

# **COAL MINING SAFETY AND HEALTH BILL 1999**

## **EXPLANATORY NOTES**

### **SHORT TITLE**

This Bill may be cited as the *Coal Mining Safety and Health Bill 1999*.

### **POLICY OBJECTIVES**

The major policy objective of this Bill is to encourage all persons involved in the coal mining industry to improve safety and health by providing industry with modern safety and health legislation.

This is to be achieved by repealing the *Coal Mining Act 1925* and introducing modern legislation that adopts the following principles:

- an emphasis on duty of care obligations of employers and employees, and other persons involved in the supply of materials or services;
- joint employer and employee planning for safety and health by developing site-specific safety management systems;
- on-site management of risks involved in mining;
- specific provision for employee involvement in safety at the site;
- establishment of a tripartite Coal Mining Safety and Health Advisory Council to advise the Minister; and
- a major monitoring and enforcement role for the Inspectorate.

### **RATIONALE FOR THE BILL**

The systematic review of business legislation and regulation program instituted by a previous Government required that the *Coal Mining Act*

1925, which provides for safe operation of coal mines, be reviewed.

The Department of Mines and Energy (DME), the Queensland Mining Council (QMC—the peak industry association), other industry associations and relevant unions, namely the Construction, Forestry, Mining and Energy Union (CFMEU) and the Australian Collieries Staff Association (ACSA), all recognise deficiencies in the current regulatory regime covering safety and health in coal mines.

As part of the review process, a tripartite group with representation from employee and employer organisations and from Government developed safety and health proposals to form the basis for new legislation to replace the existing *Coal Mining Act*.

In development of the legislation, it was recognised that modern safety management focuses on creating a concept of “on-site ownership” of safety and health issues, brought about by the introduction of duty of care principles. It was also a Recommendation of the Moura Inquiry that duty of care principles be included in coal mining legislation. This concept was adopted, together with some of the traditional coal industry systems, to develop the Coal Mining Act Review Policy Directive that formed the proposal for the Coal Mining Safety and Health Bill.

The Bill was finalised after extensive consultation with industry, unions and other interested parties, and the major stakeholders support the policy directions contained in the Bill.

The Bill is consistent with the approach taken in the *Workplace Health and Safety Act 1995*, in the Mining and Quarrying Safety and Health Bill and in mining legislation in other States and the United Kingdom. Some of the detailed provisions reflect the specific hazards and circumstances of the coal mining industry.

## **ALTERNATIVE WAYS OF ACHIEVING THE POLICY OBJECTIVES**

The major industry and union organisations and Government acceptance of the critical policy objectives could only be achieved by repealing the *Coal Mining Act 1925* and replacing it with legislation administered by DME.

Single legislation to cover both the coal and metalliferous mining industries was considered. However, industry and unions did not support this proposal.

## **ESTIMATED COST OF GOVERNMENT IMPLEMENTATION**

The cost to Government of implementing the Bill will be administrative in nature and will not be significant. Costs will be met within existing budgetary allocations.

## **CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES**

The Bill has been drafted with due regard to the fundamental legislative principles as outlined in section 4 of the *Legislative Standards Act 1992*. However, in the hazardous industries that the legislation is intended to control, persons may endanger the safety and health of large groups of other people by failing to meet safety obligations.

It is necessary to strike a balance between the rights of persons not to be endangered by the actions of others and the rights of the individual. In this case there has to be some compromise on FLPs to ensure safety of others.

Intended provisions are similar to those that other States and the United Kingdom have found necessary to include in legislation covering mines.

All sectors of the industry recognise that failure to establish causes of serious accidents and high potential incidents have the potential to allow a situation to continue or reoccur that may endanger the lives of many other persons.

In addressing these concerns, it was determined that the most effective method to establish causes of serious accidents is to provide Inspectors with the power to require answers to questions relating to serious injuries or high potential incidents with appropriate safeguards to prevent this evidence being used against the person providing the answers. Additionally, it is considered that documents relating to safety and health matters held by persons with obligations under the proposed Act need to be available for examination by Inspectors (and industry safety and health representatives).

DME technical officers are of the opinion that the effectiveness of the legislation will be severely compromised without these power.

All parties agree that the causes of major accidents and incidents must be discovered to ensure proper remedial action can be taken to eliminate the occurrence of a similar situation.

**Specifically, the FLPs issues are:*****Requirement to answer to questions***

The proposed legislation includes powers for Inspectors when interviewing persons in connection with a serious accident or high potential incident to compel answers. It is not a reasonable excuse to refuse to answer because the answers may incriminate the person.

Persons who are compelled to answer questions must be advised prior to compulsory questioning that they may claim privilege if answering the questions may incriminate them. If privilege is claimed the information obtained under compulsion cannot be used in any proceedings against the person. Information and documents gained as a result of answers obtained under compulsion likewise cannot be used in any proceedings against the person and are not discoverable under FOI legislation.

The primary purpose of this power is to enable an Inspector to determine the nature and cause of accidents and incidents which may, if the underlying causes are not uncovered and remedied, lead to serious consequences involving fatalities or widespread destruction.

***Requirement to produce documents.***

The proposed legislation contains powers for persons with obligations under the Bill to be compelled to produce documents (this includes computer records etc) that are related to the person's obligations under the legislation, and that these documents may be copied or seized.

It is not a reasonable excuse that such documents may incriminate and there is no protection against these documents being used in criminal or civil proceedings.

This power was used during the Moura No 2 disaster to seize the records of the monitoring system that detected and recorded the accumulation of explosive gas underground and other valuable data relating to spontaneous ignition of coal.

Without this information the inquiry into the Moura No 2 disaster would have been unable to make any meaningful findings.

It is believed such documents should be available to be used to prosecute either under the proposed legislation or under the *Criminal Code 1899* where gross neglect has resulted in the death of others. In a

mining situation this may be many deaths. As these documents would be subject to normal discovery processes it is not considered that they should be protected from being used in civil proceedings.

However, where documents are the personal property of a person, protections are included. The Inspector must give warnings to the owner of the personal documents, and the owner may claim privilege. The use of the documents is then restricted to proceedings under the mining legislation and civil proceedings. Derivative use of privilege personal documents is also prohibited.

### ***Sections of the Criminal Code not to apply***

The Bill states that sections 23 and 24 of the *Criminal Code* do not apply to a contravention of clause 34 of the Bill.

These sections of the *Criminal Code* require the prosecution to disprove potential excuses of mistake of fact and acts or omissions that occur independently of the exercise of the will or for an event that occurs by accident. The Bill provides instead for a defence that the defendant must prove that the commission of the offence was due to causes over which the defendant had no control.

The exclusion of sections 23 and 24 of the *Criminal Code* is necessary because some matters are inherently within the knowledge of persons with obligations under the proposed legislation.

### ***Entry without Warrant***

The proposed legislation contains powers to enter places (other than dwelling places) without warrants or permission. However, access without warrant is limited to work places under the control of persons with obligations under the legislation. This power extends to work places off the mine site. Warrants will be required for other places.

The power to enter work places off the mine site is considered necessary because of the downsizing, outsourcing and the increasing use of contractors on mine sites to carry out major parts of the mining operations. Contractors have also been allocated obligations in the legislation.

Information published by the Western Australian Government identified contractors as one of the reasons for an increase in fatal injuries within the WA mining industry.

These powers are consistent with powers of Inspectors under the *Workplace Health and Safety Act*.

***Responsibility of executives of corporations***

In major corporations company executives have the authority to allocate resources according to the priorities they determine. It is necessary to ensure personnel in these positions are held accountable to ensure mine safety and health has a high corporate priority and is supported with the provision of adequate resources. In the Bills company executives have obligations to ensure safety and health. Other persons within the corporate structure also have obligations consistent with their ability to ensure safety and health.

The Bill, as previously mentioned, removes the protection given under sections 23 and 24 of the *Criminal Code*. This is similar to provisions in the *Workplace Health and Safety Act 1995*, and is necessary to ensure that senior executives take positive steps to ensure safety and health.

***Creation of offences under regulations carrying penalties of up to 400 penalty units***

The Bills provides for penalties of up to 400 penalties units for a breach of regulations. A penalty unit is currently \$75 for an individual and \$375 for a corporation. These are maximum penalties, and Courts consistently impose much smaller penalties.

The industry is highly capital intensive with individual earning very large amounts that are often related to production bonuses. If fines are to have deterrent value, then penalties of the magnitude included in the Bills are necessary.

It is not possible to include in the Bills every situation that will require penalties of this magnitude. The offences could relate to major infrastructure requirements, machine modifications, and mine monitoring and operational systems.

## **CONSULTATION**

Extensive consultation with the major stakeholders from industry and unions has taken place since 1992 within the tripartite Coal Legislation Review Group (LRG).

The LRG has representation from the QMC, the CFMEU, the ACSA and the Mines Inspectorate of DME.

Industry consultation also involved the individual members of the organisations represented on the LRG.

Specific State Government consultation involved the Workplace Health and Safety Program of the Department of Employment, Training and Industrial Relations, the Business Regulation Reform Unit, the Department of Justice and Attorney-General, the Department of the Premier and Cabinet, the Office of Rural Communities, the Office of Parliamentary Counsel, the Budget Division and National Competition Policy Unit of the Treasury Department and the Department of Communication, Information, Local Government and Planning. Also, Crown Law provided advice on a number of legal issues.

## **PURPOSE AND INTENDED OPERATION OF EACH CLAUSE**

An Act to regulate the operation of coal mines, to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations, and for other purposes.

## **PART 1—PRELIMINARY**

### *Division 1—Introduction*

#### **Clause 1—Short Title**

Provides that the Bill, when passed by Parliament, can be referred to as the *Coal Mining Safety and Health Act 1999*.

#### **Clause 2—Commencement**

Provides for the commencement of the Bill on a day to be fixed by proclamation.

***Division 2—Operation of Act*****Clause 3—Act binds all persons**

Sub-clause 3(1) provides that the Bill binds all persons including the State of Queensland and, subject to the legislative powers of the Queensland Parliament, the Commonwealth and other States.

Sub-clause 3(2) provides that nothing in the Bill makes the State liable to be prosecuted for an offence.

**Clause 4—What does this Act apply to**

Provides that the Bill applies to coal mines and coal mining operations. A coal mine is defined in Clause 9 of the Bill.

**Clause 5—Who does this Act apply to**

Provides that the Bill applies to any person who may affect the safety and health of persons because of coal mining. It also applies to an individual whose safety and health may be affected by mining.

***Division 3—Objects of Act*****Clause 6—Objects of Act**

Provides the objects of the Bill, and these are the protection of persons on or off a coal mine who may be affected by coal mining operations, and that the level of risk of injury or illness resulting from coal mining be at an acceptable level.

**Clause 7—How objects are to be achieved**

Provides the details on how the objects of the Bill are to be achieved. In particular it provides for:

- safety and health obligations;
- safety and health management systems;



- regulations and recognised standards;
- Coal Mining Safety and Health Advisory Council;
- safety and health representatives;
- provision of, and powers of, Inspectors;
- assessment and recognition of professional competencies;
- provision of management structures;
- underground coal mines rescue capabilities;
- emergency preparedness; and
- health assessment of workers.

#### *Division 4—Interpretation*

##### **Clause 8—Dictionary**

Provides that the words commonly used in this Bill are defined in Schedule 2 of the Bill.

##### **Clause 9—Meaning of “coal mine”**

Sub-clause 9(1) provides a definition of a coal mine. Specifically it relates to on-site activities on land held as a mining tenure or adjoining lands. It also relates to illegal mining activities. An abandoned coal mine having work performed to secure it is also a coal mine. It also provides that a place where tourism, education or research relating to where coal mining happens may be prescribed under a regulation to be a coal mine.

Sub-clause 9(2) provides that a coal mine includes any buildings provided for administration, accommodation and associated facilities that are either on, or are adjoining, the mining lease.

Sub-clause 9(3) provides that it is not a coal mine after abandonment merely because work is being done at the place by or on behalf of the State to ensure public safety, to rehabilitate it or to secure it.

**Clause 10—Meaning of “on-site” activities**

Sub-clause 10(1) provides details of what constitutes on-site activities referred to in sub-clause 9(1), and these are activities undertaken principally to explore for or win coal. The activities include constructions, exploration, mining and treating coal, disposal of waste products, rehabilitation, and maintenance and testing of plant, equipment or machinery.

Sub-clause 10(2) provides details of those activities that are not regarded as on-site activities. Those activities include airborne surveys and air transportation, use of public roads and railways, and pastoral activities.

Also, on-site activities do not include any operation exempted by regulation.

**Clause 11– Meaning of “safety and health”**

Provides a definition of safety and health of a person, and is the safety and health of a person to the extent it is, or may be, affected by coal mining operations or other activities at a coal mine.

**Clause 12—Meaning of “competence”**

Provides a definition for competence, and is the demonstrated skill and knowledge to carry out a particular task to a standard to maintain safety and health of persons.

**Clause 13—Meaning of “consultation”**

Provides a definition for consultation, and is a discussion between the site senior executive or supervisors and workers with the aim of reaching agreement about a matter.

**Clause 14—Meaning of “standard operating procedure”**

Provides a definition for standard operating procedure, and includes consulting with workers to achieve an acceptable level of risk for work duties, or facilities.

**Clause 15—Meaning of “accident”**

Provides a definition of accident, and is an event/s that results in an injury to a person.

**Clause 16—Meaning of “serious accident”**

Provides a definition of a serious accident, and is an accident that results in a death of a person or a person being admitted to hospital as an in-patient.

**Clause 17—Meaning of “high potential incident”**

Provides a definition of high potential incident, and is an event/s that has the potential to significantly and adversely affect safety and health of a person.

**Clause 18—Meaning of “risk”**

Provides a definition of risk, and is the chance of an event that may cause injury or illness happening when measured in terms of consequences and likelihood.

**Clause 19—Meaning of “hazard”**

Provides a definition of hazard, and is a thing or situation with potential to cause illness or injury.

**Clause 20—Meaning of “principal hazard”**

Provides a definition of principal hazard, and is a hazard that could cause multiple fatalities.

**Clause 21—Meaning of “coal mine operator”**

Provides a definition of the coal mine operator. In particular a coal mine operator is the person in charge of a coal mine. Separate coal mine operators may be appointed to control different parts of the surface of a coal mine provided certain conditions (e.g. no geographical separation, no physical overlapping and no separation of management) are all met in relation to the

division of operations on the surface of the mine.

It also provides that a person may be appointed a coal mine operator for more than one mine or separate parts of a surface mine.

### **Clause 22—Meaning of “geographically separated”**

Provides that in relation to Clause 21 the surface of a coal mine is geographically separated when there is a clear boundary between separate operations on the mine. Examples of geographical separation may include a treatment plant with its own facilities, an excavation with its own facilities including haul roads, and exploration that does not involve sharing facilities with operations in another part of the mine.

If geographical separation does not occur then more than one operator cannot be appointed.

### **Clause 23—Meaning of “physical overlapping of coal mining operations”**

Sub-clause 23(1) provides that in relation to Clause 21 physical overlapping operations include the shared use of haul roads, stock piles and workshops, stores and stores systems, hard stands areas (e.g. parking areas) and amenities.

If physical overlapping occurs then more than one operator cannot be appointed.

Sub-clause 23(2) provides examples of what is not physical overlapping coal mining operations, and these are:

- vehicles dumping into a receival hopper provided the vehicles does not travel into another part of the mine;
- conveyor system discharging into a bin or stockpile in another part of the mine;
- shared use of vehicle workshop facilities; and
- shared use of laboratory facilities.

**Clause 24—When is a coal mine operator not in control**

Provides examples where the coal mine operator is not in control of coal mining operations of part of a mine. Examples include a person involved in operations in one part of the mine:

- being able to move resources to another part of the mine;
- having general management responsibilities in another part of the mine; or
- controlling services (supervision and inspections) to another part of the mine.

**Clause 25—Meaning of “site senior executive”**

Provides a definition of site senior executive and is, subject to certain requirements, the most senior officer employed by the coal mining operator.

**Clause 26—Meaning of “supervisor”**

Provides a definition of supervisor, and is a coal worker whose duties include giving instructions/directions to other workers.

**Clause 27—Meaning of “industry safety and health representative”**

Provides a definition of an Industry Safety and Health Representative, and is a person representing coal workers on safety and health matters and carries out the role of a Industry Site Safety and Health Representative as defined elsewhere in this Bill.

**Clause 28—Meaning of “site safety and health representative”**

Provides a definition of a Site Safety and Health Representative, and is a worker elected by other workers to carry out the role of a Site Safety and Health Representative as defined elsewhere in this Bill.

## **PART 2—THE CONTROL AND MANAGEMENT OF RISK AND OTHER BASIC CONCEPTS**

### *Division 1—Control and management of risk*

#### **Clause 29—What is an acceptable level of risk**

Sub-clause 29(1) provides that all coal mining operations must be carried out so that the level of risk of injury or illness is both acceptable and at a minimum.

Sub-clause 29(2) provides what is a measurement of an acceptable level of risk, and that is the level being measured in both the likelihood and severity of injury or illness.

#### **Clause 30—How is an acceptable level of risk achieved**

Provides that management and operating systems must be established to achieve an acceptable level of risk. Those systems must incorporate risk management elements and practices that are appropriate for the individual mine. It also provides details of those elements and practices.

It also provides that the way an acceptable level of risk can be achieved may be prescribed under a regulation.

#### **Clause 31—What happens if the level of risk is unacceptable**

Provides that when a mine has an unacceptable level of risk that persons are evacuated and action to reduce the risk to an acceptable level is taken. Examples of actions include restricting the use of plant or substances.

Action to reduce the risk may be initiated by on-site personnel including the operator, site senior executive, the Site or Industry Safety and Health Representative or any worker, and the Mines Inspectorate.

***Division 2—Cooperation*****Clause 32—Cooperation to achieve objects of Act**

Sub-clause 32(1) provides that the Bill seeks to achieve co-operation between the operator, site senior executive and workers to achieve the objects of this Bill.

Sub-clause 32(2) provides that the establishment of a Coal Mining Safety and Health Advisory Council and the appointment of Industry and Site Safety and Health Representatives and involving workers are important methods of achieving safety and health for the coal mining industry in general, and the mine site in particular.

**PART 3—SAFETY AND HEALTH OBLIGATIONS*****Division 1—Preliminary*****Clause 33—Obligations for safety and health**

Provides details of those persons who have responsibilities under Division 2 and Division 3 of Part 3. Those persons not only include on-site persons and holders but also off-site persons involved in manufacturing, designing, supplying and importing plant and substances. It also includes erectors and installers of plant, contractors and service providers.

The intent of this clause is to ensure duty of care resides not only with on-site persons but also resides with other persons who may influence safety and health at coal mines.

**Clause 34—Discharge of obligations**

Provides penalties for persons who fail to discharge their obligations. Those penalties range from 400 to 800 penalty units or 1 to 2 years' imprisonment. For an individual a penalty unit is currently \$75, whilst for a body corporate a penalty unit is \$375.

**Clause 35—Person may owe obligations in more than 1 capacity**

Provides that a person may have more than one obligation at the same time under the Bill. An example is a person could be an operator, contractor and supplier of plant at the same time.

**Clause 36—Person not relieved of obligations**

Provides that nothing in this Bill that imposes an obligations on a person relieves another person of his/her obligations.

**Clause 37—How obligation can be discharged if regulation or recognised standard made**

Sub-clause 37(1) provides that if a regulation has been made which details the way of achieving an acceptable level of risk, then a person can only discharge his/her obligation by following the regulation.

The intent of this clause is to restrict other methods of addressing serious risk where it is appropriate to state a method of controlling the risk.

Sub-clause 37(2) provides that if a regulation prohibits exposure to a risk, then the only way an obligation can be discharged is by no exposure to the risk.

Sub-clause 37(3) provides that if a recognised standard details a way of achieving an acceptable level of risk, then a person can discharge his/her obligation by either following the standard or by adopting and following another way to level the risk which is at least equal to or better than the acceptable level.

**Clause 38—How obligations can be discharged if no regulation or recognised standard made**

Provides that if there is no regulation or recognised standard to minimise risk, then a person must take reasonable precautions and exercise proper diligence in determining an appropriate way of addressing the risk.



***Division 2—Generally applicable safety and health obligations of persons*****Clause 39—Obligations of persons generally**

Sub-clause 39(1) provides in detail the obligations of on-site and off-site persons. Those obligations include to comply with this Bill and, if required, comply with the procedures contained in the safety and health management system, provision of information necessary for others to undertake their duties and to take any other reasonable and necessary course of action to achieve an acceptable level of risk.

Sub-clause 39(2) provides in detail those obligations that an on-site person has in addition to the obligation under sub-clause 39(1) to reduce the risk of injury or illness to his/herself or another.

***Division 3—Obligations on holders, coal mine operators, site senior executives and others*****Clause 40—Obligation of holders**

Provides the obligation of a holder of a coal mine, if the holder is not also the operator. Those obligations include providing the intended operator with information to assist the provision of a safety and health management system and the preparation and implementation of principal hazard management plans.

It also provides that the contract appointing the operator is to include obligation on the operator to:

- establish a safety and health management system: and
- enter into an agreement with a mines rescue provider, provided the operation does not solely consist of exploration activities under an exploration permit or mineral development licence.

Maximum penalty for non-compliance is 100 penalty units.

This intention is to place clear safety and health obligations on holders, and to restrict the obligation to have a mines rescue agreement to coal mining operations.

**Clause 41—Obligations of coal mine operators**

Sub-clause 41(1) provides the obligations of a coal mine operator. Those obligations include: the management of risk to workers is at an acceptable level; the safety and health of the entire workforce and others; appointment and supervision of a site senior executive; to undertake audits and reviews of the safety and health management system; and the provision of adequate resources to ensure the effectiveness and implementation of the safety and health management system.

The supervision of the site senior executive includes ensuring the site senior executive develops and implements a safety and health management system, and develop, implement and maintain a management structure that helps ensure safe operations at the coal mine.

Sub-clause 41(2) provides that an operator has an obligation not to conduct mining operations without a safety and health management system.

The intent of this clause is to ensure that the coal mine operator has specific but broad obligations for coal mine safety and health for the operations which he/she controls.

**Clause 42—Obligations of site senior executive for coal mine**

Provides the obligations of the site senior executive. Those obligations include management of the level of risk, development and implementation of a safety and health management system and management structure, training of workers and the provision of resources necessary to carry out mining operations (eg. planning, leadership, control, supervision, expertise, monitoring and inspections).

The intent of this clause is to place specific obligations on the site senior executive for the safety and health of the coal mining operation for which he/she is responsible.

**Clause 43—Obligations of contractors**

Provides that any contractor must comply with the provisions of the Bill and any applicable safety and health management system.

**Clause 44—Obligations of designers, manufacturers, importers and suppliers of plant etc, for use at coal mines**

Provides the obligations of a designer, manufacturer and supplier of equipment for use at coal mines.

A designer or importer of plant for use at a relevant place has an obligation to ensure that the equipment is designed to be safe and without risk to health when used properly.

A manufacturer or importer of equipment for use at a relevant place has an obligation to ensure that the equipment is constructed to be safe and without risk to health when used properly.

A designer, manufacturer or importer of equipment has an obligation to ensure that the equipment undergoes appropriate levels of testing and examination to ensure compliance with the obligations specifically imposed on designers or importers in sub-clause 44(1) and manufacturers in sub-clause 44(2).

A designer, manufacturer, importer or supplier of equipment has an obligation to take all reasonable steps to ensure that appropriate information about the safe use of the equipment is available. For this clause, “appropriate” information states the use for which the plant has been designed and tested as well as the conditions (if any) that must be observed if the equipment is to be used safely.

Also, it places an obligation on the designer, manufacturer, importer or supplier to take the actions reasonably required by the Chief Inspector of Coal Mines to prevent the use of unsafe equipment. For example the Chief Inspector of Coal Mines may require the recall of equipment to prevent its use.

Further, it places an obligation on a supplier of equipment to notify the mine operator of any hazard or defect in the use of the equipment and any corrective actions to address the hazard or defect.

**Clause 45—Obligations of erectors and installers of plant**

Provides that an erector and installer of plant has an obligation to ensure it is erected or installed in a way that is safe and without risk to health. It also provides an obligation to ensure that nothing about the way the plant was erected or installed makes it unsafe or a risk to health when used properly.

**Clause 46—Obligations of manufacturers, importers and suppliers of substances for use at coal mines**

Provides an obligation on a manufacturer, importer and supplier of chemicals etc. A manufacturer or importer of a substance has an obligation to ensure the substance is safe and without risk to safety and health when used properly. They also have an obligation to ensure the substance undergoes appropriate levels of testing and examination to comply with the obligation to ensure the substance is without risk to safety and health when used properly.

Also, a manufacturer, importer or supplier has an obligation to ensure that appropriate information about the safe use of the substance is provided with the substance. For this clause, information is appropriate if it clearly identifies the substance and states (if any) the:

- precautions to be taken for the safe use, storage and disposal of the substance; and
- risks associated with the substance.

**Clause 47—Obligation of provider of services at coal mines**

Provides that a provider of a service has obligations to ensure the service does not:

- adversely affect the safety and health of miners or others; and
- adversely affect the use of plant.

***Division 4—Defences*****Clause 48—Defences for div 2 or 3**

Sub-clause 48(1) provides the defences in a proceeding against a person for a contravention of an obligation imposed under Division 2 (Safety and health obligation of persons) or Division 3 (Obligations on holders, coal mine operators, site senior executives and others) of Part 3.

Where there is a regulation about the way to achieve an acceptable level for a risk, it is a defence for the person if he/she followed the way prescribed in the regulation.

Where there is a recognised standard stating a way/s to achieve an acceptable level for a risk, it is a defence for a person if he/she adopted and followed the stated way/s. It is also a defence for the person if that he/she adopted and followed another way that achieved a level of risk that is equal to or better than acceptable level of risk.

Where there is no regulation or recognised standard, it is a defence for a person to prove that he/she chose an appropriate way and took reasonable precautions and exercised proper diligence to prevent the contravention.

Sub-clause 48(2) provides that it is also a defence for a person if the commission of the offence was due to causes over which the person had no control.

Sub-clause 48(3) provides that sections 23 and 24 of the *Criminal Code* do not apply in relation to a breach of Clause 34 of this Bill.

Sub-clause 48(4) provides that a reference to a recognised standard is a reference to a recognised standard in force at the time of the contravention.

## **PART 4—PROVISIONS ABOUT THE OPERATION OF COAL MINES**

### *Division 1—Notices about coal mines*

#### **Clause 49—Notices by holder**

Provides that the holder of a coal mine must notify the Chief Inspector of Coal Mines of the coal mine operator's particulars, a description of the land, the name of the coal mine or part of the surface of the mine and the date that coal mining is to commence. For exploration activities under a exploration permit or mineral development licence details of the operator are only required.

It also requires that the name of the mine or the mine operator must not be changed without first notifying the Chief Inspector of Coal Mines.

Penalty for non-compliance is 40 penalty units.

**Clause 50—Notices by coal mine operator**

Provides that the coal mine operator before the commencement of mining operations must notify the relevant regional Inspector of particulars of the site senior executive. It also provides that the coal mine operator must also notify the regional Inspector of the name and address of a person appointed as a replacement or relieving site senior executive within 7 days of the appointment.

Further it provides that when lands are added to or deleted from the mining operations, the coal mine operator must provide within 1 month written particulars of this happening to the Chief Inspector of Coal Mines.

Penalty for non-compliance is 40 penalty units.

**Clause 51—Notice of management structure**

Provides that the site senior executive must provide to the regional Inspector before the commencement of mining operations information on the coal mine management structure. It also provides for a penalty of 40 penalty units for contravention.

**Clause 52—Notice about exploration activities**

Provides that the coal mine operator must notify the regional Inspector before the commencement of exploration activities on exploration permits and mineral development licences details of the intended activity including the commencement date and duration. It also provides for a penalty of 40 penalty units for contravention.

*Division 2—Management of coal mines***Clause 53—Appointment of coal mine operator**

Provides that the holder may, by written contract, appoint a coal mine operator for a mine or part of the surface of a mine. It also provides that in respect of an appointment for part of the surface where that part of the surface is not a separate mining operation in terms of this Bill then the appointment is ineffective.

**Clause 54—Appointment of site senior executive**

Provides that a coal mine operator must only appoint one site senior executive for each mine or part of the surface of a mine. It also provides that a person cannot be appointed site senior executive for more than one coal mine unless the mines form part of a mining project or are exploration activities under an exploration permit or mineral development licence. Penalty for non-compliance is 500 penalty units.

**Clause 55—Management structure for safe operations at coal mines**

Provides an obligation on the site senior executive to develop and maintain a management structure that allows for the development and implementation of the safety and health management system, and to document the management structure.

The documented management structure must state the responsibilities of the site senior executive, the responsibilities and competencies for each senior position in the structure and provided the names and competencies of holders of senior positions in the structure.

It also provides for a penalty of 40 penalty units for non-compliance.

It also provides that an Inspector may by written notice to the site senior executive declare a senior position within the management structure.

**Clause 56—Competencies of supervisors**

Provides an obligation on the site senior executive not to assign supervisory tasks to a person unless that person is competent to perform the assigned tasks and has the necessary competencies to undertake those tasks, if prescribed.

It also provides for a penalty of 100 penalty units for non-compliance.

**Clause 57—Appointment of another site senior executive during temporary absence**

Provides that if the site senior executive is absent from duty for more than 14 days, the coal mine operator must appoint a person to act as and undertake the obligations of the site senior executive. It also provides for a penalty of 100 penalty units for failure to appoint as person to act as site

senior executive.

### **Clause 58—Other appointments during absences**

Provides that during the absence of any person mentioned in the management structure, the site senior executive must appoint another competent person to perform the duties of the absent person if the absent person actively supervises other and there is a health and safety risk. It also provides for a penalty of 40 penalty units for non-compliance.

### **Clause 59—Additional requirements for management of surface mines**

Provides that the site senior executive must appoint a person holding an open cut examiner's certificate of competency to carry out the responsibilities and duties under a regulation in I or more surface mine excavations. It also provides a penalty of 200 penalty units for non-compliance.

### **Clause 60—Additional requirements for management of underground coal mines**

Sub-clauses 60(1), 60(2) and 60(3) provide that the site senior executive must appoint an underground mine manager where there is an underground coal mine. Penalty for non-compliance is 400 penalty units. It further provides that the site senior executive may also be the underground mine manager provided he/she is appointed by the coal mine operator.

Sub-clause 60(4) provides that if the underground mine is to be managed in accordance with the commute system an alternate mine manager must be appointed. A commute system is normally used in mines using a fly-in/fly-out workforce, but could be used in other mines. It involves a duplicate management team. The sub-clause also provides a penalty of 400 penalty units for non-compliance.

Sub-clause 60(5) provides that a person appointed underground mine manager can only be appointed if that person has a first class certificate of competency for an underground coal mine. It also provides a penalty of 400 penalty units for non-compliance.

Sub-clause 60(6) provides that a direction to an underground mine manager about a technical matter can only be given by a person holding a



first class certificate of competency for an underground coal mine. It also provides for a penalty of 200 penalty units.

Sub-clause 60(7) provides that a person must not give a direction that may adversely affect safety and health to an underground mine manager. It also provides a penalty of 200 units for non-compliance.

Sub-clause 60(8) provides that the underground mine manager must appoint a person to be responsible for the control and management of the underground activities when the mine manager is not in attendance at the mine. The person appointed must hold a first or second class certificate of competency or a deputy's certificate of competency. It also provides a penalty of 200 penalty units for failure to comply.

Sub-clause 60(9) provides that in relation to activities in any explosion risk zone the underground mine manager must appoint a person/s holding a first or second class certificate of competency or a deputy's certificate of competency. It also provides a penalty of 200 penalty units for non-compliance.

Sub-clause 60(10) provides that the underground mine manager must appoint a person/s with appropriate competencies to control and manage the mechanical and electrical engineering activities at the underground mine. It also provides a penalty of 200 penalty units for non-compliance.

Sub-clause 60(11) provides that a person cannot be appointed as underground mine manager for more than one coal mine without the written approval of the Chief Inspector of Coal Mines. It also provides a penalty of 200 penalty units for non-compliance.

### **Clause 61—Appointment of ventilation officer**

Sub-clauses 61(1) and 61(2) provide that in regards to an underground coal mine, the site senior executive must appoint an appropriate person to be ventilation officer. It also provides a penalty of 200 penalty units.

Sub-clause 61(3) provides the underground mine manager may be appointed the ventilation officer.

Sub-clause 61(4) provides that the ventilation officer must have competencies recognised as appropriate by Coal Mining Safety and Health Advisory Council, and that on appointment the ventilation officer is directly

responsible for the establishment of effective standards of ventilation for the mine.

Sub-clause 61(5) provides the ventilation officer is subject to the direction and control of the underground mine manager for the implementation of the mine ventilation system and for the establishment of effective standards of ventilation for the mine.

Sub-clause 61(6) provides that in the temporary absences of the ventilation officer the duties and responsibility of that position are to be assumed by the underground mine manager, if no other competent person has been appointed.

Sub-clauses 61(7) and 61(8) provide that where an underground mine manager is also the ventilation officer, an Inspector may by written notice require the mine manager to demonstrate that he is capable of effectively carrying out the duties of both positions. If the underground mine manager is unable to demonstrate he/she can effectively carry out the duties of the ventilation officer, the Inspector may give an appropriate directive.

Sub-clause 61(9) provides that a ventilation officer must not be appointed for more than one mine, unless the Chief Inspector of Coal Mines gives permission for the appointment to the site senior executive. It also provides a penalty of 200 penalty units.

### ***Division 3—Safety and health management systems***

#### **Clause 62—Safety and health management system**

Sub-clauses 62(1) and 62(2) provides that the safety and health management system for a coal mine is a system that includes risk management elements and practices, and must be an auditable and documented system that forms part of the overall management system. The overall management system must include organisational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining a safety and health policy.

Sub-clause 62(3) provides that the safety and health management system must be adequate and effective to achieve an acceptable level of risk by:

- defining the safety and health policy of the coal mine operator;
- including a plan in relation to the implementation of the safety and health policy;
- providing information on strategies to develop the capabilities and support mechanisms to achieve the safety and health policy;
- including principal hazard management plans and standard operating procedures;
- providing means of measuring, monitoring and evaluating the performance of the safety management system, and remedial action to be taken in relation to those matters that do not conform with the safety management system;
- including a plan for the continual improvement and regular review of the safety and health management system; and
- including a plan to immediately review the safety and health management system, if there is a significant change in coal mining operations

Sub-clause 62(4) provides that a copy of the safety and health management system must be made available by the site senior executive for inspection by coal mine workers. Penalty for non-compliance is 100 penalty units.

Sub-clause 62(5) provides that the site senior executive must give a copy of a principal hazard management plan to a coal mine worker who requests a copy of the plan and whose work is affected by the plan. Penalty for non-compliance is 100 penalty units.

### **Clause 63—Principal hazard management plan**

Provides that a principal hazard management plan must identify, analyse and assess risk associated with a principal hazard, and must include standard operating procedures and other measures to control risk.

It also provides that the site senior executive must give a copy of the principal hazard management plan to a person who employs other at the coal mine affected by the requirements of the plan. Penalty for non-compliance is 200 penalty units.

**Clause 64—Review of principal hazard management plans and standard operating procedures**

Provides that this clause applies only if a safety and health management system has been developed or it is intended to modify an existing system. If the clause applies then the principal hazard management plans and standard operating procedures must be reviewed by the site senior executive in consultation with affected coal mine workers. It also provides for a penalty of 200 penalty units.

The review of the principal hazard management plans and standard operating procedures must take place for a new coal mine as soon as practicable after the commencement of mining operations, or in relation to the modification of existing plans and procedures before the modification is effected.

***Division 4—Records and reporting*****Clause 65—Changes in management structure to be reported to an inspector**

Provides that the site senior executive must provide written notice within 14 days of any change in the management structure to the regional Inspector. It also provides a penalty of 50 penalty units for failure to comply.

**Clause 66—Management structure to be recorded in the mine record**

Provides that the site senior executive must enter into the mine record details of the management structure and of persons holding positions in the structure, and any changes to the management structure. It also provides for a penalty of 50 penalty units

It also provides that information must be entered in the mine record within seven days of the establishment of, or changes to, the management structure.

**Clause 67—Plans of coal mine workings**

Sub-clause 67(1) provides that the site senior executive must maintain plans showing the extent of workings and the current position of workings

and, if the mine is an underground mine, significant topographical features on the surface. It also provides that information likely to be required to evaluate the effect of the coal mine by any adjoining coal mines, the safety of adjoining mines and any potential uncontrolled flow of material into the mine workings must be maintained. A penalty of 100 penalty units applies for non-compliance.

Sub-clause 67(2) provides that the site senior executive must produce to the Chief Inspector of Coal Mines by 31 December of each year plans showing the extent of mine workings. Penalty for non-compliance is 100 penalty units.

Sub-clause 67(3) provides that the site senior executive must if requested by a designated officer, produce plans that show the extent of or the current position of workings and on the information mentioned in sub-clause 67(1). It also provides a penalty of 100 penalty units for failure to comply.

Sub-clause 67(4) provides that the last coal mine operator must provide to the Chief Inspector of Coal Mines, within 14 days of the abandonment of a coal mine, plans showing the extent of mining. It also provides a penalty of 200 penalty units for failure to comply.

Sub-clause 67(5) provides that if asked by the site senior executive of an adjoining mine or the information is relevant to the safety of the adjoining mine, the site senior executive of the first mine must, as soon as reasonably practicable, provide the information mentioned in sub-clause 67(1). Penalty for non-compliance is 100 penalty units.

Sub-clause 67(6) provides that plans referred to in this clause must be certified by a person competent in mining surveying.

### **Clause 68—Mine record**

Provides that a coal mine operator must keep a record of:

- all reports etc. of inspections;
- all directives and remedial action taken;
- all serious accidents and high potential incidents; and
- any other information that may be required under a regulation.

It also provides that the records for the last six months must be available for inspection by workers, and that records must be kept for seven years

irrespective of whether or not entries were made under this Bill or under the *Coal Mining Act 1925*. Penalty of 200 penalty units for non-compliance with requirements to maintain records at mine for six months.

Further, it provides a penalty of 400 penalty units for a person who destroys, defaces or alters a mine record.

### **Clause 69—Display of reports and directives**

Provides that the site senior executive must display in a conspicuous place likely to be access by affected workers copies of all current directives and inspection reports. It also provides for a penalty of 100 penalty units for non-compliance.

## ***Division 5—Protection of abandoned coal mines***

### **Clause 70—Responsibility for protecting abandoned coal mines**

Sub-clauses 70(1) and 70(2) provides that the last coal mine operator is responsible for ensuring that operations are made safe and secure at the time of abandonment of the mine, and that the holder is responsible for ensuring discontinued operations are made safe and secure, if the coal mine operator fails to make safe and secure abandoned operations. Penalty for non-compliance is 800 penalty units.

Sub-clause 70(3) provides the without limiting sub-clauses 70 (1) and 70 (2) the holder must ensure the mine is safe and made secure. Penalty for non-compliance is 800 penalty units.

Sub-clause 70(4) provides that Department of Mines and Energy can make safe an abandoned mine and recover costs.

Sub-clause 70(5) provides that a conviction under this clause does not affect the Department's ability to recover the cost of making safe and securing the mine.

## **PART 5—RECOGNISED STANDARDS**

A recognised standard under this Bill is similar to an advisory standard under the *Workplace Health and Safety Act 1995*, and is intended to offer advice to persons on how their obligations may be met.

### **Clause 71—Purpose of recognised standards**

Provides that a recognised standard that details ways to achieve an acceptable level of risk may be made.

### **Clause 72—Recognised standards**

Provides that the Minister may make recognised standards and those standards must be published in the Government Gazette. It also provides that a copy of each standard and supporting documentation must be kept and be made available for inspection free of charge at any departmental office involved in safety and health.

Further, a person may obtain a copy of a recognised standard on payment of a determined fee.

### **Clause 73—Use of recognised standards in proceedings**

Provides that a recognised standard is admissible as evidence in any proceeding under this Bill provided: the proceedings relate to a contravention of an obligation imposed under Part 3; there is an allegation that a person contravenes his/her obligation to achieve an acceptable level of risk; and the standard is about achieving an acceptable level for a risk.

## **PART 6—INDUSTRY CONSULTATIVE ARRANGEMENTS**

The intent of this Part is to establish a Coal Mining Safety and Health Council that will allow industry stakeholders to be involved in suggesting ways in which safety and health in the coal mining industry can be improved.

***Division 1—Purposes of part*****Clause 74—Purposes of pt 6**

Provides that the purposes of Part 6 are to provide for the establishment of and the functions of the Coal Mining Safety and Health Advisory Council.

***Division 2—Coal mining safety and health advisory council and its functions*****Clause 75—Coal mining safety and health advisory council**

Provides that under this clause of the Bill the Coal Mining Safety and Health Advisory Council is established.

**Clause 76—Functions of council**

Sub-clause 76(1) provides that the primary function of the Council is the provision of advice and recommendations to the Minister concerning the promotion and protection of safety and health of persons at coal mines.

Sub-clause 76(2) provides that the Council must discharge the primary function referred to in sub-clause 76(1) by periodically reviewing:

- the effectiveness in coal mines of this Bill, regulations or recognised standards;
- the effectiveness of the control of the risk of injury or illness to any person from coal mining operations; and
- reviewing the effectiveness of the Board of Examiners and the need for the continuation of its functions, within 3 years of the commencement of this legislation.

Sub-clause 76(3) provides that the Council also has the function of recognising, establishing and publishing the competencies accepted by the Council as qualifying a person to carry out stated functions or performs duties under this Bill.

Sub-clause 76(4) provides that in reviewing the effectiveness referred to in sub-clause 76(2), the Council must have regard to the following:



- the risk management performance of industry;
- the appropriateness of recognised standards;
- education, training and standards of competency;
- the implementation of recommendations resulting from an Inspector, inquest or inquiry etc;
- the promotion of community knowledge and awareness of safety and health; and
- any other matter referred to the Council by the Minister.

**Clause 77—Annual report**

Provides that the Council must prepare a report for the Minister on its operations within four months of the end of each financial year, and that the report must be tabled in the Legislative Assembly.

***Division 3—Membership and conduct of council proceedings*****Clause 78—Membership of council**

Provides that the Council shall consist of an Inspector as chair and eight other members.

It also provides that the chair is to be appointed by the Minister.

**Clause 79—Organisations to submit names to Minister**

Provides that organisations representing coal mine operators and coal mine workers may each provide a panel of nominees of not less than four names to be members of the Council, within one month of being requested by the Minister. It also provides the nominees must be experienced in coal mining operations. All industrial organisations representing operators and all industrial organisations representing workers can each only submit one panel of nominees.

**Clause 80—Appointment of members**

Provides that the Minister must appoint three persons from each panel as

members of the Council, and that one of the persons appointed from the list provided by the organisations representing coal mine workers must be from the organisation that represents most of the coal mine workers in Queensland.

It also provides that two Inspectors, in addition to the Inspector to be chairperson, must be appointed to the Council.

Further, it provides that the Minister can only appoint a person if the person is experienced in coal mining operations, and that the Minister in selecting any member of Council must consider an individual's breadth of experience, commitment to promoting safety and health in the coal industry, and practical knowledge of the coal industry and relevant legislation.

If a panel of names is not submitted the Minister may arbitrarily appoint the members the Minister considers appropriate.

### **Clause 81—Duration of appointment**

Provides that except for the chairperson each term of an individual member of the Council shall not exceed three years, provided any individual's cumulative period does not exceed eight consecutive years.

The chairperson is appointed for a term that the Minister considers appropriate.

### **Clause 82—Conditions of appointment**

Provides that a member of the Coal Mining Safety and Health Advisory Council is entitled to the remuneration and allowances determined by the Governor in Council.

It also provides that the Governor in Council determines the conditions of office, if not provided elsewhere in this Bill.

### **Clause 83—Member ceasing as member**

Provides those circumstances when a position on Council becomes vacant.

**Clause 84—Times and places of council meetings**

Provides that the Council must meet at least twice a year at times and places decided by Council. A meeting may be called by the chairperson either personally or at the request of at least four members of Council, or by the Minister.

**Clause 85—Presiding at meetings of the council**

Provides that the chairperson must act as presiding member (chair), except in his/her absence when an Inspector nominated by the chairperson is to act as presiding member (chair).

**Clause 86—Quorum and voting at meetings of the council**

Provides that a quorum at a meeting of Council is four members provided there is included in the members attending a representative from the coal mine operators, the coal mine workers and the Inspectorate. It also provides that a question is decided by a majority of votes and if the votes are equal then the presiding member has a casting vote.

**Clause 87—Recommendation to Minister if vote not unanimous**

Provides that the advice or recommendation provided to the Minister by the Council must include information on whether or not the advice or recommendation was the unanimous view of Council. If not, the Council must provide the Minister with the views of the minority of members.

**Clause 88—Taking part in meetings by telephone etc.**

Provides that Council meetings may be conducted by any technology permitting contemporaneous communication between members of the Council. (eg. telephone, close circuit television etc).

**Clause 89—Resolutions without meetings**

Provides that a meeting of Council is deemed to have taken place if at least six members of Council, who must include a representative of the coal mine operators, coal mine workers and Inspectorate, have signed a

resolution. It also provides that the resolution may be executed in part provided each is identical, and that all members must be provided with a copy.

**Clause 90—Minutes by the council**

Provides that minutes must be kept of all Council proceedings.

**Clause 91—Committees**

Provides that committees to deal with particular issues can be appointed by the Council.

**PART 7—SITE SAFETY AND HEALTH  
REPRESENTATIVES**

The intent of this Part is to allow for elections of coal mine workers as Site Safety and Health Representatives to represent the safety and health interests of all coal mine workers at mining sites.

*Division 1—Purposes of part*

**Clause 92—Purposes of pt 7**

Provides that Part 7 of the Bill relates to the election and functions and powers of Site Safety and Health Representatives.

*Division 2—Site safety and health representatives*

**Clause 93—Election of site safety and health representatives**

Sub-clauses 93(1) and 93(2) and 93(3) provide that workers at a coal mine may elect no more than two persons to be Site Safety and Health Representatives for the mine for a term decided by the workers, except

under circumstances where there is more than one site senior executive when up to two workers can be elected for each site senior executive. A worker elected as a Site Safety and Health Representative can only hold that position if he/she holds appropriate competencies recognised by the Coal Mining Safety and Health Advisory Council.

Sub-clause 93(4) provides that for the purposes of Part 7 a Site Safety and Health Representative when exercising statutory powers is taken to be undertaking the duties of a mineworker.

**Clause 94—Further election if site safety and health representative not available**

Provides if an elected Site Safety and Health Representative is not available and affected coal mine workers consider operations to be unsafe, then the workers can elect two colleagues to inspect the coal mining operations. Workers elected under these circumstances are only Site Safety and Health Representatives while the Site Safety and Health Representative is unavailable and for the period the mine is considered unsafe by affected workers.

**Clause 95—Person must be qualified to act as site safety and health representative**

Provides a penalty of 40 penalty units for a person acting as a Site Safety and Health Representative who does not hold appropriate competencies. It also provides a penalty of 40 penalty units for a person who uses incorrectly the powers of a Site Safety and Health Representative.

It also provides that this clause does not apply to persons elected under clause 94.

**Clause 96—Ceasing to be a site safety and health representative**

Provides that a Site Safety and Health Representative is no longer a representative if he/she ceases as a worker at the mine or informs the site senior executive that he/she has resigned from that position.

**Clause 97—Removal from office**

Provides that a Site Safety and Health Representative may be removed from office if the Minister considers the representative is not performing his/her functions satisfactorily.

It also provides that the notice of removal from office must contain the Minister's reasons.

**Clause 98—Election after removal from office**

Provides that if a Site Safety and Health Representative is removed from office then another representative may be elected in terms of the processes and arrangements provided in this division of the Bill.

It also provides that an appointment cannot be made until the time for making an appeal against the dismissal has expired or, if an appeal has been lodged, until the appeal has been determined.

**Clause 99—Functions of site safety and health representatives**

Sub-clause 99(1) provides the functions of the Site Safety and Health Representative. Those functions include the inspection of the coal mine in relating to risk, the review of procedures concerning control of risk, the detection of unsafe practices and conditions and to undertake appropriate action to protect the safety and health of coal miners, and to investigate complaints regarding safety and health.

Sub-clauses 99(2) and 99(3) provide that the Site Safety and Health Representative must be given reasonable assistance to carry out an inspection, and that he may be accompanied during an inspection. Sub-clause 99(2) also provides a penalty of 40 penalty units for non-compliance.

Sub-clauses 99(4) provides that in relation to an inspection, the Site Safety and Health Representative must make a written report and provide a copy of the report to the site senior executive. In the event that the inspection indicates an existing or possible danger, the Site Safety and Health Representative must notify the site senior executive or the responsible supervisor and must provide a copy of the report to an Inspector.

Sub-clauses 99(5), 99(6) and 99(7) provide that if the Site Safety and Health Representative believes the safety and health management system is

ineffective or inadequate, he must inform the site senior executive. If the Site Safety and Health Representative is not satisfied that proper action has been taken to correct the problem, then the representative must inform the Inspector. The Inspector must investigate the report and record the results of his/her investigation in the mine record.

#### **Clause 100—Powers of site safety and health representatives**

Provides the powers of the Site Safety and Health Representative. Those powers include the power to enter any area of a coal mine at any time subject to reasonable notice being given, and the power to examine any document relating to safety and health held by the site senior executive subject to certain conditions.

#### **Clause 101—Stopping of operations by site safety and health representatives**

Sub-clause 101(1) provides that this clause applies if the Site Safety and Health Representative believes a dangerous situation exists that will affect the safety or health of workers.

Sub-clauses 101(2), 101(3) and 101(4) provide that by written report to the site senior executive, the safety and health representative may order the suspension of mining operations. However, if the representative reasonably believes there is an immediate danger, the Representative may stop operations or require the supervisor to stop operations. It further provides that the Site Safety and Health Representative must provide to the site senior executive a written report that details the action and reason for the action taken.

#### **Clause 102—Effect of report**

Provides that if the Site Safety and Health Representative provides a report that orders the suspension of operations, the site senior executive must stop mining operations. Failure to comply incurs a penalty of 200 penalty units.

**Clause 103—Site senior executive not to restart operations until risk at an acceptable level**

Provides that the site senior executive must ensure mining operations stopped under Clause 101 do not recommence until the risk is at an acceptable level. It also provides for a penalty of 200 penalty units for non-compliance.

**Clause 104—Site safety and health representative not to unnecessarily impede production**

Provides that the Site Safety and Health Representative must not unnecessarily impede production. It also provides a penalty of 200 penalty units.

**Clause 105—Protection of site safety and health representatives performing functions**

Provides that a Site Safety and Health Representative shall not be prevented from of penalise for performing his/her functions. Failure to comply incurs a penalty of 200 penalty units.

**Clause 106—Site senior executive to tell site safety and health representatives about certain things**

Provides that the site senior executive must inform the Site Safety and Health Representative as soon as practicable of the following:

- an injury or illness resulting from the coal mining operations requiring an absence from work;
- a high potential incident;
- any proposed changes to the coal mine or plant or substances used at the coal mine that affect or may affect the safety and health of persons;
- if an Inspector or Inspection Officer is at the mine; and
- any directive given by an Inspector, Inspection Officer or site safety and health representative.

It also provides for a penalty of 40 penalty units for non-compliance.



**Clause 107—Site senior executive to display identity of site safety and health representatives**

Provides that the site senior executive within five days of being notified of the election of a Site Safety and Health Representative must display a notice advising particulars of the Representative. The notice must be displayed in such a way that it is likely to be seen by workers.

It also provides a penalty of 40 penalty units for non-compliance.

**PART 8—INDUSTRY SAFETY AND HEALTH REPRESENTATIVES**

The intent of this Part is to allow for the appointments of persons as Industry Safety and Health Representatives to represent the safety and health interests of coal mine workers at Queensland coal mines.

***Division 1—Purposes of part*****Clause 108—Purposes of pt 8**

Provides the main purposes of Part 8 are the appointment of, and functions and powers of, Industry Safety and Health Representatives.

***Division 2—Industry safety and health representatives*****Clause 109—Appointment of industry safety and health representative**

Provides that the Construction, Forestry, Mining and Energy Union, after ballot, may appoint up to 3 persons to be Industry Safety and Health Representatives.

It also provides that the persons appointed must be the holders of appropriate certificates of competencies, and that an appointment is for 4

years.

**Clause 110—Industry safety and health representative to work full-time**

Provides that an Industry Safety and Health Representative must be employed full time in that capacity.

**Clause 111—Funding of industry safety and health representati**

Provides that the Construction, Forestry, Mining and Energy Union fund the representative.

**Clause 112—Termination of appointment**

Provides that the Minister if he considers an Industry Safety and Health Representative is not satisfactorily performing his/her functions, then the Minister may end the appointment.

It also provides that the notice of termination of appointment must contain the Minister's reasons.

**Clause 113—Appointment after termination**

Provides that if the Minister ends the appointment of an Industry Safety and Health Representative, then the Construction, Forestry, Mining and Energy Union may appoint another person.

In regards to the appointment, the processes regarding nominations and selections outlined in Part 8 of the Bill must be followed.

It also provides that an appointment cannot be made unless the time for making an appeal against the dismissal has expired or, if an appeal has been lodged, until the appeal has been determined.

**Clause 114—Filling of temporary vacancy**

Provides that if an Industry Safety and Health Representative is temporarily unable to carry out his/her functions, then the Construction, Forestry, Mining and Energy Union may appoint a substitute for the period the original appointee is unable to perform the functions.

**Clause 115—Vacancy generally**

Provides that a position of Industry Safety and Health Representative becomes vacant if the Representative finishes his/her term of appointment and is not re-appointed, resigns by written notice to the Minister or has his/her appointed terminated by the Minister.

**Clause 116—Persons not to pretend to be industry safety and health representatives if not appointed**

Provides that a person must not act as an Industry Safety and Health Representative if not appointed by the Minister. Penalty for non-compliance is 40 penalty units.

**Clause 117—Industry safety and health representatives restricted to safety and health purposes**

Provides that an Industry Safety and Health Representative must not perform a statutory function or exercise a statutory power other than for a safety and health purpose. Penalty for non-compliance is 40 penalty units.

**Clause 118—Functions of industry safety and health representatives**

Provides the functions of an Industry Safety and Health Representative. Those functions are:

- to inspect and assess whether the level of risk at a coal mine is at an acceptable level;
- to review procedures that control the level of risk;
- to detect unsafe practices and conditions and to take remedial action to lower the level of risk;
- to assist investigations into serious accidents and high potential incidents and other matters;
- to investigate complaints from coal workers; and
- to assist with initiatives to improve safety and health.

It also provides that the site senior executive or the Site Safety and Health Representative or their representatives may accompany the Industry Safety and health Representative during an inspection.

**Clause 119—Powers of industry safety and health representatives**

Sub-clause 119(1) provides the powers of an Industry Safety and Health Representative. Those powers include:

- to enquire about coal mining operations;
- to enter a coal mine at any time, subject to reasonable notice;
- to examine any document relating to a safety and health issue held by a person with statutory responsibilities, subject to certain requirements;
- to take copies of the safety and health management system documents. Those documents include the principal hazard management plans, standard operating procedures and training records;
- to require reasonable assistance from certain mine supervisors in the exercise of powers; and
- to issue a directive to suspend operations.

Sub-clause 119(2) provides that a person in authority must comply with a request by the Industry Safety and Health Representative for assistance, unless there is reasonable cause for non-compliance. It also provides for a penalty of 100 penalty units.

Sub-clause 119(3) provides that if the Industry Safety and Health Representative requires access to documents relating to safety or health held by a person with statutory obligations then the documents must be produced as soon as possible, unless there is reasonable cause for non-compliance. It also provides for a penalty of 100 penalty units.

**Clause 120—Industry safety and health representative not to unnecessarily impede production**

Provides that the Industry Safety and Health Representative must not unnecessarily impede production. It also provides a penalty of 100 penalty units.

**Clause 121—Inadequate or ineffective safety and health management systems**

Provides that if the Industry Safety and Health Representative believes that the safety and health management system is inadequate or ineffective he must inform the site senior executive with the Representative's reasons. If in the view of the Industry Safety and Health Representative action has not been taken to correct the problem, the representative must inform an Inspector. The Inspector must investigate and report the results of the investigation in the mine record.

**Clause 122—Identity cards**

Provides that each Industry Safety and Health Representative must be provided with an official identity card. It also provides the information that must be contained on the identity card.

**Clause 123—Failure to return identity card**

Provides that an identity card issued to an Industry Safety and Health Representative must be returned to the Department of Mines and Energy within 21 days of ceasing to be a representative, unless there is reasonable excuse. It also provides a penalty of 40 penalty units.

**Clause 124—Production or display of identity card**

Provides that the Industry Safety and Health Representative must produce the identity card when exercising his/her powers under the Bill. If it is not practicable for the identity card to be produced prior to exercising a power, then it must be produced at the first reasonable opportunity.

**PART 9—INSPECTORS AND INSPECTION OFFICERS AND DIRECTIVES**

The intent of this Part is to provide for the appointment of Inspectors and Inspection Officers with appropriate powers to inspect coal mines and determine whether persons are meeting their safety and health obligations, and take action where safety and health standards are not being met.

***Divisions 1—Inspectors and inspection officers*****Clause 125—Appointments**

Provides that the Director-General of the Department of Mines and Energy may appoint public servants as Inspectors or Inspection Officers, and that the Director-General must appoint an Inspector to be Chief Inspector of Coal Mines.

**Clause 126—Qualifications for appointment as inspector**

Provides that a person can only be appointed as an Inspector if the Director-General considers the person has a professional tertiary engineering qualification relevant to coal mining operations, and has adequate competencies and mining experience at a senior level to effectively perform the functions of an Inspector.

**Clause 127—Qualifications for appointment as inspection officer**

Provides that a person can only be appointed as an Inspection Officer if the Director-General considers the person has appropriate competencies or other adequate experience necessary to effectively perform the functions of an Inspection Officer.

**Clause 128—Functions of inspectors and inspection officers**

Provides the functions of an Inspector and Inspection Officer. Those functions include:

- to enforce this Bill;
- to monitor safety and health performance at coal mines;
- to inspect and audit coal mines;
- to provide specialist advice and information;
- to check that safety and health management systems and procedures are established;
- to assist during emergencies at coal mines;

- if unsafe practices or substandard conditions are identified, to follow up and/or direct remedial action;
- to investigate serious accidents and high potential incidents and other matters; and
- to investigate complaints relating to safety and health matters.

**Clause 129—Further functions of inspectors**

Provides that in addition to those functions mentioned above, Inspectors have the additional functions to advise the Chief Inspector of Coal Mines on safety and health and to make recommendations to the Chief Inspector of Coal Mines concerning prosecutions.

**Clause 130—Identity cards**

Provides that each Inspector and Inspection Officer must be provided with an official identity card. It also provides the information that must be contained on the identity card.

**Clause 131—Failure to return identity card**

Provides that an identity card issued to an Inspector or an Inspection Officer must be returned to the Director-General of the Department of Mines and Energy within 21 days of ceasing employment, unless there is reasonable excuse. It also provides a penalty of 40 penalty units.

**Clause 132—Production or display of identity card**

Provides that the Inspector or Inspection Officer must produce the identity card when exercising his/her powers under the Bill. If it is not practicable for the identity card to be produced prior to exercising a power, then it must be produced at the first reasonable opportunity.

***Division 2—Powers of inspectors and inspection officers******Subdivision 1—Powers to enter places*****Clause 133—Entry to places**

Sub-clause 133(1) provides that an Inspector or Inspection Officer may enter a place if the occupier consents to the entry, it is a public place and is open to the public, it is a coal mine or it is a workplace under the control of a person with obligations under this Bill and is open for business or otherwise open for entry. Sub-clause 133(3) provides that a workplace does not include a part of a place where a person resides.

Sub-clause 133(2) provides that an Inspector or an Inspection Officer without consent or a warrant may enter land around premises at the place to contact the occupier or enter part of the place the Inspector or Inspection Officer reasonably considers members of the public ordinarily enter to contact the occupier.

Sub-clause 133(4) provides that an Inspector or an Inspection Officer must not unnecessarily impede production.

Sub-clause 133(5) provides that for this clause, a workplace has the definition of workplace provided in the *Workplace Health and Safety Act 1995*.

***Sub-division 2—Procedure for entry*****Clause 134—Consent to entry**

Sub-clauses 134(1) and 134(2) provide that this section applies if an Inspector or an Inspection Officer intends to ask for consent to enter a place. It also provides that before asking for the consent, the Inspector or Inspection Officer must tell the occupier the purpose of the entry and that the consent of the occupier is not required.

Sub-clauses 134(3) and 134(4) provide that if consent is given then the occupier may be asked to sign an acknowledgement of the consent. The acknowledgement must state the following:

- the occupier has been told the purpose of the entry and that the occupier is not required to consent;



- the purpose of the entry;
- the occupier has given consent; and
- the time and date the consent was given.

Sub-clauses 134(5) and 134(6) provide that if the occupier signs an acknowledgement, a copy of the acknowledgement must be given to the occupier. It also provides that a Court must find the occupier did not consent to entry if:

- an issue arises in a proceeding before the Court concerning consent to the entry;
- an acknowledgement is not produced in evidence for the entry; and
- it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

### **Clause 135—Application for warrant**

Provides that an Inspector may apply to a magistrate for entry to a place and that the warrant application must be sworn and provide the grounds for the warrant. It also provides that the magistrate may refuse to consider the application until given all information the magistrates requires.

An example of information a magistrate may require is additional information given by statutory declaration.

### **Clause 136—Issue of warrant**

Provides those grounds when a magistrate may issue a warrant and the particulars that must be stated on the warrant.

### **Clause 137—Special warrants**

Provides that an Inspector may apply for a warrant by telephone, facsimile, radio or another form of communication if the Inspector considers it necessary because of urgent or special circumstances. It also provides how the warrant is to be issued and subsequent follow up actions.

**Clause 138—Warrants—procedure before entry**

Provides the procedures prior to entering a place authorised under a warrant.

***Subdivision 3—General powers*****Clause 139—General powers after entering coal mine or other places**

Sub-clauses 139(1) and 139(2) provide that this clause applies if an Inspector or an Inspection Officer enters a coal mine or other place. However, if an Inspector or Inspection Officer enters a place to get the occupier's consent to enter premises, this section applies to the Inspector or Inspection Officer only if the consent is given or entry is otherwise authorised.

Sub-clause 139(3) provides an Inspector or an Inspection Officer may for monitoring and ensuring compliance with this Bill undertake the following:

- search any part of the coal mine or other place;
- inspect, measure, test, photograph or film any part of, or anything at, a coal mine or other place;
- take a thing, or take a sample for analysis or testing;
- copy a document;
- take any person, equipment and material required to assist in exercising a power;
- require reasonable assistance to exercise the powers under this clause; and
- require answers to questions.

It also requires that a person be warned that it is an offence not to provide assistance or answer questions, unless there is reasonable cause.

**Clause 140—Failure to help inspector or inspection officer**

Provides a penalty of 40 penalty units for a person referred to in the preceding clause not providing reasonable assistance to an Inspector or an

Inspection Officer, unless there is reasonable excuse.

**Clause 141—Failure to answer questions**

Provides a penalty of 40 penalty units for a person, without reasonable cause, not answering a question of an Inspector or Inspection Officer.

It also provides that it is a reasonable excuse not to answer a question if it will incriminate the individual.

Further, it also provides that this clause is subject to the clause dealing with the general powers of an Inspector or Inspection Officer that require answers to questions when investigating serious accidents and high potential incidents.

**Clause 142—Site senior executive must help inspector or inspection officer**

Provides that when requested a site senior executive must assist the Inspector or Inspection Officer in the performance of their functions, unless there is a reasonable excuse. It also provides a penalty of 100 penalty units.

*Subdivision 4—Power to seize evidence*

**Clause 143—Seizing evidence at coal mine or other place**

Provides that an Inspector or Inspection Officer may enter a coal mine or other place authorised under this Bill and seize anything they reasonably believe is evidence of an offence. It also provides that an Inspection Officer cannot seize a document.

**Clause 144—Securing things after seizure**

Provides that anything seized under the preceding clause can be removed by the Inspector or Inspection Officer from the coal mine or other place, or be left at the coal mine or other place with restricted access.

**Clause 145—Tampering with things subject to seizure**

Provides that a person shall not tamper with or attempt to tamper with anything seized by an Inspector or Inspection Officer, without approval of the Inspector or Inspection Officer. It also provides for a penalty of 100 penalty units.

**Clause 146—Powers to support seizure**

Provides that an Inspector by written or oral notice may require the person in control of a seized item to assist or re-assist in the removal of, or safeguard of, a seized item. An oral notice must be confirmed in writing.

It also provides that a person must comply with this request at his/her expense, unless there is reasonable excuse. The penalty for non-compliance is 100 penalty units.

**Clause 147—Receipts to be given on seizure**

Provides that a receipt that describes each item seized and its condition must be given to the person from whom the item was seized, and if it is not practicable to give the receipt then the receipt is to be left in a conspicuous position and reasonably secure manner.

It also provides that the provision of a receipt is not required if it is impracticable or unreasonable to give the receipt given the nature, condition and value of the seized item.

**Clause 148—Forfeiture**

Provides that an item seized is forfeited to the State if the Inspector or Inspection Officer after a reasonable effort cannot find the owner of the item or cannot return the item to the owner.

**Clause 149—Return of things that have been seized**

Provides that an item seized and not forfeited must be returned by the Inspector or the Inspection Officer at the end of six months after seizure, or at the end of any proceeding or appeal provided the proceeding commenced within six months of the seizure of the item.

It also provides that if the Inspector or Inspection Officer is satisfied that the seized item is no longer required as evidence it must be immediately returned to its owner.

**Clause 150—Access to things that have been seized**

Provides that unless it is impracticable or unreasonable, an Inspector or Inspection Officer must allow the owner of a seized item to inspect it, and if the seized item is a document to copy it.

It also provides that where a person is directed to remove an item to a certain location that person must return the item at his/her own expense to its original location if directed by an Inspector.

***Subdivision 5—Power to stop and secure plant and equipment*****Clause 151—Inspector may stop and secure plant and equipment**

Provides that an Inspector or Inspection Officer may stop the use of plant or equipment and prevent it from further use if they believe it is likely to cause serious bodily injury or be an immediate threat to health. The Inspector or Inspection Officer must confirm this action in the mine record, and the site senior executive must ensure that the plant or equipment is not used until the risk from use of the plant or equipment is at an acceptable level.

It also provides for a penalty of 200 penalty units for use of plant or equipment before risk is at an acceptable level.

***Subdivision 6—Power to obtain information*****Clause 152—Power to require name and address**

Sub-clause 152(1) provides that this clause applies when an Inspector or Inspection Officer finds a person committing an offence or reasonably suspects a person has just committed an offence.

Sub-clauses 152(2), 152(3) and 152(4) provide that a person referred to in sub-clause 152(1) when requested must provide his/her name and

residential address, and be warned by the Inspector or Inspection Officer that it is an offence not to provide this information without reasonable excuse.

It also provides that if not satisfied with the information provided, the Inspector or Inspection Officer can request evidence of personal particulars.

### **Clause 153—Failure to give name or address**

Provides a penalty of 40 penalty points for a person referred to in the preceding clause not providing personal particulars without a reasonable excuse.

It also provides that a person does not commit an offence in not providing personal particulars, if it is later proved that the person had not committed an offence under the Bill.

### **Clause 154—Power to require production of documents**

Sub-clauses 154(1) and 154(2) provide that a person with an obligation under this Bill must, if requested by an Inspector or an Inspection Officer, produce any document that relates to that person's obligations under the Bill, and that the document may be kept and copied.

This requirement is referred to in the Bill as a "document production requirement".

Sub-clauses 154(3), 154(4) and 154(5) provide that where a copy is obtained, the Inspector or Inspection Officer may require the person who has custody of the document to certify the copy as a true copy. If a person is requested to and fails to certify the correctness of a copied document, the Inspector or Inspection Officer may keep the document until this requirement is complied with. It also provides that the document must be returned to its custodian as soon as practicable after copying.

Sub-clause 154(6) provides that a document may be kept if it is required for the investigation of a serious accident or high potential incident.

### **Clause 155—Failure to produce document**

Provides that in relation to the preceding clause a person on whom a "document production requirement" is placed must produce the document,

unless there is reasonable excuse. It is not a reasonable excuse to not produce a document if the document will self incriminate. Failure to comply is 200 penalty units.

If the document is a personal document and is required in relation to the investigation of a serious accident or a high potential incident, the Inspector must advise the person of the following before requiring the production of a personal document:

- that if the document might incriminate the person, the person may claim prior to producing the document, that by producing the document it might self incriminate; and
- the document is not admissible as evidence in a proceeding against the person, other than for an offence under this Bill.

Further it provides if the person claims before producing the document that producing the document might self incriminate, the document is admissible in a proceeding against the person for an offence under this Bill, but the document or anything obtain as a result of the document is not admissible in any other proceeding for the commission of an offence.

### **Clause 156—Failure to certify copy of document**

Provides that a person who is requested to and fails to certify the correctness of a document is liable to a penalty of 100 penalty units, unless there is reasonable excuse.

### **Clause 157—Power to require attendance of persons before an inspector to answer questions**

Sub-clause 157(1) provides that a person must attend a meeting arranged by the Inspector, and answer questions. Those questions relate to the following:

- concerning a person's statutory obligations;
- safety and health matters relating to the coal mining operations;
- whether the provisions of this Bill have been complied with; or
- any other action by an Inspector under this Bill.

Sub-clauses 157(2) and 157(3) provide that a request to a person to attend to answer questions made under this clause must be in writing and state a reasonable time and place, and the person must be warned it is an offence not to comply unless there is reasonable excuse.

### **Clause 158—Failure to comply with requirement about attendance**

Provides that a person is liable to a penalty of 40 penalty units for failure to comply with the requirement to attend a meeting arranged by, or answer questions by, the Inspector unless the person has a reasonable excuse. It is a reasonable excuse for a person not to comply if complying will self incriminate.

However, if the questions relate to an investigation of a serious accident or high political incident, the questions must be answered subject to the requirements of clause 159.

### **Clause 159—Persons must answer question about serious accident or high potential incident**

Sub-clause 159(1) provides that this clause applies if a person refuses to answer a question asked by an inspector about a serious accident or high potential incident.

Sub-clauses 159(2), 159(3) and 159(4) provide that before an Inspector starts questioning, the Inspector must inform the person that the person may claim that giving answers might incriminate them. It further provides that the Inspector must also inform the person on the effect of making the claim on the admissibility of the answers or documents, other information or other things obtained as a result of the person providing compulsory answers. The person must answer questions, unless the person has a reasonable excuse. Penalty for non-compliance is 40 penalty units. It is not a reasonable excuse if the answers will self incriminate.

Sub-clauses 159(5) and 159(6) provide that if privilege is claimed then neither an answer given by a person to an Inspector's question under this clause or other thing obtained as a direct or indirect consequence of the person giving the answer is admissible in any proceeding against the person other than for a proceeding in relation to the falsity or misleading nature of the answer.



***Subdivision 7—Additional powers of chief inspector*****Clause 160—Additional powers of chief inspector**

Provides that the Chief Inspector of Coal Mines has all the powers of an Inspector and has the following additional powers:

- to initiate prosecutions;
- to give a directive to provide an independent engineering study; and
- to review, confirm, vary or set aside directives given by other statutory officers.

***Division 3—Directives by inspectors, inspection officers and industry safety and health representatives******Subdivision 1—Power to give and way of giving directives*****Clause 161—Directive may be given**

Provides that an Inspector, Inspection Officer or Industry Safety and Health Representative may give a directive about a matter prescribed in Subdivision 2 which deals with “matters for which directives may be given”.

**Clause 162—How directive is given**

Provides that, except for directives relating to reduction of risk, to suspension of operations because of an unacceptable level of risk or to isolate a site following a serious accident of a high potential incident, a directive must be given in writing to the coal mine operator, and that a copy of the directive is to be provided to the site senior executive.

It also provides that failure to provide a copy of the directive to the site senior executive does not affect the validity of the directive.

**Clause 163—How directive is given for ss 166, 167 and 170**

Provides that for clauses 166, 167 and 170 the method of giving the directive is given in those clauses.

***Subdivision 2—Matters for which directives may be given*****Clause 164—Directive to ensure coal mine worker competent**

Provides that the Inspector may direct that a person must have a particular competency to perform a particular task at a coal mine.

**Clause 165—Directive to carry out test**

Provides that an Inspector may direct that tests be carried out to determine the level of risk, if the Inspector reasonably suspects the risk is unacceptable.

**Clause 166—Directive to reduce risk**

Provides that an Inspector may direct any person to take corrective or preventative action to prevent an increase in risk, if the Inspector reasonably believes the risk may reach an unacceptable level.

The directive may be given orally or by notice. However, if the directive is given orally then it must be confirmed by notice. If confirmation is not given by notice then this omission does not affect the validity of the directive.

**Clause 167—Directive to suspend operations for unacceptable level of risk**

Provides that an Inspector, Inspection Officer or Industry Safety and Health Representative may direct either orally or in writing that operations be suspended, if he/she believes risk is at an unacceptable level. If the directive is given orally then it must be confirmed in writing to the supervisor and relevant site senior executive.

If confirmation is not given by notice then this omission does not affect the validity of the directive.

**Clause 168—Directive to review safety and health management system and principal hazard management plans**

Provides that an Inspector may direct that the safety and health management system or the principal hazard management plan be reviewed if he/she believes that the system or plan is ineffective.

**Clause 169—Directive to suspend operations for ineffective safety and health system**

Provides that the Inspector may direct the suspension of operations if the Inspector believes that the safety and health management system is ineffective.

**Clause 170—Directive to isolate site**

Provides that an Inspector may direct any person either orally or in writing that the person must isolate and protect the scene of a serious accident or high potential incident. If the directive is given orally then it must be confirmed in writing to the supervisor and the relevant site senior executive.

If confirmation is not given by notice then this omission does not affect the validity of the directive.

**Clause 171—Directive about separate part of the mine**

Provides that the Inspector may issue a directive that part of the surface of the coal mine must be operated as a separate mining operation, if that part of the mine is taken to be a separate mine for the purposes of this Bill and is not being operated as such.

It also provides that if this directive is not complied with then the Inspector may direct the suspension of mining operations.

**Clause 172—Directive to provide independent engineering study**

Provides that the Chief Inspector of Coal Mines may direct that an independent engineering study be provided. The directive must state the reasons for, and objectives of, the study and that the person undertaking the study must be approved by the Chief Inspector of Coal Mines. The person

approved for the study must have relevant professional qualifications and experience and not be an employee of the coal mine operator or of a contractor at the mine.

The study may be required about:

- the risks arising out of coal mining operations;
- the safety of plant, building or structures; or
- a serious accident or high potential incident.

### ***Subdivision 3—Recording of directives and other matters***

#### **Clause 173—Records must be kept**

Provides that an accurate record of all reports and directives issued under the Bill must be maintained.

It also provides that a written report on every inspection of a coal mine made by an Inspector, Inspection Officer and Industry or Site Safety and Health Representative must be made. A copy of all reports must be given to the coal mine operator and site senior executive.

#### **Clause 174—Directives**

Sub-clauses 174(1) and 174(2) provide that the statutory officer must enter all directives and the reasons for the directives in the mine record. It also provides that a directive must be complied with, and provides a penalty of 800 penalty units or 2 years imprisonment for non-compliance.

Sub-clauses 174(3) and 174(4) provide that the site senior executive must enter in the mine record what action has been taken to comply with the directive, and make copies of the directive available to the coal mine workers. It also provides a penalty of 40 penalty units for failure to comply with either of these requirements.

Sub-clause 174(5) provides in detail when a directive is no longer effective.

***Subdivision 4—Review of directives*****Clause 175—Application for review**

Provides that this Subdivision of the Bill relates to the review of a directive, other than a directive given by the Chief Inspector of Coal Mines.

**Clause 176—Procedure for review**

Provides the process including time limits for making an application for review of a directive. That process involves a written application to the Chief Inspector of Coal Mines.

**Clause 177—Review of directive**

Provides that the Chief Inspector of Coal Mines, within 14 days after acknowledging that an application for review is satisfactory, must review and make a decision in relation to the application for review.

It also provides the decisions that the Chief Inspector of Coal Mines can make, and that the applicant must be informed within 7 days of making the decision of the reasons for the decision and of his/her appeal rights.

Further, it provides that if the Chief Inspector of Coal Mines does not review or advise the applicant within the times stipulated in the Bill, the applicant may make an appeal under Part 14 of this Bill.

**Clause 178—Stay of operation of directive**

Provides that the Industrial Court may grant a stay of a directive, and the conditions of a stay.

It also provides that a directive relating to the suspension of operations due to an unacceptable level of risk cannot be stayed.

***Division 4—General enforcement offences*****Clause 179—False or misleading statements**

Provides a penalty of 100 penalty units for a person who knowingly states false or misleading information to an Inspector or Inspection Officer.

**Clause 180—False or misleading documents**

Sub-clause 180(1) provides a penalty of 100 penalty units for a person who knowingly provides a document containing false or misleading information to an Inspector.

Sub-clause 180(2) provides that a person does not commit an offence in the following circumstances:

- if the person tells the investigating officer how the document is false or misleading; and
- if the person has, or can reasonably obtain, the correct information and provides the correct information.

Sub-clause 180(3) provides a penalty of 100 penalty units for a person who knowingly makes a false or misleading entry in a document required or permitted to be made or kept under this Bill.

**Clause 181—Obstructing inspectors, inspection officers or industry safety and health representatives**

Provides a penalty of 100 penalty units for a person who obstructs without reasonable cause an Inspector, Inspection Officer or Industry Safety and Health Representative.

It also provides that if obstructed the Inspector, Inspection Officer or Industry Safety and Health Representative must warn a person that it is an offence to obstruct without reasonable cause, and that the person's actions are considered an obstruction.

**PART 10—BOARD OF EXAMINERS***Division 1—Purposes of part***Clause 182—Purposes of pt 10**

Provides that the main purposes of Part 10 of the Bill are to provide for a Board of Examiners and its functions.

*Division 2—Board of examiners and its functions***Clause 183—Inspector for pt 10**

Provides that when used in Part 10 of the Bill an Inspector includes an Inspector appointed under the *Mining and Quarrying Safety and Health Act 1999*, as well as an Inspector under this Bill.

**Clause 184—Board of examiners**

Provides that the Board of Examiners is established.

**Clause 185—Functions of board of examiners**

Provides that the Board of Examiners has the following functions:

- to decide the competencies necessary for holders of certificates of competency;
- to assess applicants for certificates of competency;
- to grant certificates of competency; and
- to ensure that Queensland competencies are consistent with other States.

**Clause 186—Membership and conduct of board proceedings**

Provides that the membership of the Board of Examiners shall consist of an Inspector, who is to be chairperson, and at least six other members. No more than three members may be Inspectors, and at least six of the members must be currently engaged in the mining industry. For this

requirement, Inspectors and Industry Safety and Health Representatives are taken to be currently engaged in the mining industry.

It also provides that each member must have at least 10 years practical mining industry experience. The term of appointment of a member, other than the chairperson, is for a term of no more than five years, and a member may be reappointed but not for consecutive terms. The chairperson can be appointed for the term that the Governor in Council considers appropriate.

#### **Clause 187—Board of examiners to appoint secretary**

Provides that a secretary must be appointed to the Board of Examiners.

#### **Clause 188—Appointment of board of examiners**

Provides that the members of the Board of Examiners are appointed by the Governor in Council and details of the appointments are to be published in the Government Gazette, and that the members must be appointed under this Bill and not under the *Public Service Act 1996*.

#### **Clause 189—Quorum and voting at meetings of the board**

Provides the number of members that constitute a quorum at a meeting of the Board of Examiners, and that an issue is decided by a majority of votes with each member present having one vote, except when votes are equal then the chairperson has an additional or casting vote.

#### **Clause 190—Presiding at meetings of the board of examiners**

Provides that when in attendance, the chairperson must preside at all meetings of the Board of Examiners. It also provides that in the absence of the chairperson, the chairperson is to nominate an Inspector to be the presiding member. The Inspector to act as chairperson must be an appointed member of the Board of Examiners.

#### **Clause 191—Conditions of appointment**

Provides that members of the Board of Examiners, other than Inspectors, are entitled to fees and allowances determined by the Governor in Council,



and that the Minister shall determine the conditions of appointment, if not provided elsewhere in this Bill.

**Clause 192—Proceedings of the board of examiners**

Provides the way the Board of Examiners conducts its proceedings can be prescribed under a regulation or, if not prescribed by regulation, the Board of Examiners may conduct its proceedings in a way it considers appropriate.

**Clause 193—Committees**

Provides that the Board of Examiners may appoint committees to advise it on particular issues.

*Division 3—General*

**Clause 194—Examiners to be qualified**

Provides that a examining person must hold appropriate qualifications and experience to assess an applicant for a certificate of competency. It also provides a penalty of 100 penalty units for non-compliance.

**Clause 195—Obtaining certificates of competency by fraud**

Provides a penalty of 400 penalty units for a person who obtains or attempts to obtain a certificate of competency by giving false information.

It also provides that the Board of Examiners may cancel a certificate of competency obtained in this manner.

**Clause 196—Return of certificate of competency**

Provides that a person must return a certificate of competency if the Board of Examiners has cancelled it because of false information or an industrial magistrate has suspended or cancelled the certificate.

It also provides a penalty of 400 penalty units.

**Clause 197—Annual report**

Provides that the Board of Examiners within 4 months of the end of each financial year must provide to the Minister an annual report. It also provides that the report is to be tabled in the Legislative Assembly.

**PART 11—ACCIDENTS AND INCIDENTS*****Division 1—Notification of accidents, incidents and inspections*****Clause 198—Notice of accidents, incidents or diseases**

Provides that the site senior executive must immediately notify an Inspector and an Industry Safety and Health Representative either orally or by notice about any serious accident or high potential incident. Penalty for non-compliance is 40 penalty units.

It also provides that in respect of a reportable disease under this Bill, the Site Senior Executive must inform an Inspector and the Industry Safety and Health Representative as soon as practicable. If the notification is given orally, it must be confirmed by notice within 48 hours. Penalty for non-compliance is 40 penalty units.

However, if the serious accident causes death, the site senior executive must confirm the oral report in writing within 24 hours. Penalty of 80 penalty units for non-compliance.

**Clause 199—Place of accident must be inspected**

Provides that an Inspector must inspect as soon as practicable the place of an accident that has resulted in a fatality and report his/her findings to the Chief Inspector of Coal Mines.

***Division 2—Site of accident or incident*****Clause 200—Site not to be interfered with without permission**

Provides that the site of a serious accident or high potential incident must not be interfered with without the permission of an Inspector. Penalty for non-compliance is 200 penalty units.

It also provides that a request to interfere with a site of a serious accident or high potential incident is not to be unreasonably withheld, and that action taken to save life or prevent further injury is not considered interference.

**Clause 201—Action to be taken in relation to site of accident or incident**

Sub-clause 201(1) provides that the site senior executive in relation to a serious accident or a high potential incident must carry out an investigation to establish the cause/s of the accident or incident. The site senior executive must also prepare a report that includes recommendations to prevent the happening in the future, and provide a copy of the report to an Inspector, if required under regulation.. Failure to comply is 40 penalty units.

Sub-clause 201(2) provides that the site senior executive must ensure that the place of a serious accident or high potential incident is not interfered with until the following has been undertaken:

- details of the accident or incident has been recorded, and, if possible, photographed;
- measurements to allow the development of an accurate plan of the site of the accident or incident have been taken; and
- a list of witnesses has been compiled.

Failure to comply incurs a penalty of 100 penalty units.

## **PART 12—BOARDS OF INQUIRY**

### *Division 1—General*

#### **Clause 202—Minister may establish boards of inquiry**

Provides that the Minister by Government Gazette notice, which may specify issues relevant to an inquiry (e.g. membership or terms of reference), can establish a Board of Inquiry into a serious accident or high potential incident.

It also provides that the Minister may exercise his powers to establish a Board of Inquiry notwithstanding that the accident or incident may or may not have been investigated by an Inspector or that a Board of Inquiry had previously inquired into the accident or incident.

#### **Clause 203—Role of board of inquiry**

Provides that a Board of Inquiry must inquire into the circumstances and probable causes of an accident or high potential incident and provide a written report, which may include recommendations, to the Minister.

The Minister must table the report in the Legislative Assembly. However, if the Board provides a separate report of issues that they do not want made public, then the separate report does not require tabling in the Legislative Assembly.

#### **Clause 204—Conditions of appointment**

Provides that the members of the Board of Inquiry are entitled to fees and allowances as determined by the Governor in Council, and that the members' conditions of office that are not provided by this Bill are decided by the Minister.

#### **Clause 205—Chief executive to arrange for services of staff and financial matters for board of inquiry**

Provides that the Director-General of the Department of Mines and Energy must consult with the chairperson of the Board of Inquiry to arrange

for Departmental officers or other persons to assist the Board and to arrange the financial matters relevant to the Board.

### ***Division 2—Conduct of inquiry***

#### **Clause 206—Procedure**

Sub-clause 206(1) provides that the Board of Inquiry must observe natural justice and must act quickly and with as little formality and technicality as is reasonable in the circumstances.

Sub-clause 206(2) provides that the Board of Inquiry in conducting its inquiry is not bound by the rules of evidence, may inform itself in any way it considers appropriate, may decide the procedures to be followed, and must give a person involved the opportunity of defending all claims.

Sub-clauses 206(3) and 206(4) provide that the Board must comply with the requirements contained in this division of the Bill and any procedural rules made under a regulation. It also provides that the chairperson is the presiding member at the inquiry.

#### **Clause 207—Notice of inquiry**

Provides that a person who may need to appear before or is involved with a matter to be investigated by a Board of Inquiry must be given at least 14 days notice of the time and place of the inquiry.

#### **Clause 208—Inquiry to be held in public except in special circumstances**

Provides that the inquiry must be held in public except where the Board has directed that the inquiry or part of the inquiry be held in private. The Board can decide those persons who can attend the private session. However, before a private inquiry can be held, the Board is to be satisfied it is proper to hold a private inquiry.

**Clause 209—Protection of members, legal representatives and witnesses**

Provides that a member of a Board of Inquiry has the same protection and immunity as a judge of the Supreme Court, and that a lawyer or other person appearing before the inquiry has the same protection and immunity as a lawyer appearing before the Supreme Court.

It also provides that a person appearing before an inquiry has the same protection as a witness in the Supreme Court.

**Clause 210—Record of proceedings to be kept**

Provides that a record of the proceedings of a Board of Inquiry must be kept.

**Clause 211—Procedural fairness and representation**

Provides that a Board of Inquiry must give a person the opportunity of defending all claims made against that person, and that a lawyer or another person can represent the person.

**Clause 212—Board's powers on inquiry**

Provides that the Board of Inquiry in conducting its inquiry can:

- proceed without the attendance of a person who has been given a notice to appear;
- receive evidence on oath or affirmation or by statutory declaration, with the oath or affirmation being administered by a member of the Board;
- adjourn the inquiry; and
- disregard any defect, error, omission or insufficiency in a document.

**Clause 213—Notice to witness**

Provides that the chairperson of a Board of Inquiry may require a person to attend an inquiry to give evidence or produce documents or things. A person required to appear is entitled to witness fees.

**Clause 214—Inspection of documents or things**

Provides that in relation to a document or thing produced to a Board of Inquiry, the Board may inspect, copy or photograph it. The Board may also take possession of and retain it while it is necessary for the inquiry.

It also provides that while the Board of Inquiry is in possession of a document or thing, the Board must permit a person entitled to possession of the document or thing to inspect, copy or photograph it.

**Clause 215—Inquiry may continue despite court proceedings unless otherwise ordered**

Provides that a Board of Inquiry may start or continue and may prepare and present its report notwithstanding that there is a proceeding before another court or tribunal, unless that court or tribunal has the necessary jurisdiction to order otherwise, and orders otherwise.

**Clause 216—Offences by witnesses**

Sub-clause 216(1) provides that a person given a notice to attend before a Board of Inquiry must attend as required by the notice and continue to attend as directed by the chairperson of the Board, unless there is reasonable excuse. Failure to comply is 30 penalty units.

Sub-clause 216(2) provides that a witness at a Board of Inquiry must take an oath or make an affirmation when required by the chairperson. Failure to comply is 30 penalty units.

Sub-clauses 216(3) and 216(4) provide that a witness at a Board of Inquiry must answer questions by members of the Board or produce a document or thing requested by the Board, unless there is reasonable excuse. Failure to comply is 30 penalty units.

It also provides that it is a reasonable excuse not to answer a question or produce a document or thing if the answer or production might tend to incriminate the person.

**Clause 217—Contempt of board**

Provides that a person must not deliberately interrupt a Board of Inquiry, or be involved in a disturbance in or near a place where the Board of Inquiry

is being held, or do anything that would be considered to be a contempt of court if the Board was a judge acting judicially. It also provides for a penalty of 30 penalty units.

**Clause 218—Change of membership of board**

Provides that a Board of Inquiry is not affected by a change of members of the Board.

## **PART 13—MINES RESCUE**

### *Division 1—Preliminary*

**Clause 219—Purposes of pt 13**

Provides that the main purposes of Part 13 are:

- to ensure each coal mine operator of an underground coal mine provides a mines rescue capability for the mine;
- to provide for the Minister to accredit corporations which will assist coal mine operators of underground coal mines to provide a mines rescue capability;
- to provide for the Minister to fix mandatory performance criteria relating to mines rescue which must be met by the accredited corporation; and
- to ensure accredited corporations provide mines rescue services, meet the performance criteria and have adequate funding.

**Clause 220—Definitions for pt 13**

Provides that the following definitions relate solely to Part 13:

**Coal Mine Operator:** Uses the definition provided elsewhere in this Bill with the exception that it does not include a coal mine operator of a mine



where people are not employed or no work is being undertaken by a contractor.

**Mine:** Uses the definition provided elsewhere in this Bill with the exception that it does not include:

- a mine that has been abandoned;
- a mine where people are not employed; or
- if it consists only of exploration activities under an exploration permit or a mineral development licence where the size of the exploration is less than 50 cubic metres.

#### **Clause 221—Meaning of “mines rescue capability”**

Is the ability to provide sufficient trained persons and maintained equipment which will allow an ongoing rescue operation to be undertaken in an irrespirable atmosphere (the worst possible condition).

#### **Clause 222—Meaning of “mines rescue agreement”**

Provides that a mines rescue agreement is either:

- a written arrangement between the coal mine operator and a mines rescue company and, if the coal mine operator is the coal mine operator of an underground mine, it must include a requirement that the mines rescue company assist the coal mine operator to provide a mines rescue capability; or
- a coal mine operator being a member of a company limited by guarantee.

### ***Division 2—Obligations of coal mine operators and users***

#### ***Subdivision 1—All coal mine operators***

#### **Clause 223—Coal mine operator must be a party to a mines rescue agreement**

Provides that all coal mine operators must have a mines rescue agreement. It also provides a penalty of 1,000 penalty units.

**Clause 224—Coal mine operator must contribute**

Sub-clause 224(1) provides that the mines rescue corporation may levy owners who are members of the corporation for the provision of mines rescue services, and it also provides that different contributions may be levied on coal mine operators.

Clause 224(2) provides that a member of a mines rescue corporation, in addition to the compulsory level provided in this Part, is still required to meet any other obligation to pay another amount to the corporation, if applicable. It also provides a penalty of 200 penalty units for failure to pay the compulsory levy.

***Subdivision 2—Further obligation of coal mine operators of underground mines*****Clause 225—Provision of a mines rescue capability**

Sub-clauses 225(1) and 225(2) provide that the coal mine operator of an underground mine is required to provide a mines rescue capability for the mine, and this requirement is in addition to any other requirement the coal mine operator has elsewhere in this Bill. It also provides for a penalty of 1,000 penalty units for non-compliance.

Clause 225(3) provides that a coal mine operator discharges his/her obligation to provide a mines rescue capability by:

- complying with any requirement about mines rescue capability imposed on the coal mine operator under a regulation; and
- ensuring the site senior executive complies with any regulation relating to the provision of a mines rescue capability.

Sub-clause 225(4) provides that a coal mine operator commits an offence under sub-clause 225(1) on each occasion the coal mine operator fails to comply with sub-clause 225(3).

***Subdivision 3—Mine users*****Clause 226—Mine not to be used if ss223-225 contravened**

Provides that a mine cannot be used unless the coal mine operator has a mines rescue agreement, pays all contributions and provides a mines rescue capability. Penalty for non-compliance is 50 penalty units.

***Division 3—Accredited corporations******Subdivision 1—Accreditation*****Clause 227—Accreditation**

Sub-clauses 227(1) and 227(2) provide that a company may apply to the Minister to be a provider of mines rescue services, and that the Minister may grant or refuse the application.

Sub-clause 227(3) provides that prior to the Minister granting the application, the Minister must be satisfied that the corporation is able to provide mines rescue services for every underground coal mine in the State; and can meet the mandatory performance criteria.

It also provides that the Minister (or his delegated officer) must be able to audit the corporation's compliance with the mines rescue service requirements and the mandatory performance criteria. The Minister must be satisfied that in the event of the failure by the corporation to provide mines rescue services or comply with the performance criteria, the corporation has made provision for the Minister to remedy the failure.

Further, it recognises that as it is unlikely there will be a second mines rescue provider and given the specialised nature of mines rescue equipment and personnel, the Minister needs to be able to take control of the corporation's mines rescue services and levy the corporation's members when there is a default by the corporation. This is intended as an urgent temporary arrangement until the company is in a position to assume its responsibilities for the provision of mines rescue services or a second provider is available.

**Clause 228—Accreditation conditions**

Provides that the Minister may impose conditions on the grant of an application for a corporation to provide mines rescue services. It also provides that the conditions could relate to the provision of a security for the provision of mines rescue services and compliance with the performance criteria, and enforcement of the security. Another condition could relate to the corporation meeting the reasonable costs of the Minister in rectifying any default by the corporation.

**Clause 229—Refusal to accredit**

Provides that if the Minister refuses to accredit a corporation, the Minister must give the applicant within 14 days a written notice providing the reasons for the decision, that the applicant may apply within 28 days for a review of the decision to an Industrial Magistrate's Court, and the review process.

**Clause 230—Amending, suspending or cancelling accreditations—grounds**

Provides the reasons for amending, suspending or cancelling the accreditation of an accredited corporation. Those reasons are:

- the accreditation was obtained because of incorrect or misleading information;
- the corporation has not provided a mines rescue service;
- the corporation can not provide mines rescue services for every underground mine;
- the corporation has contravened the performance criteria or a condition of the accreditation;
- the corporation has not reported to the Minister on its compliance with the performance criteria; and
- the corporation has committed an offence against this Bill.

**Clause 231—Amending, suspending or cancelling accreditations—procedure**

Provides that if the Minister considers that there is sufficient evidence to amend, suspend or cancel an accreditation, he must provide to the

corporation a written notice stating the following:

- the proposed action;
- the ground for the proposed action;
- an outline of the facts and circumstances forming the basis for the ground;
- if the proposed action is to amend the accreditation (including a condition of the accreditation)—the proposed amendment;
- if the proposed action is to suspend the accreditation—the proposed suspension period; and
- that the corporation may show (within a stated time of at least 28 days) why the proposed action should not be taken.

It also provides for the subsequent amendment, suspension or cancellation of the approval, and the process for the corporation to have a review (including a stay of execution of the decision).

It further provides for amendments for administrative reasons, including clerical errors and requests by the corporation for changes to conditions of grant, to which the Minister is in agreement.

### *Subdivision 2—Functions and performance*

#### **Clause 232—Functions**

Provides the following as mines rescue services functions:

- the provision of assistance to underground coal mine operators to meet their mines rescue capability;
- the provision of underground mines rescue training;
- the provision of staff and equipment for the corporation to provide mines rescue training and assistance, and to meet the mandatory performance criteria;
- the compliance with the mandatory performance criteria; and
- the reporting by the corporation on its compliance to the Minister.

**Clause 233—Performance criteria**

Provides that the Minister must determine and publish in the Government Gazette the mandatory performance criteria. The criteria, which is to be complied with by the mines rescue corporation, must include the following:

- the provision of mines rescue training programs;
- the provision of equipment and resources to perform its obligations with underground coal mine operators;
- that equipment to be used in an emergency (i.e. mines rescue equipment) is correctly maintained;
- that audits or other exercises that show the corporation's ability to respond to an emergency are performed; and
- the provision of coordinating mutual assistance procedures between coal mine operators in the event of an emergency.

**Clause 234—Reporting to Minister**

Provides that an accredited corporation must submit to the Minister, within one month after the end of the financial year, a written report regarding its compliance with performance criteria.

It also provides that the Minister may request additional reports, and for offence provisions if the corporation does not provide the report or provides false information. Penalty provisions of 100 penalty units for not reporting and 500 penalty units for providing false information are included.

***Subdivision 3—Miscellaneous*****Clause 235—Accredited corporation must keep records**

Provides that the corporation must keep membership records and provide certificates of membership, including financial position, when requested by members.

**PART 14—APPEALS*****Division 1—Appeal against particular decisions of Minister or board of examiners*****Clause 236—Appeals against minister’s decisions**

Provides that a Site Safety and Health Representative removed from office by the Minister or an Industry Safety and Health Representative whose appointment is terminated by the Minister, can appeal to an Industrial Magistrate’s Court under this division of Part 14.

It also provides that an applicant for mines rescue accreditation can appeal the Minister’s refusal of accreditation or the conditions of accreditation. It further provides that an accredited mines rescue provider can appeal against the Minister’s decision to amend, suspend or cancel the accreditation.

**Clause 237—Appeals against board of examiners’ decision**

Provides that a person whose certificate has been cancelled by the Board of Examiners under this Bill may appeal to an Industrial Magistrate’s Court.

**Clause 238—How to start appeal**

Provides a process for commencing an appeal with an Industrial Magistrate’s Court, including time factors.

**Clause 239—Stay of operation of decisions**

Provides that an Industrial Magistrate’s Court may stay a decision appealed against to ensure the effectiveness of the appeal, and provides that the Court may impose conditions on the stay.

**Clause 240—Hearing procedures**

Provides the practices and procedures for an Industrial Magistrate’s Court to hear an appeal.

**Clause 241—Powers of court on appeal**

Provides the decisions that can be made by an Industrial Magistrate's Court in relation to the appeal. Those decisions are:

- to confirm the decision appeals against;
- to set aside the decision and substitute another decision; or
- to set aside the decision and return the matter to original decision maker with directions that the Court considers appropriate.

It also provides that an Industrial Magistrate's Court can make an order for costs.

**Clause 242—Appeal to District Court on questions of law only**

Provides that an appeal from the Industrial Magistrate's Court can be made to a District Court but only on a question of law. It also provides that on hearing the appeal, the District Court may make an order for costs.

***Division 2—Appeals against chief inspector's directives and review decisions*****Clause 243—Who may appeal**

Provides that a person who is affected by a directive given by the Chief Inspector of Coal Mines or a review decision of the Chief Inspector of Coal Mines may appeal to the Industrial Court.

**Clause 244—How to start appeal**

Provides how to commence an appeal and the time limits for making an appeal.

**Clause 245—Stay of operation of directive or review decision**

Provides that an Industrial Court may grant a stay of a directive or review decision, and the conditions of a stay.

It also provides that a directive or a review decision relating to the suspension of operations due to an unacceptable level of risk cannot be



stayed.

**Clause 246—Hearing procedures**

Provides the procedures for an appeal.

**Clause 247—Assessors**

Provides that an Industrial Court may appoint assessors to help it decide an appeal, if the appeal involves an issue of special knowledge.

**Clause 248—Powers of court on appeal**

Provides the decisions an Industrial Court can give in relation to an appeal.

**PART 15—LEGAL PROCEEDINGS***Division 1—Evidence***Clause 249—Application of div 1**

Provides that Division 1 applies to a proceeding under this Bill.

**Clause 250—Proof of appointments and authority unnecessary**

Provides that it is not necessary to prove the appointment of or the authority of the Director-General, the Chief Inspector of Coal Mines, an Inspector, an Inspection Officer or an Industry or Site Safety and Health Representative to carry out functions etc. included in this Bill, except when reasonable notice is given that the appointment of authority is to be challenged.

**Clause 251—Proof of signatures unnecessary**

Provides that a signature claimed to be the signature of those officers mentioned in the preceding clause is evidence of the signature it claims to be.

**Clause 252—Evidentiary aids**

Provides that certain documents are to be taken as evidence of the documents they purport to be.

It is also specified that, in a complaint initiating a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

Provision is also made that any instrument, equipment or installation used by an Inspector, Inspection Officer or analyst in accordance with the conditions (if any) prescribed under a relevant document for its use is taken to be accurate and precise in the absence of evidence to the contrary.

**Clause 253—Expert reports**

Provides that an expert report is admissible in evidence whether or not the expert gives oral evidence.

Provision is made that if the expert does not attend to give oral evidence in the proceeding, the report is admissible only with the Court's leave. In granting leave, the Court must have regard for certain matters including the reasons the expert is not giving oral evidence, the risk that the report's admission or exclusion from evidence will result in unfairness to a party, particularly considering a party's ability to dispute the contents of the report if the expert does not give oral evidence, and any other relevant circumstance.

An expert report means a report made by a person that deals entirely or mainly with issues on which the person is qualified to give expert evidence, but does not include an analyst's report.

**Clause 254—Analyst's certificate or report**

Provides that a signed analyst's report is evidence of certain matters that it states, such as the analyst's qualifications and the results of the analysis.

***Division 2—Proceedings*****Clause 255—Proceedings for offences**

Provides that a prosecution for an offence against this Bill is by way of summary proceedings before an Industrial Magistrate. This clause provides that more than one contravention of a coal mine safety and health obligation under clause 34 of this Bill may be charged as a single charge if the acts or omissions give rise to the claimed contravention happening within the same period and in relation to the same coal mine.

It also provides that a person dissatisfied with a decision of an Industrial Magistrate can appeal to the Industrial Court.

The *Workplace Relations Act 1997* applies to a proceeding before an Industrial Magistrate or a proceeding on appeal to the Industrial Court.

It further provides that a prosecution for an offence against this Bill must be commenced by complaint of the Chief Inspector of Coal Mines, or someone else authorised by the Minister or the Attorney-General.

**Clause 256—Recommendation to prosecute**

Sub-clause 256(1) provides that an Inspector, an Industry Safety and Health Representative or a site senior executive may recommend to the Chief Inspector of Coal Mines a prosecution for an offence against this Bill.

Sub-clause 256(2) provides that sub-clause 1 does not limit the Chief Inspector of Coal Mines power to prosecute.

**Clause 257—Limitation on time for starting proceedings**

Provides that a proceeding for an offence against this Bill must be started within one year after the commission of the offence or within six months after the offence comes to the complainant's knowledge but within 3 years after the commission of the offence.

**Clause 258—Court may order suspension or cancellation of certificate**

Provides that if a person is convicted of an offence and holds a certificate of competency, an Industrial Magistrate may suspend or cancel the certificate of competency.

**Clause 259—Forfeiture on conviction**

Provides that an Industrial Magistrate's Court on convicting a person of an offence under this Bill can forfeit to the State anything used to commit the offence or anything the subject of the offence. This forfeiture can be made notwithstanding that the item has not been seized or has been returned to its owner.

The Court's power in ordering the forfeiture does not limit the Court's powers under the *Penalties and Sentences Act 1992* or any other law.

**Clause 260—Dealing with forfeited things**

Provides that on forfeiture to the State an item may be dealt with, including its forfeiture, as the Director-General considers appropriate, including the destruction of the item.

**Clause 261—Responsibility for acts or omissions of representatives**

Provides that if it is relevant to prove a person's state of mind about a particular act or omission it is enough to show that the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority and the representative had the state of mind.

It also provides that an act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

It also provides the meaning of "representatives" and "state of mind".

**Clause 262—Executive officers must ensure corporation complies with Act**

Provides that the executive officers of a corporation must ensure that the corporation complies with this Bill.

If a corporation commits an offence against a provision of this Bill, this clause provides that each of the executive officers of the corporation commits the offence of failing to ensure that the corporation complies with

the provision. It is specified that it is evidence that each of the executive officers committed the offence of failing to ensure the corporation complied with this Bill if there is evidence that the corporation has been convicted of an offence against a provision of this Bill.

The maximum penalty for contravention of sub-clause 2 of this clause is the penalty for the contravention of the provision by an individual.

It is provided that it is a defence for an executive officer of a corporation to prove that:

- the officer, if in a position to influence the conduct of the corporation in relation to the offence, exercised reasonable diligence to ensure the corporation complied with the provision; or
- the officer was not in a position to influence the conduct of the corporation in relation to the offence.

### **Clause 263—Representation**

Provides that a lawyer or agent may represent a party to a proceeding under this Bill.

### **Clause 264—Costs of investigation**

Provides that if a court convicts a person of an offence, then the court may order the person to pay the reasonable costs of the Department of Mines and Energy in investigating the offence including the costs of preparing the prosecution.

It also provides that this clause does not limit the orders for costs that the court may make.

### **Clause 265—Recovery of fees**

Provides that an unpaid fee under this Bill may be recovered by the Director-General in summary proceedings under the *Justices Act 1886* or by action for a debt in a court of competent jurisdiction.

The clause also provides for a fee to be recovered in a proceeding for an offence against this Bill, and how an order made is enforceable.

***Division 3—Evidentiary provisions*****Clause 266—Service of documents**

Provides that if a document is required or permitted under this Bill to be given to a person, then it may be given to the person by facsimile transmission and is taken to have been given on the day the copy is transmitted, subject to certain requirements.

It also provides that this clause does not limit any other means of given documents authorised or permitted by law.

**Clause 267—How document to be given to coal mine operator**

Provides that a document is taken to have been given to a coal mine operator if it is addressed to the coal mine operator and given to the site senior executive.

**PART 16—OFFENCES****Clause 268—Person not to encourage refusal to answer questions**

Provides that a person must not encourage or influence, or attempt to encourage or influence, a coal mine worker to refuse to answer questions put to the coal mine worker by an Inspector, Inspection Officer or Industry Safety and Health Representative. It also provides a penalty of 40 penalty units.

However, a lawyer can provide advice to a worker.

**Clause 269—Impersonating inspector or inspection officers and others**

Provides that a person must not pretend to be an Inspector, Inspection Officer, Site or Industry Safety and Health Representative. It also provides a penalty of 40 penalty units.

**Clause 270—Protection for officers**

Provides that a person must not disadvantage an Inspector, Inspection Officer or Industry Safety and Health Representative or Site Safety and Health Representative for exercising their powers under this Bill. It also provides a penalty of 500 penalty units.

**PART 17—GENERAL***Division 1—General safety matters***Clause 271—Contraband must not be taken into an underground mine**

Provides that a person who is going underground may be searched to ensure that contraband is not taken underground. A search must be conducted in accordance with the relevant standard operating procedures for the coal mine.

It also provides that a search may be held at any time irrespective of whether or not there is a suspicion that the person may have possession of contraband. However, a person must be searched by a person of the same sex, and strip searches are not permissible.

A person who refuses to be searched must not go underground, or if underground must immediately return to the surface. A person who goes underground or does not return to the surface after refusing a search is liable to a penalty of 100 penalty units.

**Clause 272—Children under 16 not to be employed underground**

Provides that the site senior executive must ensure a person under the age of 16 is not employed as an underground coal mine worker. It provides a penalty of 100 penalty units.

**Clause 273—Withdrawal of persons in case of danger**

Sub-clauses 273(1) and 273(2) provide that if a coal mine is dangerous then all persons exposed to the danger must be withdrawn to a safe place, and if a coal mine worker is competent and able to eliminate a hazard then the worker must take the necessary action. Failure to comply is 100 penalty units.

Sub-clause 273(3) provides that if a coal mine worker is not competent or able to eliminate the danger then the worker must take measures to prevent immediate danger to other workers and immediately report the situation to the worker's supervisor. Penalty for non-compliance is 100 penalty units.

Sub-clauses 273(4) and 273(5) provide that a competent person must assess a hazard/s which has resulted in the withdrawal of workers, and that the workers must not be readmitted until the competent persons referred to in sub-clause 273(6) have declared that the safety and health of the coal mine or part of the coal mine is at an acceptable level.

Sub-clause 273(6) provides that notwithstanding the provisions of 273(5), the minimum number of competent persons necessary to reduce the risk may be readmitted to the coal mine or part of the coal mine if appropriate precautions are taken so that the risk to the persons is within acceptable limits.

Sub-clause 273(7) provides that for this clause of the Bill, a coal mine is dangerous if:

- sealing operations are to commence;
- the coal mine or part of the coal mine has been sealed; or
- the control details in a principal hazard management plan have not been implemented or maintained.

Sub-clause 273(8) provides incidents when a coal mine is not considered dangerous and these are:

- sealing operations are being undertaken in an emergency and an Inspector has been notified;
- sealing operations are being undertaken following written acknowledgement from an Inspector that sealing operations comply with recognised standards and good mining practice; or



- written consent has been received from an Inspector for persons to be underground following a sealing.

Sub-clause 273(9) provides that the competent person appointed under this clause to assess the hazard/s must make a report on the withdrawal of persons and remedial action taken in the mine record. Penalty for non-compliance is 100 penalty units.

Sub-clause 273(10) provides that the site senior executive must notify the Inspector of any action taken under this clause. Penalty for non-compliance is 200 penalty units.

#### **Clause 274—Where coal mine worker exposed to immediate personal danger**

Provides that if a coal mine worker believes there is immediate personal danger the worker can remove him/herself to a position of safety and refuse to undertake a task that may place the worker in immediate personal danger. It also provides that a coal mine operator or the operator's representative must not disadvantage the coal mine worker for taking this action. Penalty for non-compliance is 200 penalty units.

The operator or operator's representative must inform any other person asked or directed to enter an area considered dangerous by a fellow employee. Penalty for non-compliance is 200 penalty units.

#### **Clause 275—Representation by coal mine worker**

Provides that a coal mine worker may make a representation either personally or through a representative to an Inspector or Inspection Officer about an alleged breach of this Bill or a thing or practice at the coal mine that is, or is likely to be, dangerous. The Inspector or Inspection Officer must investigate the matter, and that the name of the person making the representation must not be disclosed except for a prosecution.

It also provides that a coal mine worker must not make a false or frivolous representation. Penalty for non-compliance is 40 penalty units.

***Division 2—Miscellaneous*****Clause 276—Protection from liability**

Provides that this clause refers to the Minister, the Chief Inspector of Coal Mines, an Inspector, an Inspection Officer, a person acting under the direction of or assisting an Inspector, a member of the Coal Mining Safety and Health Advisory Council, and an Industry or Site Safety and Health Representative.

It provides that any of the aforementioned persons do not incur a civil liability for an act done, or omission made, honestly and without negligence under this Bill, and if this prevents a civil liability attaching to an official then the liability attaches to the State.

**PART 18—ADMINISTRATION****Clause 277—Delegations**

Provides that the Minister or the Director-General may delegate their powers under this Bill to an appropriately qualified public service employee.

It also provides that the Minister may delegate a power relating to the appointment of a person to manage mines rescue to an appropriately qualified person. The person appointed to manage mines rescue need not be a public service employee.

**Clause 278—Delegation of chief inspector's powers**

Provides that the Chief Inspector of Coal Mines can delegate any of his powers to an Inspector, except the power to review an Inspector's directive.

However, the Chief Inspector of Coal Mines must be satisfied that the Inspector has the expertise and experience to exercise the delegated power.

**Clause 279—Notices about coal industry statistics or information**

Provides that when requested a person is required to provide statistical information on the coal industry. Examples of information that can be requested include the following:

- the keeping and production of records of coal production, disposal, sales and employment numbers;
- the compilation and giving of statistics, returns and other information (including about attendance and absenteeism for work at coal mines); and
- the records, statistics, returns and other information to be in a format acceptable to Department of Mines and Energy.

It also provides for a penalty of 40 penalty units if a person contravenes the order without reasonable excuse.

#### **Clause 280—Chief executive to keep records**

Provides that the Director-General must keep and maintain records that include: a database that includes information about hazards associated with coal mining operations and methods of controlling the hazards; plans showing the extent of operations in abandoned mines; and current recognised standards.

It also provides that on payment of a reasonable fee a person must be given access to the data.

#### **Clause 281—Approved forms**

Provides that the Chief Inspector of Coal Mines may authorise forms for use under this Bill.

## **PART 19—REGULATIONS**

#### **Clause 282—Regulation-making power**

Provides for the Governor in Council to make regulations under this Bill.

It also provides that a regulation may be made about:

- the performance objectives used to achieve an acceptable level;
- prohibiting anything, or prescribing anything, to achieve an

acceptable level;

- matters of an administrative nature; or
- fees payable under this Bill.

Further, it provides that a regulation can be made about coal mine safety and health and gives examples of matters about which a regulation may be made, and that a regulation may create offences and prescribe penalties of not more than 400 penalty units for offences against a regulation.

Full details are contained in Schedule 2.

## **PART 20—TRANSITIONAL PROVISIONS AND REPEALS AND CONSEQUENTIAL AMMENDMENTS**

### *Division 1—Definitions*

#### **Clause 283—Definitions for pt 20**

Provides the meaning for “commencement” and that is the commencement of Part 20, and the meaning of “former Act” and that is the *Coal Mining Act 1925*.

### *Division 2—Transitional matters*

#### **Clause 284—Existing notices**

Sub-clauses 284(1) and 284(2) provide that a notice mentioned in sub-clause 284(4) and in force under the *Coal Mining Act* immediately before the commencement of this Bill remains in force for this Bill.

It also provides that the notice may be amended or repealed by a regulation, and is to be read with the changes necessary to make it consistent with this Bill and adapt its operations to the provisions of this Bill.

Sub-clause 284(3) provides a listing of those notices that remain in force for this Bill.

**Clause 285—Existing certificates of competency**

Provides that if a certificate of competency issued by the Board of Examiners and in force at the commencement of this Bill is taken to be a certificate granted under this Bill.

**Clause 286—Approvals by inspector**

Provides that if an approval of the Chief Inspector of Coal Mines or an Inspector for a stated use for stated plant is in force under the *Coal Mining Act* at the commencement of this Bill and a certificate by a testing authority is required under this Bill for the stated use for the stated plant, then the approval of the Chief Inspector of Coal Mines or Inspector under the *Coal Mining Act* is taken to be a certificate given under this Bill.

**Clause 287—Board of examiners**

Provides for the continuation of the existing Board of Examiners for term of 6 months after the commencement of this Bill, with the functions and powers contained in this Bill.

**Clause 288—Mines rescue performance criteria**

Provides that a notice in the Government Gazette about mines rescue performance criteria under the *Coal Mining Act* is taken to be notice under this Bill.

**Clause 289—Existing chief inspector to be chief inspector**

Provides that the person who was Chief Inspector of Coal Mines at the commencement of this Bill is taken to be appointed the Chief Inspector of Coal Mines under this Bill.

**Clause 290— Existing inspector to be inspector**

Provides that a person who was an Inspector at the commencement of this Bill is taken to be appointed as an Inspector under this Bill.

**Clause 291—Existing inspector officer to be inspection officer**

Provides that a person who was an Inspection Officer at the commencement of this Bill is taken to be appointed an Inspection Officer under this Bill.

**Clause 292—Existing district union inspectors**

Provides that a person who was a District Union Inspector at the commencement of this Bill is taken to be appointed as an Industry Safety and Health Representative under this Bill until 30 June 2000.

**Clause 293—Existing miners' officer to be site safety and health representative**

Provides that a person who was a miners' officer at the commencement of this Bill is taken to be appointed as a Site Safety and Health Representative under this Bill. It also provides that the person may, subject to this Bill, continue to be a Site Safety and Health Representative for 6 months after the commencement of the Bill.

**Clause 294—Mines record book taken to be mine record**

Provides that a mines record book under the *Coal Mining Act* is a mine record under this Bill.

**Clause 295—Notices about coal industry statistics or information**

Provides that the Statistical Order made under section 110 of the *Coal Mining Act* is taken to be a notice by the Director-General under clause 279 of this Bill.

**Clause 296—Coal Industry Employees' Health Scheme**

Provides that the *Coal Industry Employees' Health Scheme Regulation 1993*, which is a regulation under the *Coal Mining Act 1925*, continues in force. It also provides that the Director-General continues to be the administrator of the Order.

**Clause 297—Warden may finish inquiry into accident**

Provides that a mining warden may continue to hear and finalise an accident inquiry commenced under the *Coal Mining Act 1925*, if the hearing has not been completed prior to the proclamation of this Act.

***Division 3—Repeals*****Clause 298—Repeals**

Provides that the *Coal Mining Act 1925* and the *Coal Mining Act Amendment Act 1928* are repealed.

***Division 4—Consequential amendments*****Clause 299—Acts amended**

Provides that Acts mentioned in Schedule are amended as mentioned in the Schedule.

**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS*****FREEDOM ON INFORMATION ACT 1992***

Provides that the *Freedom of Information Act 1992* is amended by the insertion of the following:

“*After section 42(1)—*

*insert—*

*(1A) matter is also exempt matter if—*

- (a) it consists of information given in the course of an investigation of a contravention or possible contravention of the law (including revenue law); and*
- (b) the information was given under compulsion under an Act that abrogated the privilege against self incrimination.*

**WORKPLACE HEALTH AND SAFETY ACT 1995**

Provides for the amendment of section 3(1)(a) of the *Workplace Health and Safety Act 1995* by the insertion of the words “a coal mine to which the *Coal Mining Safety and Health Act 1995* applies”.

**CORONERS ACT 1958, EVIDENCE ACT 1977, EXPLOSIVES ACT 1952, FIRE AND RESCUE ACT 1990, FOREIGN OWNERSHIP OF LAND REGISTER ACT 1988, FORESTRY ACT 1959, PROPERTY LAW ACT 1947 and QUEENSLAND INTERNATIONAL TOURIST CENTRE AGREEMENT ACT REPEAL ACT 1989**

Provides that the abovementioned Acts are amended by deleting to reference to the *Coal Mining Act 1925* and substitution therefore the *Coal Mining Safety and Health Act 1999*.

**SCHEDULE 2—SUBJECT MATTER FOR REGULATIONS**

Provides details of those matters a regulation under Clause 282 of the Bill can be made about.

**SCHEDULE 3—DICTIONARY**

Provides a dictionary that contains definitions of words and terms used in this Bill. Where a word has a substantial definition that has been included in this Bill, a cross-reference to where the definition appears is provided.