

Western Australia

**Mines Safety and Inspection Amendment Act  
2008**

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As at 16 Apr 2008

No. 16 of 2008

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# Mines Safety and Inspection Amendment Act 2008

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Western Australia

## **Mines Safety and Inspection Amendment Act 2008**

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**No. 16 of 2008**

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**An Act to amend the *Mines Safety and Inspection Act 1994*.**

[Assented to 16 April 2008]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This is the *Mines Safety and Inspection Amendment Act 2008*.

**2. Commencement**

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

**3. The Act amended**

The amendments in this Act are to the *Mines Safety and Inspection Act 1994*\*.

[\* *Reprint3 as at 10 June 2005.*

*For subsequent amendments see Western Australian Legislation Information Tables for 2006, Table 1.]*

**4. Section 4 amended**

Section 4(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical position —

“

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

”;

- (b) by deleting the definition of “principal employer” and inserting instead —

“

“**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;

”.

**5. Section 15A amended**

- (1) Section 15A(2) is amended by deleting “section 9 has” and inserting instead —  
“ sections 9 and 9A have ”.
- (2) Section 15A(3) is amended by inserting after “subsection (4) apply” —  
“ , and sections 10A and 15E have effect ”.

**6. Section 15B amended**

- (1) Section 15B(2) is amended by deleting “section 9 has” and inserting instead —  
“ sections 9 and 9A have ”.
- (2) Section 15B(3) is amended by deleting “section 10 has” and inserting instead —  
“ sections 10 and 10A have ”.

**7. Section 15C amended**

- (1) Section 15C(4) is amended by deleting “section 9 has” and inserting instead —  
“ sections 9 and 9A have ”.
- (2) Section 15C(5) is amended by deleting “section 10 has” and inserting instead —  
“ sections 10 and 10A have ”.

**8. Section 31AY amended**

- (1) Section 31AY(3) is amended as follows:
  - (a) by deleting “may be made only in the prescribed form duly completed” and inserting instead —  
“ must be made in writing ”;

(b) in paragraphs (a) and (b) by deleting “must be made”.

(2) Section 31AY(4) is amended by deleting “duly completed prescribed form” and inserting instead —

“ reference ”.

**9. Section 31BA amended**

(1) Section 31BA(2) is repealed and the following subsection is inserted instead —

“

(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.

”.

(2) Section 31BA(3) is amended by deleting “duly completed prescribed form” and inserting instead —

“ reference ”.

**10. Section 34 amended**

(1) Section 34(1), (2) and (3) are each amended by deleting the penalty at the foot of the subsection.

(2) After section 34(5) the following subsection is inserted —

“

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

”.

**11. Section 35 amended**

(1) Section 35(1) is amended by deleting the penalty at the foot of the subsection.

(2) After section 35(1) the following subsection is inserted —

“

(1a) A principal employer who contravenes subsection (1) commits an offence.

”.

**12. Section 37 amended**

(1) Section 37(1) is amended by deleting the penalty at the foot of the subsection.

(2) After section 37(1) the following subsection is inserted —

“

(1a) A principal employer who contravenes subsection (1) commits an offence.

”.

**13. Section 38A amended**

(1) Section 38A(1), (3) and (5) are each amended by deleting the penalty at the foot of the subsection.

(2) After section 38A(6) the following subsection is inserted —

“

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

”.

**14. Section 40 amended**

(1) Section 40(1) and (2) are each amended by deleting the penalty at the foot of the subsection.

(2) After section 40(2) the following subsection is inserted —

“

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

”.

**s. 15**

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**15. Section 41 amended**

(1) Section 41 is amended as follows:

(a) by inserting before “If” the subsection designation “(1)”;

(b) after paragraph (b) by deleting the comma and inserting —

“

; 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,

”;

(c) by deleting all of the section from and including “commits an offence” and inserting instead —

“ commits an offence. ”.

(2) At the end of section 41 the following subsection is inserted —

“

(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.

”.

**16. Section 43 amended**

(1) Section 43(2) is amended by deleting the penalty at the foot of the subsection.

(2) After section 43(2) the following subsection is inserted —

“

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

”.

**17. Section 43A amended**

- (1) After section 43A(2) the following subsection is inserted —

“

- (2a) An underground manager who contravenes subsection (2) commits an offence.

”.

- (2) Section 43A(4) is amended by deleting the penalty at the foot of the subsection.

- (3) After section 43A(4) the following subsection is inserted —

“

- (5) A quarry manager who contravenes subsection (4) commits an offence.

”.

**18. Section 46A inserted**

After section 46 the following section is inserted —

“

**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.

”.

**19. Section 47 amended**

(1) Section 47(1) is amended as follows:

- (a) by deleting “owned by a person who owns” and inserting instead —  
“ held by a person who holds ”;
- (b) by deleting “activities” and inserting instead —  
“ operations ”.

(2) Section 47(2) is amended as follows:

- (a) by deleting “If a registered manager does not give the notice referred to in subsection (1) or exploration operations are carried out on a mining tenement other than one to which subsection (1) refers, the owner of a mining tenement on which exploration operations are being carried out” and inserting instead —

“

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

”;

- (b) in paragraph (a) by deleting “the State for that owner” and inserting instead —

- “ those operations ”;
- (c) in paragraph (b) by deleting “that owner” and inserting instead —
- “ the principal employer ”.
- (3) Section 47(2), (3) and (4) are each amended by deleting the penalty at the foot of the subsection.
- (4) Section 47(4) is amended by deleting “nominated as” and inserting instead —
- “ notified as being ”.
- (5) Section 47(5) is amended as follows:
- (a) by deleting “exploration manager or nomination under subsection (2)(b)” and inserting instead —
- “ notification under subsection (2) ”;
- (b) by deleting all of the subsection from and including “responsibilities which are” and inserting instead —
- “
- 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.

”.

**s. 20**

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(6) After section 47(5) the following subsection is inserted —

“

(6) A person who contravenes subsection (2), (3) or (4) commits an offence.

”.

**20. Section 47A inserted**

After section 47 the following section is inserted in Division 1 —

“

**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.

”.

**21. Section 51 amended**

(1) Section 51(3) is amended by deleting the penalty at the foot of the subsection.

(2) After section 51(3) the following subsection is inserted —

“

(4) A person who contravenes subsection (3) commits an offence.

”.

**22. Section 53 amended**

Section 53(2) is amended by deleting “Part” and inserting instead —

“ Act ”.

**23. Section 55 amended**

Section 55(4) is amended as follows:

- (a) by deleting paragraph (b);
- (b) after each of paragraphs (a) and (ba) by inserting —  
“ and ”.

**24. Section 56 amended**

- (1) Section 56(8b)(b) is amended by deleting “a least” and inserting instead —

“ at least ”.

- (2) Section 56(10)(b) is amended as follows:

- (a) by deleting “prescribed form” and inserting instead —  
“ form approved by the State mining engineer ”;
- (b) by deleting “prescribed in” and inserting instead —  
“ required by ”.

**25. Section 60 amended**

Section 60(7) is amended by deleting “Part” and inserting instead —

“ Act ”.

**26. Section 77 amended**

- (1) Section 77(1) and (2) are each amended by deleting the penalty at the foot of the subsection.

**s. 27**

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(2) After section 77(2) the following subsection is inserted —

“

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

”.

**27. Section 78 amended**

(1) Section 78(1) and (2) are each amended by deleting the penalty at the foot of the subsection.

(2) After section 78(2) the following subsection is inserted —

“

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

”.

**28. Section 81 amended**

(1) Section 81 is amended as follows:

(a) by inserting before “A person” the subsection designation “(1)”;

(b) by deleting the penalty at the foot of the section.

(2) At the end of section 81 the following subsection is inserted —

“

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

”.

**29. Section 85 amended**

(1) Section 85(3) is amended by deleting the penalty at the foot of the subsection.

(2) After section 85(3) the following subsection is inserted —

“

(4) A person who contravenes subsection (3) commits an offence.

”.

**30. Section 89 amended**

(1) Section 89(1) is amended by deleting the penalty at the foot of the subsection.

(2) After section 89(1a) the following subsection is inserted —

“

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

”.

**31. Section 102 amended**

(1) Section 102(1)(a) is amended by deleting “or 74(2)” and inserting instead —

“ , 74(2) or 102AA(2) ”.

(2) Section 102(4) is amended by deleting “of the” in the first place where it occurs.

**32. Section 102AA inserted**

After section 102 the following section is inserted in Part 9 Division 3 —

“

**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.

**s. 33**

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- (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.

”.

**33. Section 104 amended**

Section 104(1) is amended after paragraph (zn) by deleting the full stop and inserting —

“

;

- (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.

”.

**34. Section 105 amended**

- (1) Section 105 is amended as follows:
- (a) by inserting before “In order” the subsection designation “(1)”;
  - (b) by deleting the penalty at the foot of the section.
- (2) At the end of section 105 the following subsection is inserted —
- “
- (2) A person who contravenes subsection (1) commits an offence.
- ”.

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