

WESTERN AUSTRALIA

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# MINES REGULATION AMENDMENT ACT

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No. 85 of 1990

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**AN ACT to amend the *Mines Regulation Act 1946* and the  
*Coroners Act 1920*.**

[Assented to 22 December 1990.]

The Parliament of Western Australia enacts as follows:

## **Short title**

1. This Act may be cited as the *Mines Regulation Amendment Act 1990*.

## **Commencement**

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

**Principal Act**

3. In this Act the *Mines Regulation Act 1946\** is referred to as the principal Act.

[\*Reprinted as authorized 15 October 1979 and amended by Acts Nos. 28 and 88 of 1984, 5, 41 and 109 of 1985, 77 of 1986 and 64 of 1987.]

**Long title amended**

4. The long title to the principal Act is amended by deleting “and mining practices” and substituting the following—

“ , mining practices and plant and substances supplied to or used at mines, to promote and improve the health, safety and welfare of persons at mines, ”.

**Section 3 repealed**

5. Section 3 of the principal Act is repealed.

**Section 4 amended**

6. Section 4 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting in the appropriate alphabetical positions the following definitions—

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

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

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

“employer” means a person by whom an employee is employed under a contract of employment or apprenticeship and when used in relation to a mine, means an employer by whom an employee is employed at the mine;

“hazard”, in relation to a person, means anything that may result in—

- (a) injury to the person; or
- (b) harm to the health of the person;

“health and safety committee” means a health and safety committee established under Division 2B;

“health and safety representative” means a health and safety representative elected under Division 2B;

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

“plant” includes any machinery, equipment, appliance, implement, or tool and any component or fitting thereof or accessory thereto;

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

“principal employer”, in relation to a mine, means the employer who is the proprietor, lessee or occupier of the mine and who has overall control and supervision of the mine and mining operations at the mine and of the manager;

“record book” means the record book referred to in section 18;

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

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

“State mining engineer” means State mining engineer referred to in section 5A;

“supply”, in relation to any plant or substance, includes supply and re-supply by way of sale, exchange, lease, hire or hire-purchase, whether as principal or agent;

“trade union” means—

- (a) an organization registered under section 53 of the *Industrial Relations Act 1979* or under the *Trade Unions Act 1902*; or
- (b) an organization registered under the *Industrial Relations Act 1988* of the Parliament of the Commonwealth and having employees as its members, or a branch of any such organization;

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

- (ii) by deleting the definitions of “agent”, “owner” and “section”;

(iii) in the definition of “manager” by deleting “having immediate charge and direction of the mining operations on any mine” and substituting the following—

“ who, as the agent of the principal employer, has immediate charge and direction of the mine and mining operations ”; and

(iv) in the definition of “registered manager” by deleting “manager registered” and substituting the following—

“ person who is appointed as a registered manager ”;

and

(b) by repealing subsection (3).

### Section 4A amended

7. Section 4A of the principal Act is amended by repealing subsection (1).

### Section 4B inserted

8. After section 4A of the principal Act the following section is inserted—

#### Jurisdiction of Industrial Relations Commission

“ 4B. (1) Where under this Act a matter is capable of being referred to the Industrial Relations Commission the matter may be heard and determined as if it were a matter in which jurisdiction were conferred on the Industrial Relations Commission by the *Industrial Relations Act 1979* and that Act shall, so far as it is capable of applying, extend to the exercise of its jurisdiction in such matters accordingly.

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

(a) every trade union shall be taken to be an organization within the meaning of that Act;

(b) the parties to proceedings in the matter shall be as determined by the Industrial Relations Commission.

(3) A decision by the Industrial Relations Commission of a matter referred under this Act shall have effect according to its tenor. ”.

**Section 5A inserted**

9. Before section 6 in Division 2 of the principal Act the following section is inserted—

**State mining engineer**

“ 5A. (1) There shall be appointed under and subject to the *Public Service Act 1978* a person to be State mining engineer.

(2) The State mining engineer may, either generally or as provided by the instrument of delegation, by writing, delegate to any inspector any of the functions of the State mining engineer under this Act other than this power of delegation, and a function performed in accordance with a delegation under this subsection is deemed to be performed by the State mining engineer. ”.

**Section 6 amended**

10. Section 6 of the principal Act is amended in subsection (2) by deleting “A person who for the time being holds or is acting in the office of State Mining Engineer or the office of Assistant State Mining Engineer” and substituting the following—

“ The State mining engineer or the person who holds the office of assistant State mining engineer ”.

**Section 7 amended**

11. Section 7 of the principal Act is amended by deleting “person for the time being holding or acting in the office of State Mining Engineer” and substituting the following—

“ State mining engineer ”.

**Section 9 amended**

12. Section 9 of the principal Act is amended by deleting “, 1904” and substituting the following—

“ 1978 ”.

**Section 12 amended**

13. Section 12 of the principal Act is amended—

(a) in subsection (1) in paragraph (a) by deleting “threaten or tend to the bodily injury of” and substituting the following—

“ constitute a hazard to ”;

(b) in subsection (2)—

(i) in paragraph (a) by deleting “threaten or tend to the bodily injury of” and substituting the following—

“ constitute a hazard to ”; and

(ii) in paragraph (d) by deleting “Mining Engineer” and substituting the following—

“ mining engineer ”;

(c) in subsection (3) by deleting “to either the owner,” and substituting the following—

“ either to the principal employer, or to the ”;

and

(d) by repealing subsection (4) and substituting the following subsections—

“ (4) A person to whom an inspector has given notice under subsection (3) of intention to inspect and examine a mine shall, on receiving that notice, forthwith notify the health and safety representative of that mine of that intention to inspect, or, if there are 2 or more health and safety representatives for that mine, such of them as have functions in relation to the matter or area with which the inspector is concerned.

(5) Upon completing an inspection of a mine, an inspector shall, in addition to making an entry in the record book in accordance with section 18, notify—

(a) the person to whom notice was given under subsection (3); and

- (b) where practicable, any health and safety representative or health and safety committee concerned,

of any action he has taken and any further action that he requires to be taken under this Act in relation to the mine as a result of the inspection.

(6) Where it is not practicable for an inspector to notify any health and safety representative or health and safety committee concerned of the results of an inspection in accordance with subsection (5), the person referred to in paragraph (a) of that subsection shall bring to the attention of the health and safety representative or health and safety committee concerned the entry in the record book.

(7) A person who contravenes subsection (4) or (6) commits an offence. ”.

### **Section 12A inserted**

14. After section 12 of the principal Act the following section is inserted—

#### **Liaison between workmen’s inspectors and health and safety representatives**

- “ 12A. A workmen’s inspector referred to in section 8 (3) who performs any function with respect to health, safety and welfare matters at the mine shall, in accordance with the regulations, liaise with any health and safety representative or health and safety committee at a mine. ”.

### **Section 14 amended**

15. Section 14 of the principal Act is amended—

- (a) by inserting after “section shall” the following—

“ affect the operation of section 12A or ”; and

- (b) by deleting “Union” in both places where it occurs and substituting the following—

“ trade union ”.



**Section 16 amended**

16. Section 16 of the principal Act is amended by deleting “owner, agent, or” and substituting the following—

“ employer and every ”.

**Section 18 repealed and a section substituted**

17. Section 18 of the principal Act is repealed and the following section is substituted—

**Results of inspection to be recorded in record book**

“ 18. After every inspection, the inspector who carried out the inspection shall forthwith enter in a record book of a type approved by the Minister to be kept at the mine, a record of the portions of the mine inspected by him, the nature of his inspection, every defect which he observes in the state and condition of the mine and machinery and any action he has taken and any further action that he requires to be taken under this Act in relation to the mine as a result of the inspection. ”.

**Section 19 amended**

18. Section 19 of the principal Act is amended by deleting “the workers employed” and substituting the following—

“ every person working ”.

**Section 22 amended**

19. Section 22 of the principal Act is amended—

(a) by deleting “In” and substituting the following—

“ Subject to sections 23E and 23M, in ”;

(b) by deleting “threaten or tend to the bodily injury of” and substituting the following—

“ constitute a hazard to ”;

- (c) in paragraph (1) by deleting “owner, agent” and substituting the following—  
“ principal employer ”;
- (d) in paragraph (2) by deleting “owner, agent or manager shall forthwith comply therewith, or, if he intends to object thereto, as provided by subsection (3) of this section” and substituting the following—  
“ principal employer or manager shall forthwith comply therewith, or, if he intends to object thereto, as provided by paragraph (3) ”;
- (e) in paragraph (3) by deleting “owner, agent” and substituting the following—  
“ principal employer ”;
- (f) in paragraph (5) by deleting “owner, agent” and substituting the following—  
“ principal employer ”; and
- (g) in paragraph (6) by deleting “owner, agent” and substituting the following—  
“ principal employer ”.

### **Section 23 amended**

**20.** Section 23 of the principal Act is amended—

- (a) by deleting “this Act” and substituting the following—  
“ section 22 ”; and
- (b) in paragraph (1) by deleting “owner, agent or manager of the mine” and substituting the following—  
“ employer or manager to whom the requisition is addressed under section 22 (1) ”.

**Section 23C amended**

21. Section 23C of the principal Act is amended in subsection (2) in paragraph (a) by deleting “the person holding or acting in the office of State Mining Engineer” and substituting the following—

“ the State mining engineer ”.

**Section 23D amended**

22. Section 23D of the principal Act is amended—

(a) in subsection (1)—

(i) in paragraph (b) by deleting “the owners, agents or managers of mines and quarries” and substituting the following—

“ an employer at, or a manager of, a mine or quarry ”; and

(ii) in paragraph (g) by deleting “Mines Department” and substituting the following—

“ department ”; and

(b) in subsection (2) by deleting “the owner, agent or manager of” and substituting the following—

“ an employer at, or a manager of, a ”.

**Section 23E amended**

23. Section 23E of the principal Act is amended in subsection (1) by deleting “Manager” and substituting the following—

“ employer, manager ”.

**Section 23F amended**

24. Section 23F of the principal Act is amended in subsection (7) by deleting “Mines Department” and substituting the following—

“ department ”.

**Section 23K amended**

25. Section 23K of the principal Act is amended in subsection (3) by deleting "Board" and substituting the following—

" Commissioner ".

**Section 23L amended**

26. Section 23L of the principal Act is amended in subsection (2) by deleting paragraph (l) and substituting the following paragraph—

" (l) prescribing the records to be kept of radioactive emissions and exposure to radiation and making provision for the examination of those records by inspectors. ".

**Divisions 2B and 2C inserted**

27. After section 23N of the principal Act the following Divisions are inserted—

" DIVISION 2B—HEALTH AND SAFETY REPRESENTATIVES  
AND COMMITTEES

**Notices requiring election of health  
and safety representatives**

23O. An employee who works at a mine may give notice to an employer at the mine requiring the election of a health and safety representative for the mine.

**Consultation on matters relevant to elections**

23P. (1) Where an employer is given notice under section 23O requiring the election of a health and safety representative, he shall, within 21 days of being given the notice, invite the appointment of a delegate or delegates, as the case requires, in accordance with subsections (2) and (3), and shall consult with that delegate or those delegates, as the case may be, as to the matters requiring to be determined under this section.

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

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

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

- (a) the number of health and safety representatives to be elected for the mine;
- (b) whether any training is to be agreed as being adequate for the purposes of section 23Q (8) (b) (iii) and, if so, what that training is to be; and
- (c) where none of the employees who work at a mine is a member of a trade union, the person by whom and the manner in which the election is to be conducted.

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

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

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

### **Election of health and safety representatives**

**23Q.** (1) In this section “election” means an election required for the purpose of electing a health and safety representative for the mine concerned.

(2) Where none of the employees who work at a mine is a member of a trade union, an election shall be conducted as determined under section 23P.

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

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

- (a) the trade union requests or, if there are 2 or more of them, those trade unions by agreement request, that the Electoral Commissioner conduct an election; or
- (b) the trade union does not indicate or, if there are 2 or more of them, neither of those trade unions indicates, within 21 days of receiving an invitation under section 23P (1), that an election is to be conducted by a trade union,

the election shall be conducted by the Electoral Commissioner.

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

(6) Subject to this section, health and safety representatives shall be elected in accordance with any determination under section 23P.

(7) Every employee who works at the mine is entitled to vote at an election and, where any of the parties consulting under section 23P to determine matters in relation to that election so requires, the election shall be by secret ballot.

(8) A person is not eligible to be elected as a health and safety representative for a mine unless the person—

- (a) is an employee who works at the mine; and
- (b) has—
  - (i) been continuously employed at the mine concerned during the preceding 2 years;
  - (ii) has a total of at least 2 years' experience at a mine in work of a similar nature to the work he does at the mine;

(iii) had a total of at least 12 months' experience of a type described in subparagraph (ii) and such training, if any, as is agreed under section 23P as being adequate for the purposes of this paragraph;

or

(iv) been approved by the State mining engineer for the purposes of this paragraph.

(9) If only one eligible candidate is nominated for election to an office of health and safety representative—

(a) a ballot need not be held; and

(b) that candidate shall be deemed to have been duly elected.

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

(11) Where a question relating to an election arises, the matter may be referred by any person interested in the question to the State mining engineer who may, if he is unable to resolve the matter to the satisfaction of the persons concerned, refer the matter to the Industrial Relations Commission for determination.

### **Terms of office**

**23R.** (1) A person who is elected as a health and safety representative holds office, subject to this Act, for a term of 2 years.

(2) A person ceases to hold office as a health and safety representative if—

(a) the term of office of the person expires and the person is not re-elected;

(b) the person ceases to be an employee who works at the mine for which he was elected;

(c) the person resigns office by notice given to the manager of the mine;

(d) the person is disqualified under section 23U.

**Functions of health and safety representatives**

23S. (1) The functions of a health and safety representative are, in the interests of health and safety at the mine for which the representative was elected—

- (a) to inspect the mine or any part of it—
  - (i) at such times as are agreed with the manager of the mine; or
  - (ii) where the representative has not inspected the mine, or that part of it, in the preceding 30 days, at any time upon giving reasonable notice to the manager;
- (b) immediately, 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, to carry out any appropriate investigation in respect of the matter;
- (c) to keep himself informed as to the health and safety information provided by the manager of the mine or an employer in accordance with this Act and liaise as necessary with the department and other Government and private bodies;
- (d) forthwith to report any hazard or potential hazard to which any person is, or might be, exposed at the mine that comes to the representative's notice to the employer concerned and to the manager of the mine;
- (e) where there is a health and safety committee for the mine, to refer to it any matters that the representative thinks should be considered by the committee;
- (f) to consult and co-operate with the manager of the mine and employers on all matters relating to the health, safety or welfare of persons in the mine;
- (g) to liaise with the employees, employers, and workmen's inspectors in accordance with section 12A, regarding matters concerning the health, safety or welfare of persons in the mine.



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

- (a) where requested to do so by an inspector, accompany an inspector while the inspector is carrying out, at the mine, any of the functions of the inspector under this Act;
- (b) request an employer to establish a health and safety committee for the mine at which there are in excess of 10 employees.

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

### **Manager to ensure safety of health and safety representative**

**23T.** (1) The manager of the mine shall ensure that whenever a health and safety representative is carrying out an inspection of a mine in accordance with section 23S (1) (a), a suitably experienced person has been given responsibility for ensuring the safe conduct through the mine of the representative.

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

### **Disqualification of health and safety representative**

**23U.** (1) A party mentioned in subsection (2) may refer to the Industrial Relations Commission the question of whether a health and safety representative should be disqualified on the grounds that the representative—

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

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

or on any number of those grounds.

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

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

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

(4) In determining what disqualification, if any, should be imposed under subsection (3), the Industrial Relations Commission shall take into account—

- (a) the harm, if any, caused to the employer, or manager of the mine or a commercial or business undertaking of that person;
- (b) the past record of the health and safety representative in performing the functions of a health and safety representative under this Act; and

- (c) whether the health and safety representative acted contrary to the public interest,

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

**Certain duties of employers and manager  
in relation to health and safety representatives**

**23V.** (1) This section applies in relation to a mine if there is any health and safety representative for that mine.

(2) The manager of a mine and every employer at the mine shall make available to each health and safety representative such information as each of those persons has, or could reasonably be expected to have, relating to—

- (a) hazards to persons that arise or may arise at the mine;
- (b) so far as it is relevant to the hazards mentioned in paragraph (a), the plant and substances used at the mine and the systems of work at the mine; and
- (c) the health and safety of employees who work at the mine.

(3) Where an employee so requests at an interview concerning occupational health, safety or welfare between an employer at the mine, the manager or a representative of either of those persons, and the employee, that employer or manager shall permit a health and safety representative to be present.

(4) The manager of the mine and every employer at the mine shall consult with health and safety representatives on intended changes to the mine or the plant or substances used at the mine where those changes may reasonably be expected to affect the health, safety or welfare of employees at the mine.

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

- (a) permit that representative to take such time off work, with pay, for the purposes of performing the functions of a representative under this Act as is provided for by section 23X (a); and

- (b) in accordance with the regulations, permit that representative to take such time off work, with pay, for the purposes of attending courses of training in occupational health, safety and welfare accredited under section 14 (1) (h) of the *Occupational Health, Safety and Welfare Act 1984* as is provided for by section 23X (b).

(6) Where any accident or dangerous occurrence takes place in a part of the mine where employees who are represented by a health and safety representative work, the manager of the mine and, where practicable, any employer, shall ensure that the health and safety representative is notified forthwith of the accident or occurrence.

(7) Every employer at a mine shall provide such facilities and assistance as are necessary or prescribed for the purposes of the performance by health and safety representatives of their functions under this Division.

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

### **Certain duties of employers in relation to health and safety representatives**

**23W.** (1) An employer at a mine—

- (a) shall not make available to a health and safety representative any medical information concerning an employee unless—

- (i) the employee has consented to the employer doing so; or

- (ii) it is in a form that does not identify, nor permit the identification of, the employee; and

- (b) is not required by section 23V (2) to make available information disclosing a trade secret.

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

### **Regulations regarding time off work for health and safety representative**

**23X.** The regulations may prescribe the time that a health and safety representative is to be permitted to take off work, with pay and other benefits, for the purposes of—

- (a) performing the functions that the representative is required to perform under this Act; and
- (b) the attendance of the representative at courses of training in occupational health, safety and welfare accredited under section 14 (1) (h) of the *Occupational Health, Safety and Welfare Act 1984*,

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

### **Requests for health and safety committees to be established**

**23Y.** (1) A health and safety representative for a mine at which there are in excess of 10 employees may request an employer at the mine to establish a health and safety committee for the mine under this Division.

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

- (a) notify the health and safety representative that the request is agreed to; or
- (b) where the employer considers that the circumstances of the case are such that a health and safety committee should not be required to be established under this Act, refer to the State

mining engineer the question of whether such a committee should be established and notify the health and safety representative that the matter has been referred to the State mining engineer.

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

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

### **Establishment of health and safety committees**

**23Z.** (1) An employer shall, in accordance with this Division and the regulations, establish a health and safety committee within 3 months of—

- (a) the coming into operation of a regulation requiring such a committee to be established by the employer;
- (b) service on the employer of a notice from the State mining engineer requiring the employer to do so; or
- (c) being requested under section 23Y to do so,

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

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

(3) An employer may, of his own motion, establish a health and safety committee at any time in accordance with this Act.

### **Composition of health and safety committees**

**23ZA.** (1) A health and safety committee for a mine shall consist of—

- (a) the health and safety representative, if any;

- (b) the person or persons elected by the employees for the purposes of this section; and
- (c) the person or persons nominated by the employer or employers at the mine for the purposes of this section.

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

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

(4) At least half of the members of a health and safety committee shall be health and safety representatives or persons elected by the employees for the purposes of this section.

(5) A person is not eligible for election or appointment as a member of a health and safety committee for a mine unless the person is an employee or employer who works at the mine, and the person or persons nominated by the employer or employers shall be, or shall include, a person or persons having the authority to give effect to such matters as the committee might reasonably resolve in connection with the health, safety and welfare of persons at the mine.

### **Review of State mining engineer's decision**

**23ZB.** The manager, an employer, a health and safety representative, or a trade union any member of which works at a mine, may refer to the Industrial Relations Commission for review by it any decision of the State mining engineer as to—

- (a) whether or not it would be appropriate for a health and safety committee to be established; or

- (b) the number of persons elected by the employees or appointed by the employer who are to be included in a health and safety committee.

### **Functions of health and safety committees**

**23ZC.** The functions of a health and safety committee are—

- (a) to facilitate consultation and co-operation between the manager of the mine, employers and employees in initiating, developing, and implementing measures designed to ensure the health, safety and welfare of employees at the mine;
- (b) to keep itself informed as to standards relating to health, safety and welfare generally recommended or prevailing in mines of a comparable nature and to review, and make recommendations to the manager of the mine, and any employer at the mine on, rules and procedures at the mine relating to the health, safety and welfare of the employees;
- (c) to recommend to the manager, employees and employers at the mine the establishment, maintenance, and monitoring of programmes, measures and procedures at the mine relating to the health, safety and welfare of the employees;
- (d) to keep in a readily accessible place and form such information as is provided under this Act by the manager and employers regarding the hazards to persons that arise or may arise at the mine;
- (e) to consider, and make such recommendations as the committee sees fit to the manager and any employer at the mine in respect of, any changes or intended changes to or at the mine that may reasonably be expected to affect the health, safety or welfare of employees at the mine;
- (f) to consider such matters as are referred to the committee by a health and safety representative; and



- (g) to perform such other functions as may be prescribed in the regulations or given to the committee, with its consent, by an employer at the mine or the manager of the mine.

### **Meetings**

**23ZD.** (1) Subject to subsection (2) and to the regulations, a health and safety committee may determine its own procedures.

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

### **DIVISION 2C—RESOLUTION OF ISSUES RELATED TO HEALTH, SAFETY AND WELFARE**

#### **Resolution of issues at the mine**

**23ZE.** (1) Where an issue relating to occupational health, safety or welfare arises in relation to a mine the employer concerned, or where the employer is not at the mine, the manager of the mine shall, in accordance with the relevant procedure, attempt to resolve the issue with—

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

whichever is specified in the relevant procedure.

(2) For the purposes of subsection (1), “the relevant procedure” means the procedure agreed between the manager of the mine and the employers and employees at the mine as applying in respect of the mine concerned or, where no procedure is so agreed, the procedure prescribed for that purpose in the regulations.

(3) Where attempts to resolve an issue as mentioned in subsection (1) do not succeed and there is both a health and safety representative and a health and safety committee in

respect of the mine concerned, the health and safety representative shall refer the issue to the health and safety committee for it to attempt to resolve the issue.

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

### **Inspector may be notified where issues unresolved**

**23ZF.** (1) Where attempts to resolve an issue as mentioned in section 23ZE are unsuccessful, and where there is a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, the manager of the mine, any employer or employee involved or a health and safety representative may notify an inspector thereof.

(2) An inspector, upon being notified under subsection (1), shall attend forthwith at the mine and either—

- (a) take such action under this Act, including under section 22, as he considers appropriate; or
- (b) determine that in the circumstances no action is required to be taken under this Act.

### **Refusal by employees to work in certain cases**

**23ZG.** (1) Nothing in section 23ZF prevents an employee from refusing to work where he has reasonable grounds to believe that to continue to work would expose him or any other person to a risk of imminent and serious injury or imminent and serious harm to his health.

(2) An employee who refuses to work as mentioned in subsection (1) shall forthwith notify—

- (a) his employer;
- (b) if his employer is not at the mine, the manager of the mine; and
- (c) if there is a health and safety representative for the mine concerned, such health and safety representative,

and the matter shall be regarded as an issue to which section 23ZE (1) applies.

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

**Assignment of other work**

**23ZH.** An employee who refuses to work as mentioned in section 23ZG (1) may be given reasonable alternative work to do until he resumes his usual work.

**Entitlements to continue**

**23ZI.** (1) An employee who refuses to work as mentioned in section 23ZG (1) is entitled to receive the same pay and other benefits, if any, which he would have been entitled to receive if he had continued to do his usual work.

(2) A dispute arising as to—

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

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

in accordance with subsection (1), may be referred by any party to the dispute to the Industrial Relations Commission. ”.

**Section 24 amended**

**28.** Section 24 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “owner of” and substituting the following—

“ principal employer at ”; and

(ii) by deleting “owner” in the second place where it occurs and substituting the following—

“ principal employer ”; and

(b) in subsection (5) by deleting “owner or agent” and substituting the following—

“ principal employer at the mine ”.

**Section 25 amended**

29. Section 25 of the principal Act is amended—

- (a) in subsection (5) by deleting “by the owner of the quarry”;
- (b) in subsection (6) by deleting “by the owner of the quarry”;
- (c) in subsection (6a)—
  - (i) by deleting “State Mining Engineer” in each place where it occurs and substituting in each place the following—

“ State mining engineer ”; and
  - (ii) by deleting “owner or registered manager of” and substituting the following—

“ principal employer at ”;
- (d) in subsection (7)—
  - (i) by deleting “registered manager or owner” and substituting the following—

“ principal employer at the mine ”;

and
  - (ii) by deleting “the owner, agent or manager” and substituting the following—

“ that employer ”; and
- (e) in subsection (7a)—
  - (i) by deleting “by the owner of the quarry”;
  - (ii) by deleting “registered manager or owner” and substituting the following—

“ principal employer at the quarry ”;

and
  - (iii) by deleting “the owner, agent or manager” and substituting the following—

“ that employer ”.

**Section 28 amended**

30. Section 28 of the principal Act is amended by deleting “owner and agent of such mine shall each commit” and substituting the following—

“ principal employer at the mine commits ”.

**Section 29 amended**

31. Section 29 of the principal Act is amended by deleting “owner, agent” and substituting the following—

“ principal employer ”.

**Section 30 amended**

32. Section 30 of the principal Act is amended—

(a) in subsection (1) by inserting after “shall” the following—

“ , in relation to matters over which he has control, ”; and

(b) in subsection (3) by deleting “the owner, agent” in both places where it occurs and substituting in each place the following—

“ an employer ”.

**Division 3A inserted**

33. After section 30 of the principal Act the following Division is inserted—

“ DIVISION 3A—GENERAL PROVISIONS RELATING TO  
OCCUPATIONAL HEALTH, SAFETY AND WELFARE

**No double jeopardy**

30A. A duty imposed on a person under this Division—

(a) does not affect the application of any other more specific duty imposed on that person under this Act or the regulations; and

(b) applies notwithstanding any other more specific duty imposed on that person under this Act or the regulations,

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

**Duties of employers**

**30B.** (1) An employer at a mine shall, so far as is practicable, provide and maintain a working environment in which his employees are not exposed to hazards and in particular, but without limiting the generality of the foregoing, an employer shall—

- (a) provide and maintain workplaces, plant and systems of work such that, so far as is practicable, his employees are not exposed to hazards;
- (b) provide such information, instructions and training to, and supervision of, his employees as is necessary to enable them to perform their work in such a manner that they are not exposed to hazards;
- (c) consult and co-operate with health and safety representatives, if any, and other employees at the mine where his employees work, regarding occupational health, safety and welfare at the mine;
- (d) where it is not practicable to avoid the presence of hazards at the mine, provide his employees with, or otherwise provide for his 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;
- (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 a manner such that his employees are not exposed to hazards.

(2) In determining the training required to be provided in accordance with subsection (1) (b) regard shall be had to the functions performed by employees and the capacities in which they are employed.

(3) For the purposes of this section, where, in the course of a trade or business carried on by him, a person (in this section called "the principal") engages another person (in this section called "the contractor") to carry out work for the principal—

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

(i) the contractor; and

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

and

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

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

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

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

(5) The duties imposed under subsection (1) on an employer who is the principal employer at a mine shall not be taken to be carried out only by the appointment of a manager for the mine.

(6) Notwithstanding subsection (1), any duty imposed under that subsection on an employer who is not the principal employer at the mine applies only in relation to matters over which the employer first mentioned has control, or but for an agreement between the 2 employers, would have had control.

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

**Duties of employees**

**30C.** (1) An employee at a mine shall take reasonable care—

- (a) to ensure his own health and safety at work; and
- (b) to avoid adversely affecting the health or safety of any other person through any act or omission at work.

(2) Without limiting the generality of subsection (1), an employee contravenes that subsection if he—

- (a) fails to comply, so far as he is reasonably able, with instructions given by his employer or the manager of the mine for his own health or safety or for the health or safety of other persons;
- (b) fails to use such protective clothing and equipment as is provided, or provided for, by his employer as mentioned in section 30B (1) (d) in a manner in which he has been properly instructed to use it;
- (c) misuses or damages any equipment provided in the interests of health, safety or welfare;
- (d) fails to report in accordance with section 30E; or
- (e) fails to report to the person in immediate authority over him, and where practicable, the person relieving him, on the state of that part of the works where he has been working.

(3) An employee shall co-operate with his employer and the manager of the mine in the carrying out by those persons of any of the obligations imposed by or under this Act.

(4) An employee who contravenes subsection (1) or (3) commits an offence.

**Duties of employers and self-employed persons**

**30D.** (1) An employer or a self-employed person at a mine shall—

- (a) take reasonable care to ensure his own health and safety at work; and



- (b) so far as is practicable, ensure that the health or safety of a person not being his employee is not adversely affected wholly or in part as a result of the work in which he or any of his employees is engaged.

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

### **Reporting of dangerous situations or occurrences**

**30E.** (1) Subject to subsection (2), every person working in a mine shall report forthwith to the person in immediate authority over him—

- (a) any significant incident of which he is aware that arises in the course of, or in connection with, his work; and
- (b) any situation at the mine that he has reason to believe could constitute a hazard to any person,

and that person shall report forthwith the information reported to him to the manager of the mine.

(2) Where a person referred to in subsection (1) does not have a person in immediate authority over him, he shall report forthwith, in the situations referred to in that subsection, to the manager of the mine.

(3) Every person working in a mine shall report forthwith to the manager of the mine any injury or harm to health of which he is aware that arises in the course of, or in connection with, his work.

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

### **Duties of principal employers and managers**

**30F.** (1) The principal employer and the manager of a mine shall take such measures as are practicable to ensure that the mine and means of access to and egress from the mine are such that persons who—

- (a) are at the mine; or

- (b) use the means of access to and egress from the mine,

are not exposed to hazards.

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

### **Duties of manufacturers, etc.**

**30G.** (1) A person who designs, manufactures, imports or supplies any plant for use at a mine shall, so far as is practicable—

- (a) ensure that the design and construction of the plant is such that persons who properly use the plant are not, in doing so, exposed to hazards;
- (b) test and examine, or arrange for the testing and examination of, the plant so as to ensure that its design and construction are as mentioned in paragraph (a); and
- (c) ensure that adequate information in respect of—
  - (i) any dangers associated with the plant;
  - (ii) the specifications of the plant and the data obtained on the testing of the plant as mentioned in paragraph (b); and
  - (iii) the conditions necessary to ensure that persons properly using the plant are not, in so doing, exposed to hazards,

is provided when the plant is supplied and thereafter whenever requested.

(2) A person who erects or installs any plant for use at a mine shall, so far as is practicable, ensure that it is so erected or installed that persons who properly use the plant are not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.

(3) A person who manufactures, imports or supplies any substance for use at a mine shall, so far as is practicable, ensure that adequate toxicological data in respect of the

substance and such other data as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance is provided—

- (a) when the substance is supplied; and
- (b) thereafter whenever requested.

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

### **Section 31 amended**

34. Section 31 of the principal Act is amended—

- (a) in subsection (1) (b) by deleting “union, within the meaning of that term under the Industrial Arbitration Act, 1912, to the Secretary or local representative of the union” and substituting the following—

“ trade union, to the secretary or local representative of that trade union ”;

- (b) in subsection (2) by deleting “owner or agent” and substituting the following—

“ principal employer at the mine ”; and

- (c) in subsection (4) by deleting “the accredited workers’ representative” and substituting the following—

“ a health and safety representative for the mine or a representative of a trade union, any member of which is employed at the mine ”.

### **Section 32 amended**

35. Section 32 of the principal Act is amended by deleting “an industrial union of workers,” and substituting the following—

“ a trade union ”.

### **Section 35 repealed**

36. Section 35 of the principal Act is repealed.

**Section 40 amended**

37. Section 40 of the principal Act is amended in subsection (3) by deleting “manager, owner and agent” and substituting the following—

“ principal employer at the mine and the manager of the mine ”.

**Section 43 amended**

38. Section 43 of the principal Act is amended in subsection (1) by deleting “owner, agent or manager, each of them” and substituting the following—

“ principal employer at the mine, both that employer and the manager ”.

**Section 45 amended**

39. Section 45 of the principal Act is amended in subsection (2) by deleting “Industrial Union” and substituting the following—

“ trade union ”.

**Section 47 amended**

40. Section 47 of the principal Act is amended—

- (a) in subsection (1) by deleting “owner, agent or”;
- (b) in subsection (2) by deleting “owner, agent or”;
- (c) in subsection (4) by deleting “owner, agent, or manager” and substituting the following—

“ principal employer at the mine ”; and

- (d) in subsection (6) by deleting “owner, agent, or”.

**Section 48 amended**

41. Section 48 of the principal Act is amended by deleting “owner, agent or” and substituting the following—

“ principal employer or the ”.

**Section 49 repealed**

42. Section 49 of the principal Act is repealed.

**Section 50 amended**

43. Section 50 of the principal Act is amended in subsection (1) by deleting “, whether owner or not,”.

**Section 51 amended**

44. Section 51 of the principal Act is amended—

(a) by deleting “owner, agent or” and substituting the following—

“ principal employer and the ”; and

(b) by deleting “owner, agent,” and substituting the following—

“ employer ”.

**Section 54 amended**

45. Section 54 of the principal Act is amended by deleting “, and any person in charge of machinery or other property which is damaged or destroyed as a result of his negligence, and any person who by his negligence causes personal injury to, or endangers the safety of any person or causes risk or likelihood of damage to any machinery or other property,”.

**Section 60 repealed and sections 60, 60A and 60B substituted**

46. Section 60 of the principal Act is repealed and the following sections are substituted—

**Evidentiary provisions**

“ 60. In proceedings for an offence against this Act an averment in the complaint that at a particular time—

(a) a particular place was a mine;

(b) a particular person was an employer of persons at a particular mine or was the principal employer at a mine;

(c) a particular person was the manager or registered manager of a mine;

- (d) a notice required under this Act to be given had not been given;
- (e) a prescribed fee had not been paid;
- (f) a particular person was an employee or inspector,

shall be deemed to be proved in the absence of proof to the contrary.

### **Offences by bodies corporate**

**60A.** (1) Where a body corporate is guilty of an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity he, as well as the body corporate, is guilty of that offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### **Discrimination**

**60B.** (1) An employer or prospective employer who in any way treats an employee or prospective employee less favourably than he otherwise would by reason only that the employee or prospective employee—

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

commits an offence.

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

### **Section 61 amended**

47. Section 61 of the principal Act is amended—

(a) in subsection (1) by deleting paragraph (f) and substituting the following paragraphs—

“ (f) Regulating all matters relating to noise at mines.

(fa) Providing for the health, safety and welfare standards and procedures to be complied with—

(i) at any mine;

(ii) in the performance of any work in connection with a mine;

(iii) in the use, cleaning, maintenance, disposal or transportation of any plant in connection with a mine;

(iv) in the use, handling, treatment, removal, processing, storing, transport or disposal of any substance in connection with a mine;

(v) in the design, importing or supplying of any plant in connection with a mine; or

(vi) in the design, manufacture, importing or supplying of any substance in connection with a mine.

(fb) The taking of any measures or precautions to avoid any accident or dangerous occurrence at any mine.

(fc) The taking of any action in the event of any accident, injury, disease or dangerous occurrence in connection with a mine. ”; and

(b) in subsection (4) by deleting “owner” in both places where it occurs and substituting in each of those places the following—

“ principal employer at, ”.

**Consequential amendment**

48. Section 25 of the *Coroners Act 1920\** is amended—

(a) in subsection (1) by deleting “owner” and substituting the following—

“ principal employer ”;

(b) in subsection (3) by deleting “owner” in each place where it occurs and substituting in each place the following—

“ principal employer ”; and

(c) in subsection (4) by deleting “owner” and substituting the following—

“ principal employer ”.

[\*Reprinted as approved 2 December 1980 and amended by Acts Nos. 17 and 87 of 1982, 80 of 1983 and 81 and 89 of 1986.]

**Savings**

49. The person holding office as the State mining engineer under the principal Act immediately before the commencement of this Act is deemed to have been appointed for the purposes of section 5A of the principal Act.

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