

WESTERN AUSTRALIA

MINES REGULATION AMENDMENT ACT

No. 64 of 1987

AN ACT to amend the *Mines Regulation Act 1946* and the
Parliamentary Commissioner Act 1971.

[Assented to 18 November 1987]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Mines Regulation Amendment Act 1987*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

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

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

Section 4 amended

4. Section 4 of the principal Act is amended by inserting after the definition of “underground superintendent” the following definition—

“ “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; ”.

Section 4A amended

5. Section 4A of the principal Act is amended—

(a) by inserting after the section designation “4A.” the subsection designation “(1)”; and

(b) by inserting the following subsection—

“ (2) Where a provision of this Act is inconsistent with a provision of the *Radiation Safety Act 1975* the latter provision prevails. ”.

Section 5 amended

6. Section 5 of the principal Act is amended—

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

“ Subject to subsection (1a), this ”; and

(b) by inserting the following subsection—

“ (1a) The provisions of this Act relating to winding engines apply to and in relation to a coal mine as defined in the *Coal Mines Regulation Act 1946*. ”.

Section 15 amended

7. Section 15 of the principal Act is amended by deleting the passage commencing with “and shall be liable” and ending with “imprisonment” where secondly occurring.

Section 16 amended

8. Section 16 of the principal Act is amended by deleting “shall be liable to a penalty not exceeding five hundred dollars” and substituting the following—

“ commits an offence ”.

Section 23C amended

9. Section 23C of the principal Act is amended—

(a) in subsection (2)—

(i) by deleting paragraph (b);

(ii) by deleting “5” in paragraph (c) and substituting “8”.

(iii) by inserting after subparagraph (c) (i) the following subparagraph—

“ (ia) one shall be an Inspector of Mines having specialised experience in occupational hygiene matters in the mining industry; ”;

(iv) by deleting subparagraph (c) (iii) and substituting the following subparagraph—

“ (iii) one shall be a medical practitioner having specialised experience in occupational health relevant to the mining industry nominated by the Permanent Head of the department principally assisting the Minister charged with the administration of the *Occupational Health, Safety and Welfare Act 1984*; ”;

(v) by deleting “one shall be a person who is” in subparagraph (c) (iv) and substituting the following—

“ 2 shall be persons who are ”; and

(vi) by inserting after subparagraph (c) (iv) the following subparagraph—

“ (iva) one shall be a person who is experienced in ventilation technology nominated by the body known as the Trades and Labor Council of Western Australia; ”;

and

(b) by repealing subsection (4) and substituting the following section—

“ (4) A quorum of the Board shall be constituted by the chairman and 4 members. ”.

Section 23D amended

10. Section 23D of the principal Act is amended in subsection (1) by inserting after “Health Act” in paragraph (g) the following—

“ 1911, the Department of Occupational Health, Safety and Welfare ”.

Sections 23G to 23N inserted

11. After section 23F of the principal Act the following sections are inserted—

Interpretation

“ 23G. In this section and in sections 23H to 23N and in Schedule 2—

“appointed member” means a member of the Board appointed under section 23H (2) (a) or (c);

“Board” means the Mines Radiation Safety Board established under section 23H;

“chairman” means the chairman of the Board;

“member” means a member of the Board and includes the chairman of the Board;

“radiation” means ionising radiation, that is, electromagnetic or corpuscular radiation capable of producing ions directly or indirectly;

“radioactive” means spontaneously emitting radiation by nuclear transformation;

“regulation” means a regulation made under section 23L.

Mines Radiation Safety Board

23H. (1) There is established by this section a board by the name of the Mines Radiation Safety Board.

(2) The Board shall consist of 8 persons of whom—

(a) one person shall be a person who is not an officer of the Public Service of the State who is appointed by the Minister;

(b) 3 persons shall be as follows—

(i) one person nominated by the Permanent Head;

(ii) one person nominated by the Permanent Head of the Department principally assisting the Minister to whom the administration of the *Occupational Health, Safety and Welfare Act 1984* is committed by the Governor; and

(iii) one person nominated by the Chairman of the Radiological Council established under the *Radiation Safety Act 1975*;

and

(c) 4 persons shall be appointed by the Minister as follows—

(i) 2 persons shall be appointed on the nomination of the body known as the Trades and Labor Council of Western Australia;

(ii) one person shall be appointed on the nomination of the body known as the Chamber of Mines; and

(iii) one person shall be appointed on the nomination of the body known as The Confederation of Western Australian Industry (Incorporated).

(3) The person appointed under subsection (2) (a) shall be chairman of the Board.

(4) An appointed member is entitled to such remuneration and allowances as are determined by the Minister on the recommendation of the Public Service Board.

(5) Appointment of a person as a member does not of itself render the *Public Service Act 1978* or any other Act applying to persons as officers of the Public Service of the State, applicable to that person or affect or prejudice the application to him of those provisions if they applied to him at the time of his appointment.

(6) The provisions of Schedule 2 shall have effect with respect to the constitution and proceedings of the Board.

Functions of the Board

23I. (1) In addition to the functions conferred on the Board under this Act, the functions of the Board are—

- (a) to advise the Minister with respect to radiation and radioactive contaminants in mines and make recommendations to the Minister with respect to—
 - (i) the maximum levels of radiation arising from or in the course of mining to which persons may be exposed;
 - (ii) the methods to be employed when dealing with radioactive tailings or other radioactive effluents arising from mining;
 - (iii) the preparation and implementation of legislation relating to the operation of mines being worked for radioactive substances or other material where radiation is or is likely to be present;
 - (iv) the co-ordination of safety measures in relation to radiation in mines;

- (b) to collect and disseminate information relating to radiation safety in mines; and
- (c) the promotion of radiation safety in mines.

(2) Before making any recommendation under subsection (1) the Board may and shall, whenever directed by the Minister, consult with any persons or body of persons who or which have an interest or function in relation to radiation safety.

Board may inquire into and report upon
radiation safety in a mine

23J. (1) For the purposes of carrying out its functions under this Act the Board may inquire into and report to the Minister upon—

- (a) the level of radiation or radioactive contaminants in any mine or arising from mining;
- (b) the measures taken with respect to radiation safety in a mine;
- (c) the discharge of radioactive effluents and radioactive atmospheric contaminants from a mine;
- (d) the disposal of waste products of a mine containing radioactive substances;
- (e) the rehabilitation and management of a mine area insofar as they relate to radiation safety upon the cessation of mining.

(2) The Board may for the purposes of subsection (1) call for and consider public submissions on any matter related to its inquiries.

(3) For the purposes of this section the Board, or, a member of the Board, with the approval of the Board, may enter any mine or authorize any person to enter a mine.

(4) The Board may for the purposes of carrying out its functions under this Act consult with and obtain advice from the Radiological Council constituted under the *Radiation Safety Act 1975* and any other department of the Public Service of the State on matters relating to radiation safety.

Committees

23K. (1) For the purposes of carrying out its functions under this Act the Board may with the approval of the Minister—

- (a) appoint committees consisting of members of the Board and other persons; and
- (b) delegate to any committee so appointed such of its functions as the Board specifies in the instrument of delegation.

(2) The Minister may at any time remove from a committee any person appointed to it whether a member of the Board or not.

(3) A person appointed to a committee shall be paid such remuneration as the Minister on the recommendation of the Public Service Board determines.

(4) The Board may give directions to a committee relating to the functions to be carried out by the committee and effect shall be given to any such direction.

Regulations

23L. (1) The Governor may make such regulations as are necessary or convenient for the purposes of providing for radiation safety in mines.

(2) Without affecting the generality of subsection (1) regulations may be made—

- (a) in relation to radiation with respect to the safety of persons working in or about mines or any area in which minerals are produced or treated;

- (b) subject to subsection (3) prescribe the maximum levels of radiation to which employees and the public may be exposed;
- (c) providing for the licensing of mines and mining operations where radiation is present;
- (d) requiring the compilation of such information as is, and the maintenance of such records as are, prescribed by persons who operate mines in which radiation or radioactive contaminants is or are present;
- (e) prescribing the methods to be adopted for the purposes of monitoring, assessing and predicting exposure of persons to radiation;
- (f) providing for the prohibition, regulation and control of radioactive effluents and radioactive atmospheric contaminants from a mine;
- (g) providing for the disposal of waste products containing radioactive substances;
- (h) providing for the decommissioning of a mine, mill and other associated facilities;
- (i) providing for the rehabilitation and management of a mine area following the cessation of production;
- (j) prescribing the instruments and methods to be applied to determine the levels of radiation and radioactive contaminants in or about a mine;
- (k) prescribing the qualifications of radiation safety officers;
- (l) prescribing the records to be kept by the owner, agent or manager of radioactive emissions and exposure to radiation and make provision for their examination by inspectors.

(3) Regulations under subsection (2) (b) shall be made only on the recommendation of the Radiological Council constituted under the *Radiation Safety Act 1975*.

(4) Where a code of practice in relation to radiation in or about a mine is formulated or adopted under any law of the Parliament of the Commonwealth regulations made under this section may adopt the code of practice formulated or adopted under that law.

Enforcement of regulations

23M. (1) Where a dispute arises from a decision made by an inspector with regard to the adequacy or standard of radiation protection on or in a mine, the manager or other party concerned shall abide by the inspector's decision but may appeal to the Senior Inspector for the district.

(2) If the dispute is not resolved by the decision made by the Senior Inspector a person aggrieved may within 7 days thereafter appeal to the Board and the Board may determine the matter.

(3) Nothing in this section prevents an inspector from proceeding against a person for an offence against the regulations.

Board may formulate codes

23N. (1) The Board may formulate codes of practice relating to radiation safety in or about mines.

(2) A code of practice formulated under subsection (1) may—

- (a) specify standards to be observed, practices and procedures to be followed and measures to be taken with respect to radiation safety;
- (b) recommend practices and procedures that may be followed, and measures that may be taken to further the attainment of the standards specified in a code of practice.

(3) A code of practice formulated under subsection (1) may adopt codes of practice formulated under any law of the Parliament of the Commonwealth or any State. ”.

Section 28 amended

12. Section 28 of the principal Act is amended by deleting the passage commencing with “be liable to a penalty” and ending with “day” and substituting the following—

“ commit an offence against this Act for each day or part of a day ”.

Section 43 amended**13.** Section 43 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting “shall be liable to a penalty not exceeding fifty dollars for” and substituting the following—

“ commits an offence in relation to ”; and

(ii) by deleting “the penalty” and substituting the following—

“ a penalty ”; and

(b) in subsection (2) by deleting “shall be liable to a penalty not exceeding forty dollars for each offence” and substituting the following—

“ commits an offence ”.

Section 46 repealed and substituted**14.** Section 46 of the principal Act is repealed and the following section substituted—**Winding engine drivers to be qualified**

“ 46. (1) Subject to this section, a person shall not—

(a) operate; or

(b) take charge of,

a winding engine by which persons or materials are raised or lowered or under which persons are working unless he is the holder of a winding engine driver's certificate of competency issued under this Act for the class of winding engine in question.

(2) A person shall not cause or permit a person to operate a winding engine by which persons or materials are raised or lowered or under which persons are working unless that second mentioned person is the holder of a winding engine driver's certificate of competency for the class of winding engine in question.

(3) This section—

- (a) applies to a coal mine within the meaning of that term in the *Coal Mines Regulation Act 1946*;
- (b) does not apply to a hoist.

(4) Where the Minister is satisfied that in the circumstances of a particular case—

- (a) it is impracticable to comply with subsections (1) and (2); and
- (b) all reasonable precautions are taken for safety,

the Minister may by order in writing direct that subsections (1) and (2) do not apply in relation to the circumstances specified in the order for the period specified in the order.

(5) An order under subsection (4)—

- (a) shall not be made for a period exceeding 6 months;
- (b) may be renewed from time to time;
- (c) may be revoked by the Minister at any time notwithstanding that the period in respect of which the order is made has not expired. ”.

Section 55 repealed and a section substituted

15. Section 55 of the principal Act is repealed and the following section is substituted—

“ 55. A person who commits an offence against this Act is liable to a penalty—

- (a) in the case of a corporation, of \$50 000;
- (b) in the case of a natural person, of \$5 000. ”.

Section 55A amended

16. Section 55A of the principal Act is amended in subsection (2) by deleting the passage commencing with “and is liable” and ending with “original offence”.

Section 61 amended

17. Section 61 of the principal Act is amended—

(a) in subsection (1)—

(i) by deleting paragraph (d) and substituting the following—

“ (d) Dealing with the examination and issuance of certificates to managers, supervisors and winding engine drivers under this Act and the constitution of Boards of Examiners therefor and the registration of managers, supervisors and engine drivers to whom such certificates have been issued. ”; and

(ii) by deleting paragraph (va);

(b) in subsection (2)—

(i) by inserting after paragraph (b) the following paragraph—

“ (ba) so as to adopt, either wholly or in part or with modifications and either specifically or by reference, any rules, regulations, codes or other subordinate legislation, made, determined or issued under any other Act or under any Act of the Parliament of the Commonwealth or of any standards, rules, codes or specifications of any body specified in the regulations; ”;

(ii) by inserting after “authority;” in paragraph (c) the following—

“ and ”;

(iii) by deleting “specified; and” at the end of paragraph (d) and substituting the following—

“ specified. ”; and

(iv) by deleting paragraph (e); and

(c) by inserting after subsection (4) the following subsection—

“ (5) Regulations made under this Act may adopt either wholly or in part and either specifically or by reference, any of the standards, rules, codes or specifications of the bodies known as the Standards Association of Australia, the National Health and Medical Research Council, the International Atomic Energy Agency, the World Health Organisation, the International Labor Organisation or such other like body as is specified in the regulations. ”.

Section 62 inserted

18. After section 61 of the principal Act the following section is inserted—

Review

“ 62. (1) The Minister shall carry out a review of the operation and effectiveness of this Act on every 5th anniversary of the date of the commencement of sections 23G to 23N and in the course of that review the Minister shall consider and have regard to—

- (a) the effectiveness of the Ventilation Board and the Mines Radiation Safety Board;
- (b) the need for the continuation of the functions of the Ventilation Board and the Mines Radiation Safety Board; and
- (c) such other matters as appear to him to be relevant to the operation and effectiveness of sections 23A to 23L.

(2) The Minister shall prepare a report based on his review made under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament. ”.

Heading to Schedule amended

19. The heading to the Schedule to the principal Act is amended by inserting after “SCHEDULE” the following—

“ 1 ”.

Schedule added

20. After the Schedule to the principal Act the following Schedule is added—

“ SCHEDULE 2 Sections 23G, 23H.

Provisions as to Constitution and Proceedings of the Mines Radiation Safety Board

Term of office

1. (1) Except as otherwise provided by this Act, an appointed member shall hold office for such term, not exceeding 3 years, as is specified in his instrument of appointment, but may from time to time be re-appointed.

(2) An appointed member, unless he sooner resigns, or is removed from office, shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

Resignation, removal, etc. of appointed members

2. The office of an appointed member becomes vacant if—
- (a) he resigns his office by written notice addressed to the Minister;
 - (b) he is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy; or
 - (c) he is removed from office by the Minister on the grounds of neglect of duty, misbehaviour, incompetence or mental or physical incapacity impairing the performance of his duties and proved to the satisfaction of the Minister.

Nomination of other members

3. A nomination of a member for the purposes of section 23H (2) (b) may be made from time to time and may be expressed to operate for a period or in such circumstances as are specified in the instrument of nomination and may be withdrawn by the nominator at any time.

Deputy members

4. (1) The Minister may appoint an eligible person to act as deputy of an appointed member other than the member appointed under section 23H (2) (a), to act in the place of the appointed member whenever the appointed member is absent by reason of sickness, absence or other cause and while so acting the deputy member is deemed to be a member of the Board.

(2) No act or omission of a deputy member shall be questioned on the ground that the occasion for his appointment or acting had not arisen or had ceased.

(3) The appointment of a person as a deputy member may be terminated by the Minister at any time.

Meetings

5. (1) The first meeting of the Board shall be convened by the chairman and thereafter, subject to subclause (2), meetings shall be held at such times and places as the Board determines.

(2) A special meeting of the Board may at any time be convened by the chairman.

(3) The chairman shall preside at all meetings of the Board at which he is present.

(4) If the chairman is absent from a meeting the person holding office under section 23H (2) (b) (i) if he is present shall preside at the meeting and if that person is absent from the meeting the members present shall appoint one of their number to preside.

(5) A quorum for a meeting of the Board is 5 members.

(6) At any meeting of the Board the person presiding at the meeting shall have a deliberative vote, and, in the event of an equality of votes, shall also have a casting vote.

(7) The Board shall cause accurate minutes to be kept of the proceedings at its meetings.

Leave of absence

6. The Minister may grant leave of absence to an appointed member on such terms and conditions as the Minister thinks fit.

Board to determine its own procedures

7. Except to the extent that they are prescribed, the Board shall determine its own procedures. ”.

Parliamentary Commissioner Act 1971 amended

21. The Schedule to the *Parliamentary Commissioner Act 1971* is amended by inserting, after the item relating to the Metropolitan Planning Council, the following—

“ Mines Radiation Safety Board constituted under the *Mines Regulation Act 1946*. ”.

Transitional

22. (1) With effect on and from the commencement day—

- (a) notwithstanding anything in the principal Act, a person who on that day was employed in or about a mine as a winding engine driver is deemed to be the holder of a winding engine driver's certificate of competency issued under and subject to the principal Act as amended by this Act; and
- (b) the provisions of the *Machinery Safety Act 1974* cease to apply to and in relation to a person referred to in paragraph (a).

(2) In this section—

“commencement day” means the day on which sections 14 and 17 (a) of this Act come into operation.