

MINING AND QUARRYING SAFETY AND HEALTH BILL 1999

EXPLANATORY NOTES

SHORT TITLE

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

POLICY OBJECTIVES

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

This is to be achieved by repealing the *Mines Regulation Act 1964* and introducing modern legislation that adopts the following basic 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 Mining and Quarrying 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 *Mine Regulation Act*

1964, which provides for safe operation of mines (other than coal mines) and quarries, 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 Crushed Stone Association, the Australian Workers’ Union and the Australian Council of Trade Unions—Queensland, all recognise deficiencies in the current regulatory regime covering safety and health in mines and quarries.

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 *Mines Regulation 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. This concept was adopted, to develop the policy requirement for review of the *Mines Regulation Act* that formed the proposal for the Mining and Quarrying 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 Coal Mining Safety and Health Bill and in mining legislation in other States. Some of the detailed provisions reflect the specific hazards and circumstances of the mining and quarrying 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 *Mines Regulation Act* 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.

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

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 31 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 consent is limited to work places under the control of persons with obligations under the legislation. This power extends to workplaces off the mine site. Warrants will be required for other place

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.

In Western Australia, the use of contractors has been identified as one of the reasons for an increase in fatal injuries within the 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 penalty 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 Legislation Review Group (LRG)

The LRG has representation from the QMC, the Crushed Stone Association, the Australian Workers' Union and the Australian Council of Trade Unions -Queensland 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 mines, other than coal mines, to protect the safety and health of persons at mines and persons who may be affected by operations, and for related 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 *Mining and Quarrying Safety and Health Act 1999*.

Clause 2—Commencement

Provides for the commencement of the *Mining and Quarrying Safety and Health Act 1999* 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 mines and mining operations. A mine is defined in Clause 9 of the Bill and includes a quarry.

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 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 mine who may be affected by mining operations; and
- that the level of risk of injury or illness resulting from mining is 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 guidelines;
- establishment of a Mining Safety and Health Advisory Council;
- Site Safety and Health Representatives and Site Safety and Health Committees;
- provision of, and powers of, Inspectors and other officers to monitor operations and take appropriate action;
- recognition and assessment of professional competencies;

- provision of management structures; and
- emergency preparedness.

Division 4—Interpretation

Subdivision 1—Dictionary

Clause 8—Definitions-the dictionary

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

Subdivision 2—Other important terms

Clause 9—Meaning of “mine”

Sub-clauses 9(1) and 9(2) provide a definition of a mine. Specifically it relates to a place where operations are undertaken within a mining tenure or adjoining lands. It also refers to place where illegal mining activities are undertaken. It also provides that a mine includes a quarry.

It further includes certain works on an abandoned mine. It also provides that when declared under a regulation a mine could be a place where tourism, education or research related to mining is undertaken. It further provides that a mine includes buildings for administration, accommodation and associated facilities at the mine or adjoining the mine.

Sub-clauses 9(3) and 9(4) provide that certain work done by or on behalf of the State after abandoned on a mine does not make a place a mine. It also provides that a mine or part of a mine declared by regulation to be exempted from the provisions of this Bill is not a mine.

Clause 10—Meaning of “operations”

Sub-clause 10(1) provides a definition of operations and includes: exploration; mining for minerals or for hard rock and treating; extracting, loading, transporting, crushing, concentration, storing etc; disposals of minerals or waste products; works on dams, excavations, buildings, plant machinery or equipment; and rehabilitation of a place after operations.

Sub-clause 10(2) provides those operations that are not a mine for the purposes of this Bill and these are: extracting clays for manufacture of bricks or ceramics; airborne surveys, fossicking, smelters, refineries, stock piles and processing plants that are not adjacent etc to the mine or, if adjacent to the mine, are not an integral part of operations; use of public road or railways or a pipeline; air transportation or pastoral activities and operations exempted by regulation.

Clause 11—Meaning of “quarry”

Sub-clauses 11(1) and 11(2) provide details of what constitutes a quarry, and is a place where hard rock is excavated to produce construction or road building material. It also provides that it includes a place where processing of hard rock is undertaken provided the processing is adjacent to the excavation.

Sub-clause 11(3) provides that a quarry is not a construction workplace under the *Workplace Health and Safety Act 1995*, or where rock is excavated without being broken.

Clause 12—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 mining and quarrying operations or other activities at the mine or quarry.

Clause 13—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 14—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 15—Meaning of “standard work instruction”

Provides a definition for standard work instruction, and is a documented way of working at the mine to achieve an acceptable level of risk, developed after consultation with workers.

Clause 16—Meaning of “accident”

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

Clause 17—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 18—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 19—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 20—Meaning of “hazard”

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

Clause 21—Meaning of “operator”

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

It also provides that a person may be appointed an operator for more than one mine or separate parts of a mine, subject to certain requirements.

Clause 22—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 operator at the mine.

Clause 23—Meaning of “supervisor”

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

Clause 24—Meaning of “district workers’ representative”

Provides a definition of a District Workers Representative, and is a person representing workers on safety and health matters while carrying out the role of a District Workers Representative as defined elsewhere in this Bill.

Clause 25—Meaning of “site safety and health representative”

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

PART 2—BASIC CONCEPTS*Division 1—Control and management of risk***Clause 26—What is an acceptable risk**

Sub-clause 26(1) provides that all operations must be carried out so that the level of risk of injury or illness is both acceptable and at a minimum.

Sub-clause 26(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 27—Risk management

Provides that risk management is the systematic application of policies, procedures and practices to:

- identity, analyse and assess risk, and avoid or reduce unacceptable risk;
- monitor levels of risk and the adverse consequence of residual risk;
- investigate and analyse the causes of serious accidents and high potential incidents;
- review risk control measures and take necessary corrective and preventative action; and

- mitigate the potential adverse effects arising from residual risk.

It also provides that the policies, procedures and practices must be appropriate, and details of issues that should be considered.

Clause 28—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 Safety and Health Representative or any worker, and the District Workers' Representative or the Mines Inspectorate.

Division 2—Cooperation

Clause 29—Cooperation to achieve objects of Act

Sub-clause 29(1) provides that the Bill seeks to achieve cooperation between operators, site senior executives and workers to achieve the objectives of this Bill.

Sub-clause 29(2) provides that the establishment of a Mining Safety and Health Advisory Council, the appointment of District Workers' Representatives and Site Safety and Health Representatives, the establishment of site safety and health committees, and the involvement of workers are important methods of achieving safety and health for the mining industry in general, and the mine site in particular.

PART 3—SAFETY AND HEALTH OBLIGATIONS

Division 1—Preliminary

Clause 30—Obligations for safety and health

Provides details of those persons who have responsibilities under

Division 2 and Division 3 of Part 3 of this Bill. Those persons not only include on-site persons and holders but also off-site persons involved in manufacturing, designing, supplying and importing plant, and those persons involved in the manufacture, import and supply of chemicals etc. It also includes 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 persons who may influence safety and health at mines.

Clause 31—Discharge of obligations

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

Clause 32—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 33—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 34—How obligation can be discharged if regulation or guideline made

Sub-clause 34(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 34(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 34(3) provides that if a guideline details a way of achieving an acceptable level of risk, then a person can discharge his/her obligation by either following the guideline or by adopting and following another way to reduce the level of risk which is at least equal to or better than the acceptable

level.

Clause 35—How obligations can be discharged if no regulation or guideline made

Provides that if there is no regulation or guideline 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 36—Obligations of persons generally

Provides in detail the obligations of on-site and off-site persons. Those obligations include: compliance with this Bill, standard work instructions and 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.

It also provides that a mine worker has the following additional obligations:

- to manage the risk of injury or illness to self or others;
- if applicable, supervision of tasks and people in relation to safety and health;
- applying risk management practices;
- follow safety and health instructions;
- only work if fit to undertake work without affecting safety and health of others; and
- not to do anything that might adversely affect safety and health.

Division 3—Obligations of holders, operators, site senior executives and others**Clause 37—Obligations of holders**

Provides the obligation of a holder of a mine, if the holder is not also the operator. Those obligations include providing the proposed operator with information to ensure the site senior executive develops and implements a safety and health management system, and provision of adequate resources to ensure the effectiveness and implementation of the safety and health management system.

It also provides that the contract between the holder and operator must include an obligation on the operator to establish a safety and health management system.

The contract must be in writing.

Penalty for non-compliance is 100 penalty units.

Clause 38—Obligation of operators

Sub-clause 38(1) provides the obligations of a operator. Those obligations include the management of risk at an acceptable level, the safety and health of the entire workforce and other affected by mining operations, the appointment and supervision of a site senior executive and to undertake audits and reviews of the safety and health management system.

The supervision of the site senior executive includes ensuring that he/she develops and implements a safety and health management system, and develops, implements and maintains a management structure.

Sub-clause 38(2) provides that an operator has an obligation not to conduct mining operations without a safety and health management system.

Sub-clause 38(3) provides that sub-clauses 1(d) to 1(f) and sub-clause 2 do not apply to mines where no more than 10 workers are employed

Sub-clause 38(4) provides that because of the size, nature or complexity of operations a regulation can specify that sub-clauses 1(d) to 1(f) and 2 can apply to a mine with 10 or less workers.

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

Clause 39—Obligations of site senior executive for mine

Provides the obligations of the site senior executive. Those obligations relate to the safety and health of persons who may be affected by operations and include: ensuring risk from operations, plant or chemicals etc. is at an acceptable level; 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 such as planning, control, supervision, expertise, monitoring and inspections etc.

It also provides that the requirement to develop and implement a safety and health management system does not apply to a site senior executive of a mine with 10 or less workers. It also provides that by regulation, a mine with 10 or less workers because of the size, nature or complexity of operations can specify that a safety and health management system be developed and implemented.

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

Clause 40—Obligations of contractors

Provides that any contractor must comply with the Mining and Quarrying Safety and Health Bill and any applicable safety and health management system.

Clause 41—Obligations of designers, manufacturers, importers and suppliers of plant etc for use at mines

Provides the obligations of a designer, manufacturer and supplier of equipment for use at 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 41(1) and manufacturers in sub-clause 41(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 and without risk to health.

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

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

Clause 42—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 43—Obligations of manufacturers, importers and suppliers of substances for use at mines

Provides an obligation on a manufacturer, importer and supplier of substances. 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 available. There is also an obligation to take any action the Chief Inspector of Mines reasonably requires to prevent the use of a 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

- health hazards associated with the substance.

Clause 44—Obligation of provider of services at mines

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

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

Division 4—Defences**Clause 45—Defences for div 2 or 3**

Sub-clause 45(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, 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 guideline 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 guideline. It is also a defence for the person if he/she adopted and followed another way that achieved a level of risk equal to or better than the acceptable level.

Where there is no regulation or guideline, 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 45(2) provides that it is also a defence for a person in relation to clause 31 if the commission of the offence was due to causes over which the person had no control.

Sub-clause 45(3) provides that sections 23 and 24 of the *Criminal Code* do not apply in relation to a contravention of clause 31.

Sub-clause 45(4) provides that a reference to a guideline is a reference to a guideline in force at the time of the contravention.

PART 4—PROVISIONS ABOUT THE OPERATION OF MINES

Division 1—Notices about mines

Clause 46—Notices by holder

Provides that the holder of a mine must notify the Inspector of the region of the mine operator's particulars and the name of the mine and description of the land comprised in the mine and of any subsequent additions or deletions of land. It further provides that notification of the appointment of the operator must be given within 14 days of the appointment. The mine operator must not be changed without first notifying the Inspector.

Penalty for non-compliance is 40 penalty units.

Clause 47—Notices by operator

Provides that the operator must provide the regional Inspector of the mine operator's personal particulars, the name of the mine and a description of the land to be mined, if there is not a holder for the mine.

It also provides that the mine operator must also provide the regional Inspector at least 2 months prior to the commencement or significant change to operations a facility description for the mine. The facility description must include information to decide the risk management measures necessary for an effective safety and health management system. It also provides that by regulation this clause does not apply to mines with a small number of employees.

The operator must, before operations start, inform the regional Inspector in writing of the date of commencement of operations. The operator must also inform a regional inspector of name and address of the person appointed as the site senior executive and of any temporary or relieving site senior executives, within 7 days after the appointment. It also provides a penalty of 40 penalty units for non-compliance.

Further, it provides that the operator, within 1 month after the addition or omission of land, must advise the regional Inspector in writing of the change of boundaries. Penalty for non-compliance is 40 penalty units.

Division 2—Management of mines**Clause 48—Appointment of operator**

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

Clause 49—Appointment of site senior executive

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

Clause 50—Management structure for safe operations at 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, provide the names and competencies of holders of positions in the structure and provide for competent persons as relieving supervisors.

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 in the management structure.

Clause 51—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 undertake those tasks, or if the competency is recognised—the person has the necessary competency.

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

Clause 52—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 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 53—Additional requirements for management of underground mines

Sub-clauses 53(1) and 53(2) provide that the site senior executive must appoint an underground mine manager where there is an underground mine. Penalty for non-compliance is 400 penalty units. It further provides that the site senior executive may also be the underground mine manager.

Sub-clause 53(3) provides that if more than 20 people are employed underground, an underground mine manager can only be appointed if that person has a first class certificate of competency for an underground mine. It also provides a penalty of 400 penalty units for non-compliance.

Sub-clause 53(4) provides that a person cannot be appointed as underground mine manager for more than one mine without the written approval of the Chief Inspector of Mines. It also provides a penalty of 200 penalty units for non-compliance.

Sub-clause 53(5) requires that written notice be given to the regional Inspector of the appointment on an underground mine manager. Penalty for non-compliance is 40 penalty units.

Clause 54—Appointment of another underground mine manager during temporary absence

Provides that if the underground mine manager is absent for more than 14 days, the operator or site senior executive must in writing appoint an underground mine manager during the period of the absence.

Division 3—Safety and health management systems**Clause 55—Safety and health management system**

Sub-clause 55(1) provides that the safety and health management system for a mine is a system that incorporates risk management elements and

practices that ensure safety and health of persons who may be affected by operations.

Sub-clause 55(2) provides that the safety and health management system 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 55(3) provides that the safety and health management system must be effective to achieve an acceptable level of risk by:

- defining the safety and health policy of the operator;
- including a plan in relation to the implementation of the safety and health policy;
- providing information on the strategy to develop the capabilities and support mechanisms to achieve the safety and health policy;
- including procedures for operating the mine and standard work 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 operations

Clause 56—Review of safety and health management system

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 site senior executive, in consultation with affected workers or appropriate Site safety and Health Representatives and committees, must review the safety and health management system. It also provides for a penalty of 200 penalty units.

The review of the safety and health management system must take place for a new 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 57—Management structure to be recorded in the mine record

Provides that the site senior executive must enter into the mine record, within 7 days of the establishment or change, details of the management structure and of persons holding senior positions in the structure, or any changes to the management structure. It also provides for a penalty of 50 penalty units.

Clause 58—Plans of mine workings

Sub-clause 58(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 any adjoining mine on the safety of the mines, any potential uncontrolled flow of material into the mine workings and information to evaluate the effects of mining on adjoining mines be included in the plan. A penalty of 100 penalty units applies for non-compliance.

Sub-clause 58(2) 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 or other matters referred to in sub-clause 58(1). It also provides a penalty of 100 penalty units for failure to comply.

Sub-clause 58(3) provides that the last operator of a mine must provide to the Chief Inspector of Mines, within 14 days of the abandonment of a mine, plans showing the extent of mining. It also provides a penalty of 100 penalty units for failure to comply.

Sub-clause 58(4) 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 58(1). Penalty for non-compliance is 100 penalty units.

Sub-clause 58(5) provides that the accuracy of plans mentioned in this

clause must be certified by a person competent in mine surveying.

Clause 59—Mine record

Provides that an operator must keep a mine record of:

- all inspections, audits etc and reports etc arising therefrom;
- 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 the records must be kept for seven years irrespective of whether or not entries were made under this Bill or under the *Mines Regulation Act 1964*. It provides for a penalty of 200 penalty units for non-compliance with requirement to maintain records for 6 months

It also provides that a person must not alter, deface or destroy a record, with a penalty of 400 penalty units for an offence.

Clause 60—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 mines

Clause 61—Responsibility for protecting abandoned mines

Provides that the last mine operator is responsible for ensuring that discontinued operations are made safe. It also provides that the holder is responsible for ensuring discontinued operations are made safe, if the operator fails to comply with this clause. It also provides that notwithstanding the obligations of the operator under this clause, the holder made ensure the mine is safe and made secure.

Further, it provides for a penalty of 800 penalty units for non-compliance with each provision of this clause, and that a conviction under this clause does not affect the Director-General's ability to recover costs of making the mine safe and secure.

PART 5—GUIDELINES

A guideline 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 62—Purpose of guidelines

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

Clause 63—Guidelines

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

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

Clause 64—Use of guidelines in proceedings

Provides that a guideline 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 guideline is about achieving an acceptable level for a risk.

PART 6—INDUSTRY CONSULTATIVE ARRANGEMENTS

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

Division 1—Purposes of part**Clause 65—Purposes of pt 6**

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

Division 2—Mining safety and health advisory council and its functions**Clause 66—Mining safety and health advisory council**

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

Clause 67—Functions of council

Sub-clause 67(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.

Sub-clause 67(2) provides that the Council must discharge the primary function referred to in sub-clause 67(1) by:

- periodically reviewing the effectiveness of this Bill, regulations and guidelines;
- periodically reviewing the effectiveness of the control of the risk to any person from 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 67(3) provides that the Council also has the following functions:

- establishing, recognising and publishing the competencies accepted by the Council as qualifying a person to carry out stated tasks or to perform duties under this Bill; and
- if asked by the Minister, making recommendations about individuals nominated for appointment as District Workers' Representatives.

Sub-clause 67(4) provides that in reviewing the effectiveness referred to in sub-clause 67(2), the Council must have regard to the following:

- the risk management performance of industry;
- the appropriateness of guidelines;
- education, training and standards of competency;
- the implementation of recommendations resulting from an Inspector's investigation, an 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 68—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 69—Membership of council

Provides that the Council shall consist of an Inspector appointed by the Minister as chairperson and eight other members.

Clause 70—Organisations to submit names to Minister

Provides that organisations representing mine operators and mine workers may each provide, within one month of being requested by the Minister, a panel of nominees of not less than four names to be members of the Council.

All industrial organisations representing operators and all industrial organisations representing workers can each only submit one panel of nominees.

Clause 71—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 organisation representing operators must represent quarry

operators, and that one of the persons from the list provided by organisations representing mine workers must be from the organisation that represents the majority of the 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 appropriately experienced, 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 industry, and practical knowledge of the industry and relevant legislation.

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

It also provides that the members who are not Inspectors must be appointed under this Bill and not the *Public Service Act 1996*.

Clause 72—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.

Clause 73—Conditions of appointment

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

It also provides that a member holds office on conditions of office determined by the Governor in Council, if not provided elsewhere in this Bill.

Clause 74—Member ceasing as member

Provides those circumstances when a position on the Mining Safety and Health Advisory Council becomes vacant.

Clause 75—Times and places of meetings of the council

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 76—Presiding at meetings of the council

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

Clause 77—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 mine operators, the mineworkers 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 78—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 79—Taking part in meetings by telephone etc.

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

Clause 80—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 mine operators, 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 81—Minutes by the council

Provides that minutes must be kept of all Council proceedings.

Clause 82—Committees

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

PART 7—SITE SAFETY AND HEALTH REPRESENTATIVES AND COMMITTEES

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

Division 1—Purposes of part

Clause 83—Purposes of pt 7

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

Division 2—Site safety and health representatives

Clause 84—Selection or election of site safety and health representatives

Sub-clauses 84(1) and 84(2) provide that mine workers may elect up to two workers to be Site Safety and Health Representatives. If the mine operations allow for more than one site senior executive, the mine workers may elect two workers for each site senior executive. The terms of appointment of the Site Safety and Health Representatives to be determined by the mine workers.

Sub-clause 84(3) provides that more than two Site Safety and Health Representatives for each site senior executive may be elected if the mine workers and the site senior executive considers it necessary because of the operations.

Sub-clause 84(4) provides that the workers and the site senior executive may decide the area of representation that is the responsibility of the Site Safety and Health Representative.

Sub-clause 84(5) and 84(6) provides that a person does not need any qualifications to be selected or elected a Site Safety and Health

Representative but must have been a worker for at least 2 years and must receive appropriate training within 3 months of appointment. It also provides that the mine worker when exercising the functions and role of a Site Safety and Health Representative is taken to be working at the mine.

Clause 85—How site safety and health representatives are selected or elected

Provides that a site senior executive, if requested, must assist in facilitating the appointment of a Site Safety and Health Representative which can take place by any process agreed to by workers. However, if agreement cannot be achieved, it shall be by an election.

Penalty for non-compliance is 40 penalty units.

Clause 86—Site Safety and Health Representatives must obtain qualifications.

Provides that a person must not continue to act as a Site Safety and Health Representative unless that person within 3 months of appointment has appropriate competencies accepted by the Mining Safety and Health Advisory Council.

Penalty for non-compliance is 40 penalty units.

Clause 87—Site Safety and Health Representatives must perform functions and exercise powers appropriately

Provides that a Safety and Health Representative must perform the functions and exercise the powers provided under this Act and for no other purpose.

Penalty for non-compliance is 40 penalty units.

Clause 88—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, informs the site senior executive that he/she has resigned from that position or is removed from office by a vote of workers.

Clause 89—Functions and powers for area of representation

Provides that if a Site Safety and Health Representative has an area of representation, the Representative can only exercise his/her powers and functions within the area of representation.

Clause 90—Functions of site safety and health representatives

Sub-clause 90(1) provides that a Site Safety and Health Representative has the following functions:

- to inspect operations or participate in investigations or other inspections;
- review procedures to control risk;
- review the circumstances of injuries, occupational disease and other incidents;
- consult with supervisor about corrective and preventative action, and other safety and health matters;
- consult with Inspectors, District Workers' Representatives, advisers and independent experts;
- provide assistance in the resolution of safety and health issues;
- investigate workers' complaints; and
- refer safety and health matters to the Site Safety and Health Committee.

Sub-clauses 90(2) and 90(3) provide that the site senior executive and supervisors must provide reasonable assistance to the Site Safety and Health Representative, and that the site senior executive or the executive's representative may accompany the Site Safety and Health Representative during an inspection. Penalty for non-compliance for sub-clause 90(2) is 40 penalty units.

Sub-clause 90(4) provides that a Site Safety and Health Representative must make a written report on the inspection and provide the site senior executive with a copy of the report. If the inspection indicates existing or possible danger, the Site Safety and health Representative must immediately notify the site senior executive or responsible supervisor, and provide a copy of the inspection report to an inspector.

Sub-clause 90(5) provides that if the Site Safety and Health Representative believes the safety and health management system is inadequate or ineffective, the Representative must inform the site senior executive.

Sub-clause 90(6) provides that if the Site Safety and Health Representative is not satisfied with the actions of the site senior executive in

relation to correcting the safety and health management system, the Representative must inform an Inspector.

Sub-clause 90(7) provides that the Inspector must investigate the matter and report the results of the investigation in the mine record.

Clause 91—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 part of a mine at any time, subject to reasonable notice being given, and the power to examine any document held by the site senior executive and relating to achieving an acceptable level of risk, subject to certain conditions.

Sub-clause 92—Stopping operations by site safety and health representatives

Provides that if operations appear to pose a serious danger, the Site Safety and Health Representative must first notify and consult with the site senior executive or supervisor on removal of the danger.

It also provides that if consultation is not possible because of immediate danger or if consultation does not lead to agreement the Site Safety and Health Representative may stop the whole, or part of the, operations and evacuate persons to a safe location. The Site Safety and Health Representative must provide a written report to the site senior executive about the actions taken and the reasons for those actions.

Clause 93—When operations may be restarted

Provides that if operations are ceased under the preceding clause, the site senior executive must ensure operations do not recommence until risk is at an acceptable level. Penalty for non-compliance is 200 penalty units.

Clause 94—Safety and health representative not to unnecessarily impede production

Provides that a Site Safety and Health Representative must not unnecessarily impede production. Penalty for non-compliance is 200 penalty units.

Clause 95—Protection of site safety and health representatives performing functions

Provides that a supervisor or management must not prevent or attempt to prevent or penalise a Site Safety and Health Representative from

performing his/her functions. It also provides a penalty of 200 penalty units.

Division 3—Site safety and health committees

Clause 96—Site safety and health committees

Sub-clause 96(1) provides that the site senior executive must establish a Site Safety and Health Committee if asked by the Site Safety and Health Representative or directed by the Chief Inspector of Mines. Penalty for non-compliance is 100 penalty units.

Sub-clauses 96(2) and 96(3) provide that there may be more than one Site Safety and Health Committee if the workers and site senior executive decide that this is appropriate because of the operations. If more than one Committee is established, the area of responsibility of each Committee must be decided.

Clause 97—Membership of committee

Provides that a Site Safety and Health Committee shall consist of at least 2 members. It also provides that the members of the Committee are the Site Safety and Health Representative, the site senior executive and other members nominated by the site senior executive and the workers.

Further, it provides that the members must be workers at the mine and at least half the nominated members must be workers nominated by workers.

Clause 98—Functions of safety and health committee

Provides the functions of a Site Safety and Health Committee, and these are:

- to facilitate consultation and co-operation at the mine in initiating, developing and implementing risk management;
- encourage an active interest in safety and health matters;
- review the circumstances of injuries, occupational disease and high potential incidents, and recommend appropriate action;
- consider any proposed change that may affect risk, and make recommendations;
- undertake inspections;

- considers matters referred to it by a Site Safety and Health Representative;
- assist in the resolution in any safety and health issue; and
- perform other appropriate functions.

Clause 99—Times of meetings

Provides that a Site Safety and Health Committee must meet at least every 3 months at the times decided by the Committee.

Clause 100—Proceedings at meetings

Provides that the Site Safety and Health Committee can conduct its meetings in any way it decides but must keep minutes of meetings.

Clause 101—Minutes to be made available

Provides that the site senior executive must make available the minutes of the Site Safety and Health Committee's meetings to workers and an Inspector. Penalty for non-compliance is 40 penalty units.

*Division 4—Duties of site senior executive***Clause 102—Provision for assistance to representatives and committees**

Provides that the site senior executive must:

- provide the Site Safety and Health Representative with appropriate training, during working time and within 3 month of the Representative's selection or election;
- provide access for the Site Safety and Health Committee to appropriate facilities to perform its functions; and
- ensure the Site Safety and Health Representatives and members of the Site Safety and Health Committee receive payment for the time spent exercising their functions and undergoing training for an appropriate competency.

Penalty for non-compliance is 40 penalty units.

Clause 103—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, provided they are within the area of jurisdiction of the Site Safety and Health Representative:

- any work injury or illness resulting from the operations requiring a person's absence from work;
- any high potential incident;
- any proposed changes to operations or plant or chemicals etc used at the mine that affect or may affect the safety or health of persons;
- if an Inspector or Inspection Officer is at the mine; and
- any directive given by an Inspector or Inspection Officer.

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

Clause 104—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 affected by the appointment.

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

**PART 8—DISTRICT WORKERS'
REPRESENTATIVES**

The intent of this Part is to allow for the appointments of persons as District Workers' Representatives to represent the safety and health interests of mine workers at Queensland mines (including quarries).

Division 1—Purposes of part**Clause 105—Purposes of pt 8**

Provides the main purposes of Part 8 are the appointment and functions and powers of District Workers' Representatives.

Division 2—District workers' representatives**Clause 106—Nomination and appointment of district workers' representatives**

Sub-clauses 106(1) and 106(2) provide that the Minister may appoint a maximum of four persons to be District Workers' Representative, and the terms of those appointments shall not exceed 4 years.

Sub-clause 106(3) provides that an industrial organisation with members in the industry may nominate persons to be District Workers' Representatives.

Sub-clause 106(4) provides that from the persons nominated the Minister is to appoint persons who he is satisfied:

- have the appropriate competencies and adequate experience to provide the functions; and
- are in a position to adequately represent a majority of mine workers.

Sub-clause 106(5) provides that a District Workers' Representative is appointed under this Bill and not under the *Public Service Act 1996*.

Clause 107—Funding of district workers' representative

Provides that a District Workers' Representative is entitled to the remuneration and allowances decided by the Minister. It also provides that the Minister will decide the conditions of office, if not otherwise provided in this Bill.

Clause 108—Termination of appointment

Provides that if the Minister considers a District Workers' Representative is not satisfactorily performing his/her functions, then the Minister may end the appointment.

The notice terminating the appointment must contain the Minister's reasons.

Clause 109—Appointment after termination

Provides if the Minister ends an appointment of a District Workers' Representative, then the Minister may appoint another person. It also provides that in regard to the appointment, the processes regarding nominations and selections outlined in Part 8 of the Bill must be followed.

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

Clause 110—Filling of temporary vacancy

Provides that if a District Workers' Representative is temporarily unable to carry out his/her functions, the Minister may appoint a substitute in a way and for a period the Minister considers appropriate.

Clause 111—Persons not to pretend to be district workers' representatives if not appointed

Provides that a person must not act as a District Workers' Representative if not appointed by the Minister. Penalty for non-compliance is 40 penalty units.

Clause 112—District workers' representative restricted to safety and health purposes

Provides that a District Workers' Representative must not perform a function or exercise a power other than for safety and health purpose. Penalty for non-compliance is 40 penalty units.

Clause 113—Functions of district workers' representatives

Provides the functions of a District Workers' Representative. Those functions are:

- to assist, represent and to advise workers on safety and health matters;
- to inspect mines to determine whether the level of risk is at an acceptable level;
- to participate in inspections by Inspectors and Inspection Officers;
- to assist investigations into serious accidents and high potential

incidents and other matters;

- to investigate complaints from 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 District Workers' Representative during inspections.

Further, it provides that a District Workers' Representative must make a report of the inspection and provide a copy of the report to the site senior executive and an Inspector. It also provides that if the inspection indicates the existence or possible existence of danger, the District Workers' Representative must immediately notify the site senior executive or responsible supervisor.

Clause 114—Powers of district workers' representatives

Sub-clause 114(1) provides the powers of a District Workers' Representatives. Those powers include:

- to enquire about mining and quarrying operations;
- to enter a 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 standard work instructions and training records;
- to require reasonable assistance from certain mine supervisors in the exercise of powers; and
- to issue a directive to suspend operations for unacceptable level of risk.

Sub-clause 114(2) provides that a person in authority must comply with a request by the District Workers' Representative for assistance, unless there is reasonable cause for non-compliance. It also provides for a penalty of 100 penalty units.

Sub-clause 114(3) provides that if the District Workers' 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 115—District workers’ representatives not to unnecessarily impede production

Provides that the District Workers’ Representative must not unnecessarily impede production.

It also provides a penalty of 200 penalty units.

Clause 116—Inadequate or ineffective safety and health management systems

Provides that if the District Workers’ Representative believes that the safety and health management system is inadequate or ineffective he must inform the site senior executive. If in the view of the District Workers’ 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 117—Identity cards

Provides that each District Workers’ Representative must be provided with an official identity card. It also provides the information that must be contained on the identity card.

Clause 118—Failure to return identity card

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

Clause 119—Production or display of identity card

Provides that the District Workers’ 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 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 120—Appointments

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

Clause 121—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 mining and quarrying operations, and has adequate competencies and experience at a senior level to effectively perform the functions of an Inspector.

Clause 122—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 123—Functions of inspectors and inspection officers

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

- to enforce the provisions of this Bill;
- to monitor safety and health performance at mines;
- to inspect and audit mines;

- to provide specialist advice and information;
- to check that safety and health management systems and procedures are established;
- to assist during emergencies at mines;
- if unsafe practices or substandard conditions are detected, to follow up and/or direct remedial action;
- to investigate serious accidents, high potential incidents and other matters; and
- to investigate complaints relating to safety and health matters.

Clause 124—Further functions of inspectors

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

Clause 125—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 126—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 127—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 128—Entry to places**

Sub-clause 128(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 entry is open to the public, the entry is authorised under a warrant, it is a mine or it is a workplace under the control of a person with obligations under this Bill and is carrying on business or open for entry.

Sub-clause 128(2) provides that an Inspector or an Inspection Officer without consent or a warrant may enter land around premises at a place to an extent reasonable to contact the occupier or enter part of a place the Inspector or Inspection Officer reasonably considers members of the public are allowed to enter to contact the occupier.

Sub-clause 128(3) provides that a workplace referred to in sub-clause 128(1) does not include a part of a place where a person resides.

Sub-clause 128(4) provides that an Inspector or an Inspection Officer must not unnecessarily impede production.

Sub-clause 128(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—Procedures for entry**Clause 129—Consent to entry**

Sub-clauses 129(1) and 129(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 129(3) and 129(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 129(5) and 129(6) provide that if the occupier signs a consent 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 130—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 magistrate's requires.

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

Clause 131—Issue of warrant

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

Clause 132—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 133—Warrants—procedure before entry

Provides the procedures required before entering a place authorised under a warrant.

Subdivision 3—General powers**Clause 134—General powers after entering mine or other places**

Provides that this clause of the Bill applies to an Inspector or an Inspection Officer who enters a mine or another place. However, if an Inspector or Inspection Officer enters a place to obtain permission to enter premises, this clause applies only if the consent is given or the entry is otherwise authorised.

It also provides that the Inspector or the Inspection Officer may for monitoring and ensuring compliance with this Act undertake the following:

- search any part of the mine or other place;
- inspect, measure, test, photograph or film any part of or anything at a 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; and
- require reasonable assistance to exercise the powers under this clause, or require answers to questions. It requires that a person be warned that it is an offence not to provide assistance or answer questions, unless there is reasonable cause.

Clause 135—Failure to help inspector or inspection officer

Provides a penalty of 100 penalty units for a person referred to in the preceding clause not providing reasonable assistance, unless there is reasonable excuse.

Clause 136—Failure to answer questions

Provides a penalty of 40 penalty units for a person, without reasonable cause, not answering a question by an Inspector or Inspection Officer to ascertain if this Bill is being or has been complied with, or knowingly providing false or misleading information to 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 with “when questions must be answered”. Specifically if the question is in relation to a serious accident or high potential incident, the question must be answered subject to certain requirements and safeguards.

Clause 137—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 reasonable excuse. It also provides a penalty of 100 penalty units.

Subdivision 4—Power to seize evidence

Clause 138—Seizing evidence at mine or other place

Provides that an Inspector or Inspection Officer may enter a mine or other place authorised under this Bill and seize anything the Inspector or Inspection Officer reasonably believe is evidence of an offence.

Clause 139—Securing things after seizure

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

Clause 140—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, if restricted access is placed on the thing, without approval of the Inspector or Inspection Officer. It also provides for a penalty of 100 penalty units.

Clause 141— Powers to support seizure

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

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

Clause 142—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 143—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 144—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 6 months after seizure, or at the end of any proceeding or appeal provided the proceeding commenced within 6 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 promptly returned to its owner.

Clause 145—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 146—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.

It further provides that the site senior executive must ensure that the plant or equipment is not used until the risk associated with its use is at an acceptable level. Penalty for non-compliance is 200 penalty units.

Subdivision 5—Power to obtain information

Clause 147—Power to require name and address

Sub-clause 147(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 147(2), 147(3) and 147(4) provide that a person referred to in the preceding sub-clause 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 148—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 149—Power to require production of documents

Sub-clauses 149(1) and 149(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 149(3), 149(4) and 149(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 149(6) provides that a document may be kept if it is required for the investigation of a serious accident or high potential incident.

Clause 150—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 not to produce a document if the document will self incriminate. Failure to comply is 200 penalty units.

If the document is required in relation to the investigation of a serious accident or 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 admissible as evidence in a proceeding for an offence under this Bill, but is not admissible in any other proceeding for an offence.

Further, it provides if the document is the personal property of a person and the person claims privilege before producing the document, the document is admissible in a proceeding against the person for an offence under this Bill, but the document or anything obtained as a consequence of the person producing the document is not admissible in any other proceeding for the commission of an offence.

Clause 151—Failure to certify copy of document

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

Clause 152—Power to require attendance of persons before an inspector to answer questions

Sub-clause 152(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 mining operations;
- whether the provisions of this Bill have been complied with; or
- any other action by an Inspector.

Sub-clause 152(2) and 152(3) provide that a request to a person to attend to answer questions made under this clause must be in writing, and the person must be warned it is an offence not to comply unless there is reasonable excuse.

Clause 153—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 and 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.

Further, it also provides that this clause in subject to the clause with "when questions must be answered". Specifically if the question is in relation to a serious accident or high potential incident the question must be answered, subject to certain requirements and safeguards.

Clause 154—Persons must answer question about serious accident or high potential incident

Sub-clause 154(1) provides that this clause applies if an Inspector asks a question about a accident or high potential incident.

Sub-clause 154(2) and 154(3) provide that the person must answer the question, 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 154(4) provides 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 of 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.

Sub-clauses 154(5) and 154(6) provide that if privilege is claimed then neither an answer given 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 155—Additional powers of chief inspector

Provides that the Chief Inspector of 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 district workers' representatives

Subdivision 1—Power to give and way of giving directives

Clause 156—Directive may be given

Provides that Subdivision 2 of this division details for what purpose a directive may be given and who can give the directive.

Clause 157—How directive is given

Provides that, except for directives relating to reduce risk, the suspension of operations because of an unacceptable level of risk or to isolate a site following a serious accident or a high potential incident, a directive must be given in writing to the 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 158—How directive is given for ss 161, 162 and 165

Provides that for clauses 161, 162 and 165 the method of giving the directive is given in those clauses.

Subdivision 2—Matters for which directives may be given

Clause 159—Directive to ensure worker competent

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

Clause 160—Directive to carry out test

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

Clause 161—Directive to reduce risk

Provides that an Inspector may direct either orally or by notice that corrective or preventative action be taken, if the Inspector reasonably believes the risk may reach an unacceptable level.

If the directive is given orally it must be confirm by written notice to the person is control of the mine or part of the mine affected by the directive and to the site senior executive. However, failure to confirm by written notice does not affect the validity of the directive.

Clause 162—Directive to suspend operations for unacceptable level of risk

Provides that an Inspector, Inspection Officer or District Workers' 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 by notice to the person in control of the mine affected by the directive and the relevant site senior executive

Failure to confirm an oral directive by notice does not affect the validity of the directive.

Clause 163—Directive to review safety and health management system

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

Clause 164—Directive to suspend operations for ineffective safety and health management system

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

Clause 165—Directive to isolate site

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

It also provides that failure to confirm an oral directive by notice does not affect the validity of the directive.

Clause 166—Directive about separate part of the mine

Provides that the Inspector may issue a directive that part of the surface of the 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 167—Directive to provide independent engineering study

Provides that the Chief Inspector of 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 Mines. The person approved for the study must have relevant professional qualifications and experience and not be an employee of the mine operator or of a contractor at the mine.

The study may be required about:

- the risks to safety and health from 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 168—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 mine made by an Inspector, Inspection Officer or District Workers' Representative must be made. A copy of all reports must be given to the mine operator and site senior executive, as soon as practicable.

Clause 169—Directives

Sub-clauses 169(1) and 169(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 for non-compliance or 2 years imprisonment.

Sub-clauses 169(3) and 169(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 mine workers. It also provides a penalty of 40 penalty units for failure to comply with either of these requirements.

Sub-clause 169(5) provides in detail when a directive is no longer effective.

Subdivision 4—Review of directives

Clause 170—Application for review

Provides that a person may apply under this Subdivision of the Bill for a review of a directive, other than a directive given by the Chief Inspector of Mines.

Clause 171—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 Mines.

Clause 172—Review of directive

Provides that the Chief Inspector of 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 Mines can make, and that the applicant must be informed of the reasons for the decision and of his/her appeal rights.

Further, it provides that if the Chief Inspector of Mines does not review or advise the applicant within the times stipulated in the Bill, the applicant may make an appeal to the Industrial Court.

Clause 173—Stay of operation of directive

Provides that if an application for review of a directive has been lodged with the Chief Inspector of Mines, an application may be immediately made to the Industrial Court for a stay of execution. However, a stay for execution of a directive issued to suspend operations because of an unacceptable level of risk cannot be given.

It also provides the Industrial Court with the powers to stay the execution of the directive and for the Court to set conditions on the stay.

Division 4—General enforcement offences**Clause 174—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 175—False or misleading documents

Sub-clause 175(1) provides a penalty of 100 penalty units for a person who knowingly provides a document containing false or misleading information to an Inspector, Inspection Officer or District Workers' Representative.

Sub-clause 175(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 175(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 176—Obstructing inspectors, inspection officers or district workers’ representatives

Provides a penalty of 100 penalty units for a person who obstructs without reasonable cause an Inspector, Inspection Officer or District Workers’ Representative.

It also provides that if obstructed the Inspector, Inspection Officer or District Workers’ 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 177—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 function

Clause 178—Inspector for pt 10

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

Clause 179—Board of examiners

Provides that by this clause the Board of Examiners is established.

Clause 180—Functions of the 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 181—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 District Workers' 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 re-appointed but not for consecutive terms. The chairperson can be appointed for the term that the Governor in Council considers appropriate.

Clause 182—Board of examiners to appoint secretary

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

Clause 183—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 are appointed under this Bill and not under the *Public Service Act 1996*.

Clause 184—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 185—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, who is a member of the Board, to be the presiding member.

Clause 186—Conditions of appointment

Provides that members of the Board of Examiners, other than a member who is an Inspector, are entitled to the remuneration and allowance determined by the Governor in Council. It also provides that members hold office on conditions decided by the Minister, if not provided elsewhere in the Bill.

Clause 187—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 188—Committees

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

Division 3—General**Clause 189—Examiners to be qualified**

Provides that examining persons 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 190—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 191—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, unless the holder has a reasonable excuse.

It also provides a penalty of 400 penalty units.

Clause 192 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 Assembl

PART 11—ACCIDENTS AND INCIDENTS***Division 1—Notification of accidents, incidents and inspections*****Clause 193—Notice of accidents, incidents or diseases**

Provides that the site senior executive must immediately notify an Inspector and District Workers' Representative either orally or by notice about any serious accident or high potential incident. If the notification is given orally, it must be confirmed by notice within 48 hours. It also provides that in respect of a reportable disease under this Bill, the Senior Site Executive must inform an Inspector and the District Workers' Representative in writing as soon as practicable. A penalty of 40 penalty units for non-compliance.

It also provides that if the accident results in a death, the oral report must be confirmed in writing within 24 hours. Failure to comply is 80 penalty units.

It also provides that in relation to a disease prescribed under a regulation to be reported, the site senior executive must give a notice about the disease to an Inspector and District Workers' Representative. Penalty for non-compliance is 40 penalty units.

Clause 194—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 Mines.

Division 2—Site of accident or incident**Clause 195—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 196—Action to be taken in relation to site of accident or incident

Sub-clause 196(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 if requested by an Inspector submit the report to the Inspector within 1 month of being requested. Failure to comply is 40 penalty units.

Sub-clause 196(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 197—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 198—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 199—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 200—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 201—Procedure**

Sub-clause 201(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 201(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 and may decide the procedures to be followed. It also provides the Board must give a person involved the opportunity of defending all claims made against the person

Sub-clauses 201(3) and 201(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 202—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 14 days written notice of the time and place of the inquiry.

Clause 203—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 204—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 205—Record of proceedings to be kept

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

Clause 206—Representation

Provides that a lawyer or another person may represent a person before an inquiry.

Clause 207—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 208—Notice to witne

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 209—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 210—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 211—Offences by witnesses

Sub-clause 211(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 211(2) provides that a witness at a Board of Inquiry must take an oath when required by the chairperson. Failure to comply is 30 penalty units.

Sub-clauses 211(3) and 211(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 212—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 213—Change of membership of board

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

PART 13—APPEALS***Division 1—Appeals against particular decisions of Minister or board of examiners*****Clause 214—Appeal against minister’s decision**

Provides that a person whose appointment as District Workers’ Representative is terminated by the Minister, can appeal to an Industrial Magistrate’s Court under this division of Part 13.

Clause 216—Appeals against board of examiner’s 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 216—How to start appeal

Provides a process for commencing an appeal, including time factors.

Clause 217—Stay of operation of decision

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 218—Hearing procedures

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

Clause 219—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 the 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 220—Appeals 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 221—Who may appeal**

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

Clause 222—How to start appeal

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

Clause 223—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 224—Hearing procedures

Provides the procedures for hearing an appeal.

Clause 225—Assessors

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

Clause 226—Powers of court on appeal

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

PART 14—LEGAL PROCEEDINGS*Division 1—Evidence***Clause 227—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 Mines, an Inspector, an Inspection Officer and District Workers' Representative to carry out functions etc. included in this Bill.

Clause 228—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 229—Evidentiary aids

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

It is also provides 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 230—Expert reports

Provides that an expert report is admissible in evidence in a proceeding under this Bill and, when admitted, is evidence of any fact or opinion of which the expert could have given 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 reason the expert is not giving oral evidence, the risk that its 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.

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 231—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 232—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 mine safety and health obligation under Part 3 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 mine.

It also provides that a person dissatisfied with a decision of an Industrial Magistrate in proceedings for an offence against this Bill can appeal to the Industrial Court.

The *Workplace Relations Act 1997* applies to a proceeding before an industrial magistrate or an 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 Mines, or someone authorised by the Minister or the Attorney-General.

Clause 233—Recommendation to prosecute

Provides that an Inspector, a District Workers' Representative or a site senior executive may recommend to the Chief Inspector of Mines a prosecution for an offence against this Bill. It also provides that this provision does not limit the Chief Inspector's power to initiate prosecution.

Clause 234—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 235—Court may order suspension or cancellation of certificate

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

It also provides that a person may appeal this decision of an Industrial Magistrate to the Industrial Court.

Clause 236—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 provisions of the *Penalties and Sentences Act 1992* or any other law.

Clause 237—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 238—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 the terms "representatives" and "state of mind".

Clause 239—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 239(2) 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 240—Representation

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

Clause 241—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 242—Recovery of fees

Provides that an unpaid fee under this Bill may be recovered by the Director-General of the Department of Mines and Energy 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 243—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 244—How document to be given to operator

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

PART 15—OFFENCES

Clause 245—Person not to encourage refusal to answer questions

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

However, a lawyer can provide legal advice to a worker.

Clause 246—Impersonating inspector or inspection officers and others

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

Clause 247—Protection for officers

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

PART 16—GENERAL*Division 1—General safety matters***Clause 248—Person must not employ underage persons underground**

Provides a penalty of 100 penalty units if a person employs a person under the age of 16 as an underground mine worker.

Clause 249—Workers may request information

Provides that a copy of the safety and health management system must be made available by the site senior executive for inspection by mine workers. Penalty for non-compliance is 100 penalty units.

Clause 250—Action where risk is unacceptable

Sub-clause 250(1) provides that if the level of risk from a hazard at a mine is not within acceptable limits, a worker if competent and able to eliminate the danger must take action to eliminate the danger. It provides for a penalty of 100 penalty units.

Sub-clauses 250(2) provides that if a mine is dangerous (risk unacceptable) and the risk is created by equipment, chemicals etc or operations then the cause must be stopped. If this fails to bring the risk to acceptable levels the supervisor is to ensure persons are withdrawn to a safe place. It provides for a penalty of 100 penalty units.

Sub-clauses 250(3) and 250(4) provide that a worker aware of a potentially dangerous situation must take action to prevent danger to other workers and report the situation immediately to the supervisor. The supervisor must ensure that workers are withdrawn from the area of the mine or mine. It provides for a penalty of 100 penalty units.

Sub-clauses 250(5) and 250(6) provide that work or use of equipment or chemicals etc must not resume until a competent person has assessed the risk and the risk has been reduced to an acceptable level. If the risk had resulted in the withdrawal of workers, the workers must not be readmitted until the mine has been assessed and the risk is at an acceptable level. Penalty for non-compliance is 100 penalty units.

Clause 251—Where worker exposed to immediate personal danger

Provides that if a 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 serious danger. It also provides that the operator or the operator's representative must not disadvantage the worker for taking this action. It provides for a penalty of 200 penalty units.

It also provides that if another worker is asked or directed to carry out a task/work in an area etc that a previous worker had considered dangerous, the second worker must be informed of the actions of the previous worker.

Penalty for non-compliance is 200 penalty units.

Clause 252—Representation by worker

Provides that a 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 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 worker must not make a false or frivolous representation. Penalty for non-compliance is 40 penalty units.

Division 2—Miscellaneous

Clause 253—Disclosure of information

Provides that a person must not disclose information concerning the personal affairs of a person or commercially sensitive information obtained under this Bill unless the disclosure is made:

- with the consent of the person providing the information;

- in the administration of the Bill;
- in a proceeding under this Bill, or a report of the proceedings; and
- in a proceeding before a court in which the information is relevant to the court.

It also provides that notwithstanding the aforementioned provision, the Chief Inspector of Mines can communicate anything that comes to the Chief Inspector's knowledge to a person responsible for administering any law in Queensland, other States or the Commonwealth.

It also provides that this clause does not limit information requested under the *Freedom of Information Act 1992*.

Clause 254—Protection from liability

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

It also provides that any of the abovementioned 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 17—ADMINISTRATION

Clause 255—Delegations

Provides that the Minister or the Director-General may delegate their powers under this Bill to an appropriately qualified public service employee.

Clause 256—Delegation of chief inspectors' powers

Provides that the Chief Inspector can delegate any of his powers to an Inspector, except the power to review an Inspector's directive.

However, the Chief Inspector can only delegate a power if satisfied the Inspector has the expertise and experience to properly exercise the delegated

power.

Clause 257—Notices about industry statistics or information

Provides that when requested a person is required to provide statistical information on the industry, unless the person has a reasonable excuse. Examples of information that can be requested include: the keeping and giving of records of production, disposal, sales and employment numbers; the compilation and provision of statistics, returns and other information including information regarding attendance and absenteeism; and that the information be in an approved form.

It also provides for a penalty of 40 penalty units if a person contravenes the order without reasonable excuse.

Clause 258—Chief executive to keep database

Provides that the Director-General must keep a database that includes information about hazards associated with mining operations and methods of controlling the hazards, lost time accidents and illnesses and high potential incidents, plans showing the extent of operations in abandoned mines and current guidelines.

It also provides that on payment of a reasonable fee a person must be given access to the data.

Clause 259—Approved forms

Provides that the Chief Inspector of Mines may approve forms for use under this Bill.

PART 18—REGULATIONS

Clause 260—Regulation-making power

Provides for the Governor in Council to make regulations under this Bill.

It also provides examples of what a regulation may be made about, and that a regulation can create offences and prescribe penalties of up to 400 penalty units.

PART 19—TRANSITIONAL PROVISIONS AND REPEALS

Division 1—Definitions

Clause 261—Definitions for pt 19

Provides the meaning for commencement and that is the commencement of Part 19 of the Bill, and the meaning of “former Act” and that is the *Mines Regulation Act 1964*.

Division 2—Transitional matters

Clause 262—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 continues to have effect as if it was granted under this Bill.

Clause 263—Approvals by inspector

Provides that if an approval of the Chief Inspector of Mines or an Inspector for a stated use for stated plant is enforced under the *Mines Regulation Act 1964* 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 Mines or Inspector under the *Mines Regulation Act 1964* is taken to be a certificate given under this Bill.

Clause 264—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 265—Existing chief inspector to be chief inspector

Provides that the person who was Chief Inspector of Mines at the commencement of this Bill is taken to be appointed the Chief Inspector under this Bill.

Clause 266—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 267—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 268—Existing district workers' representative

Provides that a person who was a District Workers' Representative at the commencement of this Bill is taken to be appointed as a District Workers' Representative under this Bill.

Clause 269—Mines record book taken to be mine record

Provides that a mines record book under the *Mines Regulation Act 1964* is a mine record under this Bill.

Clause 270—Warden may finish inquiry into accident

Provides that the Warden may finish an inquiry that had commenced under the *Mines Regulation Act 1964*.

Division 3—Repeals**Clause 271—Repeals**

Provides that the *Mines Regulation Act 1964* is repealed.

Division 4—Consequential amendments**Clause 272—Acts amended**

Provides that the Acts referred to in Schedule 1 of this Bill are amended as provided for in Schedule 1.

SCHEDULE 1—AMENDMENT OF OTHER ACTS**AMENDMENT OF THE CORONERS ACT 1958, FIRE AND RESCUE AUTHORITY ACT 1990, FOSSICKING ACT 1994, WORKPLACE HEALTH AND SAFETY ACT 1995 AND WORKPLACE RELATIONS ACT 1997.**

Provides for the amendment of the above mentioned Acts by deleting reference to the *Mines Regulation Act 1964* and inserting in lieu thereof the *Mining and Quarrying Safety and Health Act 1999*.

SCHEDULE 2**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.