

MINES SAFETY AND INSPECTION ACT 1994

(No. 62 of 1994)

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MINES SAFETY AND INSPECTION ACT 1994

No. 62 of 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 health, safety and welfare of persons at mines and for connected purposes.

[Assented to 7 November 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

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

Commencement

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

Objects

3. The objects of this Act are —

- (a) to promote, and secure the health, safety and welfare 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 co-operation 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 health and safety 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.

Interpretation

4. (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;

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

“blasting agent” has the same meaning as it has in the *Explosives and Dangerous Goods Act 1961*;

“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;

“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 person by whom work is done at a mine under a contract of employment or apprenticeship;

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

“employer” means a person who employs an employee at a mine under a contract of employment or apprenticeship;

“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” has the same meaning as it has in the *Explosives and Dangerous Goods Act 1961*;

“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;

“health and safety committee” means a health and safety committee established under section 65;

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

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

“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;

“Industrial Relations Commission” means The Western Australian Industrial Relations Commission constituted under the *Industrial Relations Act 1979*;

“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 and includes —

(a) a person who is appointed by the registered manager to have the immediate charge and direction of the mine; and

(b) a deputy manager appointed by a manager;

“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 Occupational Health and Safety Advisory Board” means the Board of that name established under section 90;

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

“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

- (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
- (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 authority for the use or disposition by any such agency, instrumentality or authority; 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” in relation to a mine, 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;

“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 manager 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;

“self-employed person” means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not that person employs any other person;

“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 plant or a substance, includes supply or re-supply by way of sale, exchange, lease, hire, or hire-purchase, whether as principal or agent;

“trade union” means —

- (a) an organization registered under section 53 of the *Industrial Relations Act 1979* or under the *Trade Unions Act 1902*; or
- (b) an organization 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 organization;

“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 manager 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;

“welfare” means welfare which is directly related to an employee’s health and safety at a mine;

“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 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.

Crown bound

5. This Act binds the Crown.

Application to certain excavations, shafts, or tunnels

6. (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.

Inconsistent laws

7. 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.

Power to exempt

8. (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 HEALTH, SAFETY AND WELFARE

Duties of employers

9. (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 co-operate with health and safety representatives, if any, and other employees at the mine where that employer's employees work, regarding occupational health, safety and welfare 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) For the purposes of this section, where, in the course of mining operations carried on by a person (in this section called **"the principal"**), the principal engages another person (in this section called **"the contractor"**) to carry out work for the principal —

- (a) the principal is deemed, in relation to matters over which the principal has control or, but for an agreement between the principal and the contractor to the contrary, would have had control, to be the employer of —

- (i) the contractor; and

- (ii) any person employed or engaged by the contractor to carry out or to assist in carrying out the work; and

- (b) the persons mentioned in paragraph (a) (i) and (ii) are deemed, in relation to those matters, to be employees of the principal.

(4) Nothing in subsection (3) derogates from —

- (a) the duties of the principal to the contractor; or

- (b) the duties of the contractor to persons employed or engaged by the contractor.

(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.

(7) An employer who contravenes subsection (1) commits an offence and is liable in the case of a corporation to a fine of \$100 000 and in the case of an individual to a fine of \$10 000.

Duties of employees

10. (1) An employee at a mine must take reasonable care —

- (a) to ensure his or her own health and safety at work; and
- (b) to avoid adversely affecting the health or safety 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 health or safety or for the health or safety 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 health, safety or welfare; 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 co-operate 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.

(4) An employee who contravenes subsection (1) or (3) commits an offence and is liable to a fine of \$10 000.

Reporting of dangerous situations or occurrences

11. (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.

Duties of employers and self-employed persons

12. (1) An employer or a self-employed person at a mine must —

- (a) take reasonable care to ensure his or her own health and safety at work; and
- (b) so far as is practicable, ensure that the health or safety of a person not being an employee of that person is not adversely affected wholly or in part as a result of the work in which that person or, in the case of a person who is an employer, any of that person's employees is engaged.

(2) A person who contravenes subsection (1) commits an offence and is liable in the case of a corporation to a fine of \$100 000 and in the case of an individual to a fine of \$10 000.

Duties of principal employers and managers

13. (1) 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.

(2) A person who contravenes subsection (1) commits an offence and is liable in the case of a corporation to a fine of \$100 000 and in the case of an individual to a fine of \$10 000.

Duties of manufacturers etc.

14. (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 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 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.

(5) A person who contravenes subsection (1), (2), (3), or (4) commits an offence and is liable in the case of a corporation to a fine of \$100 000 and in the case of an individual to a fine of \$10 000.

No double jeopardy

15. 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 notwithstanding any other more specific duty imposed on that person under this Act,

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

PART 3 — ADMINISTRATION OF ACT

Division 1 — Inspectors of mines

State mining engineer and State coal mining engineer

16. (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.

Appointment of inspectors of mines

17. (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 employees 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.

District and special inspectors

18. (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.

Employee's inspectors

19. (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 re-appointment 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.

Assistant inspectors

20. (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

Powers of inspectors

21. (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;
- (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) require the attendance of any official or employee at the mine and interview, either in private or otherwise as the inspector considers appropriate, any such official or employee or any other person whom he finds at the mine or whom the inspector has reasonable grounds to believe is, or was at any time during the preceding 2 years, an employee working at the mine;
- (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.

(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 health and safety representative of that mine of that intention, or

if there is more than one health and safety 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.

(6) In this section, “**mine**” includes a workplace that relates to but is not at a mine.

Power to give directions

22. (1) An inspector or an assistant inspector may for the purposes of this Act give a direction in writing under this section to a principal employer or the manager of a mine if, in the opinion of the inspector or assistant inspector —

- (a) a contravention of a provision of this Act constitutes or is likely to constitute a hazard to any person at the mine; or
- (b) the mine, or any plant or mining practice or hazardous substance at or related to the mine, is dangerous or is likely to become dangerous so as to constitute a hazard to any person.

(2) A direction under this section may direct —

- (a) that the contravention of a provision of the Act be remedied or the hazard or likely hazard be removed and may specify the nature of the action that the inspector or assistant inspector requires to be taken to remedy the contravention or remove the hazard or likely hazard, and the time within which that action must be taken;
- (b) that work at the mine must stop and any person or persons must be removed from the mine or a specified

part of the mine until the provisions of this Act are not being contravened and the hazard or likely hazard has been removed,

and an inspector or assistant inspector may give a direction either under paragraph (a) or under paragraphs (a) and (b).

(3) A direction under this section must specify the provision of the Act which, in the opinion of the inspector or assistant inspector, has been contravened, or the nature of the danger or likely danger, and the reasons for that opinion.

Notice of result of inspection

23. (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
 - (iv) any direction that the inspector or assistant inspector has given under section 22, including the substance of the direction and the time within which the inspector or assistant inspector requires action to be taken to comply with the direction; and

- (b) notify the person to whom notice was given under section 21 (4) and, where practicable, any health and safety representative or health and safety 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 authorized in writing by the State mining engineer.

(3) Where it is not practicable for an inspector or assistant inspector to notify any health and safety representative or health and safety 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 health and safety representative or health and safety committee concerned.

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

Inspector must inquire into complaints

24. (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.

Liaison between employee's inspectors and health and safety representatives

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

Use and misuse of information by inspectors and assistant inspectors

26. (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 or a fire 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 or a fire at a mine.

(5) In this section, “**inspector**” includes a workmen's inspector.

Certificates of appointment

27. (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.

Provision of facilities for inspection

28. (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.

Obstruction

29. (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.

Compliance with inspector's directions

30. (1) This section applies where an inspector or an assistant inspector gives a direction under section 22 to the principal employer or the manager of a mine.

(2) A principal employer or manager who is given a direction under section 22 must comply with it within the time specified in the direction or, if no time is specified, immediately or, if the principal employer or manager intends to object to the direction

in accordance with subsection (4), the principal employer or manager must —

- (a) cease to use the mine, or part of the mine, or the plant or mining practice or hazardous substance to which the direction relates; and
- (b) withdraw all employees from the danger indicated by the inspector or assistant inspector until the arbitration provided for in subsection (4) is completed.

(3) Notwithstanding subsection (2), the State mining engineer or the inspector or assistant inspector may permit work to proceed at the mine, or the plant or mining practice or hazardous substance to be used, subject to such restrictions and conditions as that person may impose and specify in writing in order to ensure the safety of employees and other persons at the mine and, if permission is given under this subsection, the substance of the permission and any restrictions and conditions attached to the permission are to be entered in the record book.

(4) A principal employer or a manager may, within 7 days after receiving a direction, deliver to the district inspector for the region where the mine is situated written objections to the direction specifying the grounds for those objections and the matter shall then be determined by arbitration; and the date when the district inspector receives the objection is to be taken to be the date of the submission to arbitration. The district inspector must send a copy of the objection to the State mining engineer.

(5) A principal employer or manager who —

- (a) contravenes a direction under section 22, or, in the event of an objection and arbitration, contravenes an award made on arbitration, and such contravention continues for 14 days after the date the direction is received by the principal employer or manager or the award is made; or

- (b) in the event of an intention to object to the direction, contravenes subsection (2),

commits an offence and is liable in the case of a corporation to a fine of \$100 000 and in the case of an individual to a fine of \$10 000.

(6) If the court is satisfied in a proceeding for an offence under subsection (5) (a) that the principal employer or manager has taken active measures to comply with the direction or award but has not, despite reasonable diligence, completed the works necessary for that purpose, the court may adjourn the proceeding and if the works are completed within a reasonable time shall not enter a conviction.

(7) A principal employer or a manager who delivers to the district inspector for the region where the mine is situated written objections to the direction under subsection (4) must —

- (a) immediately enter a record of those objections in the record book; and
- (b) without delay, enter a record of any award made in respect of those objections after arbitration is completed.

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

(8) The State mining engineer may, by notice in writing given to the principal employer or the manager of the mine, revoke a direction given under section 22.

(9) No person is precluded by a contract from doing such acts as are necessary to comply with a direction or award under section 22 or is liable under any contract to any penalty for doing such acts.

Arbitration concerning direction

31. (1) An arbitration under section 30 is to be conducted in accordance with the *Commercial Arbitration Act 1985* as it applies to a reference to 2 arbitrators and an umpire.

(2) The parties to the arbitration are to be the principal employer or the manager to whom the direction was addressed and the district inspector or special inspector (on behalf of the Minister).

(3) No person is eligible to act as arbitrator or umpire who is employed or has a financial interest in the mine or plant or a hazardous substance to which the arbitration relates.

(4) A person who is appointed an umpire must be a mining engineer with extensive experience in mining operations in positions of responsibility, a person experienced in the working of mines, a person with appropriate qualifications or expertise to deal with the issue in question, a Judge, or a warden or stipendiary magistrate; but an award is not liable to be upset on the ground that an umpire was not qualified under this subsection to act.

PART 4 — MANAGEMENT OF MINES***Division 1 — Duties of employers and managers*****Principal employer**

32. (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.

(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 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 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.

Registered manager

33. (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.

Alternate and deputy registered managers

34. (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.

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

(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.

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

(3) If the 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 must appoint a fit and proper person to act as the registered manager's deputy during the incapacity or absence.

Penalty: \$5 000.

(4) If the period of incapacity or absence of the registered manager is expected to be more than 5 days, the registered manager must inform the district inspector for the region in which the mine is situated of the name and address of the deputy within 24 hours (by electronic document transmission confirmed by hard copy within 7 days).

Penalty: \$5 000.

(5) The registered manager and the alternate registered manager must maintain a log in the record book of their periods of duty as registered manager for the mine.

Penalty: \$5 000.

(6) Each deputy registered manager and alternate registered manager appointed under this section is deemed to be the registered manager and to be subject to the duties imposed on registered managers by this Act for such periods of duty as the deputy or alternate has been appointed, but the appointment of a deputy or an alternate registered manager does not relieve the registered manager from responsibility for the exercise of powers and duties while serving as registered manager.

Certificated underground manager

35. (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.

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

(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.

Alternate and deputy underground managers

36. (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) The principal employer must inform the district inspector for the region in which the mine is situated of the name and address of the deputy appointed under subsection (3) within 24 hours (by electronic document transmission confirmed by hard copy within 7 days) and the reason for the appointment.

(5) A person who contravenes subsection (1), (2), (3) or (4) 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) Where an alternate or deputy underground manager has been appointed, the underground manager, alternate underground manager or deputy underground manager, as the case may require, must maintain a log in the record book of their periods of duty as underground manager for the mine.

Penalty: \$5 000.

(8) Each deputy underground manager and alternate underground manager appointed under this section is deemed to be the underground manager and to be subject to the duties imposed on underground managers 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 of powers and duties while serving as underground manager.

Certificated quarry manager

37. (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.

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

(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 —

(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.

Alternate and deputy quarry managers

38. (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 situate 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) The principal employer must inform the district inspector for the region in which the mine is situated of the name and address of the deputy within 24 hours (by electronic document transmission confirmed by hard copy within 7 days) and the reason for the appointment.

(5) A person who contravenes subsection (1), (2), (3) or (4) 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) Where an alternate or deputy quarry manager has been appointed, the quarry manager, alternate quarry manager or deputy quarry manager, as the case may require, must maintain a log in the record book of their periods of duty as quarry manager for the mine.

Penalty: \$5 000.

(8) Each deputy quarry manager and alternate quarry manager appointed under this section is deemed to be the quarry manager and to be subject to the duties imposed on quarry managers by 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 of powers and duties while serving as quarry manager.

Requirement for appointment of more than one certificated manager

39. (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.

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

Managers to notify assumption of control

40. (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.

Penalty: \$5 000.

(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.

Penalty: \$5 000.

(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 a log attached to the record book and kept at the mine.

Offence to work mine without appointed managers

41. 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,

the principal employer commits an offence for each day or part of a day during which the mine is so worked and is liable to a fine of \$25 000 in the case of a corporation and \$5 000 in the case of an individual and to a further fine of \$1 000 in the case of a corporation and \$500 in the case of an individual for each day or part of a day during which the offence continues.

Commencement or suspension of mining

42. (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, re-commencement, 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.

Duties and responsibilities of manager

43. (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.

Penalty: \$5 000.

Management appointments

44. (1) A principal employer, manager or other person authorized 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.

Provision of engineering report

45. (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 health and safety 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.

Principal employer's instructions to manager

46. (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.

Management of exploration operations

47. (1) If exploration operations are carried out on a mining tenement which is owned by a person who owns 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 activities are under the control of that registered manager.

(2) 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 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 the State for that owner; and
- (b) notify, without delay and in writing, that senior inspector of the name and address of the person who is responsible to that owner 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.

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

(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.

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

(4) A person nominated as 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.

Penalty: \$5 000.

(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 exploration manager or nomination under subsection (2) (b) 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 imposed on exploration managers and persons nominated under subsection (2) (b) under this Act.

Division 2 — Certificates of competency

Board of Examiners

48. (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.

Complaint to Board of Examiners

49. (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.

Inquiry by Board of Examiners

50. (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.

Disciplinary action following inquiry

51. (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.

Penalty: \$2 000.

Appeal to Minister

52. (1) A person whose certificate of competency is suspended or cancelled by the Board of Examiners may appeal in writing to the Minister 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 Minister orders otherwise.

(3) The Minister 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.

**PART 5 — HEALTH AND SAFETY REPRESENTATIVES
AND COMMITTEES**

Division 1 — Health and safety representatives

Functions of health and safety representatives

53. (1) The functions of a health and safety representative are, in the interests of health and safety 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 health and safety 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

- (e) where there is a health and safety committee for the mine, to refer to that committee any matters that the representative thinks the health and safety committee should consider; and
- (f) to consult and co-operate with the manager of the mine and employers on all matters relating to the health, safety or welfare 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 health, safety or welfare of persons at the mine.

(2) A health and safety representative for a mine has such powers as are necessary for the carrying out of the representative's functions under this Part and in particular, but without limiting the generality of the preceding statement, may —

- (a) 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;
- (b) request an employer to establish a health and safety committee for a mine at which there are more than 10 employees.

(3) A health and safety representative incurs no civil liability arising from the representative's performance of, or failure to perform, in good faith any function of a health and safety representative under this Act.

Notice requiring election of health and safety representatives

54. An employee who works at a mine may give notice to his or her employer at the mine requiring the election of a health and safety representative for the mine.

Consultation on election matters

55. (1) Where an employer is given notice under section 54 requiring the election of a health and safety representative, the employer must, within 21 days of being given the notice, invite the appointment of a delegate or delegates, as the case requires, in accordance with subsections (2) and (3), and must consult with that delegate or those delegates as to the matters which are required to be determined under this section.

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

(2) Where any employees who work at a mine are not members of a trade union, those employees may, upon being invited under subsection (1) to do so, appoint a delegate from amongst their number to represent them.

(3) Where any of the employees who work at a mine is a member of a trade union, that trade union, or where there are 2 or more such trade unions, each of those trade unions, may, upon being invited under subsection (1) to do so, appoint a delegate from amongst its members who work at the mine to represent them.

(4) The matters which are required to be determined under this section in relation to an election are —

- (a) the number of health and safety representatives to be elected for the mine;
- (b) whether any training is to be agreed as being adequate for the purposes of section 56 (8) (c) and, if so, what that training is to be; and
- (c) where none of the employees who work at a mine is a member of a trade union, the person by whom and the manner in which the election is to be conducted.

(5) Where they wish to do so, the parties consulting under subsection (1) may request that an election to be held under this section be conducted by the Electoral Commissioner.

(6) Any matter mentioned in subsection (4) that remains unresolved notwithstanding attempts to resolve it under subsection (1) may be referred to the State mining engineer who may, if unable to resolve the matter to the satisfaction of each of the parties concerned, refer the matter to the Industrial Relations Commission for determination.

Election of health and safety representatives

56. (1) In this section, “**election**” means an election required for the purpose of electing a health and safety representative for the mine concerned.

(2) Where none of the employees who work at a mine is a member of a trade union, an election is to be conducted as determined under section 55.

(3) Where any of the employees who work at a mine is a member of a trade union, that trade union, or, where there are 2 or more such trade unions, one of those trade unions as agreed between them, may conduct an election.

(4) In the case referred to in subsection (3), where —

- (a) the trade union requests or, if there are 2 or more of them, those trade unions by agreement request, that the Electoral Commissioner conduct an election; or
- (b) the trade union does not indicate or, if there are 2 or more of them, none of those trade unions indicates, within 21 days of receiving an invitation under section 55 (1), that an election is to be conducted by a trade union,

the election is to be conducted by the Electoral Commissioner.

(5) Where members of 2 or more trade unions work at a mine and there is a dispute as to who is to conduct an election, the dispute may be referred to the State mining engineer who may, if he is unable to resolve the matter to the satisfaction of the parties concerned, refer the matter to the Industrial Relations Commission for determination.

(6) Subject to this section, health and safety representatives are to be elected in accordance with a determination under section 55.

(7) Every employee who works at the mine is entitled to vote at an election and, where any of the parties consulted under section 55 to determine matters in relation to that election so requires, the election must be by secret ballot.

(8) A person is not eligible to be elected as a health and safety representative for a mine unless the person is an employee who works at the mine and has —

- (a) been continuously employed at the mine concerned during the preceding 2 years; or
- (b) had a total of at least 2 years' experience at a mine in work of a similar nature to the work that person does at the mine; or
- (c) had a total of at least 12 months' experience of a type described in paragraph (b) and such training, if any, as is agreed under section 55 as being adequate for the purposes of this subsection; or
- (d) been approved by the State mining engineer for the purposes of this subsection.

(9) If only one eligible candidate is nominated for election to an office of health and safety representative, a ballot need not be held and that candidate is deemed to have been duly elected.

(10) A trade union conducting an election must notify the employer concerned of the results of the election.

(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 may, if unable to resolve the matter to the satisfaction of the persons concerned, refer the matter to the Industrial Relations Commission for determination.

Terms of office

57. (1) A person who is elected as a health and safety representative holds office, subject to this Act, for a term of 2 years.

(2) A person ceases to hold office as a health and safety 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 the mine for which that person was elected; or
- (c) the person resigns office by notice given to his or her employer; or
- (d) the person is disqualified under section 59.

Manager to ensure safety of health and safety representative

58. (1) The manager of a mine must ensure that whenever a health and safety 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.

Disqualification of health and safety representative

59. (1) A person specified in subsection (2) may refer to the Industrial Relations Commission the question of whether a health and safety 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 health and safety 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 health and safety representative under this Act,

or on more than one of those grounds.

(2) A reference under subsection (1) concerning the disqualification of a health and safety representative may be made by —

- (a) an employer at the mine or the manager of the mine; or
- (b) a trade union a member of which works at the mine; or
- (c) the State mining engineer.

(3) If, upon a reference under subsection (1), the Industrial Relations Commission is satisfied that grounds for the disqualification of the health and safety representative exist, it may disqualify the representative for a specified period or permanently from holding office as a health and safety representative.

(4) In determining what disqualification, if any, should be imposed under subsection (3), the Industrial Relations Commission 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 health and safety representative in performing the functions of a health and safety representative under this Act; and
- (c) whether the health and safety representative acted contrary to the public interest,

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

Duties of employers and manager regarding health and safety representatives

60. (1) This section applies in relation to a mine if there is a health and safety representative for that mine.

(2) The manager of a mine and every employer at the mine must make available to each health and safety 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 health and safety of employees who work at the mine.

(3) Where an employee so requests at an interview concerning occupational health, safety or welfare 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 health and safety representative to be present.

(4) The manager of the mine and every employer at the mine must consult with health and safety 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 health, safety or welfare of employees at the mine.

(5) The employer of a health and safety representative must —

- (a) permit that representative to take such time off work, with pay, for the purposes of performing the functions of a health and safety representative under this Act as is provided for in the regulations; and
- (b) in accordance with the regulations, permit that representative to take such time off work, with pay, for the purposes of attending courses of training in occupational health, safety and welfare accredited under section 14 (1) (h) of the *Occupational Health, Safety and Welfare Act 1984* as provided for by section 62 (b).

(6) Where any accident or dangerous occurrence takes place in a part of the mine where employees who are represented by a health and safety representative work, the employer of the health

and safety representative must ensure that the health and safety 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 health and safety representatives of their functions under this Part.

(8) A person who contravenes subsection (2), (3), (4), (5), (6) or (7) commits an offence.

Duties of employers regarding health and safety representatives

61. (1) An employer at a mine —

- (a) must not make available to a health and safety 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.

Regulations regarding time off work for health and safety representatives

62. The regulations may prescribe the time that a health and safety representative is to be permitted to take off work, with pay and other benefits, 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 health, safety and welfare accredited under section 14 (1) (h) of the *Occupational Health, Safety and Welfare Act 1984*,

but the time that a health and safety representative is to be permitted to take off work, with pay and other benefits, for those purposes may be varied, in a way not less favourable to the health and safety representative than that prescribed in the regulations, by agreement with the employer concerned or by a determination made by the Industrial Relations Commission upon a reference made to it under this section by the employer, the health and safety representative, or the State mining engineer.

Division 2 — Health and safety committees

Functions of health and safety committees

63. The functions of a health and safety committee are —

- (a) to facilitate consultation and co-operation between the manager of the mine, employers and employees in initiating, developing, and implementing measures designed to ensure the health, safety and welfare of employees at the mine; and

- (b) to keep itself informed as to standards relating to health, safety and welfare 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 health, safety and welfare 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 health, safety and welfare 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 health, safety or welfare 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 health and safety 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.

Request for health and safety committee to be established

64. (1) A health and safety representative for a mine at which there are more than 10 employees may request an employer at the mine to establish a health and safety committee for the mine.

(2) Where an employer has been requested by a health and safety representative under subsection (1) to establish a health and safety committee, the employer must, within 21 days of the request —

- (a) notify the health and safety representative that the request is agreed to; or
- (b) if the employer considers that the circumstances of the case are such that a health and safety committee should not be required to be established under this Act, refer the question of whether such a committee should be established to the State mining engineer and notify the health and safety representative that the matter has been referred to the State mining engineer.

(3) The State mining engineer must as soon as is practicable decide a question referred under subsection (2) and notify the employer and the health and safety representative concerned of the decision.

(4) An employer who contravenes subsection (2) commits an offence.

Establishment of health and safety committee

65. (1) An employer must, in accordance with this Division and the regulations, establish a health and safety committee within 3 months of —

- (a) the coming into operation of a regulation requiring such a committee to be established by the employer; or
- (b) service on the employer of a notice from the State mining engineer requiring the employer to do so; or
- (c) being requested under section 64 to do so,

unless, in the case mentioned in paragraph (c), the State mining engineer has decided that a health and safety committee should not be required to be established.

(2) An employer who contravenes subsection (1) commits an offence.

(3) An employer may, of the employer's own initiative, establish a health and safety committee at any time in accordance with this Division.

Composition of health and safety committee

66. (1) A health and safety committee for a mine is to consist of —

- (a) the health and safety representative, if any; and
- (b) the person or persons elected by the employees for the purposes of this section; and
- (c) the person or persons nominated by the employer or employers at the mine for the purposes of this section.

(2) Subject to subsections (4) and (5), the number of persons to be elected by the employees or appointed by the employer or employers is to be as agreed between the employer or employers and the health and safety representative or, where there are 2 or more of them, the health and safety representatives, for the mine concerned.

(3) Where there is no health and safety representative for the mine or there is failure to agree on the matter under subsection (2), the number of persons to be elected by the employees or appointed by the employer or employers is to be as decided by the State mining engineer.

(4) At least half of the members of a health and safety committee must be health and safety representatives or persons elected by the employees.

(5) A person is not eligible for election or appointment as a member of a health and safety committee for a mine unless the

person is an employee or employer who works at the mine, and the person or persons nominated by the employer or employers must be, or must include, a person or persons having the authority to give effect to such matters as the committee might reasonably resolve in connection with the health, safety and welfare of persons at the mine.

Review of State mining engineer's decision

67. The manager, an employer, a health and safety representative, or a trade union any member of which works at the mine, may refer to the Industrial Relations Commission for review any decision of the State mining engineer as to —

- (a) whether it would be appropriate for a health and safety committee to be established; or
- (b) the number of persons elected by the employees or appointed by the employer or employers who are to be included in a health and safety committee.

Procedure of health and safety committees

68. (1) Subject to subsection (2) and to the regulations, a health and safety committee may determine its own procedure.

(2) Each health and safety committee must meet at intervals not exceeding 3 months.

Division 3 — Discrimination

Discrimination

69. (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 because the employee or prospective employee —

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

commits an offence.

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

PART 6 - RESOLUTION OF HEALTH, SAFETY AND WELFARE ISSUES

Resolution of issues at the mine

70. (1) Where an issue relating to occupational health, safety or welfare 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 health and safety representative; or
- (b) the health and safety committee; or
- (c) the employees; or
- (d) where relevant, any employer,

whichever is specified in the relevant procedure.

(2) For the purposes of subsection (1), “**the relevant procedure**” means 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, where no procedure is so agreed, the procedure prescribed for that purpose in the regulations.

(3) Where attempts to resolve an issue as mentioned in subsection (1) do not succeed and there is both a health and safety representative and a health and safety committee in respect of the mine concerned, the health and safety representative must refer the issue to the health and safety committee for it to attempt to resolve the issue.

(4) A person who contravenes subsection (1) or (3) commits an offence.

Inspector may be notified where issue unresolved

71. (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 health and safety 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 section 22, as the inspector considers appropriate; or
- (b) determine that in the circumstances no action is required to be taken under this Act.

Refusal by employee to work in certain cases

72. (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.

(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 health and safety representative for the mine, such health and safety representative,

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

(3) An employee who contravenes subsection (2) commits an offence.

Assignment of other work

73. 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.

Entitlements to continue

74. (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.

(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 Industrial Relations Commission.

**PART 7 — SPECIFIC DUTIES RELATING TO
OCCUPATIONAL HEALTH AND SAFETY*****Division 1 — Health surveillance*****Health surveillance of mine employees**

75. (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**Notice of accident to be given**

76. (1) Where a person suffers injury in an accident at a mine and is disabled by that accident from following his or her ordinary occupation, 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 or blasting agents.

Recording of accidents in accident log book

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

Penalty: \$5 000.

(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 health and safety representative for the mine, a representative of a trade union any member of which is employed at the mine, and of any other person authorized by the State mining engineer.

Penalty: \$5 000.

Recording of occurrences in the record book

78. (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.

Penalty: \$5 000.

(2) The manager must without delay record particulars of an occurrence to which this section applies in the record book.

Penalty: \$5 000.

(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.

Manager to report potentially serious occurrences

79. (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.

Examination of accident location by trade union representatives

80. 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.

Place of accident not to be disturbed

81. 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 the coroner.

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

Division 3 — Plans and records

Mines Survey Board

82. (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 authorized mine surveyor's certificates and issue such certificates where appropriate; and
- (c) to deal with complaints concerning the holders of authorized 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.

Complaint to Mines Survey Board

83. (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 authorized 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.

Inquiry by Mines Survey Board

84. (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 authorized 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.

Disciplinary action following inquiry

85. (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 authorized mine surveyor's certificate for a stated period; or
- (c) cancel the respondent's authorized 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 authorized 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.

Penalty: \$2 000.

Appeal to Minister

86. (1) A person whose authorized mine surveyor's certificate is suspended or cancelled by the Mines Survey Board may appeal in writing to the Minister 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 Minister orders otherwise.

(3) The Minister 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.

Plans to be furnished

87. (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 authorized 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.

Plans for abandonment or suspension

88. (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.

Record books

89. (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.

Penalty: \$5 000.

(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 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.

PART 8 — MINISTERIAL HEALTH AND SAFETY POWERS

Mines Occupational Health and Safety Advisory Board

90. (1) There is to be established a Board, to be known as the Mines Occupational Health and Safety Advisory Board, which in accordance with this section and the regulations is to provide advice to the Minister on occupational health, safety and welfare in the mining industry in the State.

(2) The Minister may in accordance with the regulations appoint such persons as the Minister thinks appropriate to be members of the Board including representatives of the department and other departments of the Public Service of the State, persons representing management of the mining industry in the State and employee groups and organizations of employees of the mining industry in the State.

(3) The functions of the Mines Occupational Health and Safety Advisory Board are —

- (a) to advise and make recommendations to the Minister on occupational health, safety and welfare matters concerning the mining industry in the State; and
- (b) to inquire into and report to the Minister regarding any matter referred to the Board by the Minister relating to occupational health, safety and welfare in the mining industry in the State; and
- (c) to make recommendations to the Minister regarding the formulation, amendment, or repeal of laws relating to occupational health, safety and welfare for which the Minister is responsible; and
- (d) to prepare or recommend the adoption of codes of practice, guidelines, standards, specifications or other forms of guidance for the purpose of assisting employers, self-employed persons, employees or

manufacturers to maintain appropriate standards of occupational health, safety and welfare in the mining industry; and

- (e) to advise the Minister on education, training and training courses with respect to occupational health, safety and welfare in the mining industry; and
- (f) to advise the Minister on publications concerning occupational health, safety and welfare which are relevant to the mining industry; and
- (g) to liaise with the Occupational Health, Safety and Welfare Commission established by the *Occupational Health, Safety and Welfare Act 1984* to co-ordinate activities on related functions and maintain parallel standards.

(4) Except as provided in the regulations, the Mines Occupational Health and Safety Advisory Board may determine its own procedure.

(5) Members of the 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.

Minister may publish report

91. 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.

Delegation of ministerial functions

92. (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.

Codes of practice

93. (1) The Minister may approve a code of practice which has been considered by the Mines Occupational Health and Safety Advisory Board, 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 health, safety or welfare 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.

(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.

PART 9 — OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

General penalty

94. A person who commits an offence against this Act is liable, if a penalty is not expressly provided for that offence, to a fine —

- (a) in the case of a corporation, not exceeding \$25 000; and
- (b) in the case of an individual, not exceeding \$5 000.

Continuing offences

95. (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 \$500 in the case of a corporation and \$100 in the case of an individual for every day on which the offence is so continued.

Proceedings to be taken by inspector or authorized officer

96. (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 authorized 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.

Time limit for prosecutions

97. (1) Subject to subsection (2), every proceeding for an offence under this Act must be commenced within 12 months after the offence was committed.

(2) A proceeding for an offence under section 14 must be commenced within 2 years after the offence was committed.

Evidentiary provisions

98. (1) In a proceeding for an offence under this Act, an averment in the complaint that at a particular time —

- (a) a particular place was a mine;
- (b) a particular person was an employer of persons at a particular mine or was the principal employer at a mine;
- (c) a particular person was the registered manager or the manager of 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 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 authorized 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 authorized 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.

Vicarious responsibility of employers, managers, and supervisors

99. (1) Where an offence under this Act 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).

Offences by corporations

100. (1) Where a corporation commits an offence under this Act 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) applies 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.

False or misleading information

101. A person who knowingly or recklessly —

- (a) in relation to an application for a certificate of competency or an authorized 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.

Jurisdiction of Industrial Relations Commission

102. (1) Where under this Act a matter is capable of being referred to the Industrial Relations Commission, the matter may

be heard and determined as if it were a matter in which jurisdiction were conferred on the Industrial Relations Commission by the *Industrial Relations Act 1979* and that Act is, so far as it is capable of applying, to extend to the exercise of its jurisdiction in such matters accordingly.

(2) For the purposes of the application of the *Industrial Relations Act 1979* in relation to a matter mentioned in subsection (1) —

- (a) every trade union is to be taken to be an organization within the meaning of that Act;
- (b) the parties to proceedings in the matter are to be as determined by the Industrial Relations Commission.

(3) A decision by the Industrial Relations Commission of a matter referred under this Act has effect according to its substance.

PART 10 — FINAL PROVISIONS**Exemption from personal liability**

103. 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 Mines Occupational Health and Safety Advisory Board, 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.

Power to make regulations

104. (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;
- (c) dealing with and imposing duties on employers, managers, supervisors, superintendents, deputies, foremen and employees under this Act;
- (d) regulating and otherwise dealing with —
 - (i) the transport, storage, handling, use, and disposal of explosives, blasting agents, and blasting initiation systems; and

- (ii) the testing and evaluation of performance of explosives, blasting agents 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 health, safety and welfare standards and procedures to be complied with —
 - (i) at any mine;
 - (ii) in the performance of any work in connection with a mine;
 - (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 authorizations or exemptions required or permitted under this Act;

- (t) dealing with wilful damage to or unauthorized 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;
 - (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

- (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.
- (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 health and safety 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.

(4) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding \$25 000 for any offence in the case of

a corporation and \$5 000 in the case of an individual and if the offence is a continuing one a further penalty not exceeding \$500 in the case of a corporation and \$100 in the case of an individual 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.

(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 the Standards Association of Australia, and other Australian and international bodies of well established high repute.

Publication of regulations at mine

105. 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.

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

Application of regulations to self-employed persons

106. 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.

Repeals

107. The following Acts are repealed —

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

Savings and transitional

108. 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.

Consequential amendments

109. The Acts referred to in the first column of Schedule 2 are amended as set out in the second column of that Schedule.

Review of Act

110. (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after the expiration of 5 years from its commencement, and in the course of that 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 Mines Occupational Health and Safety Advisory Board, 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 the review and shall, as soon as practicable after the report is prepared, cause it to be laid before each House of Parliament.

SCHEDULE 1

[Section 108]

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation Act not restricted

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

General transitional provision

2. (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, authorized 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.

Act in substitution for repealed Acts

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

Workmen's inspectors

4. 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.

Inspectors

5. 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.

Board members

6. 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.

Certificates of competency

7. (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.

Exemptions

8. 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.

Notification of principal employer

9. (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.

(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

[Section 109]

CONSEQUENTIAL AMENDMENTS

Short title of Act	Amendment
<i>Coal Industry Superannuation Act 1989</i>	<p>In section 4 (1), delete paragraph (b) and substitute the following paragraph —</p> <p>“ (b) an employee’s inspector appointed under section 17 of the <i>Mines Safety and Inspection Act 1994</i>; ”.</p>
<i>Constitution Acts Amendment Act 1899</i>	<p>In Part 3 of Schedule V —</p> <p>(a) delete “The Board of Examiners constituted under the <i>Coal Mines Regulation Act 1946</i>.” and “The Board of Examiners constituted under regulation 3.2 of the <i>Mines Regulation Act Regulations 1976</i>.” and substitute —</p> <p>“ The Board of Examiners established under the <i>Mines Safety and Inspection Act 1994</i>. ”;</p> <p>(b) insert before the entry relating to the Mines Survey Board the following entry —</p> <p>“ The Mines Occupational Health and Safety Advisory Board established under the <i>Mines Safety and Inspection Act 1994</i>. ”;</p> <p>(c) in the entry relating to the Mines Survey Board, delete “<i>Mines Regulation Act 1946</i>.” and substitute “<i>Mines Safety and Inspection Act 1994</i>.”.</p>
<i>Consumer Affairs Act 1971</i>	<p>In the Schedule, delete “<i>Coal Mines Regulation Act 1946</i>.” and substitute in the appropriate alphabetical position “<i>Mines Safety and Inspection Act 1994</i>.”.</p>

Coroners Act 1920

- (a) In section 9 (1) (a) (i), delete “Mines Regulation Act 1946 or the Coal Mines Regulation Act 1946” and substitute “*Mines Safety and Inspection Act 1994*”;
- (b) Repeal sections 25 and 26 and substitute the following section —

“ **Inquests on accidental deaths at mines**

25 (1) This section applies to every inquest concerning the death or suspected death of a person where it is suspected that the death or suspected death may have been caused by an accident at a mine.

(2) A representative of the deceased person, or suspected deceased person, a representative of any trade union of which that person was a member, a representative of employees at the mine at which the accident took place, and a representative of the principal employer for that mine may each examine the locality of the accident, be present at the inquest, and, subject to the direction of the coroner, examine any witness as to the cause of the accident.

(3) The district inspector for the region where the mine is situated at which the accident took place must, if practicable, and an employee's inspector may, be present at the inquest and may examine witnesses as to the cause of death or the circumstances of the suspected death and, if

death is established beyond reasonable doubt, as to the issue whether the accident was attributable to negligence or contravention of the *Mines Safety and Inspection Act 1994*.

(4) The coroner may view the locality of the accident, and, when the inquest is held by a coroner with a jury, if a majority of the jury so desire, the coroner is to arrange for the jury to view the locality of the accident.

(5) The principal employer and the manager of the mine must provide the coroner and the jury (if any and if so requested) with the facilities that are required to be provided to an inspector under section 28 of the *Mines Safety and Inspection Act 1994*.

Penalty: \$1 000.

(6) In this section, "district inspector", "employee's inspector", "manager", "mine" and "principal employer" have the meanings given in section 4 of the *Mines Safety and Inspection Act 1994*. "

- (c) In section 32 delete "*Mines Regulation Act 1946* or the *Coal Mines Regulation Act 1946*" and substitute the following —

" *Mines Safety and Inspection Act 1994* "

*Explosives and
Dangerous Goods
Act 1961*

- (a) In section 6 (5), delete "*Coal Mines Regulation Act 1946*, or the *Mines Regulation Act 1946*" and substitute "*Mines Safety and Inspection Act 1994*";
- (b) In section 22 (1), delete paragraph (d) and substitute the following paragraph —
 - " (d) a magazine at any mine within the meaning of the *Mines Safety and Inspection Act 1994*, if the magazine or place is inspected and approved under the authority of that Act; "
- (c) In section 30 (3) (a), delete "owner or manager of a mine within the meaning of the *Mines Regulation Act 1946*, or of the *Coal Mines Regulation Act 1946*" and substitute "principal employer or manager of a mine within the meaning of the *Mines Safety and Inspection Act 1994*";
- (d) In section 34 (1) (c), delete "*Mines Regulation Act 1946*, or of the *Coal Mines Regulation Act 1946*" and substitute "*Mines Safety and Inspection Act 1994*";
- (e) In section 34 (4) (a), delete "*Mines Regulation Act 1946*, or of the *Coal Mines Regulation Act 1946*" and substitute "*Mines Safety and Inspection Act 1994*".

*Occupational Health,
Safety and Welfare
Act 1984*

- (a) In section 4 (2), delete "the *Mines Regulation Act 1946*, the *Coal Mines Regulation Act 1946*," and substitute "the *Mines Safety and Inspection Act 1994*,".
- (b) In section 4 (2a), delete "the *Mines Regulation Act 1946*, or the *Coal Mines Regulation Act 1946*," and substitute "or the *Mines Safety and Inspection Act 1994*,".

*Parliamentary
Commissioner Act 1971*

In the Schedule, insert the following entries in their correct alphabetical positions —

“ Board of Examiners constituted under the *Mines Safety and Inspection Act 1994*.

Mines Survey Board constituted under the *Mines Safety and Inspection Act 1994*.

Mines Occupational Health and Safety Advisory Board constituted under the *Mines Safety and Inspection Act 1994*. ”.

*Workers' Compensation
and Rehabilitation
Act 1981*

- (a) In section 5 (1) in the definition of “mine”, delete “defined or classified as a class A or class B mine for the purposes of Part 9 of the *Mines Regulation Act Regulations 1976*,” and substitute “of a class prescribed for the purposes of this definition;”.
- (b) In section 47, delete “*Mines Regulation Act 1946*” wherever it occurs and substitute in each place “*Mines Safety and Inspection Act 1994*”.