision.

- (2) This regulation applies if, under section 14(1)(h) of the *Occupational Safety and Health Act 1984* —

(a) a training course is accredited that is designed for safety and health representatives to attend, subject to course availability, during the first year of holding office; or

(b) a training course is accredited that is designed to update the knowledge of safety and health representatives who have completed an introductory course.

”

- (2) After regulation 2.6(4) the following subregulation is inserted —

“

- (4a) A safety and health representative who has previously attended an introductory course but completed it before March 2005 may, if the representative has not completed a transitional course after February 2005, give to his or her employer notice in writing in accordance with subregulation (5) that the representative wishes to attend a transitional course.

”

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- (3) Regulation 2.6(5) is amended by inserting after “subregulation (4)” —
“ or (4a) ”.
- (4) Regulation 2.6(6) is amended by deleting “in accordance with subregulations (4) and (5)” and inserting instead —
“ under subregulation (4) or (4a) in respect of a course ”.
- (5) Regulation 2.6(7) is amended by inserting after “subregulation (4)” —
“ or (4a) in respect of a course ”.
- (6) Regulation 2.6(8) is amended as follows:
(a) by deleting “introductory” where it first appears;
(b) by deleting “introductory course” and inserting instead —
“ course of the same kind ”.
- (7) Regulation 2.6(9) is amended by inserting after “introductory course” —
“ or a transitional course ”.
- (8) Regulation 2.6(12) is amended by inserting after “introductory course” —
“ or a transitional course ”.

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7. Regulation 2.6A replaced by regulations 2.6A and 2.6B

Regulation 2.6A is repealed and the following regulations are inserted instead —

“

2.6A. Training courses for “qualified representative” under section 31BF

- (1) Each course of training described in subregulation (2) is prescribed for the purposes of the definition of “qualified representative” in section 31BF.
- (2) The prescribed courses are —
 - (a) a course that was an introductory course, as defined in regulation 2.6(1), and that the safety and health representative completed after February 2005; and
 - (b) a course that was a transitional course, as defined in regulation 2.6(1), and that the safety and health representative completed after February 2005 after having, before March 2005, completed a course that was an introductory course, as defined in regulation 2.6(1).

2.6B. Form of notification of election result

Form 3 in Schedule 1A is prescribed as the form of notice of the result of an election to be given to the State mining engineer for purposes of section 56(10)(b) of the Act by the person who conducted the election.

”

8. Part 2 Division 4 repealed

Part 2 Division 4 is repealed.

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9. Part 3 Division 2A inserted

After regulation 3.16 the following Division is inserted —

“

Division 2A — Further requirements for record book entries under section 38(2), (4) and (6)**3.16A. Matters to be recorded**

- (1) This regulation applies where —
 - (a) a person is appointed under section 34(3) of the Act to be the deputy of a registered manager or of an alternate registered manager (a “**manager**”);
 - (b) a person is appointed under section 36(3) of the Act to be the deputy of an underground manager or of an alternate underground manager (an “**underground manager**”); or
 - (c) a person is appointed under section 38(3) of the Act to be the deputy of a quarry manager or of an alternate quarry manager (a “**quarry manager**”).
- (2) A manager, underground manager or quarry manager for whom a deputy is appointed must, in addition to complying with section 38(2), (4) or (6) of the Act, as the case may be, make a record in the record book showing the particulars specified in subregulation (3).
- (3) The particulars are —
 - (a) the day and time when the deputy started acting pursuant to the appointment;
 - (b) the day and time when the deputy stopped acting pursuant to the appointment; and

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- (c) the ground on which the appointment was made, that is whether because of incapacity, absence from the mine or otherwise, and a brief statement of the circumstances involved.
- (4) The entries referred to in subregulation (3)(a) and (c) must be made as soon as is practicable after the deputy started acting.
- (5) The entry referred to in subregulation (3)(b) must be made as soon as is practicable after the deputy stopped acting.
- (6) The manager, underground manager or quarry manager concerned must ensure that the deputy signs each entry referred to in subregulation (3)(a) and (b) in respect of that deputy, as soon as is practicable after the entry is made, to show that the deputy agrees that the particulars entered for the purposes of that provision are correct.

”

10. Regulation 3.23 amended and transitional provisions

- (1) Regulation 3.23 is amended in the definitions of “assessment form”, “designated work” and “respiratory questionnaire” by deleting “Mines Occupational Safety and Health Advisory Board” and inserting instead —
“ Mining Industry Advisory Committee ”.
- (2) If immediately before the commencement of subregulation (1) —
 - (a) there is a form that has the approval of the Mines Occupational Safety and Health Advisory Board for the purposes of the definition of “assessment form” in regulation 3.23; or

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- (b) there is a form that has the approval of that Board for the purposes of the definition of “respiratory questionnaire” in that regulation,

the approval is to be treated as if it had been given by the Mining Industry Advisory Committee.

- (3) Any advice given by the Mines Occupational Safety and Health Advisory Board before the commencement of subregulation (1) for the purposes of paragraph (b) of the definition of “designated work” in regulation 3.23 is to be treated as if it had been given by the Mining Industry Advisory Committee.

- (4) In this regulation —

“Mines Occupational Safety and Health Advisory Board”

has the meaning given by section 4(1) of the Act as in force before the commencement of section 115(2) of the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004*.

11. Regulation 3.34 amended

Regulation 3.34(2)(b) is amended by deleting “Mines Occupational Safety and Health Advisory Board” and inserting instead —

“ Mining Industry Advisory Committee ”.

12. Regulation 9.1 amended

Regulation 9.1 is amended, in the definition of “inspirable dust”, by deleting “inspirable” and inserting instead —

“ inhalable ”.

13. Regulation 9.2 amended and transitional provision

- (1) Regulation 9.2 is amended by deleting “Mines Occupational Safety and Health Advisory Board” and inserting instead —

“ Mining Industry Advisory Committee ”.

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- (2) Any advice given by the Mines Occupational Safety and Health Advisory Board before the commencement of subregulation (1) for the purposes of regulation 9.2 is to be treated as if it had been given by the Mining Industry Advisory Committee.
- (3) In subregulation (2) —
“Mines Occupational Safety and Health Advisory Board”
has the meaning given by section 4(1) of the Act as in force before the commencement of section 115(2) of the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004*.

14. Regulation 9.11 amended

Regulation 9.11(2) is amended by deleting paragraphs (a), (b) and (c) and inserting instead —

“

- (a) of respirable dust does not exceed
3.0 milligrams per cubic metre of air; and
- (b) of inhalable dust does not exceed
10.0 milligrams per cubic metre of air.

”.

15. Regulation 9.13 amended

Regulation 9.13(1)(b)(i) is amended by deleting “inspirable” and inserting instead —

“ inhalable ”.

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Regulation 17.1 is repealed and the following regulation is inserted instead —

“

17.1. General penalty

The penalty for an offence committed by a person against a provision of these regulations that refers to this regulation is —

- (a) if the offence was committed by the 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) if paragraph (a) does not apply —
 - (i) in the case of an individual —
 - (I) for a first offence, a fine of \$25 000; and
 - (II) for a subsequent offence, a fine of \$31 250;
 - or
 - (ii) in the case of a corporation —
 - (I) for a first offence, a fine of \$50 000; and
 - (II) for a subsequent offence, a fine of \$62 500.

”

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17. Schedule 1A replaced

Schedule 1A is repealed and the following Schedule is inserted instead —

“

Schedule 1A — Forms

Form 1

[r. 2.4B(1)]

Mines Safety and Inspection Act 1994

section 31AY(3)

Referral of improvement notice for review

To the State Mining Engineer

1. I
(full name) refer to you for review¹ the improvement notice
number issued by
(name of issuing officer) on
(date of issue) in respect of the
.....
(name and location of mine).
2. A copy of the improvement notice is attached.
3. I am referring the notice in my capacity² as —
 - the person issued with the notice
 - the principal employer at the mine
 - the manager of the mine.
4. The referral is made on the following grounds —
.....
.....

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.....
.....
(attach separate sheets if required).
.....

Signature of referrer

Address:

Date:

Note:

¹ By section 31AY(3)(a) of the Act the time limit for referring an improvement notice for review is the time before which the notice must be complied with (as specified in the notice).

² Section 31AY(4) of the Act requires a referrer who is not the manager of the mine to give a copy of this form duly completed to the manager as soon as is practicable.

Form 2

[r. 2.4B(2)]

Mines Safety and Inspection Act 1994

section 31AY(3)

Referral of prohibition notice for review

To the State Mining Engineer

1. I
(full name) refer to you for review¹ the prohibition notice
number issued by
(name of issuing officer) on
(date of issue) in respect of —
 - the
(name and location of mine)

OR

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- the occupation of the residential premises at

(show the address or location of the premises).

2. A copy of the prohibition notice is attached.

3. I am referring the notice in my capacity² as —

- the person issued with the notice
- the principal employer at the mine
- the manager of the mine.

4. The referral is made on the following grounds —

.....

(attach separate sheets if required).

.....

Signature of referrer

Address:

Date:

Note:

¹ By section 31AY(3)(b) of the Act the time limit for referring a prohibition notice for review is 7 days after the day of its issue, but the State mining engineer has power to extend that limit.

² Section 31AY(4) of the Act requires a referrer who is not the manager of the mine to give a copy of this form duly completed to the manager as soon as is practicable.

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Form 3

[r. 2.6B]

Mines Safety and Inspection Act 1994

section 56(10)(b)

Notice of election of safety and health representative(s)

To the State Mining Engineer

1. NOTICE IS GIVEN that I conducted an election for [a safety and health representative] or [..... (*specify number*) safety and health representatives] on (*specify date*) and the person(s) named in the Schedule(s)¹ to this notice [was/were] elected.
2. Other information relating to the person(s) elected is also set out in the Schedule(s). In providing some of that information I have relied on information given to me by the person(s) elected.
3. I have given notice of the result of the election² to —
 - the person(s) elected; and
 - the employer³ concerned.

.....
 Signature of person who conducted the election
 Full name:
 Official title:

SCHEDULE

1. Full name of person elected:
- Telephone: Fax: Email:
- Occupation:
- Period in current position:
- Period with current employer:

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2. Name of employer:

Business address:

Suburb/town: Postcode:

Telephone: Fax: Email:

3. The elected person was elected for the following mine or mines —

.....

.....

.....

(for each mine give the name and location, the nearest town and the postcode)

to perform functions in respect of the following matter(s), area(s) or kind(s) of work —

.....

.....

.....

.....

OR

The elected person was elected for the following group of employees⁴ —

.....

.....

.....

(describe the group and give particulars of the mine or mines concerned).

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4. The elected person —
- (a) [has not previously been elected as a safety and health representative] *or* [has previously been elected (*specify how many times*) as a safety and health representative];
 - (b) [has attended] *or* [has not attended] an accredited introductory training course for safety and health representatives.

Note:

¹ If more than one person was elected attach a separate Schedule for each person.

² Such notice to be given within 7 days after the election was completed.

³ References in this form to an employer may include a principal — see section 55B of the Act.

⁴ Under section 55B(3) of the Act, a contractor or a person employed by a contractor may be treated as an employee, if a scheme so provides.

”

By Command of the Governor,

G. M. PIKE, Clerk of the Executive Council.
