

Mines Safety and Inspection Act 1994

Compare between:

[10 Nov 2020, 06-d0-03] and [31 Mar 2022, 06-e0-00]

Mines Safety and Inspection Act 1994

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

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

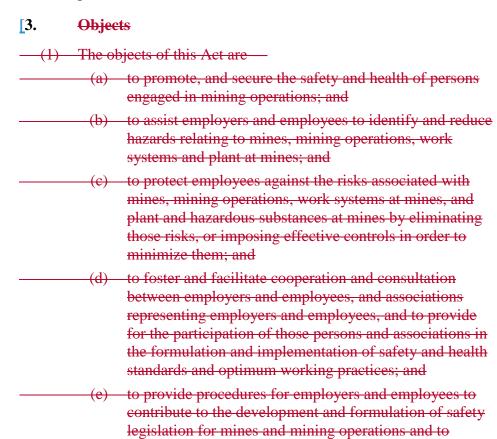
s. 1

1. Short title

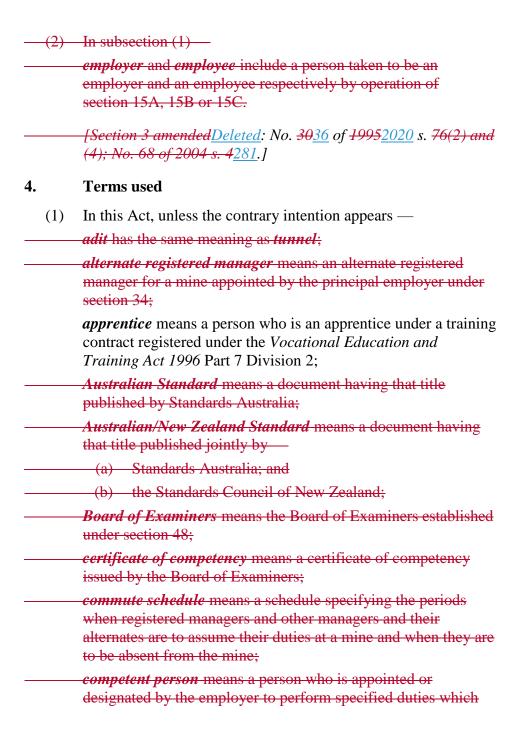
This Act may be cited as the *Mines Safety and Inspection Act 1994*.

2. Commencement

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



consult regarding its administration.





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

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

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

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

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

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

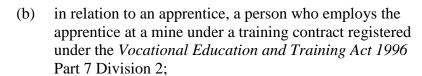
Electoral Commissioner means the Electoral Commissioner appointed under the *Electoral Act 1907*;

employee means —

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

employer means —

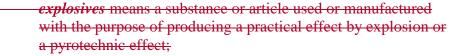
(a) a person who employs an employee at a mine under a contract of employment; and



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

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

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



- foreman in relation to underground metal mining operations, means a person directly responsible to the underground manager or underground superintendent who has, under the direction of that manager or superintendent, the immediate charge of mining operations and supervisors for designated areas;
- hazard in relation to a person, means anything that may result in injury to the person or harm to the health of the person;
 - hoist means a single undivided drum winding engine driven by a motor or engine having a capacity not exceeding 25 kilowatts;
- *import* means to bring into the State, whether from outside Australia or otherwise;
 - improvement notice means an improvement notice issued under Part 3 Division 3;

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

inspector means an inspector of mines appointed under this the Work Health and Safety 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 2020 Part 9;

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 engineerregulator notifies the principal employer in writing otherwise in accordance with subsection (3); and *to mine* includes to carry on any manner or method of mining operations;

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

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

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

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

- (a) exploration operations; and
- (b) developmental and construction work associated with opening up or operating a mine; and

- (c) the removal and disposal of overburden or waste or residues by mechanical or other means and the stacking, depositing, storage, and treatment of any substance considered to contain any mineral; and
- (d) the operation of blast furnaces and direct reduction furnaces; and
- (e) the operation of privately owned railways to transport ore or other mining products, or to provide related services; and
- (ea) the transport of ore or other mining product that takes place on a road that is not a road as defined in the *Road Traffic (Administration) Act 2008* section 4; 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 transhipment 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 —

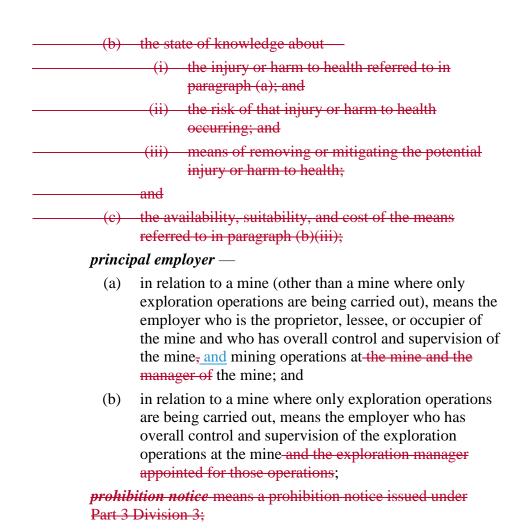
- (p) steel making plants; or
- (q) rolling mills; or
- (r) facilities for the manufacture of goods from mining products; or
- (s) residential facilities or recreational facilities and the ground used for the purpose where such facilities are not located on a mining tenement and directly associated with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



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

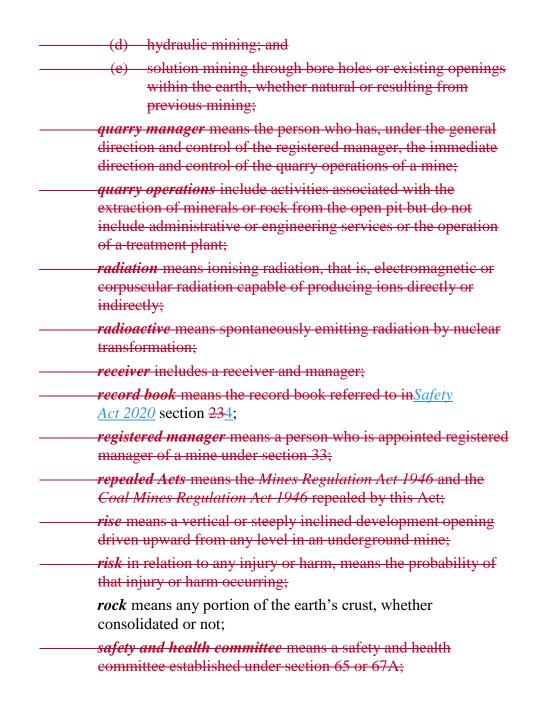
(a) the severity of any potential injury or harm to health that may be involved and the degree of risk of such injury or harm occurring; and

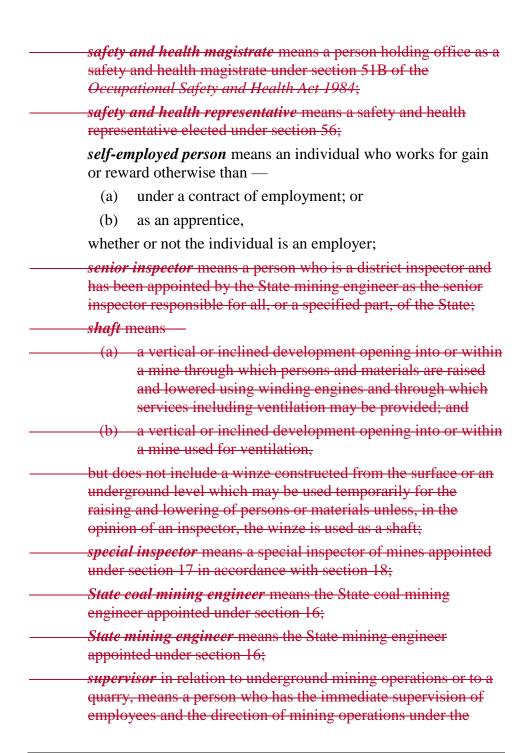


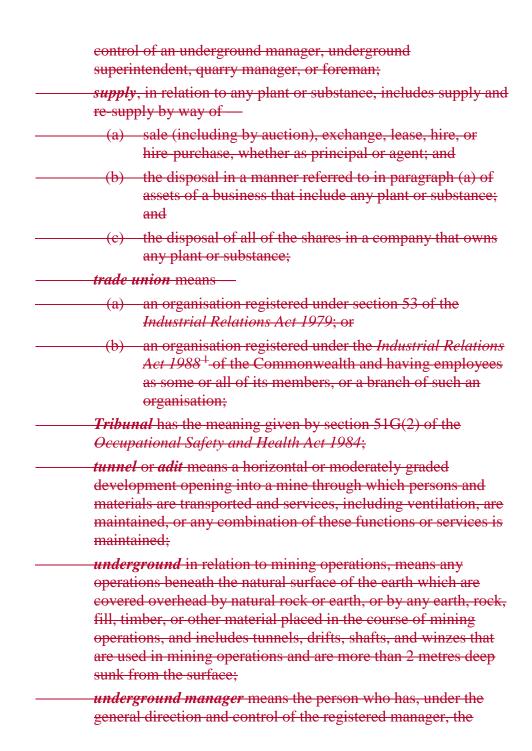
improvement notice issued under Part 3 Division 4;

quarry or open cut or open pit means a surface mining operation in which mineral or rock is extracted from regulator has the earth by excavating into a natural surface gradient meaning given in the Work Health and includes

- (a) harvesting evaporites; and
- (b) strip mining; and
- (c) extraction of sand, clay and gravel; and









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

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

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

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

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

- (2) Unless the contrary intention appears, a reference in this Act to a mine is to be taken to include a reference to any part of the mine.
- (3) Where mining operations are being carried on in conjunction with one another at 2 or more places, the State mining engineerregulator 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.
- (4) For the purposes of sections 8B(2), 9A(2), 10A(2), 12A(2), 12C(2), 13A(2), 15(2), 15E(2), 99A(2)(a)(iv) and 100A(2)(a)(iii) a contravention causes serious harm to a person

if it causes any bodily injury to the person, or causes the person to have a disease, of such a nature as to

- (a) endanger, or be likely to endanger, the person's life; or
- (b) result, or be likely to result, in permanent injury or harm to the person's health.

[(4) deleted]

[Section 4 amended: No. 30 of 1995 s. 53 and 76(1); No. 79 of 1995 s. 67(4); No. 14 of 1996 s. 4; No. 16 of 2002 s. 3; No. 7 of 2004 s. 70; No. 51 of 2004 s. 115(2); No. 68 of 2004 s. 14, 49, 73, 80 and 88; No. 16 of 2008 s. 4; No. 44 of 2008 s. 55; No. 8 of 2012 s. 134; No. 33 of 2014 s. 44; No. 36 of 2020 s. 282.]

[4A. Penalty levels defined

- (1) Where a person is liable to a level one penalty for an offence against this Act the person is liable

 (a) if the offence was committed by the person as an employee—

 (i) for a first offence, to a fine of \$50 000; and

 (ii) for a subsequent offence, to a fine of \$60 000;
- (b) if paragraph (a) does not apply
 - (i) in the case of an individual
- (I) for a first offence, to a fine of \$100 000;
 - (II) for a subsequent offence, to a fine of \$120 000;

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- (ii) in the case of a corporation—
 - (I) for a first offence, to a fine of \$450 000;
 - (II) for a subsequent offence, to a fine of \$570,000.

(2) Where a person is liable to a level 2 penalty for an offence
against this Act the person is liable
(a) in the case of an individual
(i) for a first offence, to a fine of \$250 000; and
(ii) for a subsequent offence, to a fine of \$350 000;

(b) in the case of a corporation—
(i) for a first offence, to a fine of \$1 500 000; and
(ii) for a subsequent offence, to a fine of \$1 800 000.
— (3) Where a person is liable to a level 3 penalty for an offence against this Act the person is liable—
(a) in the case of an individual
(i) for a first offence, to a fine of \$400 000; and
(ii) for a subsequent offence, to a fine of \$500 000;

(b) in the case of a corporation
(i) for a first offence, to a fine of \$2 000 000; and
(ii) for a subsequent offence, to a fine of \$2 500 000.
— (4) Where a person is liable to a level 4 penalty for an offence against this Act the person is liable—
(a) in the case of an individual
(i) for a first offence, to a fine of \$550 000 and imprisonment for 5 years; and
(ii) for a subsequent offence, to a fine of \$680 000 and imprisonment for 5 years;

(b) in the case of a corporation
(i) for a first offence, to a fine of \$2 700 000; and
(ii) for a subsequent offence, to a fine of \$3 500 000.

[Section 4A inserted Deleted: No. 68 36 of 20042020 s. 15; amended: No. 17 of 2018 s. 4283.]

4B. First offence and subsequent offence defined

(1) In this section —

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

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

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

5. Crown bound

This Act binds the Crown.

6. Application to certain excavations, shafts, or tunnels

- (1) The Governor may, by order published in the *Gazette*, declare any surface or underground excavation, shaft, or tunnel constructed for purposes other than those set out in the definition of *mining operations* in section 4(1) to be deemed a mining operation for the purposes of this Act during any period of the construction of the excavation, shaft or tunnel.
- (2) In an order published under subsection (1), the Governor may exempt the excavation, shaft, or tunnel from such provisions of this Act as are specified in the order and may prescribe conditions under which the project is to be carried on.

(3) This Act applies to an excavation, shaft, or tunnel referred to in an order under subsection (1) subject to the terms of that order.

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

- (1) In this section

 specified means specified in an instrument under this section;

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

[Section 6A inserted Deleted: No. 68 36 of 20042020 s. 89284.]

7. Relationship with other Acts

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

[(1) deleted]

(2) This Act does not apply to or in relation to a railway to which the *Rail Safety National Law (WA) Act 2015* applies or to the ownership or operation of such a railway.

[Section 7 amended: No. 32 of 1998 s. 64(2); No. 18 of 2010 s. 264; No. 21 of 2015 s. 5050; No. 36 of 2020 s. 285.]

8. Power to exempt

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

Part Parts 2 — General duties relating to occupational safety and health

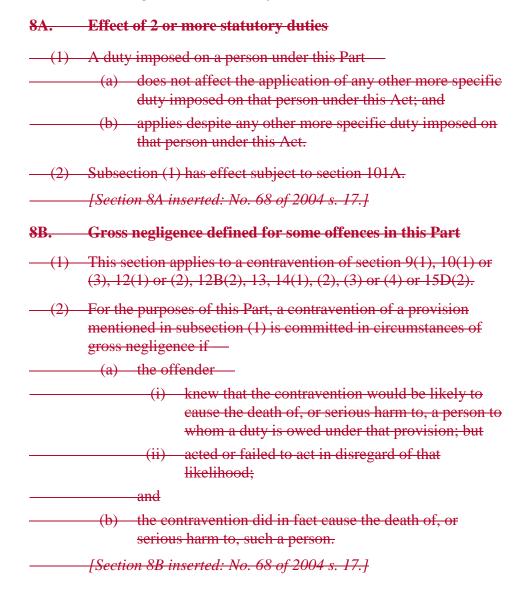
<u>[Heading amended-8 (s. 8A-93) deleted</u>: No. 3036 of 19952020 s. 76(1).]286.]

s. 8A

Part 9 — Offences, penalties and legal proceedings

Division 1 — **Preliminary** General provisions

[Heading inserted: No. 68 of 2004 s. 1728.]



Division 2 — General duties

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

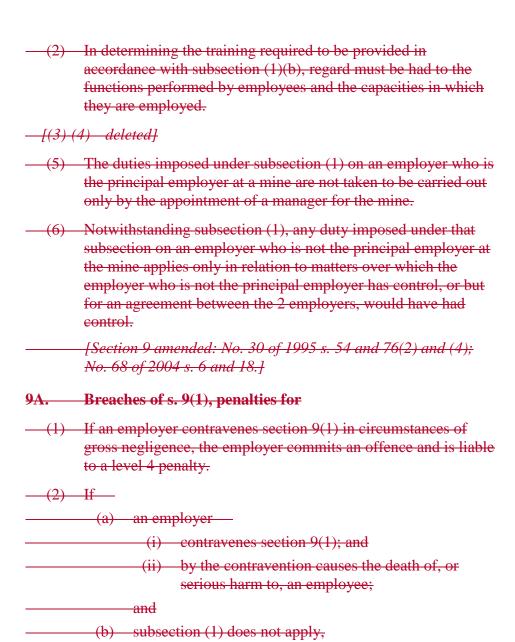
9. Employers, duties of

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

at the mine is carried out in such a manner that that employer's employees are not exposed to hazards.

Division 2 General duties

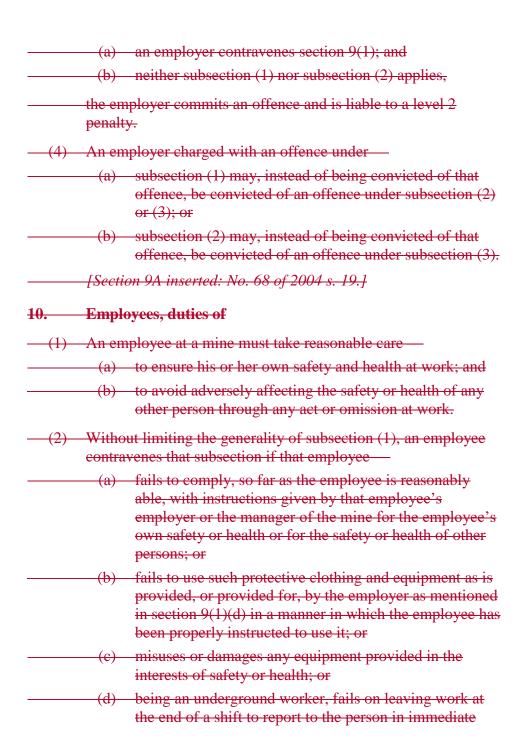
s. 9A



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

penalty.

(3) If



s. 10A

Division 2

General duties

authority over that employee and, where practicable, the person relieving that employee, on the state of that part of the works where the employee has been working.

(3) An employee must cooperate with his or her employer and the manager of the mine in the carrying out by those persons of the obligations imposed on those persons under this Act.

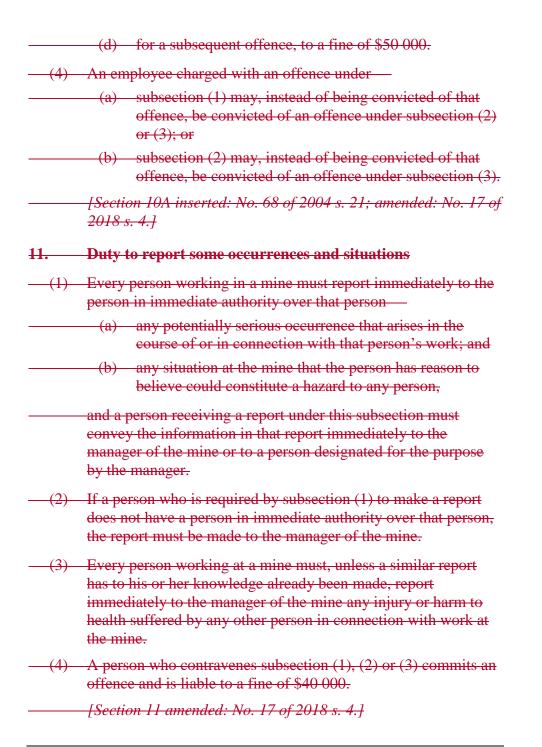
[Section 10 amended: No. 30 of 1995 s. 55 and 76(1), (3) and (4); No. 68 of 2004 s. 20.]

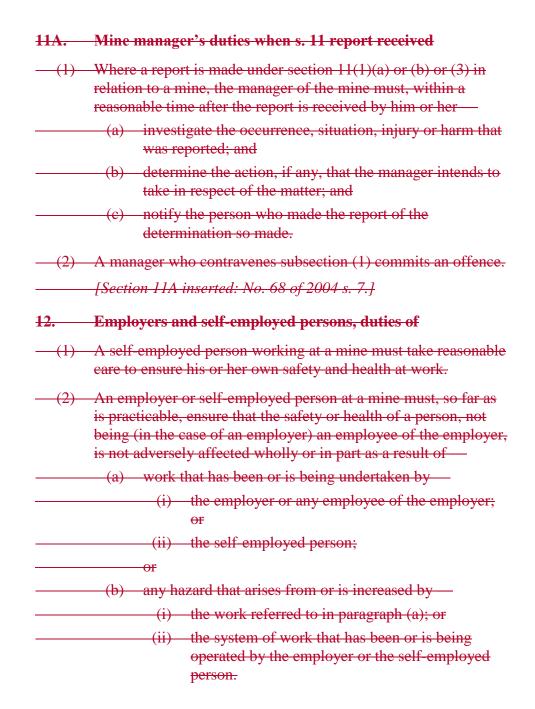
10A. Breaches of s. 10(1) or (3), penalties for

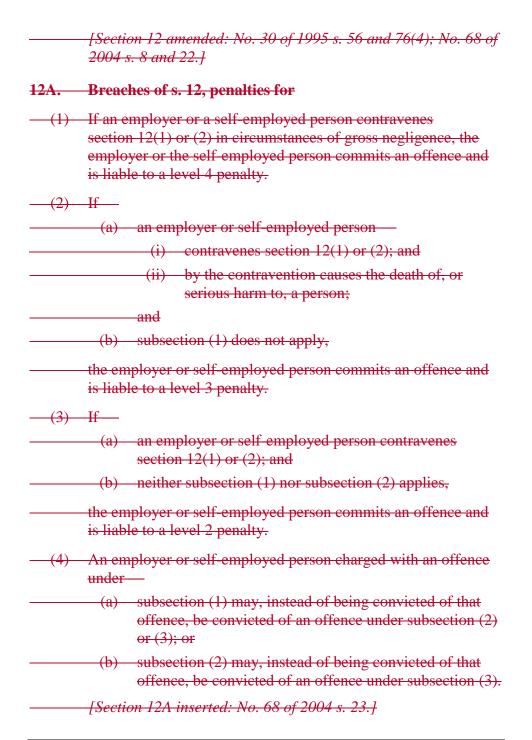
- (1) If an employee contravenes section 10(1) or (3) in circumstances of gross negligence, the employee commits an offence and is liable—
 - (a) for a first offence, to a fine of \$100 000; and
 - (b) for a subsequent offence, to a fine of \$120 000.
- (2) If
- (a) an employee
 - (i) contravenes section 10(1) or (3); and
- (ii) by the contravention causes the death of, or serious harm to, a person;
- and
 - (b) subsection (1) does not apply,
- the employee commits an offence and is liable
- (c) for a first offence, to a fine of \$80 000; and
- (d) for a subsequent offence, to a fine of \$100 000.
- (3) If
 - (a) an employee contravenes section 10(1) or (3); and
- (b) neither subsection (1) nor subsection (2) applies.

the employee commits an offence and is liable

(c) for a first offence, to a fine of \$40 000; and



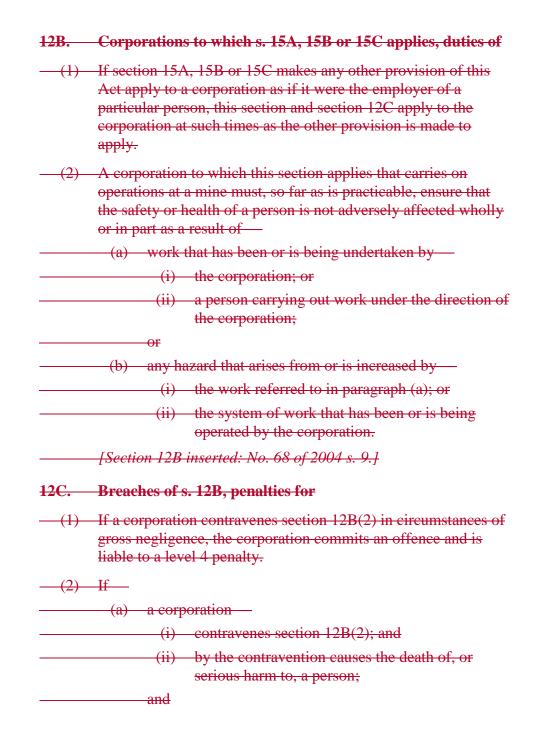


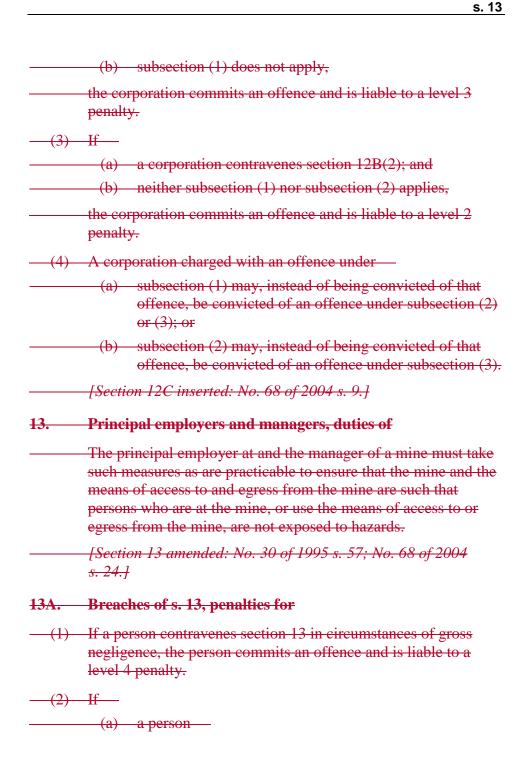


Part 9 Offences, penalties and legal proceedings

Division 2 General duties

s. 12B

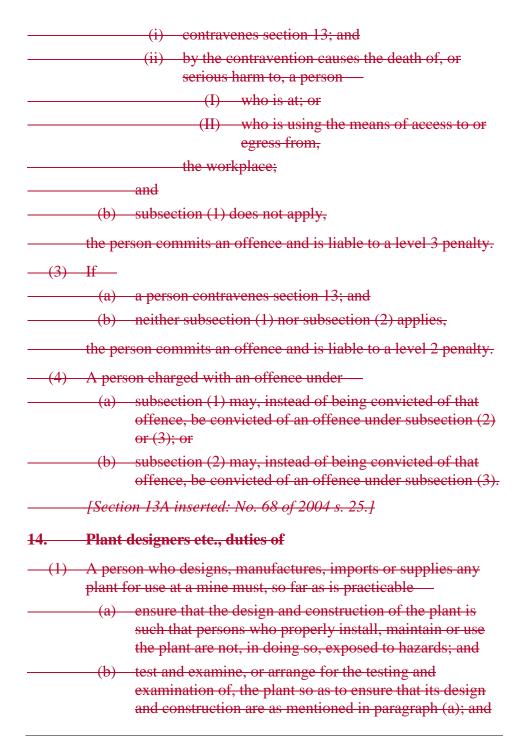


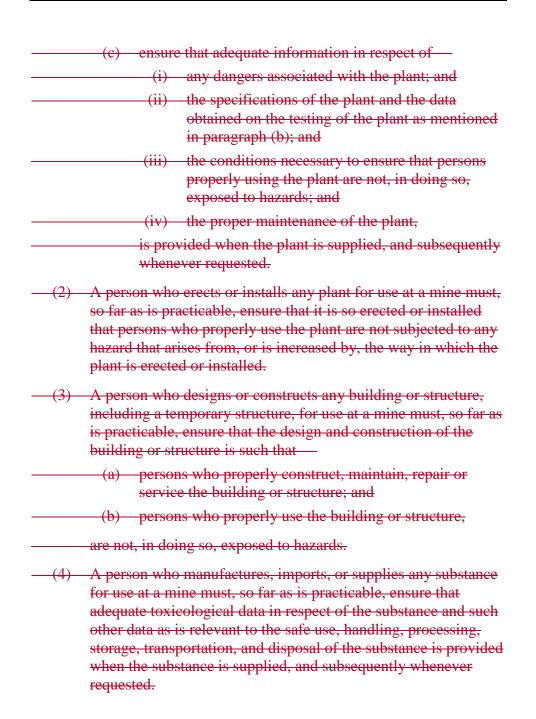


Part 9 Offences, penalties and legal proceedings

Division 2 General duties

s. 14

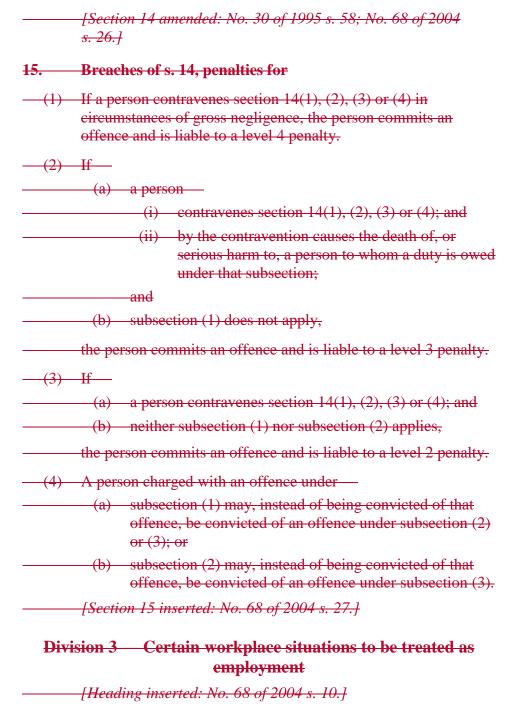




Part 9 Offences, penalties and legal proceedings

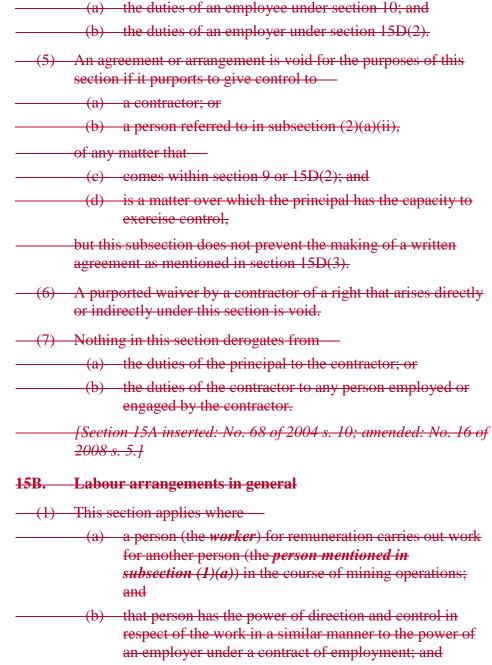
Division 3 Certain workplace situations to be treated as employment

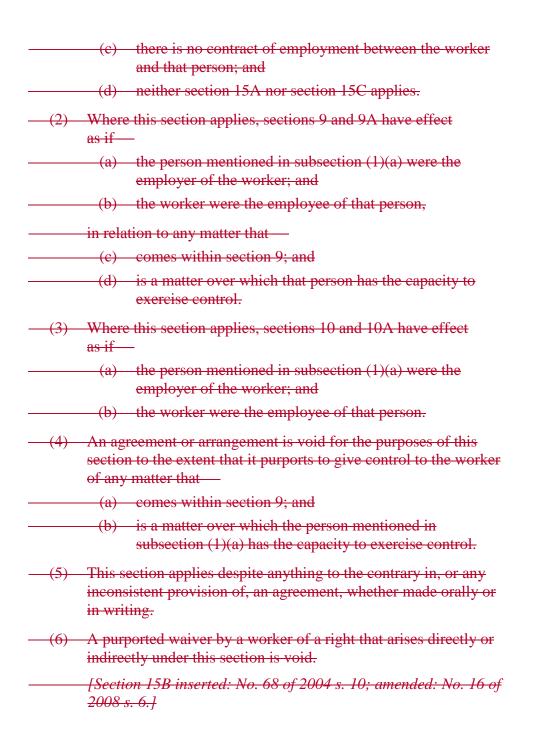
s. 15



15A.	—Contract work arrangements			
(1)	This section applies where a person (the <i>principal</i>) in the coordinate of mining operations engages a contractor (the <i>contractor</i>) to carry out work for the principal.			
(2)	Where this section applies, sections 9 and 9A have effect			
	(a) as if the principal were the employer of			
	(i) the contractor; and			
	(ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned,			
	in relation to matters over which the principal has the capacity to exercise control; and			
	(b) as if			
	(i) the contractor; and			
	(ii) any person referred to in paragraph (a)(ii),			
	were employees of the principal in relation to matters over which the principal has the capacity to exercise control.			
(3)	Where this section applies, the further duties referred to in subsection (4) apply, and sections 10A and 15E have effect			
	(a) as if the principal were the employer of			
	(i) the contractor; and			
	(ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned;			
	and			
	(b) as if			
	(i) the contractor; and			
	(ii) any person referred to in paragraph (a)(ii),			
	were employees of the principal.			
(4)	The further duties mentioned in subsection (3) are			

Part 9 Offences, penalties and legal proceedings Division 3 Certain workplace situations to be treated as employment s. 15B



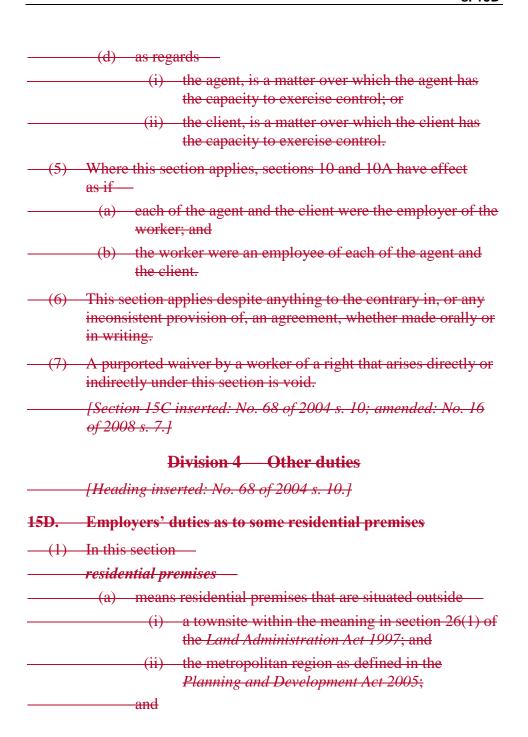


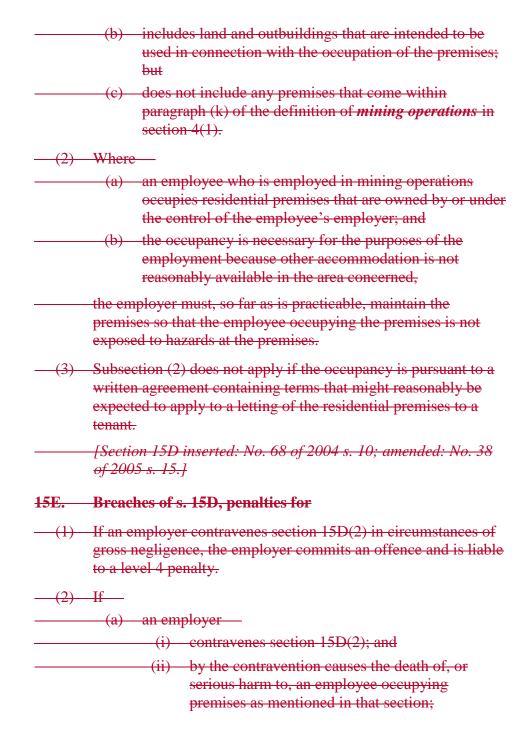
Part 9 Offences, penalties and legal proceedings

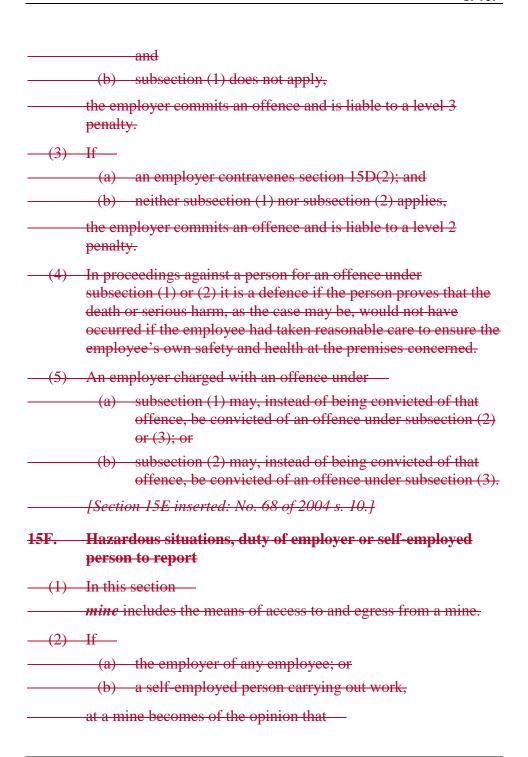
Division 3 Certain workplace situations to be treated as employment

s. 15C

15C.	Labour hire arrangements
	In this section—
	-agent -
	(a) means a person who carries on a business of providing workers to carry out work for clients of the person; and
	(b) includes a group training organisation as defined in section 7(1) of the <i>Industrial Relations Act 1979</i> ;
	worker includes an employee or a contractor.
(2)	This section applies where, under a labour hire arrangement, work is carried out for remuneration by a worker for a client of an agent (the <i>client</i>) in the course of mining operations carried on by the client.
	A labour hire arrangement exists where
	(a) an agent has for remuneration agreed with the client to provide a worker to carry out work for the client; and
	(b) there is no contract of employment between the worker and the client in relation to the work; and
	(c) there is an agreement (which may be a contract of employment) between the worker and the agent as to the carrying out of work including in respect of remuneration and other entitlements; and
	(d) that agreement applies to the carrying out of the work by the worker for the client.
(4)	Where this section applies, sections 9 and 9A have effect as if—
	(a) each of the agent and the client were the employer of the worker; and
	(b) the worker were an employee of each of the agent and the client,
	in relation to any matter that
	(c) comes within section 9; and



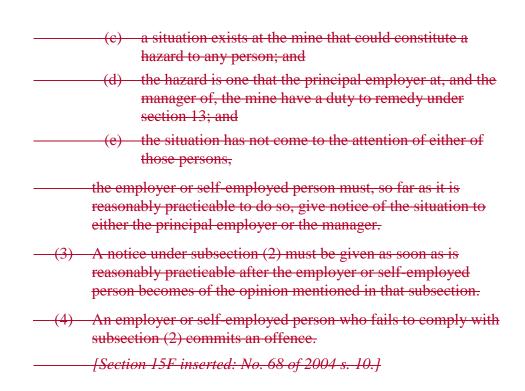




Mines Safety and Inspection Act 1994

Part 9 Offences, penalties and legal proceedings Division 4 Other duties

s. 15F



Part 3 — Administration of Act

Division 1 — **Inspectors of mines**

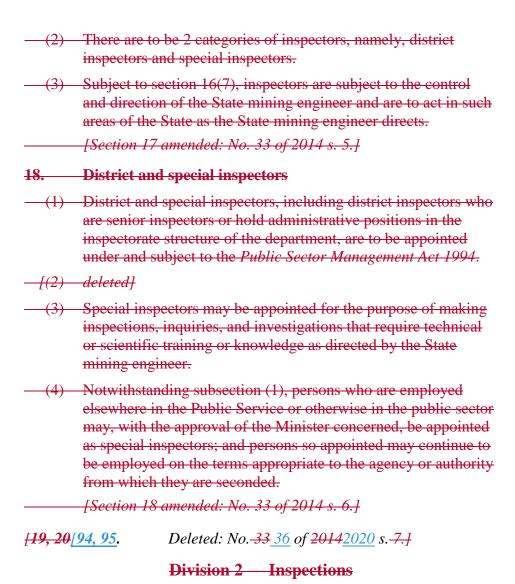
16. State mining engineer and State coal mining engineer

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

17. Inspectors of mines, general provisions

(1) The Minister may appoint suitable persons to be inspectors of mines.

s. 18



20A. Extended meaning of employer and employee

In this Division

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

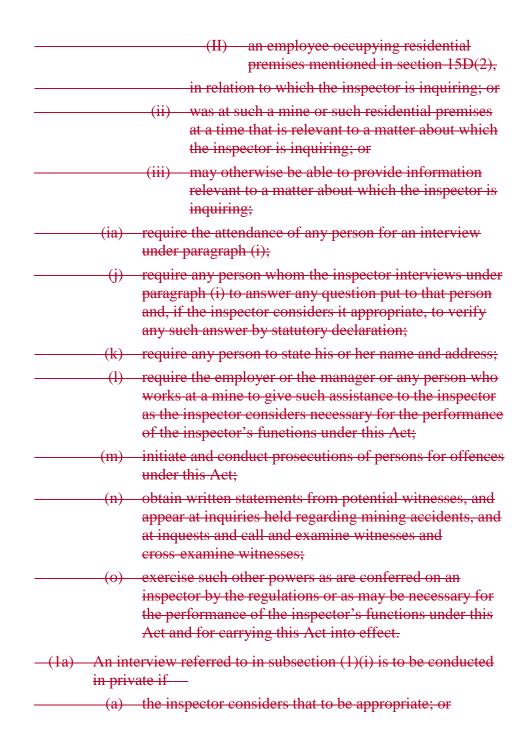
Section 20A inserted: No. 68 of 2004 s. 11.]

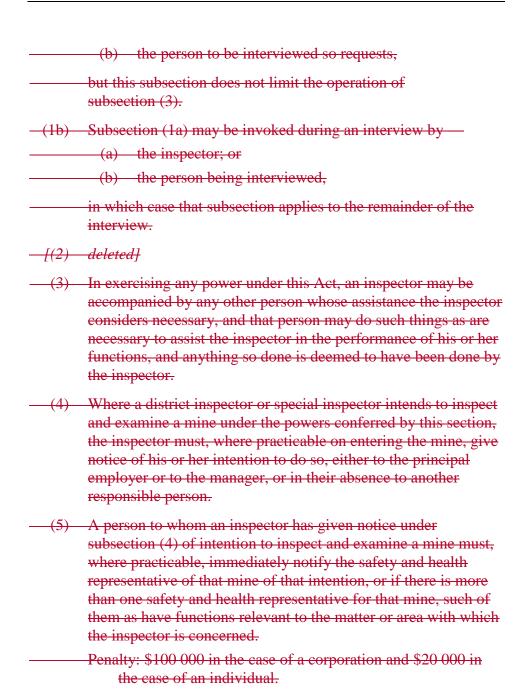
Powers of inspectors A district inspector or special inspector may, for the purposes of this Act (a) at all times of the day or night, enter, inspect, and examine any mine and examine any plant, substance, or other thing whatsoever at the mine (but must do so in such a manner as not unnecessarily to impede or obstruct the working of the mine); when entering a mine, take with the inspector such equipment and materials as the inspector considers appropriate; conduct such examination and inquiry as the inspector considers necessary to ascertain whether the provisions of this Act have been and are being complied with in respect of a mine or a mining operation; (ca) provide information to any person for the purpose of facilitating compliance with this Act; (d) take and remove samples of any substance or thing whatsoever at a mine without paying for them; take possession of any plant or thing for further examination or testing or for use as evidence; take photographs and measurements, and make sketches and recordings; require the production of, examine, and take copies of or extracts from, any document; require that the mine, or any part of it, be left undisturbed for as long as is specified in the requirement; in accordance with subsections (1a) and (1b), interview any person who the district inspector or special inspector (the *inspector*) has reasonable grounds to believe (i) is, or was at any time during the preceding 3 years

(I) an employee working at a mine; or

Inspections

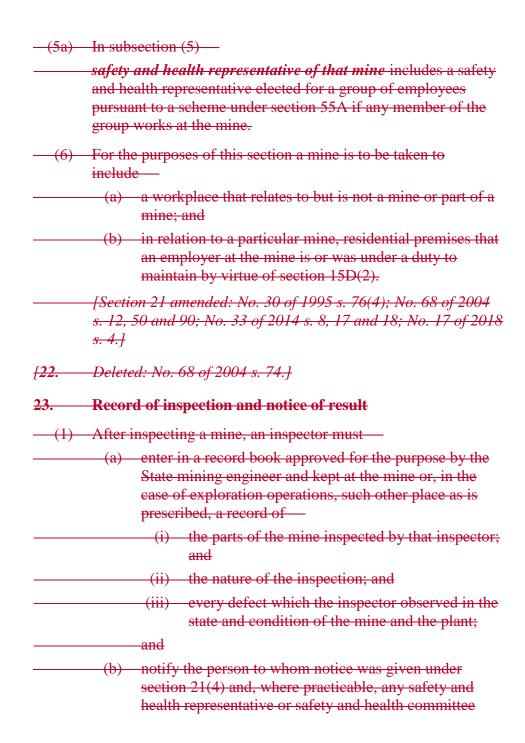


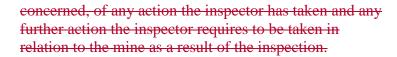




Inspections

s. 23





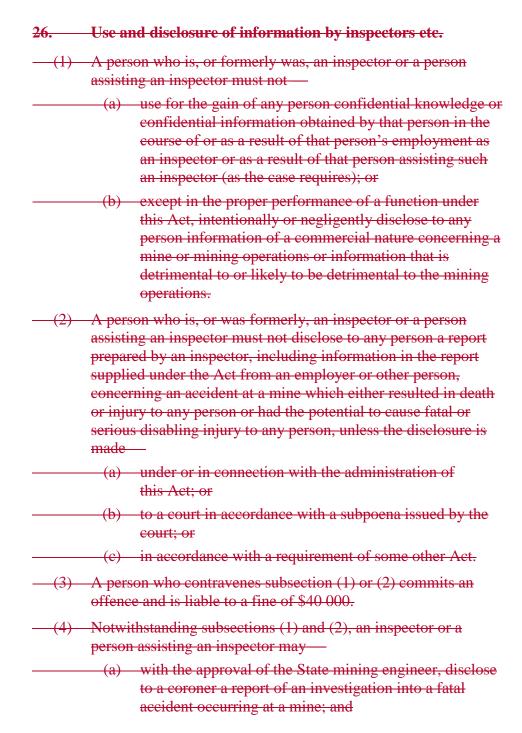
- (2) The record book referred to in subsection (1) is to be open at all reasonable times to the examination of
- (a) an inspector; and
 - (b) every person working at the mine; and
- (c) every other person authorised in writing by the State mining engineer.
- Where it is not practicable for an inspector to notify any safety and health representative or safety and health committee concerned of the results of an inspection in accordance with subsection (1)(b), the person to whom notice was given under section 21(4) must bring the entry in the record book to the attention of the safety and health representative or safety and health committee concerned.
- Penalty: \$100 000 in the case of a corporation and \$20 000 in the case of an individual.
- [Section 23 amended: No. 30 of 1995 s. 76(4); No. 68 of 2004 s. 75; No. 33 of 2014 s. 17; No. 17 of 2018 s. 4.1

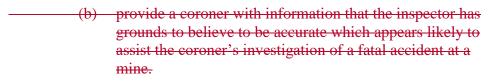
Complaints to inspectors

- (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.
- Deleted: No. 33 of 2014 s. 9.1 125.

Inspections







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

[Section 26 amended: No. 24 of 2000 s. 25; No. 33 of 2014 s. 10 and 17; No. 17 of 2018 s. 4.]

27. Certificates of appointment for inspectors

- (1) Every 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 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.

——— [Section 27 amended: No. 33 of 2014 s. 17.]

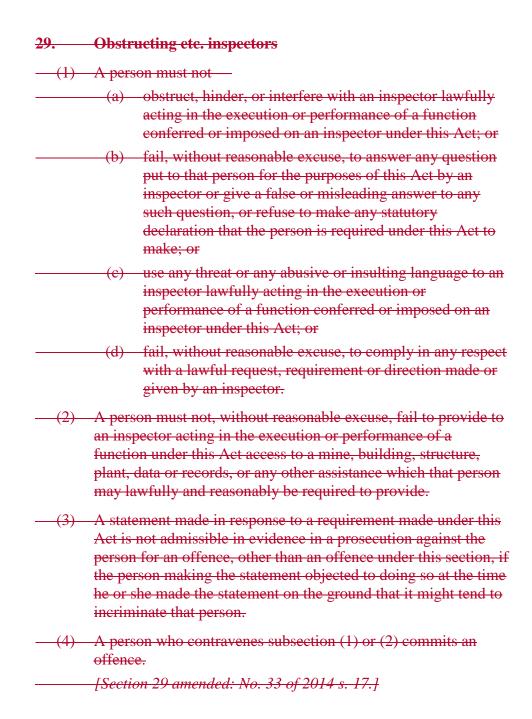
28. Employers and managers to facilitate inspections

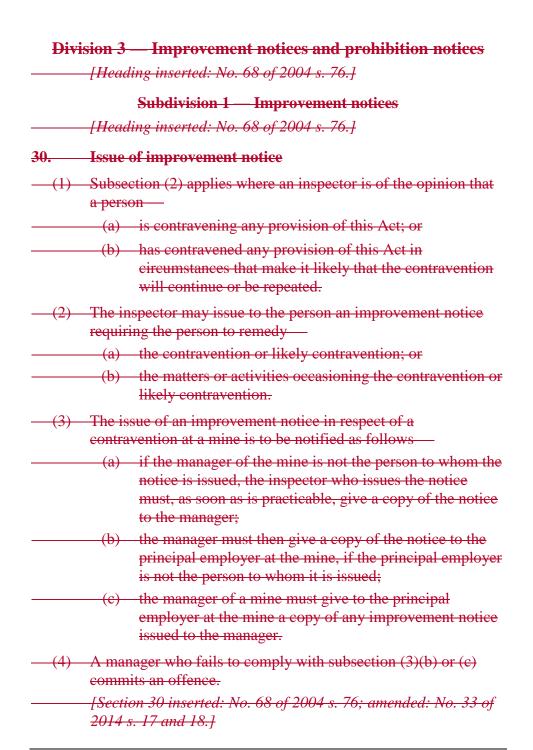
- (1) An employer at a mine and a manager of a mine must provide an inspector and any person accompanying the inspector under section 21(3) with the means of making an entry, inspection, examination or inquiry at the mine for the purposes of this Act.
- (2) An employer or a manager who contravenes subsection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

[Section 28 amended: No. 33 of 2014 s. 17.]

Inspections

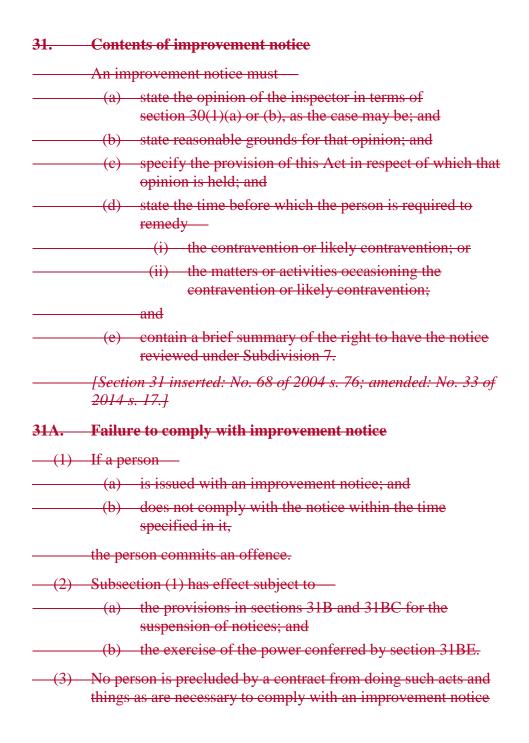


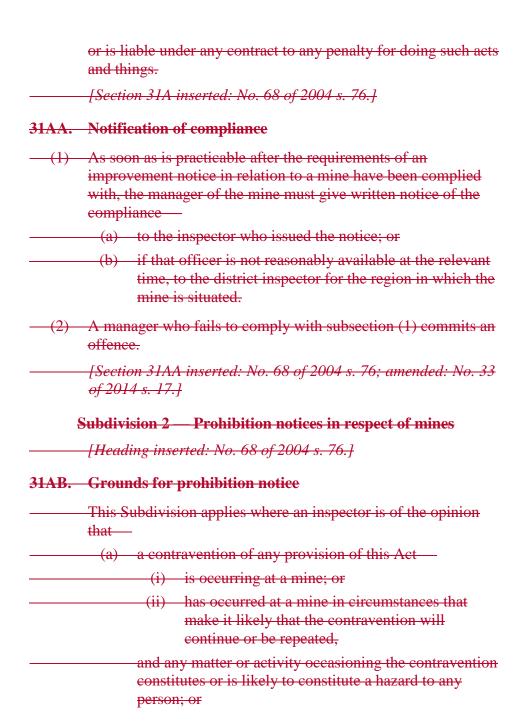




Improvement notices and prohibition notices

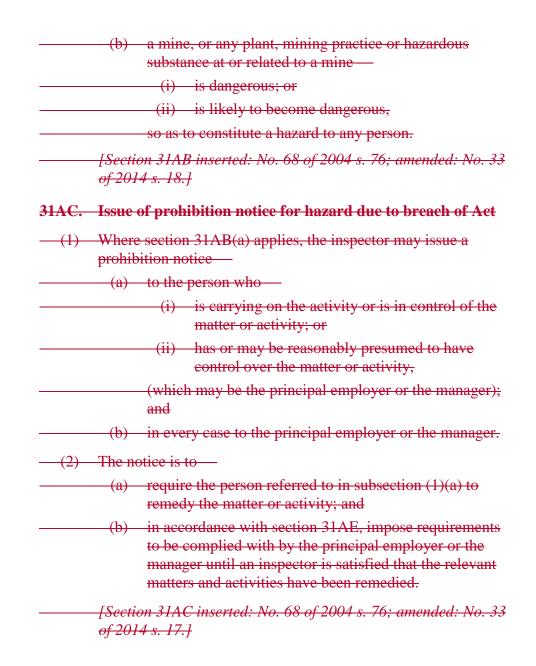
s. 31

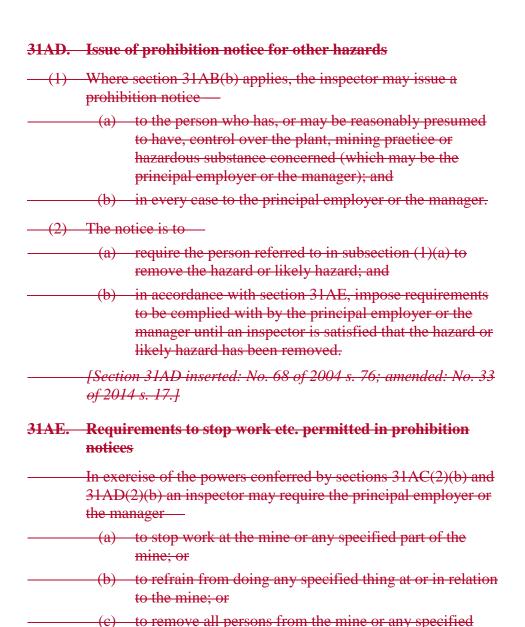




Improvement notices and prohibition notices

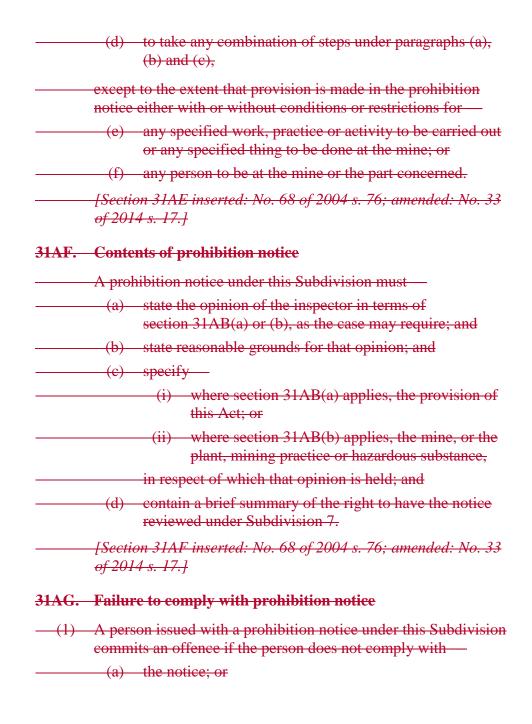
s. 31AC

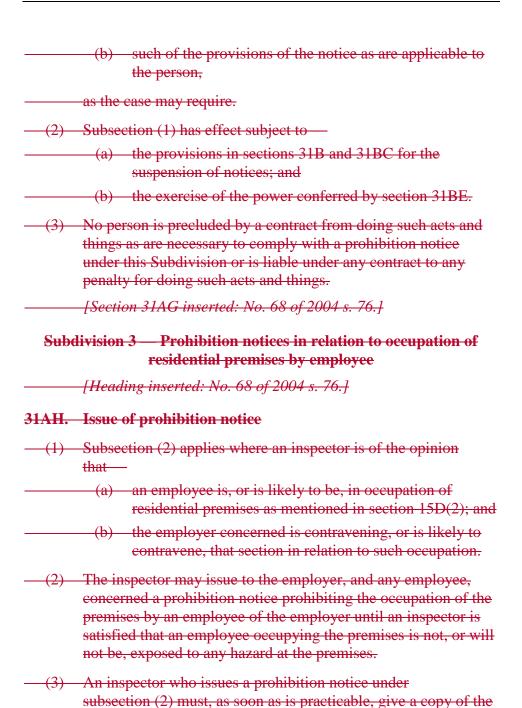




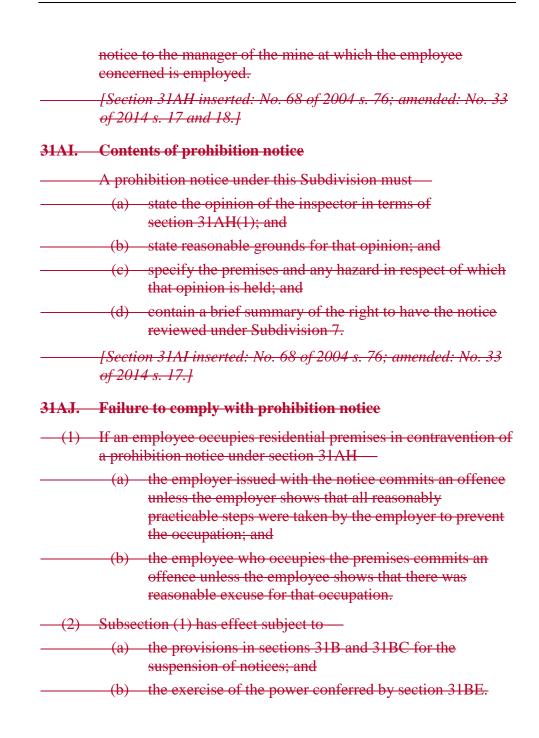
part of the mine; or

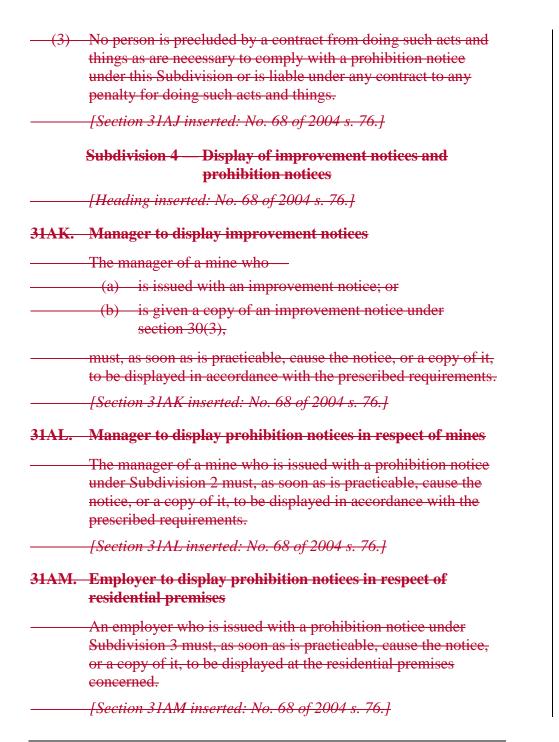
s. 31AF





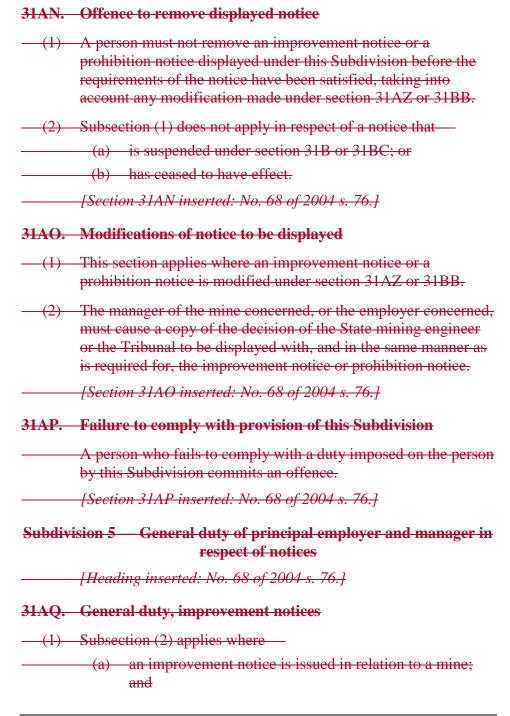
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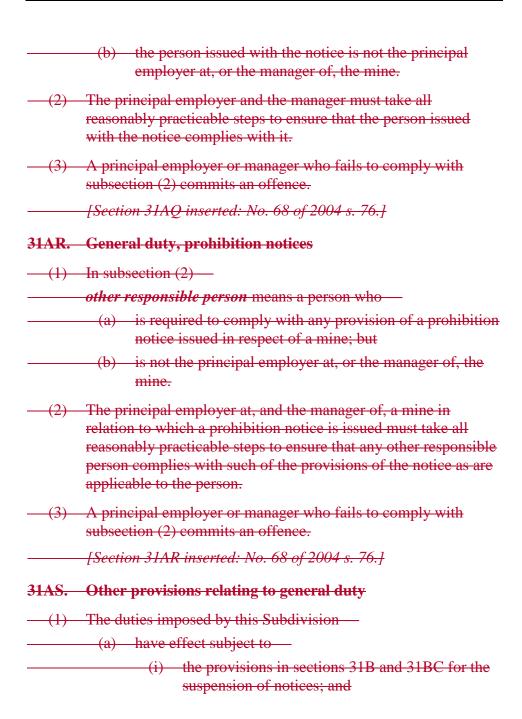




Division 3 Improvement notices and prohibition notices

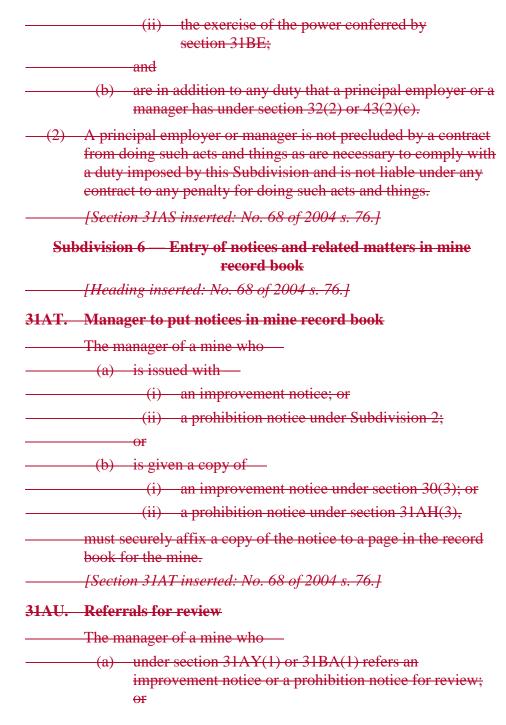
s. 31AN

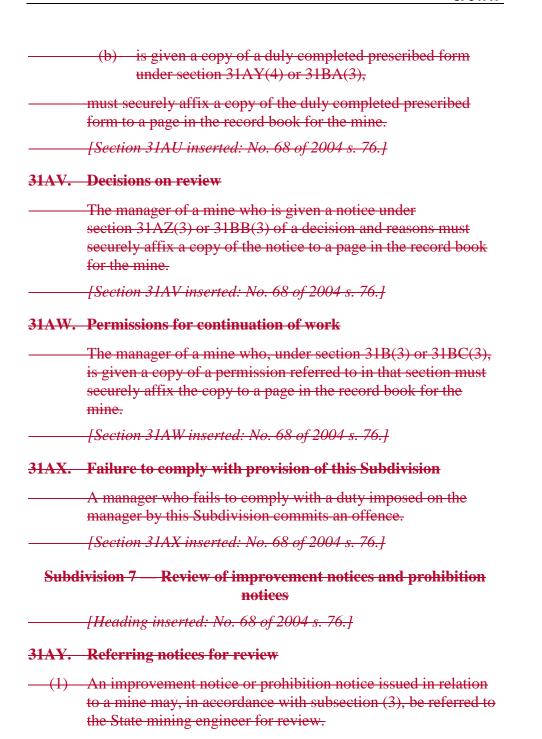




Improvement notices and prohibition notices

s. 31AT

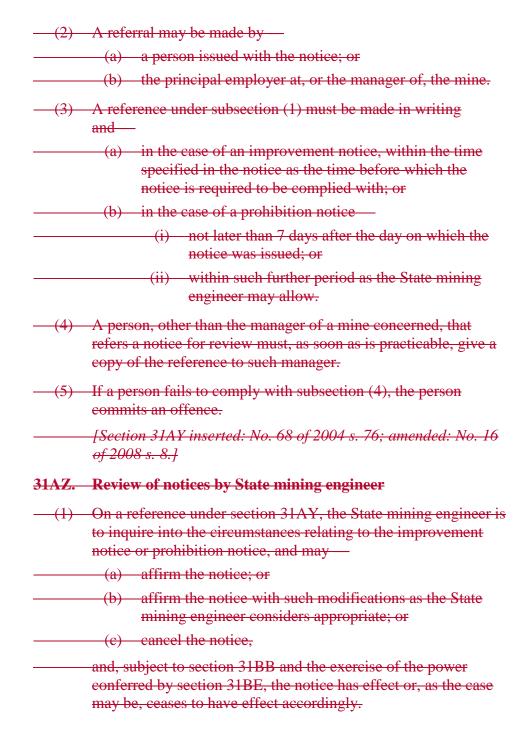




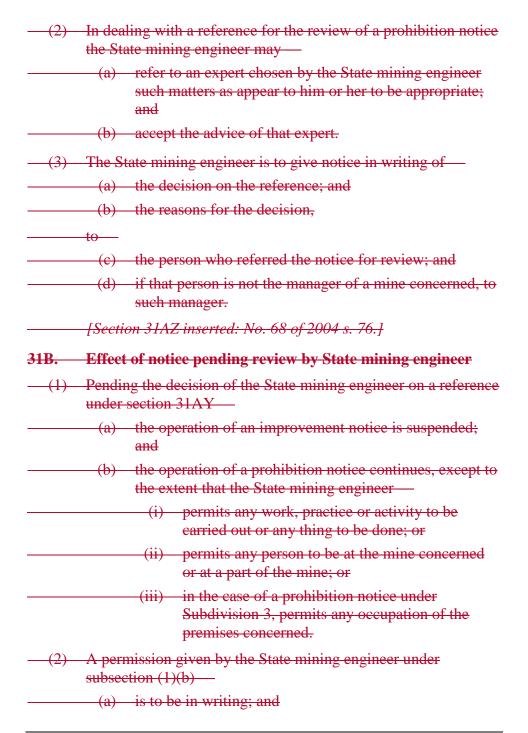
Part 3 Administration of Act

Division 3 Improvement notices and prohibition notices

s. 31AZ

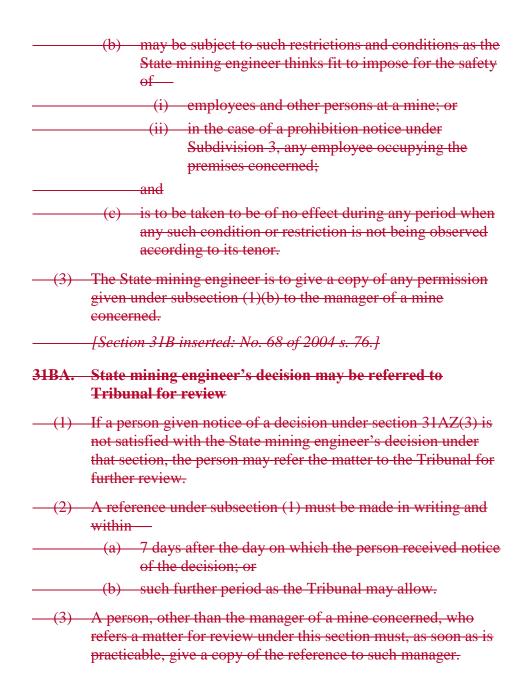


s. 31B



Improvement notices and prohibition notices

s. 31BA

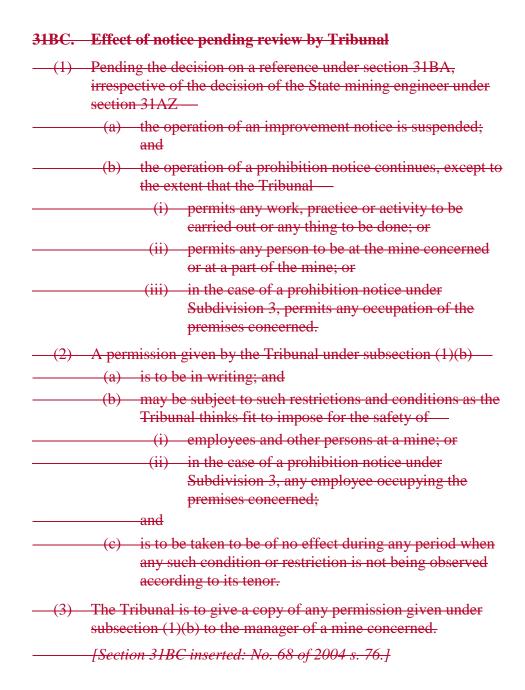


(4)	If a person fails to comply with subsection (3), the person commits an offence.
	[Section 31BA inserted: No. 68 of 2004 s. 76; amended: No. 16 of 2008 s. 9.]
31BB.	Review by Tribunal
(1)	On a reference under section 31BA, the Tribunal is to inquire into the circumstances relating to the improvement notice or prohibition notice, and may
	(a) affirm the decision of the State mining engineer; or
	(b) affirm the decision of the State mining engineer with such modifications as the Tribunal considers appropriate; or
	(c) revoke the decision of the State mining engineer and make such other decision with respect to the notice as the Tribunal thinks fit,
	and the notice has effect or, as the case may be, ceases to have effect accordingly.
(2)	A review under this section—
	(a) is to be in the nature of a rehearing; and
	(b) is to be completed by the Tribunal as quickly as is practicable.
(3)	The Tribunal is to give notice in writing of
	(a) its decision on the reference; and
	(b) the reasons for the decision,
	_ to
	(c) the person who referred the matter for review; and
	(d) if that person is not the manager of a mine concerned, to

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

such manager.

s. 31BC



Subdivision 8 — General

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

31BD. Notices may include directions

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

[Section 31BD inserted: No. 68 of 2004 s. 76; amended: No. 33 of 2014 s. 17.]

31BE. State mining engineer may cancel notice

- (1) The State mining engineer may, on his or her own initiative, cancel an improvement notice or a prohibition notice in respect of a mine by giving notice in writing of
 - (a) the cancellation; and
- (b) the reasons for the cancellation,
- to
 - (c) the person who was issued with the notice; and
- (d) the principal employer at a mine if the principal employer is not the person referred to in paragraph (c); and
- (e) the manager of the mine if the manager is not the person referred to in paragraph (c).

Mines Safety and Inspection Act 1994 Part 3 Administration of Act Division 4 Issue of provisional improvement notices by safety and health representative s. 31BF The State mining engineer may, on his or her own initiative, cancel a prohibition notice issued under section 31AH by giving notice in writing of (a) the cancellation; and (b) the reasons for the cancellation, to the employer and the employee concerned. (3) The power conferred by subsection (1) or (2) is not to be exercised in respect of a notice (a) during a period when a referral of the notice is awaiting a determination of the State mining engineer under section 31AZ; or (b) after a decision in respect of the notice has been referred to the Tribunal under section 31BA, but otherwise may be exercised at any time and whether or not the notice concerned has been affirmed under section 31AZ(1). [Section 31BE inserted: No. 68 of 2004 s. 76.] **Division 4**— Issue of provisional improvement notices by safety and health representative [Heading inserted: No. 68 of 2004 s. 76.] 31BF. Term used: qualified representative In this Division qualified representative means a safety and health representative who has completed a course of training

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

31BG. Issue of provisional improvement notices

(1) Subsection (2) applies where a qualified representative

prescribed for the purposes of this definition.

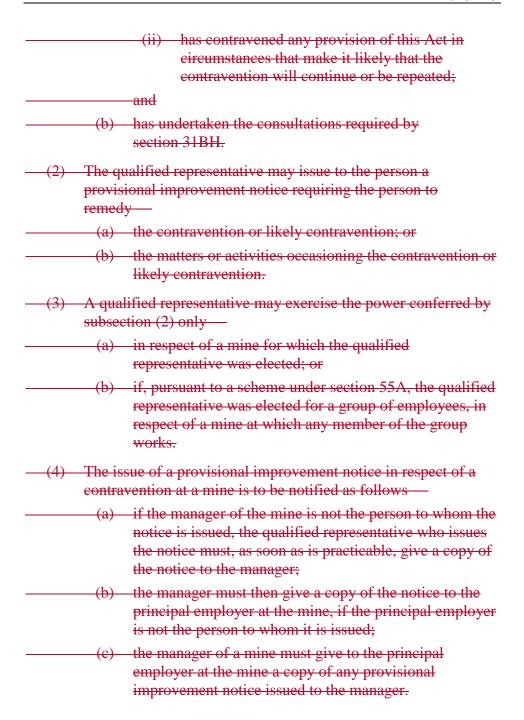
(a) is of the opinion that a person

(i) is contravening any provision of this Act; or

Issue of provisional improvement notices by safety and health representative

Division 4

s. 31BG



Mines Safety and Inspection Act 1994 Part 3 Administration of Act Division 4 Issue of provisional improvement notices by safety and health representative s. 31BH (5) A manager who fails to comply with subsection (4)(b) or (c) commits an offence. ISection 31BG inserted: No. 68 of 2004 s. 76.1 31BH. Consultation required before issue (1) In this section consult means consult about the matters or activities to which an intended notice will relate. (2) Before issuing a provisional improvement notice a qualified representative must (a) consult with the person who is to be issued with the notice: and (b) if there is any other safety and health representative for the mine concerned, consult with another representative for that mine so far as it is reasonably practicable to do so. (3) The reference in subsection (2) to a safety and health representative includes a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine concerned. The regulations may make provision requiring a qualified representative, in specified circumstances, to consult with a person who holds a prescribed office in the department before issuing a provisional improvement notice.

(1) A provisional improvement notice must

(a) state the opinion of the qualified representative in terms of section 31BG(1)(a)(i) or (ii), as the case may be; and

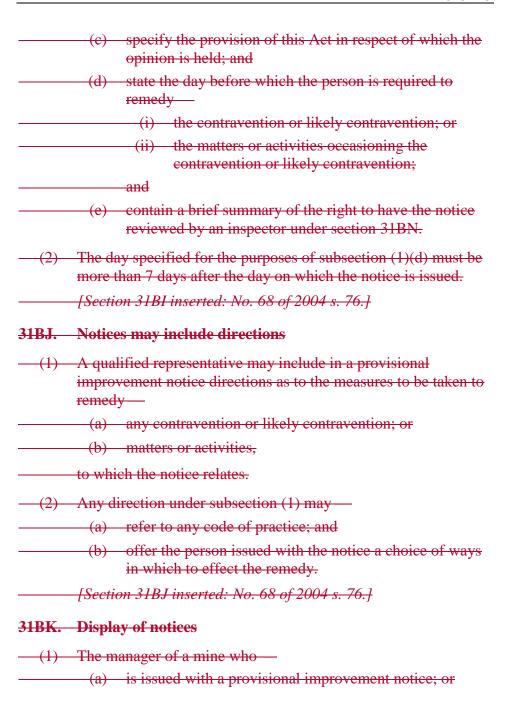
(b) state reasonable grounds for that opinion; and

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

Issue of provisional improvement notices by safety and health representative

Division 4

s. 31BJ



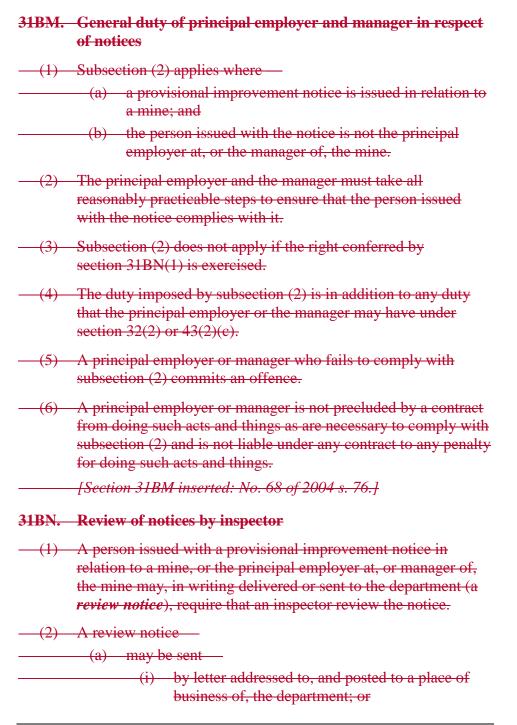
Mines Safety and Inspection Act 1994 Part 3 Administration of Act **Division 4** Issue of provisional improvement notices by safety and health representative s. 31BL (b) is given a copy of a provisional improvement notice under section 31BG(4). must, as soon as is practicable, cause the notice, or a copy of it, to be displayed in accordance with the prescribed requirements. A person commits an offence if the person removes a provisional improvement notice displayed under subsection (1) before the requirements of the improvement notice have been satisfied, taking into account any modification made under section 31BN(4). Subsection (2) does not apply in respect of a provisional improvement notice that has ceased to have effect. (4) If a provisional improvement notice is modified by an inspector under section 31BN(4), the manager must cause a copy of the inspector's decision to be displayed with, and in the same manner as is required for, the provisional improvement notice. (5) A manager who fails to comply with subsection (1) or (4) commits an offence. [Section 31BK inserted: No. 68 of 2004 s. 76.] 31BL. Failure to comply with notice

- (1) If a person
 - (a) is issued with a provisional improvement notice; and
- (b) does not comply with the notice within the time specified in it,
- the person commits an offence.
- Subsection (1) does not apply if the right conferred by section 31BN(1) is exercised.
- [Section 31BL inserted: No. 68 of 2004 s. 76.]

Issue of provisional improvement notices by safety and health representative

Division 4

s. 31BM

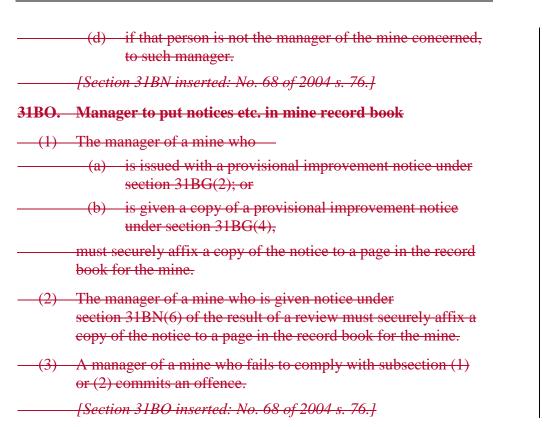


	(ii) by transmission to a facsimile number used by the department; or
	(iii) by electronic data transmission to an email address used by the department;
	and
	(b) must be received by the department not later than the day specified in the provisional improvement notice for the purposes of section 31BI(1)(d).
(3)	The operation of the provisional improvement notice is suspended by the receipt by the department of a review notice in accordance with this section.
(4)	Where a review notice is received by the department in accordance with this section, an inspector must as soon as is practicable—
	(a) attend at the mine; and
	(b) inquire into the circumstances relating to the notice,
	and having done so may
-	(c) affirm the notice; or
	(d) affirm the notice with modifications; or
	(e) cancel the notice.
(5)	If an inspector affirms a provisional improvement notice, with or without modifications, the notice as so affirmed has effect as if it had been issued by the inspector under section 30.
(6)	Where an inspector reviews a provisional improvement notice
	he or she is to give notice in writing
	(a) of the result of the review; and
	(b) of any modifications to the notice,
	_to
	(c) the person who required an inspector to review the notice; and

Issue of provisional improvement notices by safety and health representative

Division 4

s. 31BO



Duties of employers and managers

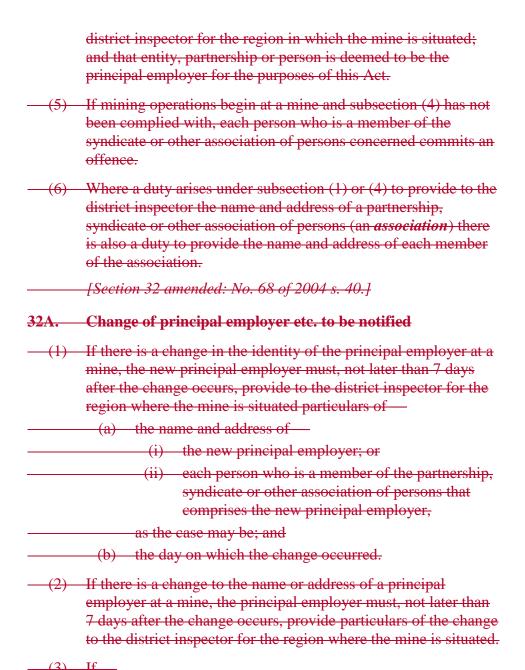
s. 32

Part 4 — Management of mines

Division 1 Duties of employers and managers

32. Principal employer, duties of for new mines

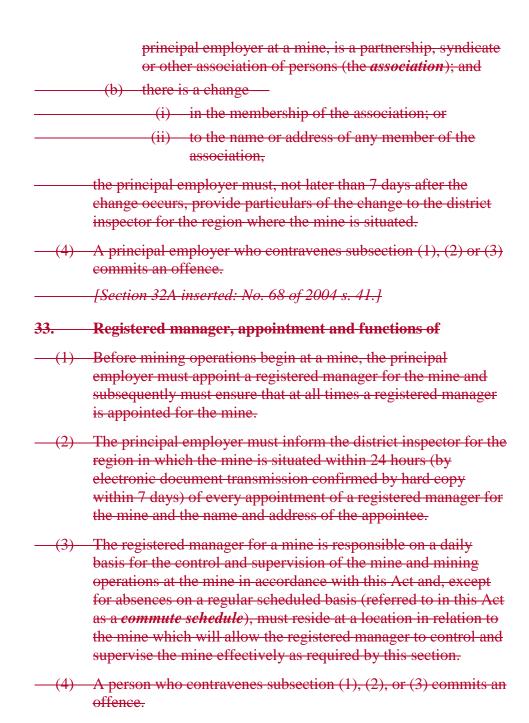
- (1) Before mining operations begin at a mine, the name and address of the principal employer at the mine must be provided in writing to the district inspector for the region where the mine is situated.
- (1a) If mining operations begin at a mine and subsection (1) has not been complied with, an offence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

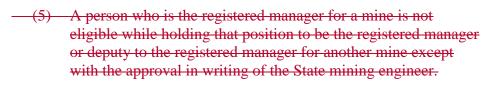


(a) the principal employer at a mine, or the person who under section 32(4) has assumed the duties of the

Duties of employers and managers



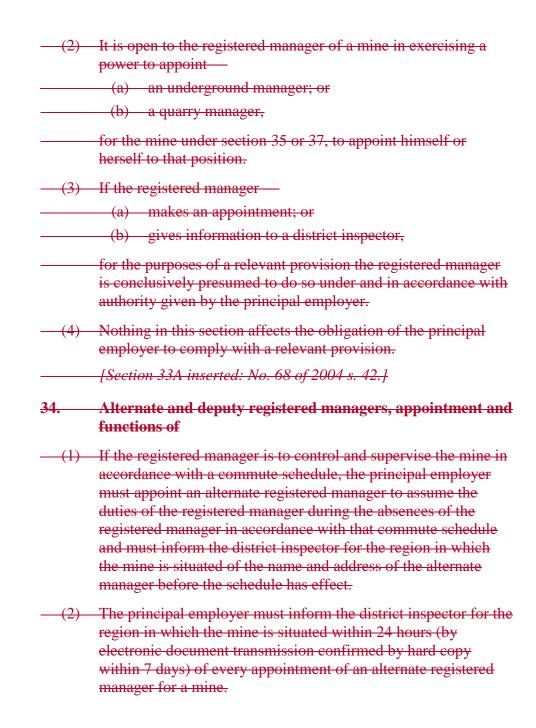


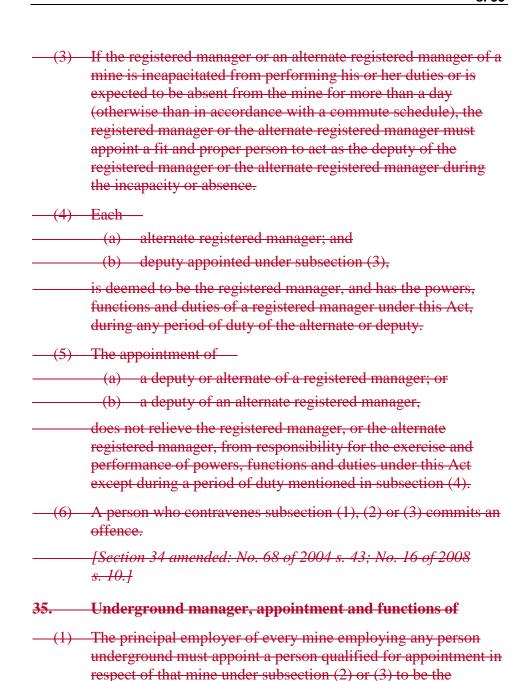


- (6) If mining operations are carried out by a syndicate or other association of persons in such a way that no person is employed at the mine, no registered manager is required and the members of that entity or partnership or those persons are jointly and severally responsible for the performance of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

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

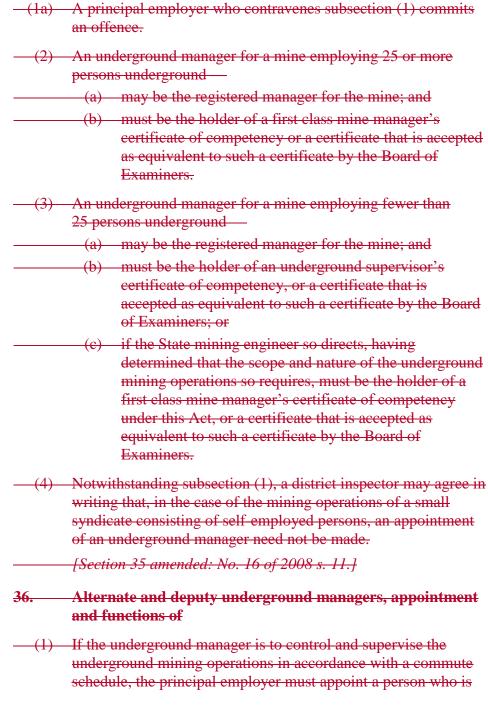
- (1) It is sufficient compliance with a provision of section 34(1) or (2), 35(1), 36(1) or (2), 37(1), 38(1), (2) or (3) or 39(2) (a relevant provision) that requires the principal employer in relation to a mine—
- (a) to make a particular managerial appointment for the mine: or
- (b) to inform the district inspector for the region in which the mine is situated concerning the appointment,
- if the appointment is made, or the information is given, on behalf of the principal employer by the registered manager in accordance with authority given by the principal employer to do so.





underground manager for the mine with responsibility to control and supervise the underground mining operations on a daily

basis.



Duties of employers and managers

eligible to be appointed underground manager for those mining operations to be an alternate underground manager to assume the duties of the underground manager during the absences of the underground manager in accordance with that commute schedule and must inform the district inspector for the region in which the mine is situated of the name and address of the alternate manager before the schedule has effect.

- (2) The principal employer must inform the district inspector for the region in which the mine is situated within 24 hours (by electronic document transmission confirmed by hard copy within 7 days) of every appointment of an alternate underground manager for a mine.
- (3) If the underground manager or alternate underground manager of a mine is incapacitated from performing his or her duties or is expected to be absent from the mine (otherwise than in accordance with a commute schedule) or unavailable to perform the duties of underground manager, the principal employer must appoint an eligible person to act as the deputy of the underground manager or alternate underground manager during the period of incapacity, absence or unavailability.
- [(4) deleted]
- (5) A person who contravenes subsection (1), (2) or (3) commits an offence.
- (6) A person is eligible to be appointed as a deputy underground manager if that person is eligible to be appointed underground manager for the mining operations or holds an underground supervisor's certificate of competency, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners, but a person who holds an underground supervisor's certificate of competency (or equivalent) is not eligible to be appointed or to hold office as deputy underground manager of a mine employing 25 or more persons underground for more than 4 weeks on any occasion without the approval of the State mining engineer.

Duties of employers and managers

s. 37

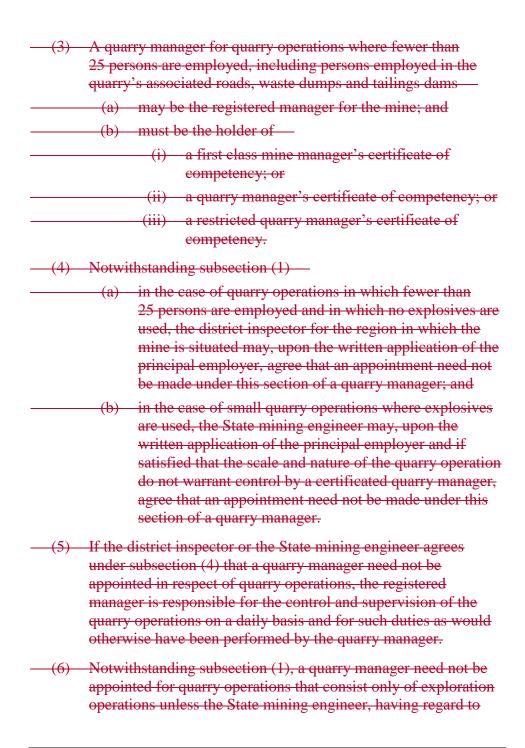


(8) Each deputy underground manager and alternate underground manager appointed under this section is deemed to be the underground manager and has the powers, functions and duties of an underground manager under this Act for such periods of duty as the deputy or alternate has been appointed, but the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

Section 36 amended: No. 68 of 2004 s. 44.1

37. Quarry manager, appointment and functions of

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



Duties of employers and managers

s. 38

the scale and nature of the exploration operations, directs that such an appointment must be made.

Section 37 amended: No. 16 of 2008 s. 12.]

38. Alternate and deputy quarry managers, appointment and functions of

- (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) deleted]
- (5) A person who contravenes subsection (1), (2) or (3) commits an offence.
- (6) A person is eligible to be appointed as a deputy quarry manager if that person is eligible to be appointed quarry manager for the quarry operations or holds a restricted quarry manager's

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

$\frac{-(7)-deleted}{}$

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

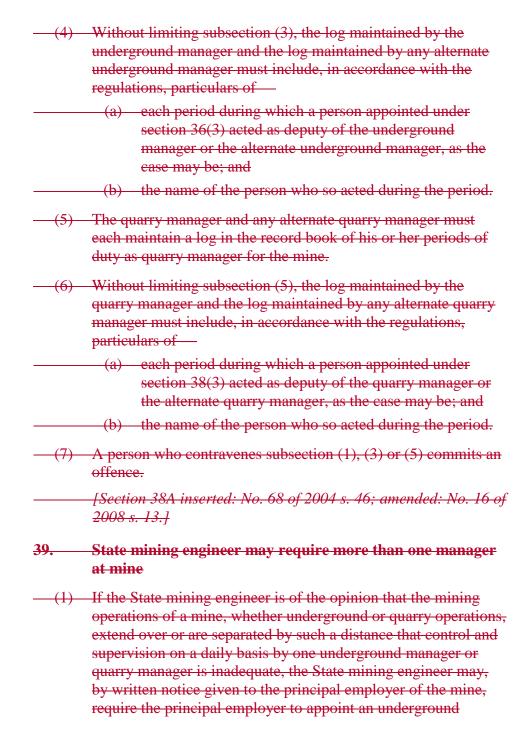
Section 38 amended: No. 68 of 2004 s. 45.1

38A. Managers to record periods of duty in mine record book

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

Duties of employers and managers

s. 39



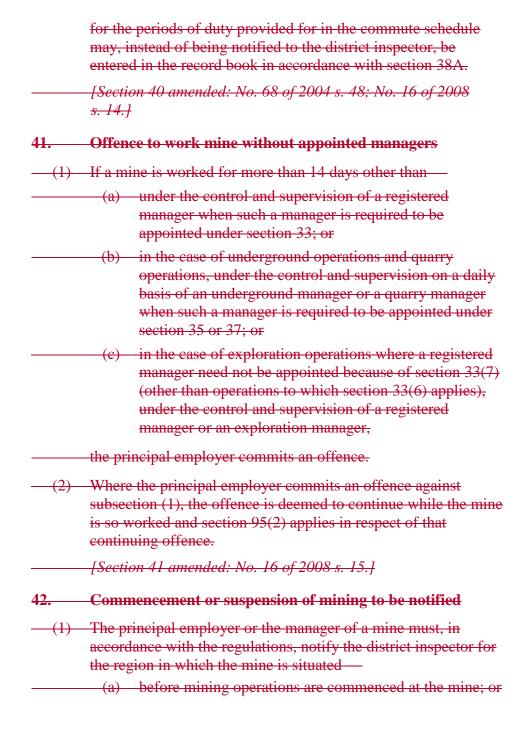
- manager or a quarry manager to control and supervise on a daily basis such of those operations as the State mining engineer may specify in the notice.
- (1a) A notice is sufficiently given to the principal employer at a mine for the purposes of subsection (1) if it is given to the registered manager of the mine.
- (2) A principal employer who fails to comply promptly with a requirement under subsection (1) commits an offence.
- Section 39 amended: No. 68 of 2004 s. 47.]

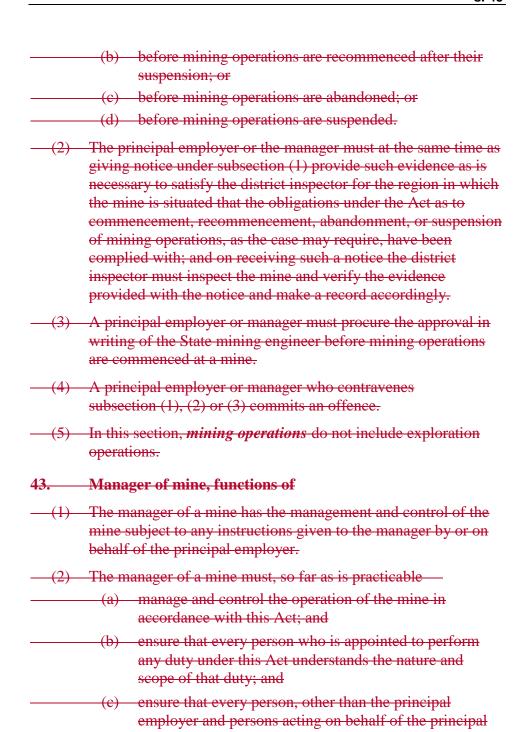
40. Managers to notify assumption of control

- (1) Every registered manager must, within 7 days of assuming the control and supervision of a mine as registered manager, notify the district inspector for the region in which the mine is situated accordingly and acknowledge, by signature in the notification, his or her appointment as registered manager.
- (2) Every underground manager and quarry manager must, within 7 days of assuming the control and supervision on a daily basis of underground operations or quarry operations as underground manager or quarry manager, as the case may be, notify the district inspector for the region in which the mine is situated accordingly and acknowledge, by signature in the notification, his or her appointment as underground manager or quarry manager.
- (2a) A person who contravenes subsection (1) or (2) commits an offence.
- (3) A district inspector must confirm in writing receipt of every notification that the inspector receives under this section.
- (4) Where a commute schedule is established and the assumption of control and supervision of the registered manager, underground manager, quarry manager and alternate managers, as the case may require, has been notified to the district inspector as required by this Part, the assumption of control by those persons

Duties of employers and managers

s. 41





Duties of employers and managers

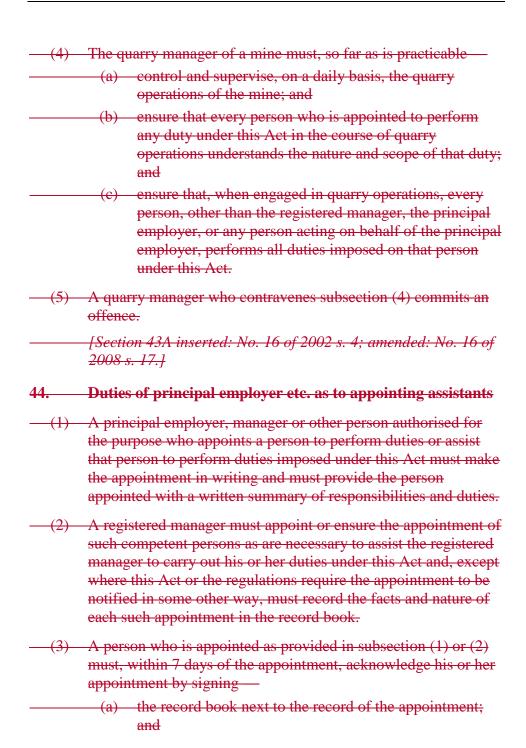
s. 43A

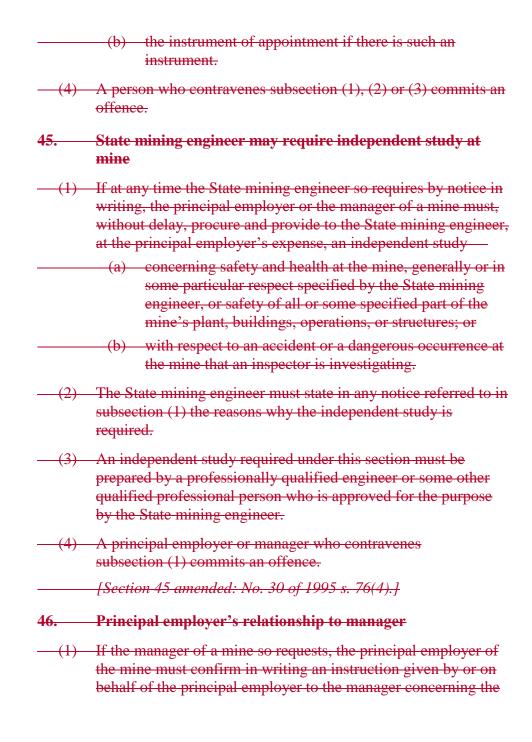


- (3) A manager who contravenes subsection (2) commits an offence.
- [Section 43 amended: No. 16 of 2008 s. 16.]

43A. Underground manager or quarry manager, functions of

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





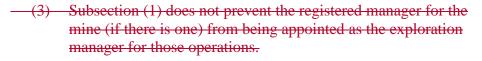


- (2) The principal employer of a mine, or a person on behalf of the principal employer, must not instruct any person (other than the manager) at work at the mine concerning any duty imposed on the manager under this Act except with the consent of the manager or in an emergency.
- (3) If any instruction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

46A. Exploration manager, appointment of

- (1) Before exploration operations begin at a mine, the principal employer must appoint an exploration manager for those operations and, while those operations continue, must ensure that an exploration manager is appointed for those operations.
- (2) If exploration operations are carried out by a syndicate or other association of persons in such a way that no person is employed in those operations, no exploration manager is required and the members of that entity or partnership or those persons are jointly and severally responsible for the performance of those duties and responsibilities which are, in the circumstances described in section 47A(1), imposed on exploration managers under this Act, so far as those duties and responsibilities apply to an operation without employees.

s. 47



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

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

Management of exploration operations

- (1) If exploration operations are carried out on a mining tenement which is held by a person who holds an adjoining mining tenement or mining tenements on one or more of which mining operations are being carried out, the registered manager of the mine at which those mining operations are being carried out may notify in writing the senior inspector responsible for the region of the State in which those exploration operations are being carried out that all such exploration operations are under the control of that registered manager.
- (2) If exploration operations at a mine are not under the control of a registered manager because a registered manager is not required under section 33(7) for those operations and, for a mine to which subsection (1) applies, no notice has been given under that subsection, the principal employer must
- notify, without delay and in writing, the senior inspector responsible for the region of the State in which those exploration operations are being carried out of the name and address of the person who is the exploration manager for those operations; and
- notify, without delay and in writing, that senior inspector of the name and address of the person who is responsible to the principal employer for the management of all activity in carrying out such exploration operations (and that person may, but need not, be the person notified under paragraph (a) as exploration manager); and

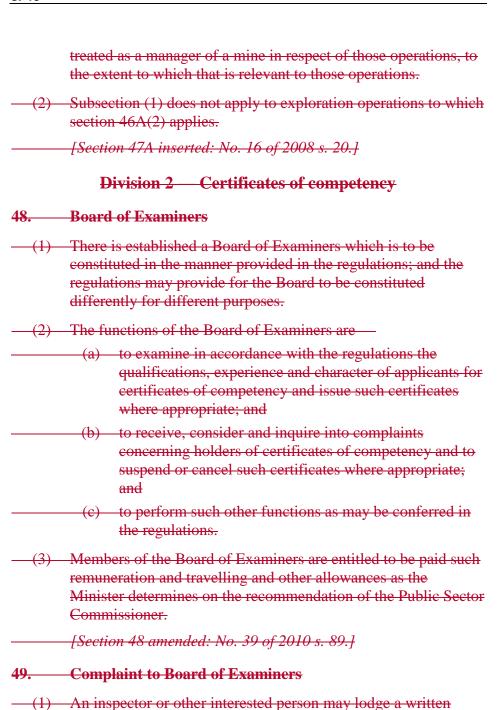


- (3) An exploration manager must inform the senior inspector for the region of the State in which the exploration operations are to take place of the location, scope, and nature of the exploration operations in accordance with the regulations.
- (4) A person notified as being responsible for the management of exploration activity under subsection (2)(b) must take all reasonable steps to liaise effectively with the district inspector for the region where that activity is taking place concerning the location, scope and nature of the exploration operations.
- (5) Notwithstanding subsections (1) and (2), in the case of exploration operations carried out by a syndicate or other association of persons in such a way that no person is employed in those operations, no notification under subsection (2) is required, but the members of that entity or partnership or those persons are jointly and severally responsible for the performance of those duties and responsibilities which are
- (a) in the circumstances described in section 47A(1), imposed on exploration managers under this Act; or
- (b) imposed on persons referred to in subsection (2)(b) under this Act.
- (6) A person who contravenes subsection (2), (3) or (4) commits an offence.
- Section 47 amended: No. 16 of 2008 s. 19.1

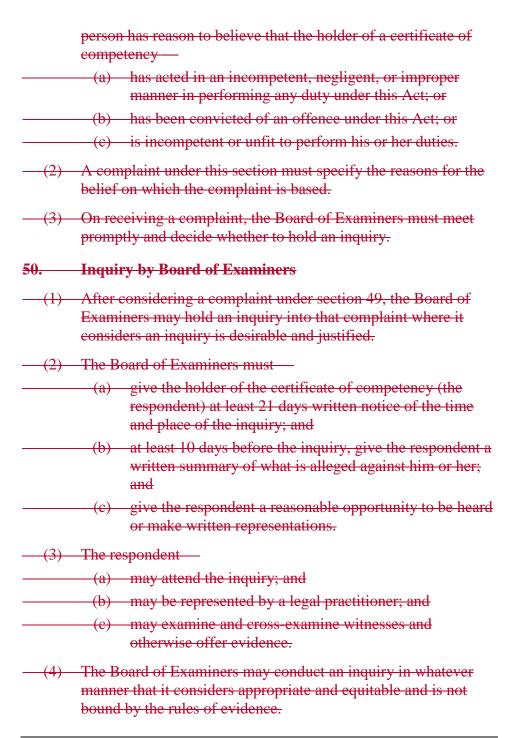
47A. Exploration manager to be treated as manager in certain circumstances

(1) If exploration operations at a mine are not under the control of a registered manager because a registered manager is not required under section 33(7) for those operations and no notice has been given under section 47(1), then, for the purposes of this Act, the exploration manager appointed for those operations is to be

s. 48



complaint with the Board of Examiners if the inspector or

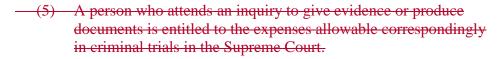


Mines Safety and Inspection Act 1994

Part 4 Management of mines

Division 2 Certificates of competency

s. 51



(6) The Board of Examiners may make an order of costs in favour of the respondent or the department and such an order may be registered in a court of competent jurisdiction as a judgment debt.

51. Disciplinary action following inquiry

- (1) If after holding an inquiry the Board of Examiners is satisfied that the substance of any complaint is made out, the Board may—
- (a) reprimand the respondent; or
- (b) suspend the respondent's certificate of competency for a stated period; or
- (c) cancel the respondent's certificate of competency.
- (2) A suspension or cancellation under this section takes effect after the time for an appeal under section 52 expires.
- (3) When the Board of Examiners suspends or cancels a certificate of competency, the respondent must return the certificate to the Board within a period specified by the Board when suspending or cancelling the certificate.
- (4) A person who contravenes subsection (3) commits an offence.
- Section 51 amended: No. 16 of 2008 s. 21.1

52. Appeal to Tribunal

- (1) A person whose certificate of competency is suspended or cancelled by the Board of Examiners may appeal in writing to the Tribunal within 30 days of receiving notice of the suspension or cancellation.
- (2) If an appeal is lodged, the suspension or cancellation does not take effect pending determination of the appeal unless the Tribunal orders otherwise.

(3) The Tribunal may dismiss the appeal or may make any decision in relation to the matter of the appeal that the Board of Examiners might have made when inquiring into the complaint.

[Section 52 amended: No. 68 of 2004 s. 85(1).]

Part 5 Safety and health representatives and committees

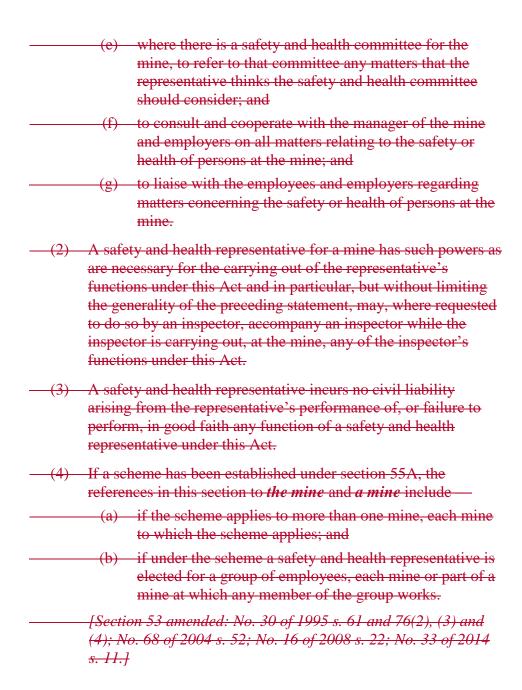
Division 1 Safety and health representatives

s. 53

Part 5 — Safety and health representatives and committees

[Heading amended: No. 30 of 1995 s. 76(1).] **Division 1**—Safety and health representatives [Heading amended: No. 30 of 1995 s. 76(1).] **Functions of representatives** (1) The functions of a safety and health representative are, in the interests of safety and health at the mine for which the representative was elected (a) to inspect the mine, or any part of the mine (i) at such times as are agreed with the manager of the mine; or 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 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 to keep informed as to the safety and health information provided by the manager of the mine or an employer in accordance with this Act and liaise as necessary with the department and other public sector and private bodies; and 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

Part 5

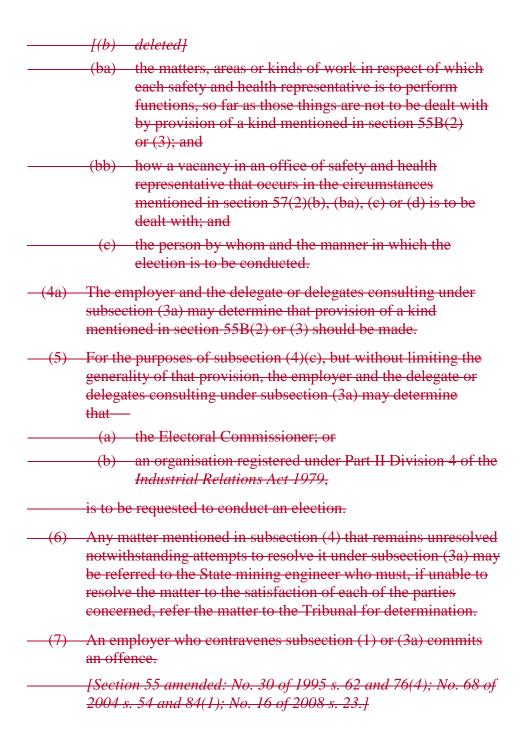




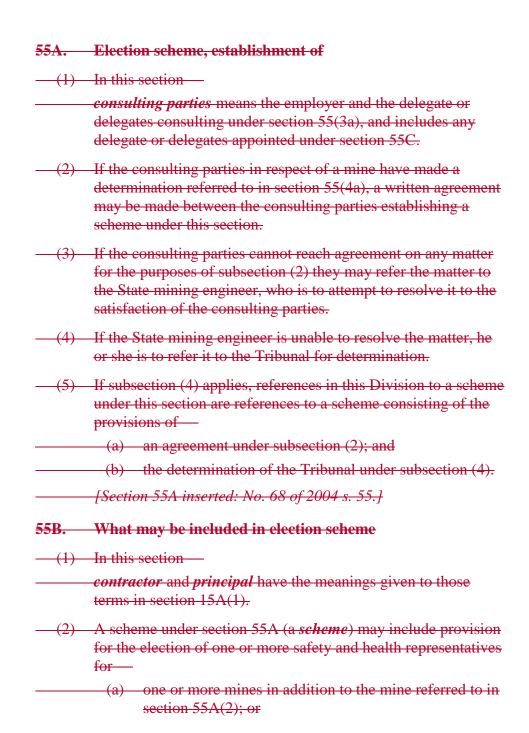
- (1) An employee who works at a mine may give notice to his or her employer at the mine requiring the election of a safety and health representative for the mine.
- (2) The fact that a notice under subsection (1) requires an election for the mine at which the employee works does not prevent
- (a) the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

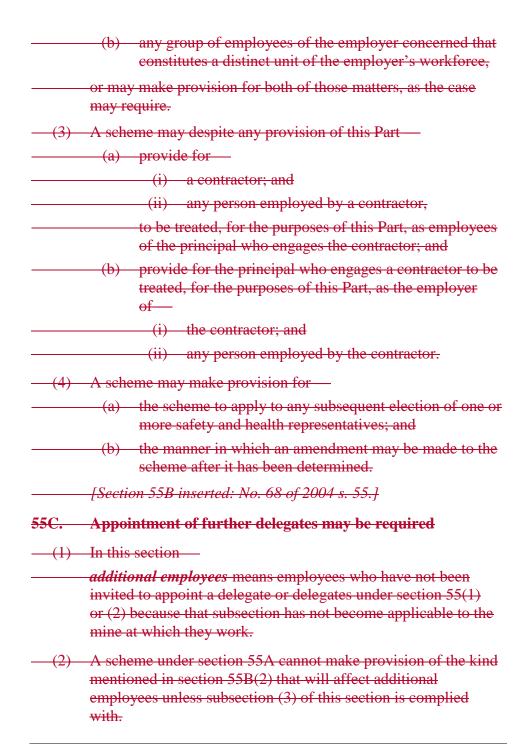
55. Consultation on matters relevant to elections

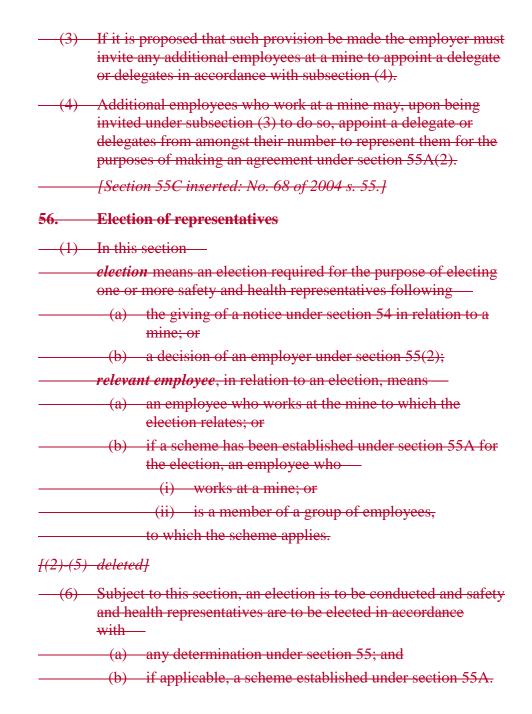
- (1) An employer must, within 21 days of being given notice under section 54 requiring the election of a safety and health representative, invite the employees who work at the mine in respect of which the notice is given to appoint a delegate or delegates in accordance with subsection (3).
- (2) An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

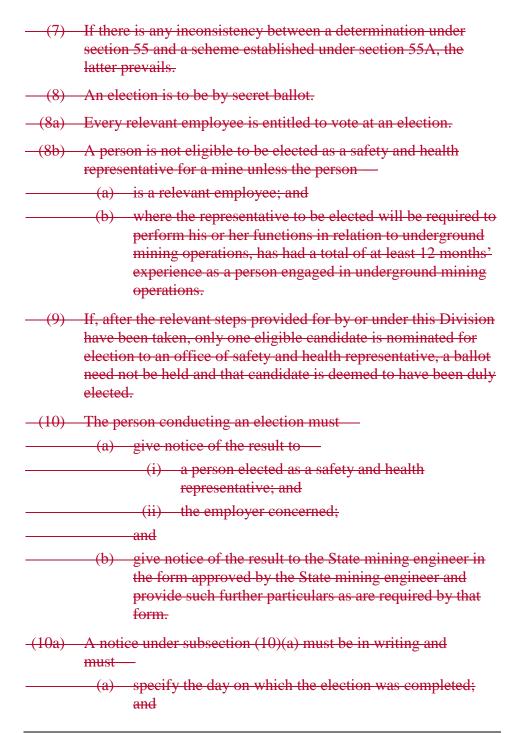


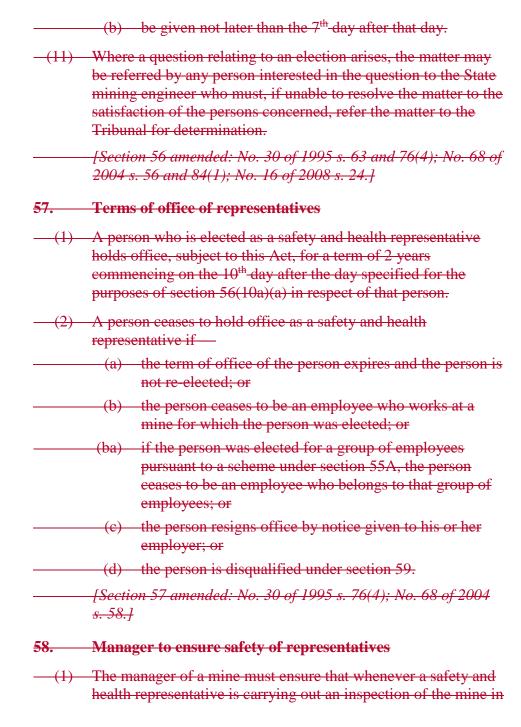
s. 55A

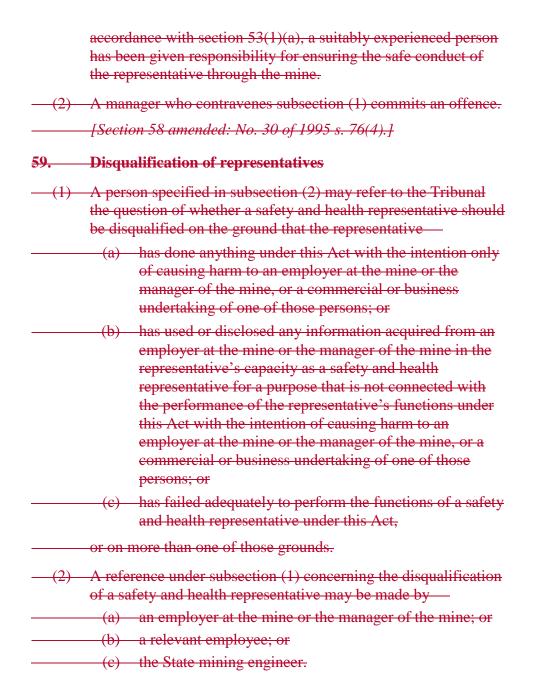


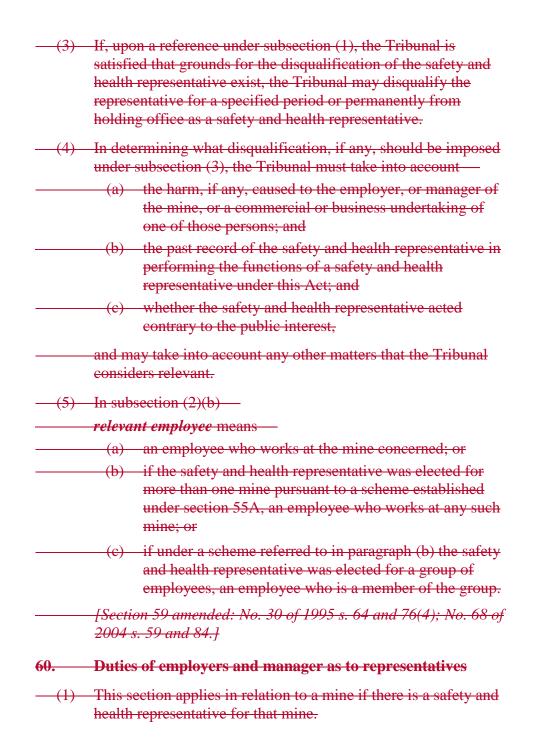








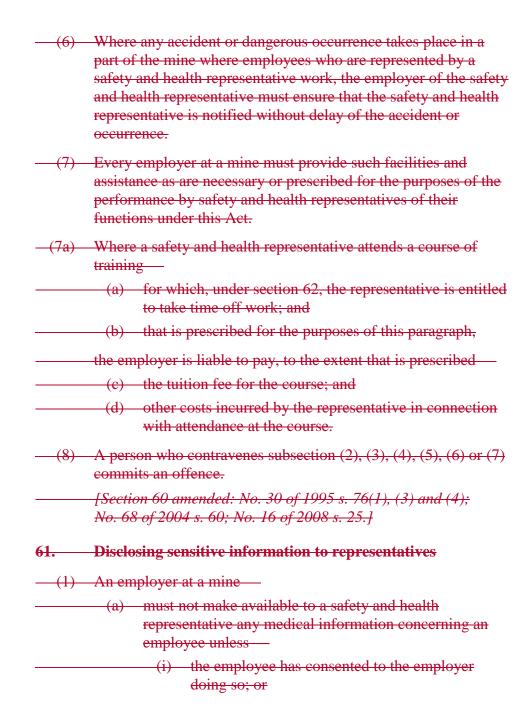




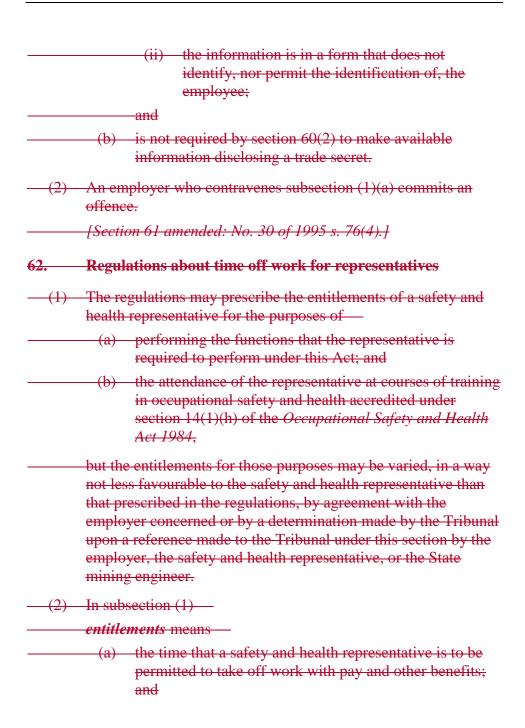
The employer of a safety and health representative must ensure that the safety and health representative receives any entitlement

that becomes due to him or her under subsection (7a) or

section 62.



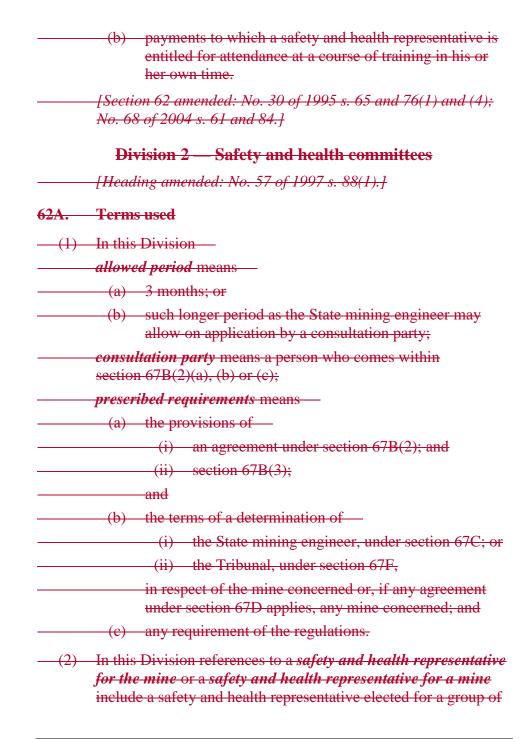
Safety and health representatives



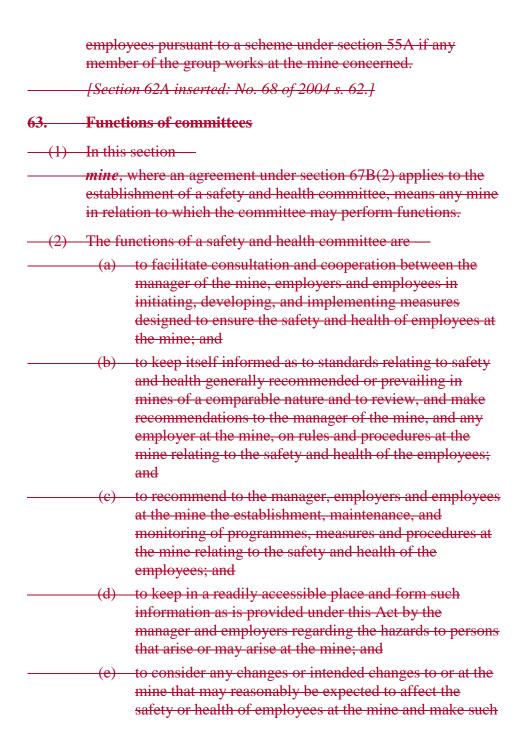
Part 5 Safety and health representatives and committees

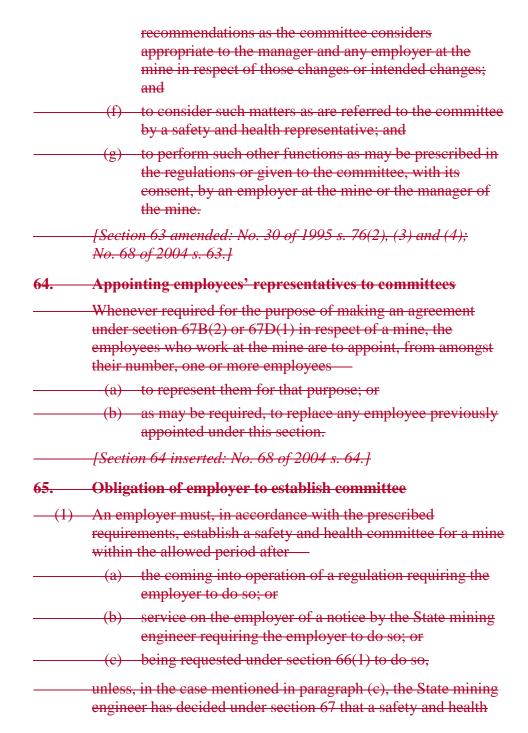
Division 2 Safety and health committees

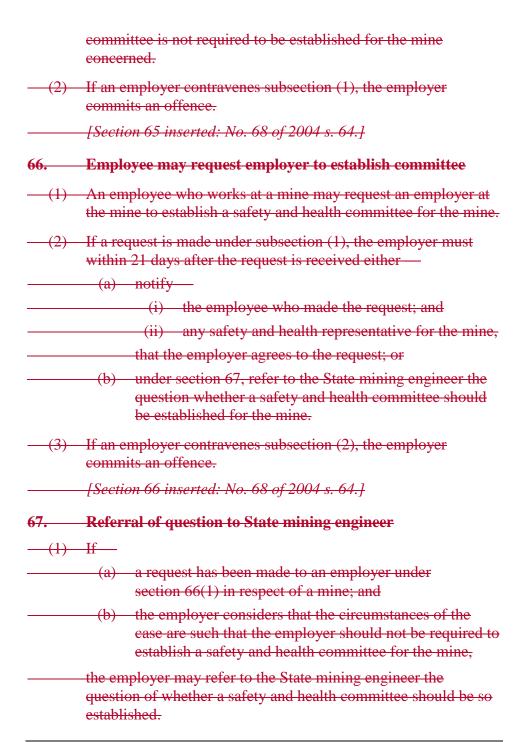
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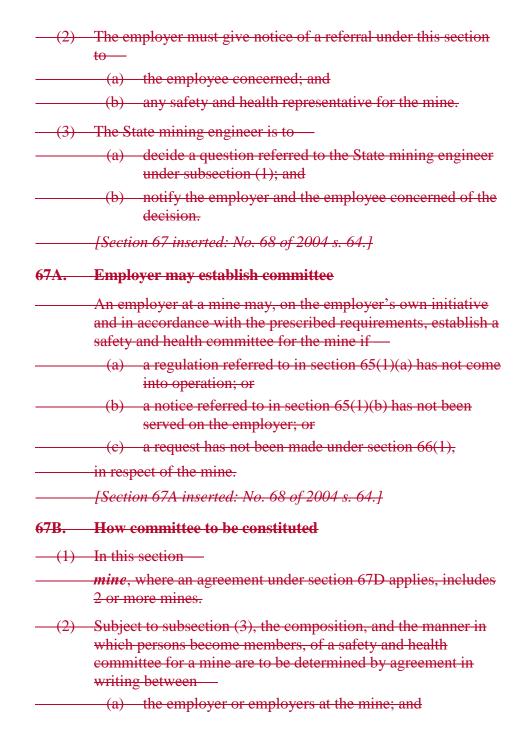


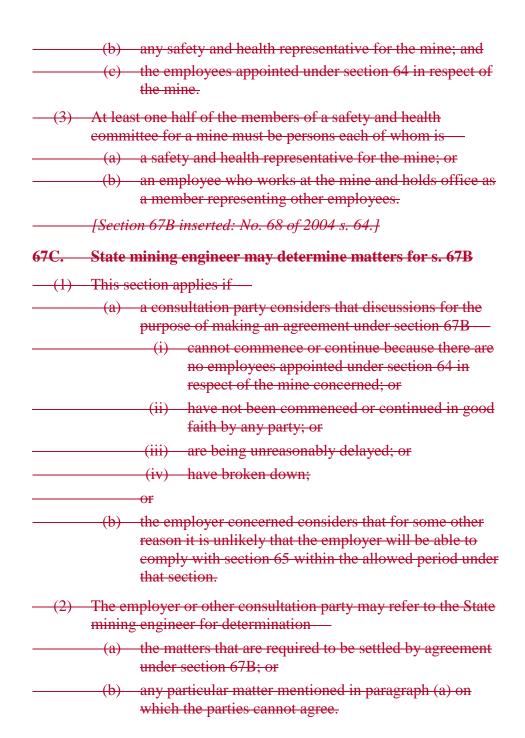
Division 2











Part 5 Safety and health representatives and committees

Division 2 s. 67D

Safety and health committees

	(a) make any necessary determination; and
	(b) notify the employer or other party concerned of the determination.
	[Section 67C inserted: No. 68 of 2004 s. 64.]
7D.	Committee may cover more than one mine
(1)	<u>If</u>
	(a) an employer
	(i) is under an obligation by operation of section 65(1); or
	(ii) wishes to take action for the purposes of section 67A,
	in respect of more than one mine; and
	(b) a safety and health committee has not been established for one or more of those mines,
	the parties concerned may agree in writing that one safety and health committee is to be established to perform functions in relation to each of the mines to which paragraph (b) applies.
	For the purposes of subsection (1) the parties concerned are
	(a) the employer or employers at; and
	(b) any safety and health representative for; and
	(c) the employees appointed under section 64 in respect of,
	any mine to which subsection (1)(b) applies.
(3)	An agreement under subsection (1) may provide
	(a) for the establishment of a safety and health committee to perform functions in relation to more than one mine; and

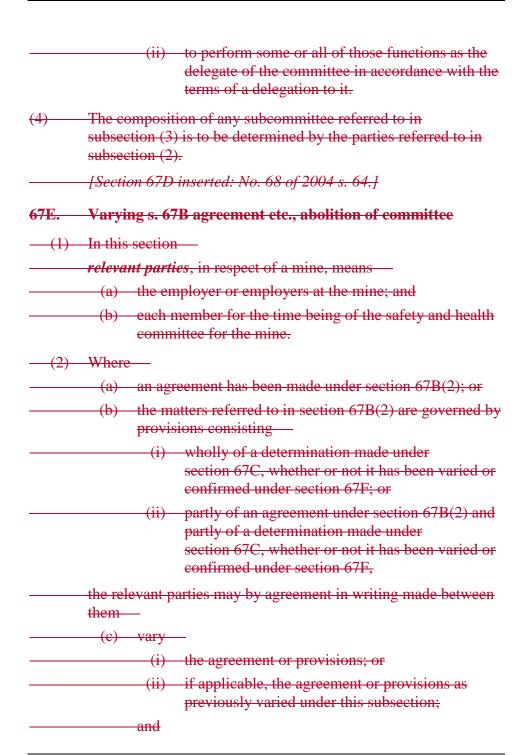
functions in relation to that mine; and

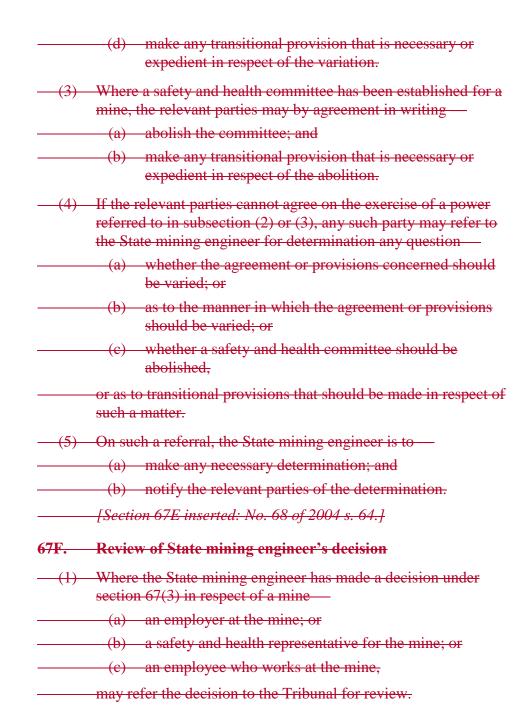
to advise the committee on the performance of its

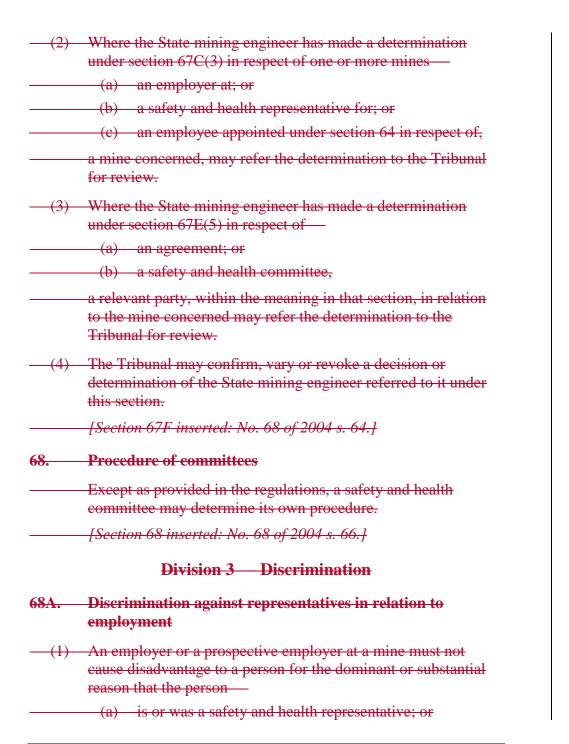
(b) for that committee to have subcommittees for each

mine ___

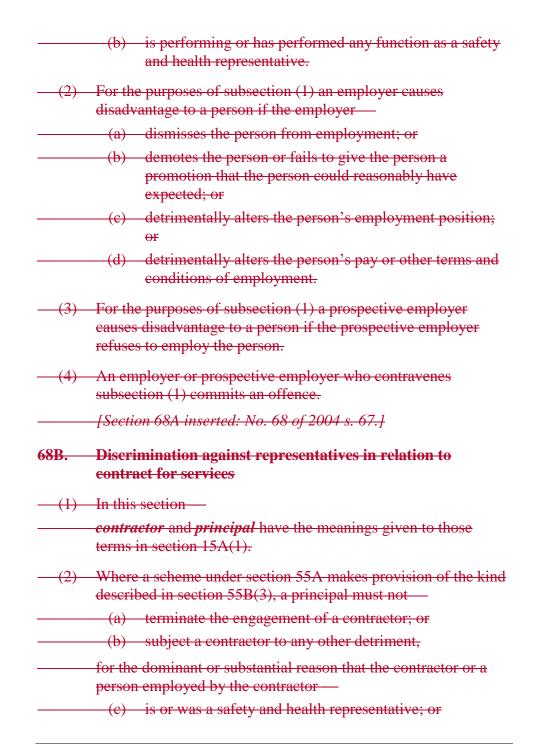
Part 5

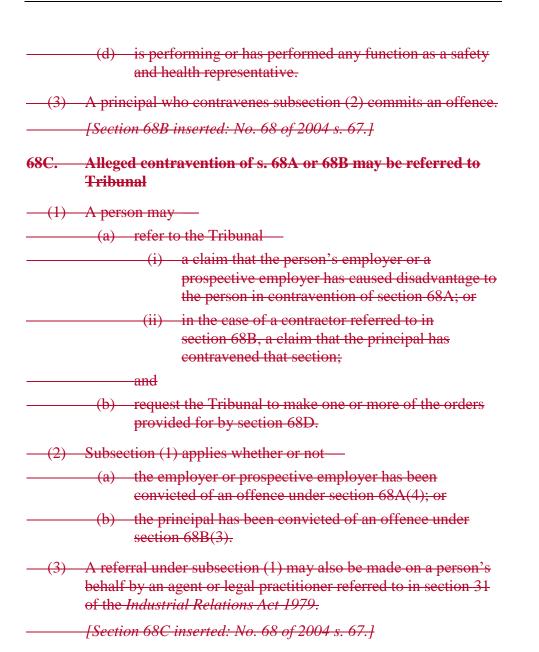




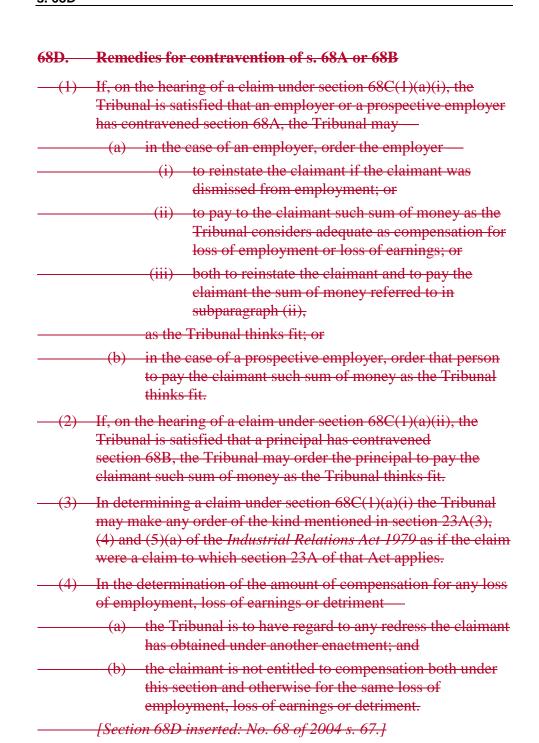


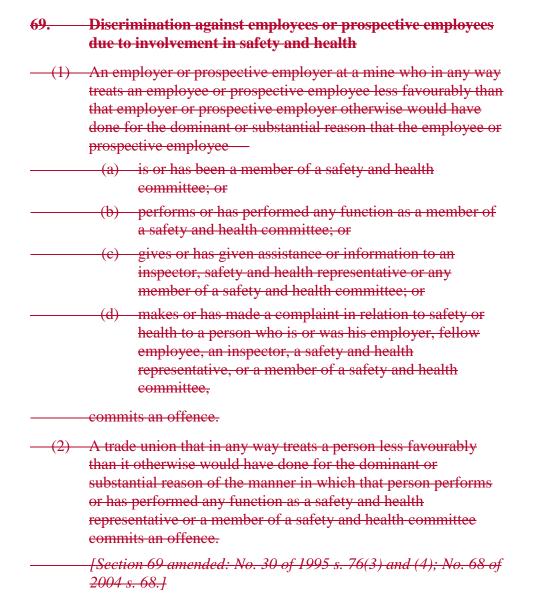
s. 68B

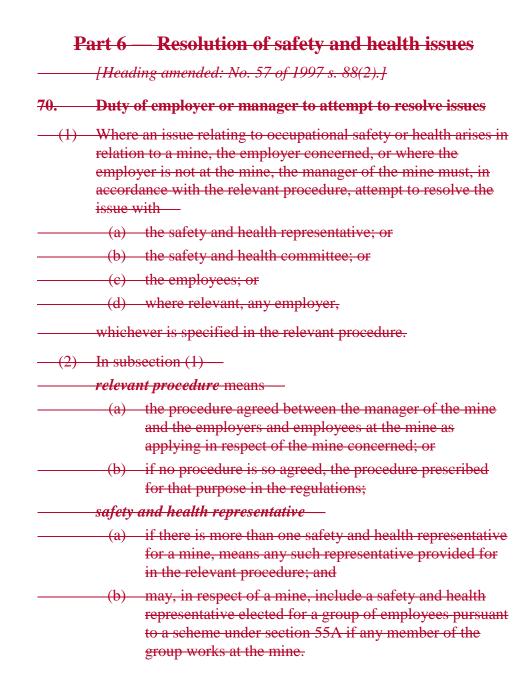


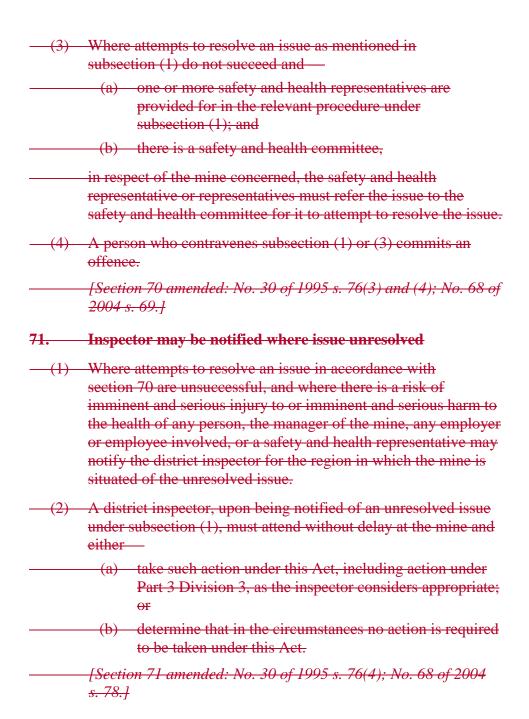


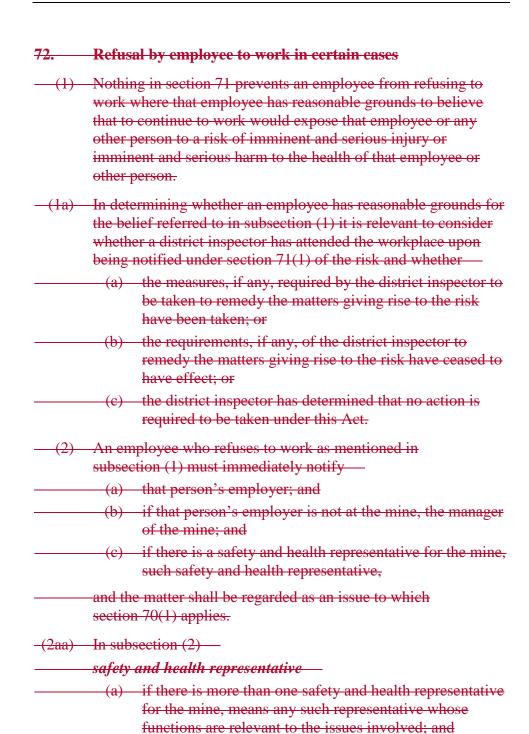
Discrimination

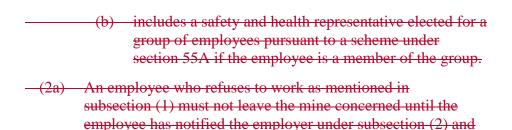












(2b) Subsection (2a) does not apply if the employee has reasonable grounds to believe that to remain at the mine concerned would expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health.

that employer has authorised the employee to leave that mine.

- (3) An employee who contravenes subsection (2) or (2a) commits an offence.
- [Section 72 amended: No. 30 of 1995 s. 69 and 76(4); No. 68 of 2004 s. 70.]

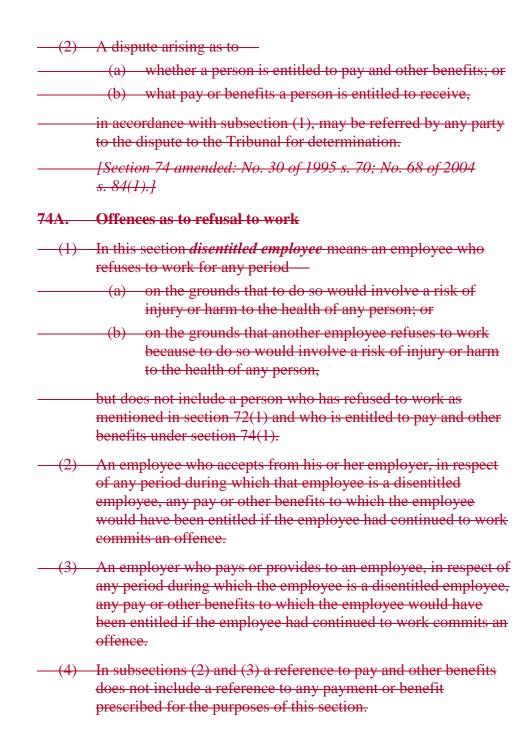
73. Employee refusing to work may be given alternative work

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

74. Employees' entitlements, continuation of

- (1) An employee who refuses to work as mentioned in section 72(1) is entitled to receive the same pay and other benefits, if any, which that employee would have been entitled to receive if the employee had continued to do his or her usual work.
- (1a) Subsection (1) does not apply if
- (a) the employee leaves the mine without the authorisation of the employer as required under section 72(2a); or
- (b) the employee refuses to do reasonable alternative work that the employee is given under section 73.

s. 74A



s. 74A

(5) This section has effect despite any provision of any other written law, including the *Industrial Relations Act 1979*, and any order, award or agreement made or registered under that Act.

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

Part 7 — Specific duties relating to occupational safety and health

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

Division 1 Health surveillance

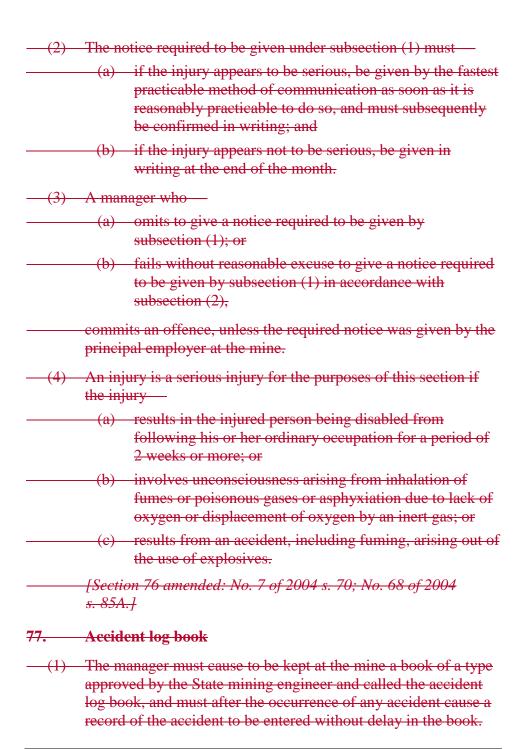
75. Health surveillance of mine employees

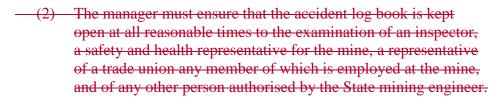
- (1) The principal employer and every employer at a mine must establish and maintain a system for the surveillance of the health of their employees in accordance with the regulations.
- (2) The principal employer and every employer at a mine must provide information to the State mining engineer on the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

Division 2 — Accidents and occurrences

76. Accidents involving disabling injury to be notified

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

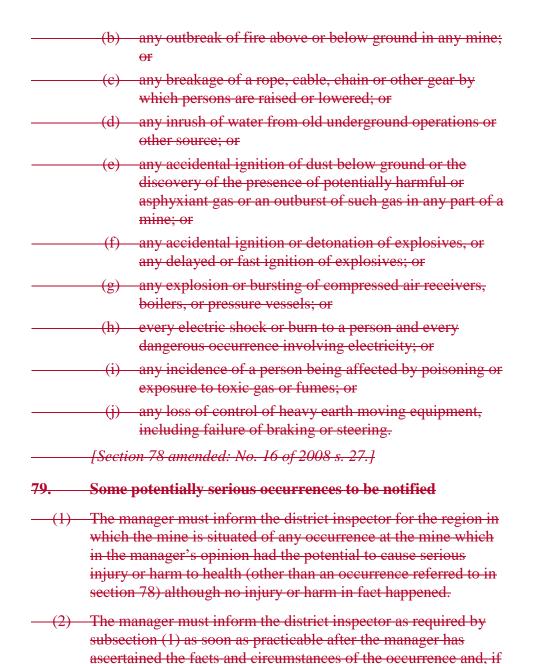




- A manager who contravenes subsection (1) or (2) commits an offence.
- (3) In subsection (2)
- safety and health representative for the mine includes a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine.
- [Section 77 amended: No. 57 of 1997 s. 88(3); No. 68 of 2004 s. 71; No. 16 of 2008 s. 26; No. 33 of 2014 s. 12.]

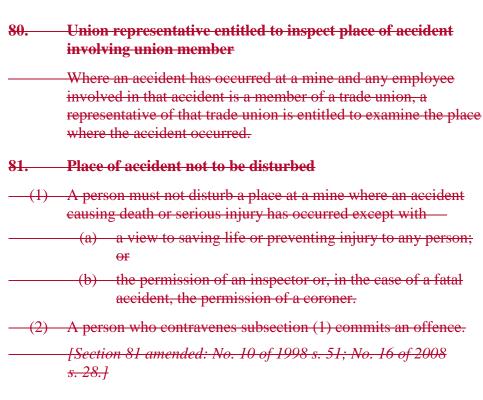
Some occurrences at mines to be notified and recorded

- (1) The manager must immediately give notice to the district inspector for the region in which the mine is situated of an occurrence to which this section applies, whether or not any bodily injury to any person or damage to property has resulted from the occurrence, and must give to the district inspector such particulars in respect of the occurrence as the inspector may require.
- (2) The manager must without delay record particulars of an occurrence to which this section applies in the record book.
- (2a) A manager who contravenes subsection (1) or (2) commits an offence.
- (3) This section applies to an occurrence of
- (a) any extensive subsidence, settlement or fall of ground or any major collapse of any part of the operations of a mine, or any earth movement caused by a seismic event; Or



required by the district inspector, must provide a written report

on that occurrence.

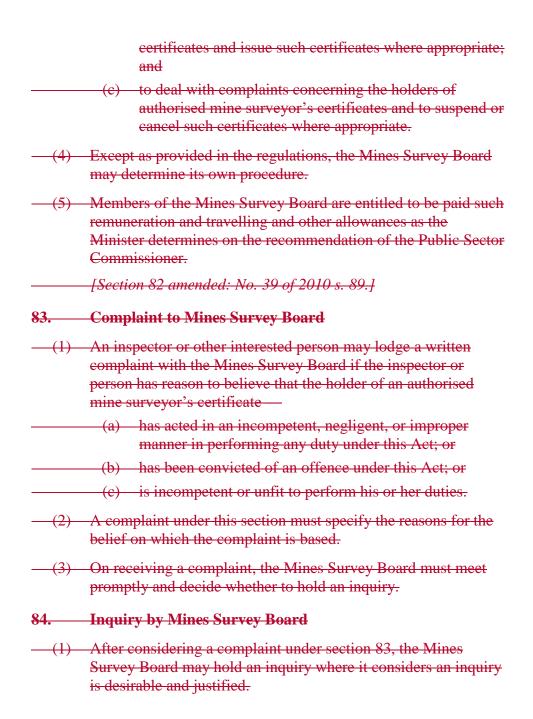


Division 3—Plans and records

82. Mines Survey Board

- (1) The Mines Survey Board established and constituted under the *Mines Regulation Act 1946* (repealed by this Act) is preserved and continues in existence for the purposes of this Act.
- (2) The Mines Survey Board is to be constituted in the manner provided in the regulations.
- (3) The functions of the Mines Survey Board are
- (a) to advise the Minister on survey matters relating to mines and mining operations, including quarries and quarry operations; and
- (b) to examine the qualifications, experience and character of persons applying for authorised mine surveyor's

Part 7

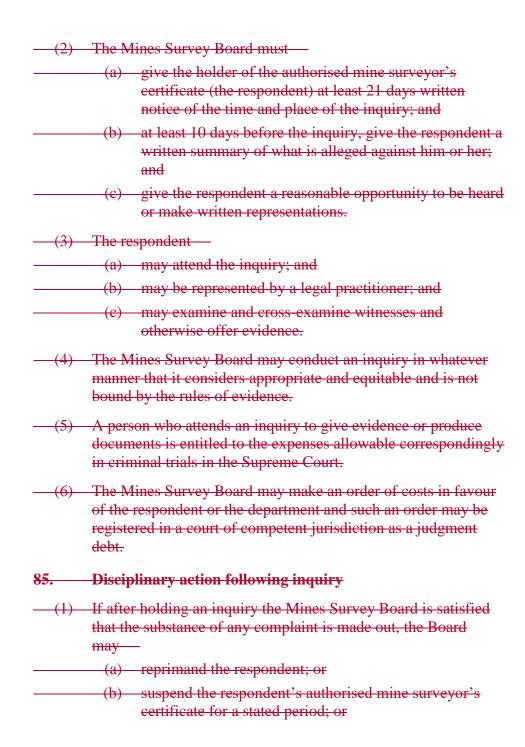


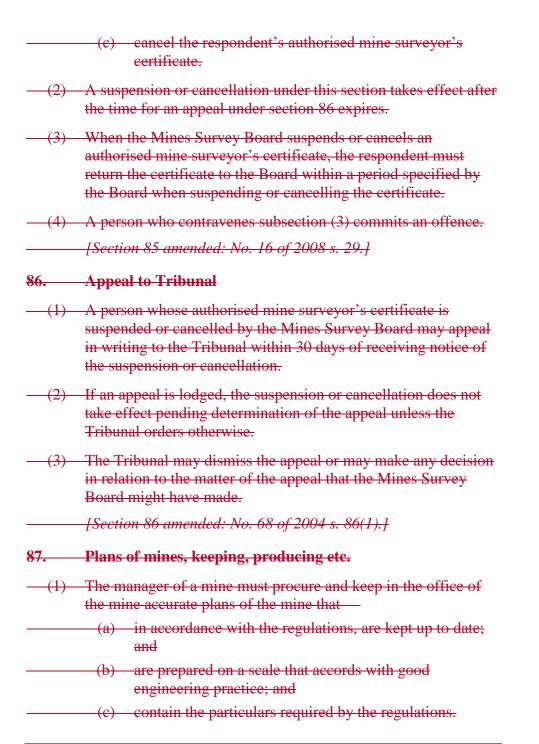
Specific duties relating to occupational safety and health

Part 7 Specific duties relating to occupational safety and health

Division 3 Plans and records

s. 85





Part 7 Specific duties relating to occupational safety and health

Division 3 Plans and records

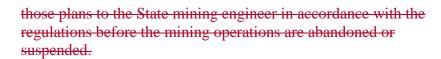
s. 88



- (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 or any other person authorised for the purpose in writing by the State mining engineer, and the manager must, if requested by that 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 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.
- Section 87 amended: No. 33 of 2014 s. 13.]

88. Plans of mine at its abandonment or suspension

(1) Where mining operations are about to be abandoned or suspended, the principal employer, or if a receiver has been appointed in respect of a principal employer, that receiver, or the manager must cause to be prepared to the satisfaction of the district inspector for the region in which the mine is situated an accurate plan or plans of the mining operations to the time of abandonment or discontinuance and must furnish that plan or



(2) A principal employer, receiver, or manager who contravenes subsection (1) commits an offence.

Specific duties relating to occupational safety and health

Record books, duties as to

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

Mines Safety and Inspection Act 1994

Part 7 Specific duties relating to occupational safety and health

Division 3 Plans and records

s. 89

(4) A principal employer or a person who was a principal employer who contravenes subsection (2) or (3) commits an offence.

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

Part 8 — Ministerial safety and health powers

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

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

91. Minister may publish inspector's report

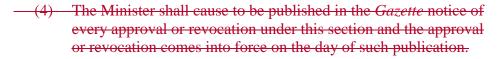
The Minister may cause a report prepared for the purposes of this Act by any inspector to be published at such time and in such manner as the Minister thinks appropriate.

92. Delegation by Minister

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

93. Codes of practice

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



- (5) The Minister shall cause a copy of every code of practice, and any document incorporated in it by reference, and any revision or revocation of a code of practice to be laid before each House of Parliament within 14 sitting days of such House.
- (6) The Minister shall cause a copy of every code of practice, including any revision of the code and any document incorporated in it by reference, to be made available, without charge, for public inspection.
- (7) Where it is alleged in a proceeding under this Act that a person has contravened a provision of this Act or the regulations in relation to which a code of practice was in effect at the time of the alleged contravention
- (a) the code of practice is admissible in evidence in that proceeding; and
- (b) demonstration that the person complied with the provision of the Act or regulations otherwise than observing that provision of the code of practice is a satisfactory defence.
- (8) A person is not liable to any civil or criminal proceeding only because the person has not complied with a provision of a code of practice.
- [Section 93 amended: No. 30 of 1995 s. 76(1) and (3); No. 51 of 2004 s. 115(4).]

Part 9 — Offences, penalties and legal proceedings

Division 1 General provisions

Heading inserted: No. 68 of 2004 s. 28.

94. General penalty

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

Section 94 inserted: No. 68 of 2004 s. 29.]

95. Continuing offences

- (1) Where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is deemed to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.
- (2) Where an offence is deemed to continue, the person who committed the offence, whether by act or omission, commits an additional offence on each day during which the offence is deemed to continue and is liable to a fine not exceeding
 - (a) \$800, where the offence is committed by a person as an employee; and
 - (b) \$4 000, where the offence is committed by an individual and paragraph (a) does not apply; and
 - (c) \$8 000, where the offence is committed by a corporation,

for every day on which the offence is so continued.

<u>[Section 95 amended: No. 30 of 1995 s. 72; No. 68 of 2004 s. 30; No. 17 of 2018 s. 4 287.]</u>

Part 9 Offences, penalties and legal proceedings

Division 1 General provisions

s. 96

96. Prosecutions, who may commence etc.

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

[96A. Prosecutions to be determined by safety and health magistrate

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

[Section 96A inserted Deleted: No. 3036 of 19952020 s. 73; amended: No. 68 of 2004 s. 81288.]

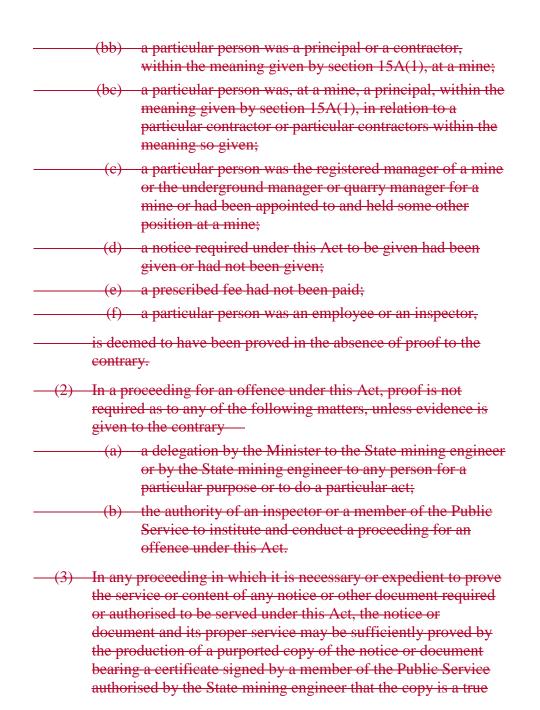
97. Time limit for prosecutions

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

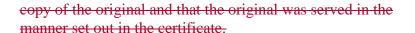
[Section 97 inserted: No. 68 of 2004 s. 31(1).]

[98. Evidentiary provisions

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



s. 99



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

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

[Section 98 amended-<u>99A. Deleted</u>: No. <u>1636</u> of <u>20022020</u> s. <u>5; No. 68 of 2004 s. 32; No. 84 of 2004 s. 80; No. 33 of 2014</u> s. <u>17.</u>]

99. Liability of employers, managers etc. for offences by others

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

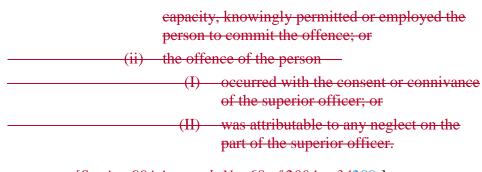
[Section 99 amended: No. 68 of 2004 s. 33.]

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

Part 9 Offences, penalties and legal proceedings

Division 1 General provisions

s. 100



[Section 99A inserted: No. 68 of 2004 s. 34289.]

100. Liability of directors etc. for offences by corporation

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

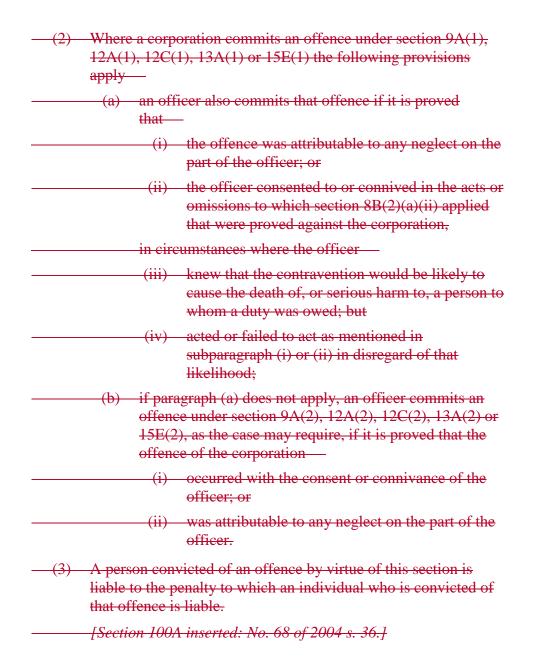
[Section 100 amended: No. 68 of 2004 s. 3535; No. 36 of 2020 s. 290.]

100A. Liability of directors etc. for offences by corporation involving gross negligence

(1) In this section

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

General provisions s. 100A



Part 9

Offences, penalties and legal proceedings

Division

Undertaking by offender in lieu of payment of fine

s. 101A



A person who knowingly or recklessly

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

<u>[Section 101 amended Deleted</u>: No. <u>33 36</u> of <u>20142020</u> s. <u>17291</u>.]

101A. No double jeopardy

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

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

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

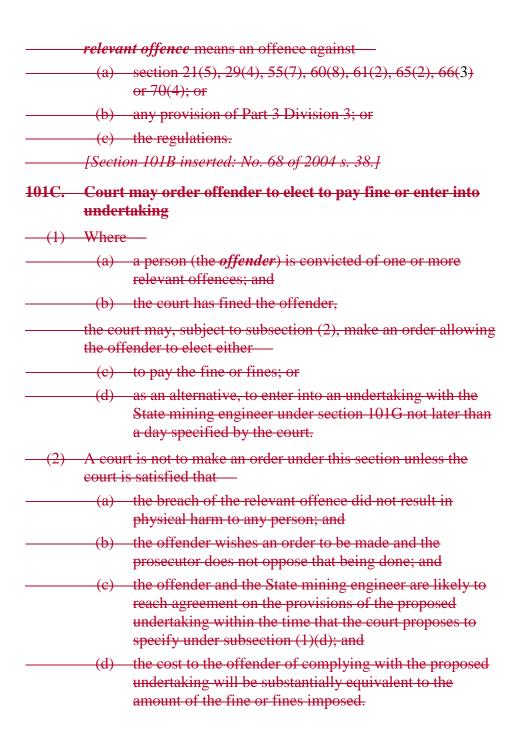
Heading inserted: No. 68 of 2004 s. 38.]

101B. Terms used

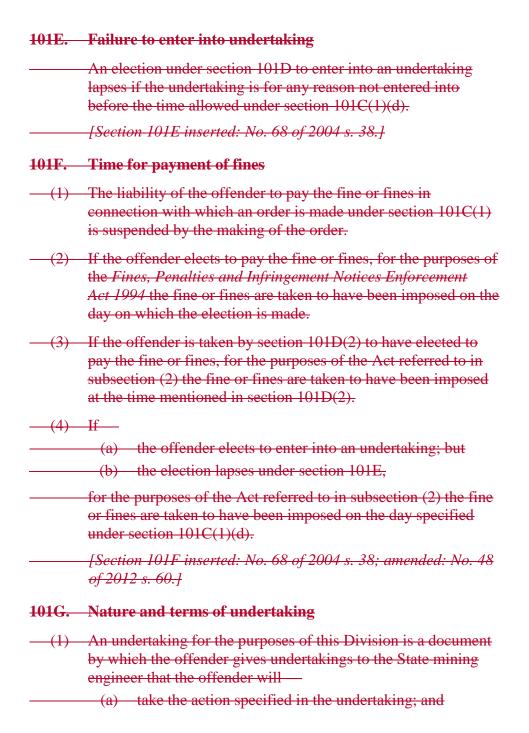
In this Division

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

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

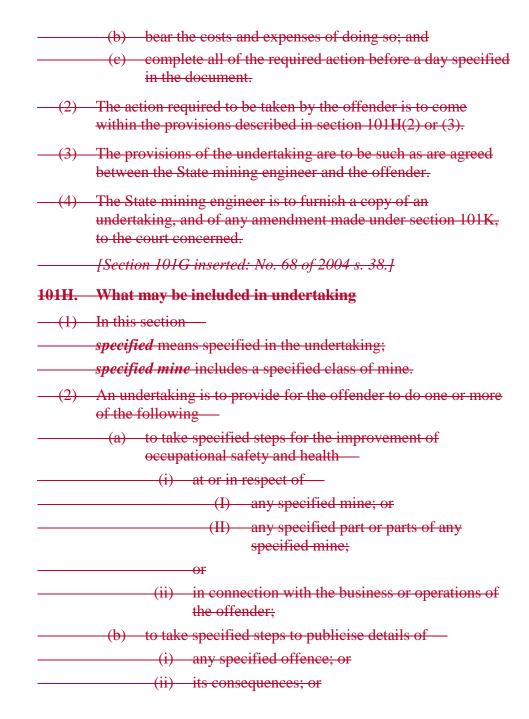


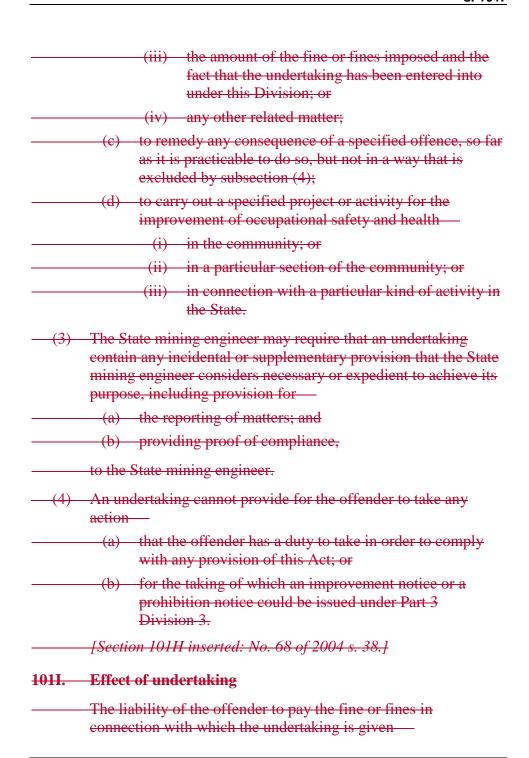
(3)	proceedings to allow—				
	(a) the offender time to consider whether the offender wishes an order to be made; and				
	(b) the prosecutor time to consider whether to oppose that being done,				
	as mentioned in subsection (2)(b).				
(4)	Nothing in this Division limits the powers of a court under the Sentencing Act 1995.				
	[Section 101C inserted: No. 68 of 2004 s. 38.]				
101D.	Making of election				
(1)	An election is made, pursuant to an order under section 101C(1), by the offender—				
	(a) lodging an election in writing with the court in which the order was made; and				
	(b) serving a copy of the election on the State mining engineer,				
	not later than 28 days after the day on which the order was made.				
(2)	- If				
	(a) an order is made under section 101C(1); but				
	(b) the offender fails to make an election in accordance with subsection (1),				
	the offender is taken, at the expiry of the period mentioned in subsection (1), to have elected to pay the fine or fines.				
	[Costion 101D inserted, No. 60 of 2004 a 201				



Mines Safety and Inspection Act 1994 Part 9 Offences, penalties and legal proceedings Division Undertaking by offender in lieu of payment of fine

Division Undertaking by offe s. 101H





signed by the offender and the State mining engineer.

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

101L. Undertaking may be published

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

(a) by publication in a newspaper; or

(b) by posting a copy of the undertaking on an internet website maintained by the department.

Mines Safety and Inspection Act 1994

Offences, penalties and legal proceedings
Undertaking by offender in lieu of payment of fine
Division
s. 101L

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

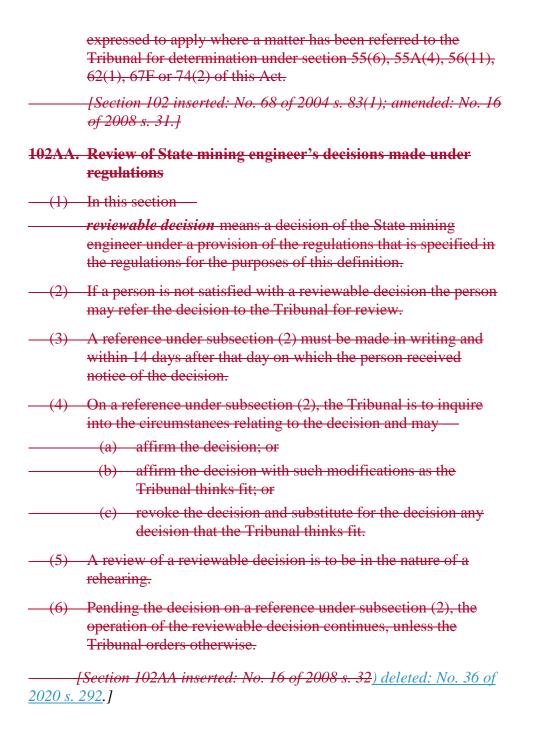
Part 9 Offences, penalties and legal proceedings

Division 3 Jurisdiction of Occupational Safety and Health Tribunal

s. 102

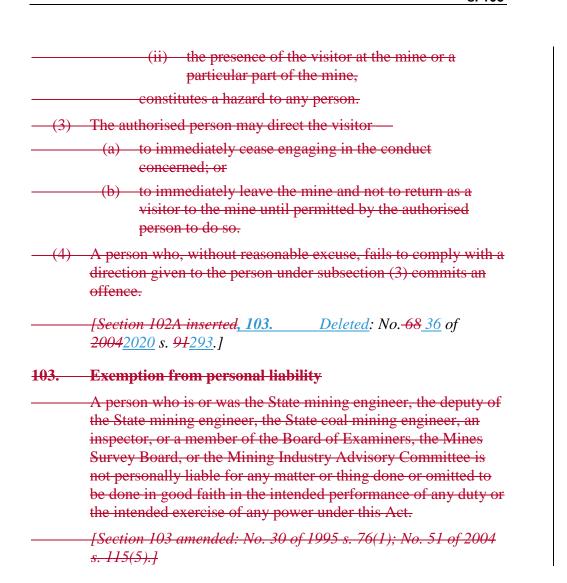
Division 3 — Jurisdiction of Occupational Safety and Health Tribunal

[Heading inserted: No. 68 of 2004 s. 82.] 102. Determination of certain matters etc. by Tribunal (1) This section applies where (a) under section 31BA, 55(6), 55A(4), 56(11), 59(1), 62(1), 67F(1), (2) or (3), 74(2) or (s. 101B-102AA(2) a matter is referred to the Tribunal; or (b) under section 68C a claim is referred to the Tribunal; or (c) under section 52 or 86 a person appeals to the Tribunal. (2) Where this section applies (a) the matter, claim or appeal may be heard and determined; and (b) a determination made by the Tribunal on the matter, claim or appeal has effect, and may be— (i) appealed against; and (ii) enforced, as if it were a matter in respect of which jurisdiction is conferred on the Tribunal by Part VIB of the Occupational Safety and Health Act 1984 (Part VIB); or (d) a determination made for the purposes of Part VIB. (3) The provisions of (a) Part VIB; and (b) the *Industrial Relations Act 1979* applied by that Part, have effect for the purposes of this section with all necessary changes. (4) In the operation of subsection (3), section 51J(1) of the Occupational Safety and Health Act 1984 has effect as if it were



Part 10 — Final provisions

[102A-	Visitors to mines to comply with directions
(1)	In this section
	authorised person, in relation to a mine, means
	(a) a managerial officer at the mine; and
	(b) an employer of any employee at the mine, including a person who is an employer by operation of section 15A, 15B or 15C; and
	(c) any self-employed person carrying out work at the mine;
	conduct includes a failure to do a particular act or thing;
	<i>employee</i> includes a person who is an employee by operation of section 15A, 15B or 15C;
	managerial officer, in relation to a mine, means—
	(a) the principal employer at the mine; and
	(b) the registered manager and any underground manager or quarry manager at the mine; and
	(c) a person appointed as an alternate or deputy of an officer referred to in paragraph (b).
(2)	Subsection (3) applies if
	(a) a person (a <i>visitor</i>) is at a mine otherwise than in the capacity of
	(i) a managerial officer; or
	(ii) an employer; or
	(iii) an employee; or
	(iv) a self-employed person;
	and
	(b) an authorised person believes on reasonable grounds that—
	(i) any conduct of the visitor at the mine; or

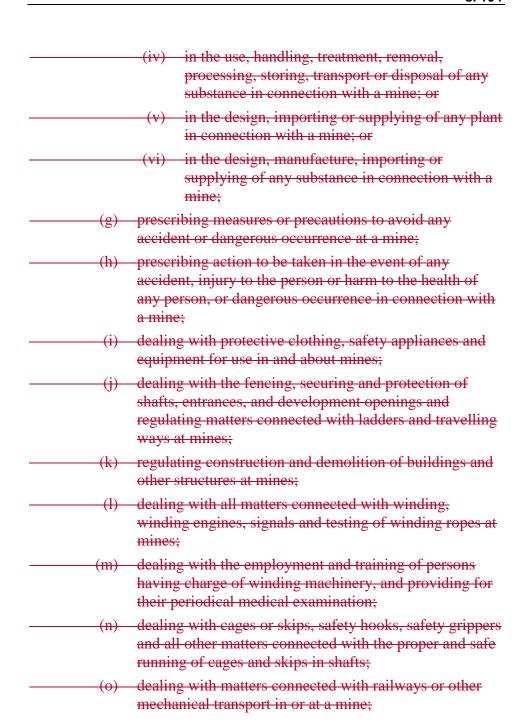


104. Regulations

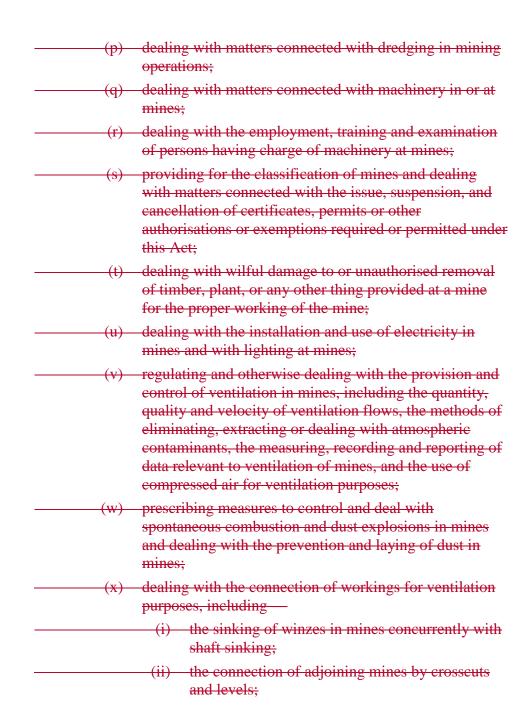
(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for achieving the objects and giving effect to the purposes of this Act, and in particular—.

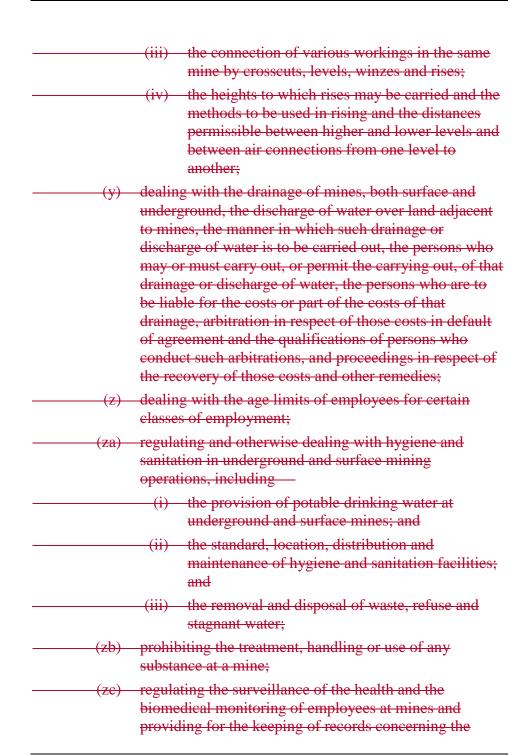
s. 104

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

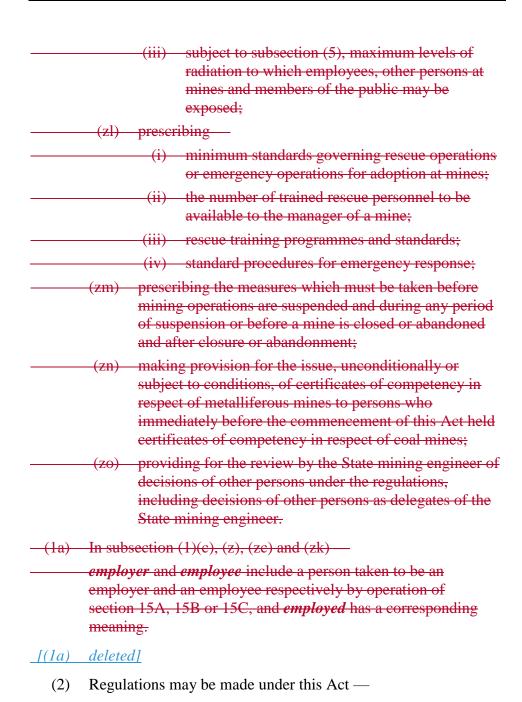


s. 104





	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;
(<u>zf)</u>	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;
<u>(zg)</u>	requiring and regulating the environmental rehabilitation of mine sites;
(zh)	dealing with the making of plans and surveys of mines;
(<u>Zi</u>)	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);
——————————————————————————————————————	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



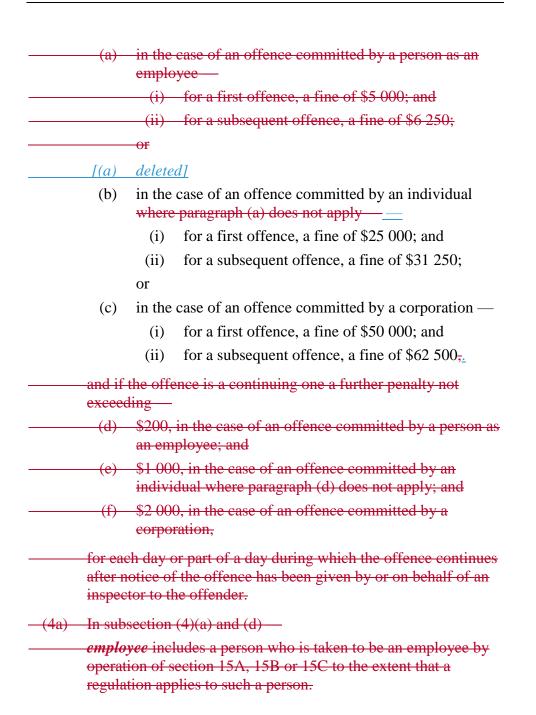
- (i) generally, or in a particular class of case or in particular classes of cases or in relation to all mines, to specified mines or to mines of a particular class; or
- (ii) at all times or at a specified time or at specified times; or
- (iii) throughout the State or in a specified part or specified parts of the State; or
- (iv) subject to specified exceptions; or
- (v) in respect of a particular coal mine in order to enhance safety and health at that mine;

and

- (b) so as to require a matter affected by them to be
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;

and

- (c) so as to confer on a specified person or body, or a specified class of person or body, a discretionary authority; and
- (d) so as to provide that, in specified cases or a specified class of case or specified classes of cases, whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.
- (3) In subsection (2), *specified* means specified in the regulations.
- (4) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding —



s. 105A

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.

[(4a), (5)] deleted

Regulations made under this Act may adopt either wholly or in part and either specifically or by reference, any of the standards, rules, codes or specifications of Standards Australia, and other Australian and international bodies of well established high repute.

[Section 104 amended: No. 30 of 1995 s. 75 and 76(2) and (4); No. 74 of 2003 s. 83; No. 7 of 2004 s. 70; No. 68 of 2004 s. 13, 39, 72 and 92; No. 16 of 2008 s. 33; No. 33 of 2014 s. 1414; No. 36 of 2020 s. 294.1

- 105A. Regulations for levy for costs of administering ActWork Health and Safety Act 2020 in relation to mines and mining operations
 - (1) Regulations may be made under section 104 to provide for a levy, which may be of the nature of a tax, to be payable to the State for the costs of administering this Act. the following —
 - (a) the Work Health and Safety Act 2020 in relation to mines and mining operations;
 - (b) this Act.

deleted] I(2)

- (2A)To the extent that the regulations provide for a levy that is a tax, the regulations may impose the tax.
 - The regulations may deal with (3)
 - the circumstances in which liability to pay the levy is imposed;
 - how the amount of the liability is to be assessed; (b)

- (c) on whom liability is imposed to pay the amount assessed, when payment becomes due, and how payment is to be made;
- (d) who is exempt or partially exempt from liability to pay the amount assessed and the conditions to which an exemption, or partial exemption, is subject;
- (e) rights to object to an assessment and how the objection is to be dealt with;
- (f) the consequences of failure to pay an amount in accordance with the regulations, which may include the imposition of an increase in the amount of an outstanding liability and may include interest;
- (g) how an amount outstanding may be recovered.
- (4) The regulations may
 - (a) provide for the keeping of records and the provision of information to facilitate the administration of the provisions for the levy;
 - (b) provide for the authorisation of persons to perform functions for the purpose of investigating and enforcing compliance with the provisions for the levy and, for those purposes, give authorised persons functions, which may include functions of a kind comparable to a kind of functions that this Act the Work Health and Safety Act 2020 gives to an inspector.

[Section 105A inserted: No. 45 of 2009 s. 4; amended: No. 36 of 2020 s. 295; No. 37 of 2020 s. 4.]

105AB. Mines Safety Account

- (1) An agency special purpose account under the *Financial Management Act 2006* section 16 is to be established for the department and called the Mines Safety Account.
- (2) The Mines Safety Account is to be credited with any levy paid under regulations mentioned in section 105A(1) including any

- additional outstanding liability and interest as mentioned in section 105A(3)(f).
- (3) Moneys held in the Mines Safety Account are to be applied in payment of the costs of administering this Act. the following
 - (a) the Work Health and Safety Act 2020 in relation to mines and mining operations;
 - (b) this Act.

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

105. Regulations applicable to mine to be displayed at mine

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

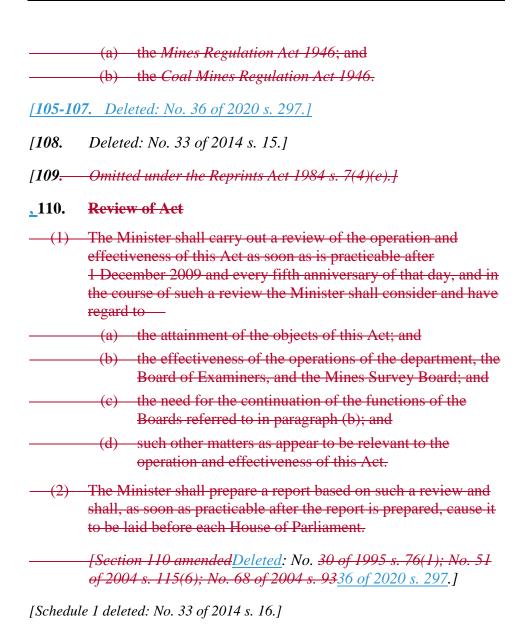
[Section 105; amended: No. 1636 of 2008 2020 s. 34296.]

106. Application of regulations to self-employed persons

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

107. Repeals

The following Acts are repealed—



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

Notes

This is a compilation of the Mines Safety and Inspection Act 1994 and includes amendments made by other written laws ^{2, 3}. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

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

Short title	Number and year	Assent	Commencement
Statutes (Repeals and Minor Amendments) Act 2003 s. 83 and 87(7)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Dangerous Goods Safety Act 2004 s. 70	7 of 2004	10 Jun 2004	1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)
Occupational Safety and Health Legislation Amendment and Repeal Act 2004 s. 115 ⁴	51 of 2004	12 Nov 2004	4 Apr 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000)
Mines Safety and Inspection Amendment Act 2004 ⁵⁻⁹	68 of 2004	8 Dec 2004	s. 1 and 2: 8 Dec 2004; Act other than s. 1 and 2: 4 Apr 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000 and <i>Gazette</i> 11 Feb 2005 p. 695)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction by <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 3: The <i>Mines Safet</i> amendments listed above exc			
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
Mines Safety and Inspection Amendment Act 2008	16 of 2008	16 Apr 2008	s. 1 and 2: 16 Apr 2008 (see s. 2(a)); Act other than s. 1 and 2: 17 Apr 2008 (see s. 2(b))
Reprint 4: The <i>Mines Safet</i> amendments listed above)	y and Inspect	ion Act 1994 as a	at 16 May 2008 (includes
Training Legislation Amendment and Repeal Act 2008 s. 55	44 of 2008	10 Dec 2008	10 Jun 2009 (see s. 2(2))
Mines Safety and Inspection Amendment Act 2009	45 of 2009	3 Dec 2009	s. 1 and 2: 3 Dec 2009 (see s. 2(a)); Act other than s. 1 and 2: 4 Dec 2009 (see s. 2(b))
Rail Safety Act 2010 Pt. 11 Div. 2	18 of 2010	28 Jun 2010	1 Feb 2011 (see s. 2(b) and <i>Gazette</i> 28 Jan 2011 p. 241)

Compare 10 Nov 2020 [06-d0-03] / 31 Mar 2022 [06-e0-00] Published on www.legislation.wa.gov.au

Short title	Number and year	Assent	Commencement
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
Reprint 5: The <i>Mines Safet</i> amendments listed above)	ty and Inspecti	on Act 1994 as a	t 4 Feb 2011 (includes
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 33	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 1371)
Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 Pt. 4 Div. 3	48 of 2012	29 Nov 2012	21 Aug 2013 (see s. 2(b) and <i>Gazette</i> 20 Aug 2013 p. 3815)
Mines Safety and Inspection Amendment Act 2014 Pt. 2	33 of 2014	3 Dec 2014	6 Jun 2015 (see s. 2(b) and <i>Gazette</i> 5 Jun 2015 p. 1971)
Rail Safety National Law (WA) Act 2015 Pt. 5	21 of 2015	17 Sep 2015	2 Nov 2015 (see s. 2(b) and <i>Gazette</i> 16 Oct 2015 p. 4149)
Reprint 6: The <i>Mines Safet</i> amendments listed above)	ty and Inspecti	on Act 1994 as a	t 22 Jan 2016 (includes
Mines Safety and Inspection Amendment Act 2018	17 of 2018	7 Sep 2018	s. 1 and 2: 7 Sep 2018 (see s. 2(a)); Act other than s. 1 and 2: 3 Oct 2018 (see s. 2(b) and Gazette 2 Oct 2018 p. 3780)

Uncommenced provisions table

To view the text of the uncommenced provisions see Acts as passed on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Work Health and Safety Act 2020 Pt. 15 Div. 2 Subdiv. 1	36 of 2020	10 Nov 2020	31 Mar 2022 (see s. 2(1)(c) and SL 2022/18 cl. 2)
Safety Levies Amendment Act 2020 Pt. 2	37 of 2020	10 Nov 2020	31 Mar 2022 (see s. 2(1)(b) and SL 2022/18 cl. 2)

Other notes

- The Industrial Relations Act 1988 (Commonwealth) was renamed the Workplace Relations Act 1996 by the Workplace and Other Legislation Amendment Act 1996 Sch. 19. The Workplace Relations Act 1996 was then repealed by the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.
- Footnote no longer applicable.
- The amendment in the *Coroners Act 1996* Sch. 1 it. 11 is not included because of an error in the reference to the provision to be amended. The amendment intended was made in the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 51.
- The Courts Legislation Amendment and Repeal Act 2004 Sch. 1 cl. 100 was deleted by the Criminal Law and Evidence Amendment Act 2008 s. 77(10).
- The Occupational Safety and Health Legislation Amendment and Repeal Act 2004 s. 115(7) reads as follows:

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

- (7) The amendment made by subsection (5) does not affect the operation of section 103 of the *Mines Safety and Inspection Act 1994*, before the commencement of that subsection, in relation to members of the Mines Occupational Safety and Health Advisory Board established under the section repealed by subsection (3).
- ⁵ The Mines Safety and Inspection Amendment Act 2004 s. 31(2) reads as follows:
 - (2) Section 97 of the *Mines Safety and Inspection Act 1994* as in force immediately before the commencement of subsection (1) applies to an offence against that Act committed before that commencement as if subsection (1) had not been enacted.
- The *Mines Safety and Inspection Amendment Act 2004* s. 57, 65 and 77 read as follows:

57. Saving provision for existing safety and health representatives

The amendments made by section 56 do not affect the continuation in office of any safety and health representative who held office under Part 5 Division 1 of the *Mines Safety and Inspection Act 1994* immediately before the commencement of that section.

65. Savings and transitional provisions for existing safety and health committees

- (1) The repeal of sections 65 and 66 of the *Mines Safety and Inspection Act 1994* (the *MSI Act*) by section 64 does not affect the status of a safety and health committee that is in existence under the MSI Act immediately before that repeal.
- (2) Any such committee is to be taken, after the commencement of section 64, to have been established under section 65 or 67A of the MSI Act inserted by section 64, as the case may require.
- (3) If before the commencement of section 64
 - (a) a request was made in respect of a mine under section 64(1) of the MSI Act repealed by section 64; but
 - (b) a safety and health committee had not been established for the mine under section 65 of the MSI Act so repealed,

the duty of the employer under section 65 of the MSI Act to establish a safety and health committee for the mine lapses on that commencement.

77. Transitional provision for directions given before commencement

Sections 22, 23(1)(a)(iv), 30 and 31 of the *Mines Safety and Inspection Act 1994* continue to have effect for the purposes of a direction under section 22 of that Act given before the commencement of this Part as if sections 74, 75 and 76 had not been enacted.

- The *Mines Safety and Inspection Amendment Act 2004* s. 83(2) and (3) read as follows:
 - (2) A matter referred to a safety and health magistrate under the *Mines Safety and Inspection Act 1994* and not finally determined before the commencement of subsection (1)
 - (a) may continue to be dealt with; and
 - (b) any order made in such a proceeding may be appealed against and enforced,

as if subsection (1) had not been enacted.

- (3) A determination or decision of a safety and health magistrate made before the commencement of subsection (1) may be the subject of —
 - (a) an application for leave to appeal; and
 - (b) an appeal for which leave is granted,

under section 54B(2) of the *Occupational Safety and Health Act 1984*, as applied by the section repealed by subsection (1), as if subsection (1) had not been enacted.

- The Mines Safety and Inspection Amendment Act 2004 s. 85(2) reads as follows:
 - (2) An appeal brought under section 52 of the *Mines Safety and Inspection Act 1994* but not finally determined before the commencement of subsection (1), may be dealt with and determined under that section as if subsection (1) had not been enacted.
- The Mines Safety and Inspection Amendment Act 2004 s. 86(2) reads as follows:
 - (2) An appeal brought under section 86 of the *Mines Safety and Inspection Act 1994* but not finally determined before the commencement of subsection (1), may be dealt with and determined under that section as if subsection (1) had not been enacted.