

Queensland



# MINING AND QUARRYING SAFETY AND HEALTH ACT 1999

**Reprinted as in force on 6 April 2001  
(includes amendments up to Act No. 46 of 2000)**

**Reprint No. 1**

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## Information about this reprint

This Act is reprinted as at 6 April 2001. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- reorder definitions and other provisions consistent with current drafting practice (s 30A)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A).

**Also see endnotes for information about when provisions commenced.**

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**MINING AND QUARRYING SAFETY  
AND HEALTH ACT 1999**

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**MINING AND QUARRYING SAFETY AND  
HEALTH ACT 1999**

[reprinted as in force on 6 April 2001]

**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 other purposes**

**PART 1—PRELIMINARY**

*Division 1—Introduction*

**Short title**

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

**Commencement**

**2.** This Act commences on a day to be fixed by proclamation.

*Division 2—Operation of Act*

**Act binds all persons**

**3.(1)** This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and all the other States.

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(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

**What does this Act apply to**

4. This Act applies to mines, other than coal mines, and to operations.

**Who does this Act apply to**

5. This Act applies to—

- (a) everyone who may affect the safety or health of persons while the persons are at a mine; and
- (b) everyone who may affect the safety or health of persons as a result of operations; and
- (c) a person whose safety or health may be affected while at a mine or as a result of operations.

*Division 3—Objects of Act*

**Objects of Act**

6. The objects of this Act are—

- (a) to protect the safety and health of persons at mines and persons who may be affected by operations; and
- (b) to require that the risk of injury or illness to any person resulting from operations is at an acceptable level.

**How objects are to be achieved**

7. The objects of this Act are to be achieved by—

- (a) imposing safety and health obligations on persons who operate mines or who may affect the safety or health of others at mines; and
- (b) providing for safety and health management systems at mines to

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- manage risk effectively; and
- (c) making regulations and guidelines for the mining industry to require and promote risk management and control; and
  - (d) establishing a safety and health advisory council to allow the mining industry to participate in developing strategies for improving safety and health; and
  - (e) providing for safety and health representatives and committees to represent the safety and health interests of workers; and
  - (f) providing for inspectors and other officers to monitor the effectiveness of risk management and control at mines, and to take appropriate action to ensure adequate risk management; and
  - (g) providing a way for the competencies of persons at mines to be assessed and recognised; and
  - (h) requiring management structures so that persons may competently supervise the safe operation of mines; and
  - (i) providing for appropriate emergency preparedness.

***Division 4—Interpretation***

***Subdivision 1—Dictionary***

**Definitions—the dictionary**

8. The dictionary in schedule 2 defines particular words used in this Act.

***Subdivision 2—Other important terms***

**Meaning of “mine”**

- 9.(1) A “mine” is any of the following places—
- (a) a place where operations are carried on within the boundaries of land the subject of a mining tenure;

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- (b) a place where operations are carried on on land adjoining, adjacent to, or contiguous with, the boundaries of land the subject of a mining tenure and within which is a place mentioned in paragraph (a);
- (c) a place where operations are carried on unlawfully because land at the place is not the subject of a mining tenure;
- (d) a place that was a mine while works are done to secure it after its abandonment;
- (e) a place where tourism, education or research related to mining happens that is declared under a regulation to be a mine;
- (f) a quarry.

(2) A “**mine**” includes buildings for administration, accommodation and associated facilities at a place mentioned in subsection (1) or adjoining, adjacent to, or contiguous with, the place.

(3) Despite subsection (1)(d), a place that was a mine is not a “**mine**” after its abandonment merely because work is being done at the place by or for the State—

- (a) to ensure public safety; or
- (b) to rehabilitate it; or
- (c) to secure it.

(4) A “**mine**” does not include a mine or part of a mine declared under a regulation to be a mine or part of a mine to which this Act does not apply.<sup>1</sup>

### **Meaning of “operations”**

**10.(1) “Operations”** are activities carried on principally for, or in connection with, exploring for, winning, or winning and treating, minerals or hard rock and include the following—

- (a) extracting, loading, transporting, crushing, concentrating, storing,

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<sup>1</sup> If a declaration is made, the *Workplace Health and Safety Act 1995* applies to the place. See the *Workplace Health and Safety Act 1995*, section 3 (Application of Act).

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smelting, electrowinning, leaching and processing of minerals or hard rock;

- (b) disposing of mineral or waste products in connection with winning, extracting or processing minerals or hard rock;
- (c) constructing, erecting, maintaining or demolishing of any dam, excavation, building, plant, machinery or equipment that is required for winning, or winning and treating, minerals or hard rock or the disposal of mineral or waste products;
- (d) rehabilitating of a place after operations.

(2) The following are not “**operations**”—

- (a) winning clay for and manufacture of bricks and other ceramics;
- (b) airborne geophysical surveys;
- (c) fossicking;
- (d) smelting, refining, stockpiling and processing operations on land that—
  - (i) are not adjoining, adjacent to, or contiguous with, mines where minerals or hard rock are excavated; or
  - (ii) are adjoining, adjacent to or contiguous with, but are not an integral part of, mines where minerals or hard rock are excavated;
- (e) transport to and from a mine on public roads or public railways or within a pipeline;
- (f) air transport to and from a mine;
- (g) pastoral activities;
- (h) an operation exempted by regulation.

### **Meaning of “quarry”**

**11.(1)** A “**quarry**” is a place on land where hard rock is excavated to produce construction or road building material.

(2) A “**quarry**” includes a place on land where processing of hard rock

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happens if the place is on land that adjoins, is adjacent to, or is contiguous with, a place mentioned in subsection (1).

(3) A “**quarry**” does not include a place—

- (a) that is operated substantially for the purposes of excavating or processing hard rock for use at a construction workplace under the *Workplace Health and Safety Act 1995*; or
- (b) where rock does not need to be broken to enable it to be excavated.

**Meaning of “safety and health”**

12. A person’s “**safety and health**” is the person’s safety and health to the extent it is or may be affected by operations or other activities at a mine.

**Meaning of “competence”**

13. “**Competence**” for a task at a mine is the demonstrated skill and knowledge required to carry out the task to a standard necessary for the safety and health of persons.

**Meaning of “consultation”**

14. “**Consultation**” with workers is discussion between the site senior executive or supervisors and affected workers about a matter with the aim of reaching agreement about the matter.

**Meaning of “standard work instruction”**

15. A “**standard work instruction**” at a mine is a documented way of working at the mine to achieve an acceptable level of risk, developed after consultation with workers.

**Meaning of “accident”**

16. An “**accident**” at a mine is an event, or a series of events, at the mine causing injury to a person.

### **Meaning of “serious accident”**

**17.** A “**serious accident**” at a mine is an accident at a mine that causes—

- (a) the death of a person; or
- (b) a person to be admitted to a hospital as an in-patient for treatment for the injury.

### **Meaning of “high potential incident”**

**18.** A “**high potential incident**” at a mine is an event, or a series of events, that causes or has the potential to cause a significant adverse effect on the safety or health of a person.

### **Meaning of “risk”**

**19.(1)** “**Risk**” means the risk of injury or illness to a person arising out of a hazard.

(2) Risk is measured in terms of consequences and likelihood.

### **Meaning of “hazard”**

**20.** “**Hazard**” means a thing or a situation with potential to cause injury or illness to a person.

### **Meaning of “operator”**

**21.(1)** An “**operator**” for a mine is—

- (a) for a mine where there is a holder—
  - (i) the holder; or
  - (ii) if another person has been appointed as the operator under section 48 and the appointment is notified to an inspector for the region under section 46, the other person; or
- (b) for a mine mentioned in section 9(1)(d) or (f), where there is not a holder, the person in control of the mine; or

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- (c) for a mine mentioned in section 9(1)(e), the person in control of the mine.

(2) If—

- (a) another person mentioned in subsection (1)(a)(ii) is appointed as the operator for a separate part of a mine; and
- (b) the appointment is notified to an inspector for the region under section 46;<sup>2</sup>

the person's responsibilities and safety and health obligations under this Act as operator for a mine are limited to the separate part of the mine.

(3) If—

- (a) 1 or more persons are appointed as operators for separate parts of a mine; and
- (b) the appointments are notified to an inspector for the region under section 46;

the holder's responsibilities and safety and health obligations under this Act as an operator for the mine are limited to the part of the mine to which the appointments do not apply.

(4) For this section, a part of a mine is taken to be a **“separate part of a mine”** only if—

- (a) the part is geographically separated from the rest of the mine; and
- (b) there is no physical overlapping of operations between the part and the operations in another part of the mine; and
- (c) the part is managed as a separate operation; and
- (d) the part is substantially self-contained.

(5) A person may be appointed operator for more than 1 mine or separate part of a mine.

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<sup>2</sup> Section 46 (Notices by holder)



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**Meaning of “site senior executive”**

**22.(1)** The “**site senior executive**” for a mine is the most senior officer employed by the operator for the mine who—

- (a) is located at or near the mine; and
- (b) has responsibility for the mine.

**(2)** Subsection (1)(a) does not require an officer with responsibility for exploration activities under a prospecting permit, an exploration permit or mineral development licence to be located at or near the mine.

**(3)** If the officer only has responsibility for a separate part of a mine, the officer’s responsibilities and safety and health obligations under this Act as a site senior executive for a mine are limited to the separate part of the mine for which the officer has responsibility.

**Meaning of “supervisor”**

**23.** A “**supervisor**” at a mine is a worker whose duties include the giving of directions to other workers.

**Meaning of “district workers’ representative”**

**24.** A “**district workers’ representative**” is a person who is appointed under section 108 to represent workers on safety and health matters and who performs the functions and exercises the powers of a district workers’ representative mentioned in part 8, division 2.

**Meaning of “site safety and health representative”**

**25.** A “**site safety and health representative**”, for a mine, is a worker selected or elected under section 84 by workers at the mine to perform the functions and exercise the powers of a site safety and health representative mentioned in part 7, division 2.

## **PART 2—BASIC CONCEPTS**

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

#### **What is an acceptable level of risk**

**26.(1)** For risk to a person from operations to be at an “**acceptable level**”, the operations must be carried out so that the level of risk from the operations is—

- (a) within acceptable limits; and
- (b) as low as reasonably achievable.

**(2)** To decide whether risk is within acceptable limits and as low as reasonably achievable regard must be had to—

- (a) the likelihood of injury or illness to a person arising out of the risk; and
- (b) the severity of the injury or illness.

#### **Risk management**

**27.(1)** Risk is effectively managed when all persons individually and as part of their respective workgroups and organisations, take action to keep risk at an acceptable level.

**(2)** In particular, effective risk management is achieved when persons apply risk management procedures and practices that are appropriate for the nature of the risk, operation or task being performed.

**(3)** Risk management is the systematic application of policies, procedures and practices to—

- (a) identify, analyse, and assess risk; and
- (b) avoid or remove unacceptable risk; and
- (c) monitor levels of risk and the adverse consequences of retained residual risk; and
- (d) investigate and analyse the causes of serious accidents and high

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- potential incidents with a view to preventing their recurrence; and
- (e) review the effectiveness of risk control measures, and take appropriate corrective and preventive action; and
  - (f) mitigate the potential adverse effects arising from retained residual risk.

### **What happens if the level of risk is unacceptable**

**28.(1)** If there is an unacceptable level of risk to persons at a mine, this Act requires that—

- (a) persons be evacuated to a safe location; and
- (b) action be taken to reduce the risk to an acceptable level.

**(2)** Action to reduce the risk to an acceptable level may include stopping the use of specified plant or substances.

**(3)** The action may be taken by the operator for the mine, the site senior executive for the mine, district workers' representatives, site safety and health representatives, workers, inspectors or inspection officers.

## ***Division 2—Cooperation***

### **Cooperation to achieve objects of Act**

**29.(1)** This Act seeks to achieve cooperation between operators, site senior executives and workers to achieve the objects of the Act.

**(2)** Cooperation is an important strategy in achieving the objects of the Act and is achieved—

- (a) at an industry level by—
  - (i) the establishment of the mining safety and health advisory council under part 6;<sup>3</sup> and
  - (ii) the appointment of district workers' representatives under

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<sup>3</sup> Part 6 (Industry consultative arrangements)

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part 8;<sup>4</sup> and

- (b) at mine level by—
- (i) the selection or election of site safety and health representatives and the establishment of site safety and health committees under part 7;<sup>5</sup> and
  - (ii) the process of involving workers in the management of risk.

## **PART 3—SAFETY AND HEALTH OBLIGATIONS**

### *Division 1—Preliminary*

#### **Obligations for safety and health**

**30.(1)** Workers or other persons at mines or persons who may affect safety and health at mines or as a result of operations, have obligations under division 2 (“**safety and health obligations**”).

**(2)** The following persons have obligations under division 3 (also “**safety and health obligations**”)—

- (a) holder;
- (b) operator;
- (c) site senior executive;
- (d) contractor;
- (e) designer, manufacturer, importer and supplier of plant for use at a mine;
- (f) erector and installer of plant at a mine;

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<sup>4</sup> Part 8 (District workers’ representatives)

<sup>5</sup> Part 7 (Site safety and health representatives and committees)

- (g) manufacturer, importer and supplier of substances for use at a mine;
- (h) person who supplies a service at a mine.

### **Discharge of obligations**

**31.** A person on whom a safety and health obligation is imposed must discharge the obligation.

Maximum penalty—

- (a) if the contravention caused death or grievous bodily harm—800 penalty units or 2 years imprisonment; or
- (b) if the contravention involved exposure to a substance that is likely to cause death or grievous bodily harm—500 penalty units or 1 year's imprisonment; or
- (c) if the contravention caused bodily harm—500 penalty units or 1 year's imprisonment; or
- (d) otherwise—400 penalty units.

### **Person may owe obligations in more than 1 capacity**

**32.** A person on whom a safety and health obligation is imposed may be subject to more than 1 safety and health obligation.

*Example—*

A person may be an operator, contractor and supplier of plant at the same time for a single mine and be subject to obligations in each of the capacities.

### **Person not relieved of obligations**

**33.** To remove doubt, it is declared that nothing in this Act that imposes a safety and health obligation on a person relieves another person of the other person's safety and health obligations under this Act.

### **How obligation can be discharged if regulation or guideline made**

**34.(1)** If a regulation prescribes a way of achieving an acceptable level of risk, a person may discharge the person's safety and health obligation in relation to the risk only by following the prescribed way.

**(2)** If a regulation prohibits exposure to a risk, a person may discharge the person's safety and health obligation in relation to the risk only by ensuring that the prohibition is not contravened.

**(3)** Subject to subsections (1) and (2), if a guideline states a way or ways of achieving an acceptable level of risk, a person discharges the person's safety and health obligation in relation to the risk only by—

- (a) adopting and following a stated way; or
- (b) adopting and following another way that achieves a level of risk that is equal to or better than the acceptable level.<sup>6</sup>

### **How obligations can be discharged if no regulation or guideline made**

**35.(1)** This section applies if there is no regulation or guideline prescribing or stating a way to discharge the person's safety and health obligation in relation to a risk.

**(2)** The person may choose an appropriate way to discharge the person's safety and health obligation in relation to the risk.

**(3)** However, the person discharges the person's safety and health obligation in relation to the risk only if the person takes reasonable precautions, and exercises proper diligence, to ensure the obligation is discharged.

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<sup>6</sup> For this section and the following section, see defences provided for under division 4 (Defences).

***Division 2—Generally applicable safety and health obligations***

**Obligations of persons generally**

**36.(1)** A worker or other person at a mine or a person who may affect safety and health of persons at a mine or as a result of operations, has the following obligations—

- (a) to comply with this Act, standard work instructions, and procedures applying to the worker or person that form part of a safety and health management system for the mine;
- (b) if the worker or other person has information that other persons need to know to fulfil their obligations or duties under this Act, or to protect themselves from the risk of injury or illness—to give the information to the other persons;
- (c) to take any other reasonable and necessary course of action to ensure that persons are not exposed to unacceptable levels of risk.

**(2)** A worker or other person at a mine has the following additional obligations at the mine—

- (a) to manage the risk of injury or illness to himself or herself or any other person in the worker's or other person's own work and activities, so that the risk is at an acceptable level;
- (b) to ensure, to the extent of the responsibilities and duties allocated to the worker or other person, that the risk of injury or illness to any person is managed in the work and activities under the worker's or other person's control, supervision, or leadership, so that the risk is at an acceptable level;
- (c) to the extent of the worker's or other person's involvement, to participate in and conform to the risk management practices of the operations;
- (d) to comply with instructions given for safety and health of persons by the mine operator or site senior executive for the mine or a supervisor at the mine;
- (e) to work at the mine only if the worker or other person is in a fit condition to carry out the work without affecting the safety and

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health of others;

- (f) not to do anything wilfully or recklessly that might adversely affect the safety and health of someone else at the mine.

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

**Obligations of holders**

**37.(1)** This section applies if the holder and the operator are or are to be different persons.

**(2)** The holder must—

- (a) inform a person proposing to enter into a contract with the holder to act as operator, by notice, of all relevant information available to the holder that may help the proposed operator to ensure the site senior executive for the mine develops and implements a safety and health management system for the mine; and
- (b) include in the contract with the operator an obligation on the operator to establish a safety and health management system for the mine.

Maximum penalty—100 penalty units.

**(3)** A contract under subsection (2)(b) must be in writing.

**Obligations of operators**

**38.(1)** An operator for a mine has the following obligations—

- (a) to ensure the risk to workers while at the operator's mine is at an acceptable level, including, for example, by—
  - (i) providing a safe place of work and safe plant; and
  - (ii) maintaining plant in a safe state;
- (b) to ensure the operator's own safety and health and the safety and health of others is not affected by the way the operator conducts operations;



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- (c) to appoint a site senior executive for the mine;
- (d) to ensure the site senior executive for the mine—
  - (i) develops and implements a safety and health management system for the mine; and
  - (ii) develops, implements and maintains a management structure for the mine that helps ensure the safety and health of persons at the mine;
- (e) to audit and review the effectiveness and implementation of the safety and health management system to ensure the risk to persons from operations is at an acceptable level;
- (f) to provide adequate resources to ensure the effectiveness and implementation of the safety and health management system.

(2) Without limiting subsection (1), an operator has an obligation not to operate a mine without a safety and health management system for the mine.

(3) Subsection (1)(d) to (f) and subsection (2) do not apply to a mine where not more than 10 workers are employed at the mine.

(4) However, a regulation may specify a mine where not more than 10 workers are employed to be a mine to which subsection (1)(d) to (f) and subsection (2) apply because of the size, nature or complexity of the mine's operations.

### **Obligations of site senior executive for mine**

**39.(1)** A site senior executive for a mine has the following obligations in relation to the safety and health of persons who may be affected by operations—

- (a) to ensure the risk to persons from operations is at an acceptable level;
- (b) to ensure the risk to persons from any plant or substance provided by the site senior executive for the performance of work by someone other than the site senior executive's workers is at an acceptable level;

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- (c) to develop and implement a safety and health management system for the mine;
- (d) to develop, implement and maintain a management structure for the mine that helps ensure the safety and health of persons at the mine;
- (e) to train workers so that they are competent to perform their duties;
- (f) to provide for—
  - (i) adequate planning, organisation, leadership and control of operations; and
  - (ii) the carrying out of critical work at the mine that requires particular technical competencies; and
  - (iii) adequate supervision and control of operations on each shift at the mine; and
  - (iv) regular monitoring and assessment of the working environment, work procedures, equipment, and installations at the mine; and
  - (v) appropriate inspection of each workplace at the mine including, where necessary, pre-shift inspections.

(2) Subsection (1)(c) does not apply to a site senior executive of a mine where not more than 10 workers are employed at the mine.

(3) However, a regulation may specify a mine where not more than 10 workers are employed to be a mine to which subsection (1)(c) applies because of the size, nature or complexity of the mine's operations.

### **Obligations of contractors**

**40.** A contractor at a mine has an obligation to ensure, to the extent that they relate to the work undertaken by the contractor, that provisions of this Act and any applicable safety and health management system are complied with.

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**Obligations of designers, manufacturers, importers and suppliers of plant etc. for use at mines**

**41.(1)** A designer or importer of plant for use at a mine has an obligation to ensure the plant is designed so that, when used properly, the risk to persons from the use of the plant is at an acceptable level.

**(2)** A manufacturer or importer of plant for use at a mine has an obligation to ensure the plant is constructed so that, when used properly, the risk to persons from the use of the plant is at an acceptable level.

**(3)** A designer, manufacturer or importer of plant for use at a mine has an obligation to ensure the plant undergoes appropriate levels of testing and examination to ensure compliance with the obligation imposed by subsection (1) or (2).

**(4)** Also, a designer, manufacturer, importer or supplier of plant for use at a mine has the following obligations—

- (a) to take all reasonable steps to ensure appropriate information about the safe use of the plant is available, including information about the maintenance necessary for the safe use of the plant;
- (b) to take the action the chief inspector reasonably requires to prevent the use of unsafe plant anywhere.

*Example of subsection (4)(b)—*

The chief inspector may require a designer, manufacturer, importer or supplier of plant to recall the plant to prevent its use.

**(5)** For subsection (4)(a), information is “**appropriate**” if the information states—

- (a) the use for which the plant has been designed and tested; and
- (b) any conditions that must be followed if the plant is to be used safely so that risk to persons is at an acceptable level.

**(6)** If a supplier of plant becomes aware of a hazard or defect associated with the plant the supplier has supplied to an operator for a mine or to a contractor for use at a mine that may create an unacceptable level of risk to users of the plant, the supplier has an obligation to take all reasonable steps to inform the operator or contractor—

- (a) of the nature of the hazard or defect and its significance; and

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- (b) any modifications or controls the supplier is aware of that have been developed to eliminate or correct the hazard or defect or manage the risk.

### **Obligations of erectors and installers of plant**

**42.** An erector or installer of plant at a mine has an obligation—

- (a) to erect or install the plant in a way that is safe and does not expose persons at the mine to an unacceptable level of risk; and
- (b) to ensure nothing about the way the plant was erected or installed makes it unsafe or likely to expose persons at the mine to an unacceptable level of risk when used properly.

### **Obligations of manufacturers, importers and suppliers of substances for use at mines**

**43.(1)** A manufacturer or importer of a substance for use at a mine has the following obligations—

- (a) to ensure the substance is safe so that, when used properly, the risk to persons from the use of the substance is at an acceptable level;
- (b) to ensure the substance undergoes appropriate levels of testing and examination to ensure compliance with the obligation imposed by paragraph (a).

**(2)** Also, a manufacturer, importer or supplier of a substance for use at a mine has the following obligations—

- (a) to ensure appropriate information about the safe use, storage and disposal of the substance is provided with the substance;
- (b) to take the action the chief inspector reasonably requires to prevent the use of an unsafe substance at a mine.

*Example of subsection (2)(b)—*

The chief inspector may require a manufacturer, importer or supplier of a substance to recall the substance to prevent its use.

**(3)** For subsection (2)(a), information is “**appropriate**” if the information

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clearly identifies the substance and states—

- (a) the precautions, if any, to be taken for the safe use, storage or disposal of the substance; and
- (b) the risks, if any, associated with the use, storage or disposal of the substance.

### **Obligation of provider of services at mines**

**44.** A person who provides a service at a mine has the following obligations—

- (a) to ensure the safety and health of workers or other persons is not adversely affected as a result of the service provided;
- (b) to ensure the fitness for use of plant at the mine is not adversely affected by the service provided.

## ***Division 4—Defences***

### **Defences for div 2 or 3**

**45.(1)** It is a defence in a proceeding against a person for a contravention of an obligation imposed on the person under division 2 or 3 in relation to a risk for the person to prove—

- (a) if a regulation has been made about the way to achieve an acceptable level of risk—the person followed the way prescribed in the regulation to prevent the contravention; or
- (b) subject to paragraph (a), if a guideline has been made stating a way or ways to achieve an acceptable level of a risk—
  - (i) that the person adopted and followed a stated way to prevent the contravention; or
  - (ii) that the person adopted and followed another way that achieved a level of risk that is equal to or better than the acceptable level to prevent the contravention; or
- (c) if no regulation prescribes or no guideline states a way to

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discharge the person's safety and health obligation in relation to the risk—that the person took reasonable precautions and exercised proper diligence to prevent the contravention.

(2) Also, it is a defence in a proceeding against a person for an offence against section 31<sup>7</sup> for the person to prove that the commission of the offence was due to causes over which the person had no control.

(3) The Criminal Code, sections 23 and 24,<sup>8</sup> do not apply in relation to a contravention of section 31.

(4) In this section, a reference to a guideline is a reference to the guideline in force at the time of the contravention.

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

### *Division 1—Notices about mines*

#### **Notices by holder**

**46.(1)** If a holder appoints an operator, the holder must, for each mine or part of a mine for which the operator is appointed, give an inspector for the region in which the mine is situated written notice of—

- (a) the name and address of the operator; and
- (b) the name of, and a description of the land comprising, the mine or part of the mine.

Maximum penalty—40 penalty units.

(2) Notice must be given within 14 days of the appointment.

(3) The holder must not change the operator for a mine without first

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<sup>7</sup> Section 31 (Discharge of obligations)

<sup>8</sup> Criminal Code, sections 23 (Intention—motive) and 24 (Mistake of fact)

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giving an inspector for the region in which the mine is situated written notice.

Maximum penalty for subsection (3)—40 penalty units.

### **Notices by operator**

**47.(1)** The operator for a mine must give an inspector for the region in which the mine is situated—

- (a) if there is not a holder for the mine, notice of—
  - (i) the operator's name and address; and
  - (ii) the name of, and a description of the land comprising, the mine or part of the mine; and
- (b) a facility description for the mine—
  - (i) if the mine is an existing mine—at least 2 months before a significant change to the operations of the mine unless, after the change, less than the number of persons prescribed under a regulation are to be employed at the mine; or
  - (ii) if the mine is not an existing mine but it is intended that operations are to start and more than the number of persons prescribed under a regulation are to be employed at the mine—at least 2 months before operations start.

Maximum penalty—40 penalty units.

**(2)** For subsection (1)(b), the facility description must include enough information to decide the risk management measures that will be necessary for an effective safety and health management system.

**(3)** Before operations start, the operator must give an inspector for the region in which the mine is situated notice of the day operations are to start.

Maximum penalty—40 penalty units.

**(4)** Also, the operator must, within 7 days after the appointment, give an inspector for the region in which the mine is situated notice of the following appointments including the name and address of the person appointed—

- (a) the appointment of a site senior executive;

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(b) an appointment under section 52.<sup>9</sup>

Maximum penalty—40 penalty units.

(5) When land is added to or omitted from a mine, the operator must, within 1 month after the addition or omission, give to an inspector for the region in which the mine is situated written particulars of the land added or omitted.

Maximum penalty—40 penalty units.

***Division 2—Management of mines***

**Appointment of operator**

**48.(1)** The holder for a mine may appoint a person as the operator for the mine or a separate part of a mine.

(2) An appointment of a person as operator for a part of a mine that is not a separate part of a mine is ineffective.

**Appointment of site senior executive**

**49.(1)** An operator for a mine or for a separate part of a mine must not appoint more than 1 site senior executive for the mine or for the part for which the person is operator.

Maximum penalty—500 penalty units.

(2) An operator must not appoint a person to be site senior executive for more than 1 mine.

Maximum penalty—500 penalty units.

(3) However, a person may be appointed to be site senior executive for more than 1 mine if—

- (a) the mines are part of a mining project; or
- (b) the mines consist only of exploration activities under an

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<sup>9</sup> Section 52 (Appointment of another site senior executive during temporary absence)



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exploration permit or mineral development licence.

(4) In this section—

“**appoint**” includes employ and purport to appoint.

### **Management structure for safe operations at mines**

**50.(1)** The site senior executive must—

- (a) develop and maintain a management structure for the mine in a way that allows development and implementation of the safety management system; and
- (b) document the management structure.

Maximum penalty—40 penalty units.

(2) The document must—

- (a) state the responsibilities of the site senior executive; and
- (b) state the responsibilities and competencies required for senior positions in the structure; and
- (c) state the names of the persons holding the senior positions and their competencies; and
- (d) provide for a competent person to perform the duties of a supervisor while the supervisor is absent.

Maximum penalty—40 penalty units.

(3) For subsection (2)(b), an inspector may by notice given to the site senior executive declare a position to be a senior position.

### **Competencies of supervisors**

**51.** A site senior executive must not assign the tasks of a supervisor to a person unless the person—

- (a) is competent to perform the task assigned; and

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- (b) if there is a safety and health competency for supervisors recognised by the council, has the relevant competency.

Maximum penalty—100 penalty units.

**Appointment of another site senior executive during temporary absence**

**52.(1)** If the site senior executive is temporarily absent from duty for more than 14 days, the operator for the mine must appoint, in writing, a person to act as the site senior executive during the absence.

Maximum penalty—100 penalty units.

(2) The person acting as the site senior executive is subject to all of the obligations of a site senior executive.

**Additional requirements for management of underground mines**

**53.(1)** The site senior executive must appoint a person to be underground mine manager to control and manage an underground mine.

Maximum penalty—400 penalty units.

(2) However, the site senior executive may be appointed underground mine manager by the operator for the mine.

(3) If 20 or more persons work underground in a mine—

(a) the site senior executive must not appoint a person as an underground mine manager unless the person has a first class certificate of competency for an underground mine; and

(b) the operator must not appoint the site senior executive as underground mine manager unless the site senior executive has a first class certificate of competency for an underground mine.

Maximum penalty—400 penalty units.

(4) The operator or site senior executive may appoint a person as underground mine manager for more than 1 mine at the same time only with the written approval of the chief inspector.

Maximum penalty—200 penalty units.

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(5) As soon as practicable after appointing an underground mine manager, the operator or site senior executive must give an inspector for the region in which an underground mine is situated notice of the appointment.

Maximum penalty—40 penalty units.

**Appointment of another underground mine manager during temporary absence**

54.(1) If the underground mine manager is temporarily absent from duty for more than 14 days, the operator or the site senior executive for the mine must appoint, in writing, a person to act as underground mine manager during the absence.

Maximum penalty—100 penalty units.

(2) To remove doubt, section 53(2) to (5) applies to an appointment under subsection (1).

(3) The person acting as the underground mine manager is subject to all of the obligations of an underground mine manager.

*Division 3—Safety and health management systems*

**Safety and health management system**

55.(1) A 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.

(2) A safety and health management system must be an auditable documented system that forms part of an overall management system that includes organisational structure, planning activities, responsibilities, practices, procedures, processes and resources for developing, implementing, achieving, reviewing and maintaining a safety and health policy for managing risks associated with operations.

(3) The safety and health management system must be effective to achieve an acceptable level of risk by—

- (a) defining the operator's safety and health policy; and

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- (b) containing a plan to implement the operator's safety and health policy; and
- (c) stating how the operator intends to develop the capabilities and support mechanisms necessary to achieve the policy; and
- (d) including procedures for the operation of the mine and standard work instructions; and
- (e) containing a way of—
  - (i) measuring, monitoring and evaluating the performance of the safety and health management system; and
  - (ii) taking the action necessary to prevent or correct matters that do not conform with the safety and health management system; and
- (f) containing a plan to regularly review and continually improve the safety and health management system so that risk to persons at the mine is at an acceptable level; and
- (g) if there is a significant change to the mining operations of the mine, containing a plan to immediately review the safety and health management system so that risk to persons is at an acceptable level.

### **Review of safety and health management system**

**56.(1)** This section applies if—

- (a) a safety and health management system has been developed for a new mine; or
- (b) it is proposed to change a safety and health management system at an existing mine.

**(2)** The site senior executive must review the system in consultation with—

- (a) workers, to the extent they are affected by the system; or
- (b) appropriate site safety and health representatives and committees.

Maximum penalty—200 penalty units.

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- (3) The review under subsection (2) must take place—
- (a) for a new mine—as soon as practicable after the start of operations; or
  - (b) for a change at an existing mine—before the change is effected.

***Division 4—Records and reporting***

**Management structure to be recorded in the mine record**

- 57.(1) The site senior executive must enter in the mine record details of—
- (a) the management structure and of the persons holding senior positions in the structure; and
  - (b) changes to the management structure.

Maximum penalty—50 penalty units.

(2) The details must be entered within 7 days after the establishment of, or changes to, the management structure.

**Plans of mine workings**

- 58.(1) A site senior executive must keep at the mine—
- (a) plans showing, as far as practicable—
    - (i) the extent of the mine workings and the current position of any part of the mine workings; and
    - (ii) for an underground mine, the significant topographical features on the surface above the mine; and
  - (b) plans showing the extent of mining undertaken at or near the mine; and
  - (c) information likely to be required to evaluate the effect of the mine on—
    - (i) the safety of adjoining mines; and
    - (ii) any potential uncontrolled flow of material into the mine

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workings; and

- (d) information likely to be required to evaluate the effect of any adjoining mine on the safety of the mine.

Maximum penalty—100 penalty units.

(2) A site senior executive, if asked by an inspector, inspection officer or district worker's representative, must give to the inspector, officer or representative plans showing the extent of the mine workings or the current position of any part of the mine workings and the information mentioned in subsection (1)(c) or (d).

Maximum penalty—100 penalty units.

(3) Within 14 days after the abandonment of a mine, the person who was the operator for the mine immediately before the abandonment must give the chief inspector plans showing the extent of operations undertaken at the mine.<sup>10</sup>

Maximum penalty—100 penalty units.

(4) A site senior executive of a mine must, as soon as reasonably practicable, provide information mentioned in subsection (1)(c) or (d) to the site senior executive of an adjoining mine—

- (a) if asked by the site senior executive of the adjoining mine; or  
(b) if the information is relevant to the safety of the adjoining mine.

Maximum penalty—100 penalty units.

(5) The accuracy of the plans mentioned in this section must be certified by a person competent in mining surveying.

(6) A reference in this section to plans is a reference to plans as certified under subsection (5).

## **Mine record**

**59.(1)** An operator for a mine must keep a mine record that includes—

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<sup>10</sup> The plans given to the chief inspector form part of the database under section 260 (Chief executive to keep records).

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- (a) all reports of, and findings and recommendations resulting from, inspections, investigations and audits carried out at a mine under this Act; and
- (b) all directives issued under this Act to the operator and the operator's agents or representatives; and
- (c) a record of all remedial actions taken as a result of directives issued under this Act; and
- (d) a record of and reports about all serious accidents and high potential incidents that have happened at the mine; and
- (e) all other reports or information that may be prescribed under a regulation.

Maximum penalty—200 penalty units.

(2) For subsection (1), a matter must be kept in the mine record for 7 years after the matter is included in the record.

(3) Subsection (2) applies whether the matter was included under this Act or the repealed *Mines Regulation Act 1964*.

(4) The operator must ensure the mine record, relating to the previous 6 months at least, is available at all reasonable times for inspection by workers at the mine.

Maximum penalty—200 penalty units.

(5) A person must not destroy, deface or alter the mine record so that it is no longer a correct and complete record.

Maximum penalty—400 penalty units.

### **Display of reports and directives**

**60.** The site senior executive must display a copy of current directives and reports of inspections carried out at a mine under this Act in 1 or more conspicuous positions at the mine in a way likely to come to the attention of workers at the mine affected by the directive.

Maximum penalty—100 penalty units.

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

**Responsibility for protecting abandoned mines**

**61.(1)** If a mine is abandoned, the person who was the operator for the mine immediately before the abandonment must ensure at the time of abandonment that the abandoned mine is safe and made secure.

Maximum penalty—800 penalty units.

**(2)** If the operator does not comply with subsection (1), the holder for the mine must ensure the abandoned mine is safe and made secure.

Maximum penalty—800 penalty units.

**(3)** Without limiting subsection (1) or (2), while the holder is the holder for the mine, the holder must ensure the mine is safe and made secure.

Maximum penalty—800 penalty units.

**(4)** If an abandoned mine is not safe and made secure, the chief executive may make it safe and secure and recover the cost of making it safe and secure from the person with the obligation to ensure the mine is safe and made secure.

**(5)** A conviction under this section with or without penalty does not affect the chief executive's ability to recover the cost of making the mine safe and secure.

**PART 5—GUIDELINES**

**Purpose of guidelines**

**62.** A guideline may be made for safety and health stating ways to achieve an acceptable level of risk to persons arising out of operations.

**Guidelines**

**63.(1)** The Minister may make guidelines.



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(2) The Minister must notify the making of a guideline by gazette notice.

(3) The chief executive must keep a copy of each guideline and any document applied, adopted or incorporated by the guideline available for inspection, without charge, during normal business hours at each department office dealing with safety and health.

(4) The chief executive, on payment by a person of a reasonable fee decided by the chief executive, must give a copy of a guideline to the person.

### **Use of guidelines in proceedings**

**64.** A guideline is admissible in evidence in a proceeding if—

- (a) the proceeding relates to a contravention of a safety and health obligation imposed on a person under part 3; and
- (b) it is claimed that the person contravened the obligation by failing to achieve an acceptable level of risk; and
- (c) the guideline is about achieving an acceptable level of risk.

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

### *Division 1—Purposes of part*

#### **Purposes of pt 6**

**65.** The main purposes of this part are to provide for the establishment of a mining safety and health advisory council and to state its functions.

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

**Mining safety and health advisory council**

**66.** The mining safety and health advisory council (the “**council**”) is established.

**Functions of council**

**67.(1)** The primary function of the council is to give advice and make recommendations to the Minister about promoting and protecting the safety and health of persons at mines.

**(2)** Without limiting subsection (1), the council must discharge its primary function by—

(a) periodically reviewing—

(i) the effectiveness of this Act, regulations and guidelines; and

(ii) the effectiveness of the control of risk to any person from operations; and

(b) within 3 years after the commencement, reviewing the effectiveness of the board of examiners and the need for the continuation of its functions.

**(3)** The council also has the functions of—

(a) establishing, recognising and publishing—

(i) the competencies accepted by it as qualifying a person to perform stated tasks; and

(ii) the safety and health competencies required to perform the duties of a person under this Act; and

(b) if asked by the Minister, making recommendations about individuals nominated to be district workers’ representatives.

**(4)** In periodically reviewing effectiveness under subsection (2), the council must have regard to the following—

(a) the risk management performance of the mining industry;

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- (b) the appropriateness of guidelines;
- (c) education, training, and standards of competency within the mining industry;
- (d) the implementation of recommendations from inspectors' investigations, coroners' inquests, boards of inquiry, and other sources;
- (e) the promotion of community knowledge and awareness of safety and health in the mining industry;
- (f) any other matter referred to it by the Minister.

### **Annual report**

**68.(1)** As soon as practicable, but within 4 months, after the end of each financial year, the council must prepare and give to the Minister a report on the council's operations for the year.

**(2)** The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

### ***Division 3—Membership and conduct of council proceedings***

#### **Membership of council**

**69.(1)** The council is to consist of 9 members, 1 of whom is the chairperson.

**(2)** The chairperson must be an inspector appointed by the Minister as the chairperson.

#### **Organisations to submit names to Minister**

**70.(1)** The following organisations, within 1 month of being asked to do so by the Minister, may submit a panel of names of individuals experienced in mining operations the organisations nominate to be members of the council—

- (a) organisations representing operators;

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(b) industrial organisations representing workers.

(2) Only 1 panel may be submitted by all organisations representing operators.

(3) Only 1 panel may be submitted by all industrial organisations representing workers.

(4) Each panel must include 4 or more names.

### **Appointment of members**

**71.(1)** The Minister must appoint 3 persons from each panel to be members of the council.

(2) One of the persons appointed from the panel submitted by organisations representing operators must represent quarry operators.

(3) One of the persons appointed from the panel submitted by industrial organisations representing workers must be a member of the industrial organisation that represents the majority of the workers in Queensland.

(4) The Minister must appoint 2 inspectors to be members of the council, in addition to the inspector appointed to be chairperson.

(5) The Minister may appoint a person to be a member only if the person is experienced in operations.

(6) In selecting a person for appointment to the council, the Minister must also consider the following in relation to the person—

(a) breadth of experience in the mining industry;

(b) demonstrated commitment to promoting safety and health standards in the mining industry;

(c) practical knowledge of the mining industry and of relevant legislation.

(7) If a panel of names is not submitted to the Minister within the stated time, the Minister may appoint 3 persons the Minister considers appropriate to be members of the council.

(8) The members who are not inspectors must be appointed under this Act and not the *Public Service Act 1996*.

### **Duration of appointment**

**72.(1)** A member of the council may be appointed by the Minister for a term of not more than 3 years.

**(2)** A person, other than the chairperson, may not be a member of the council for more than 8 consecutive years.

### **Conditions of appointment**

**73.(1)** A member of the council is entitled to the remuneration and allowances that may be decided by the Governor in Council.

**(2)** A member holds office on the conditions not provided by this Act that are decided by the Governor in Council.

### **Member ceasing as member**

**74.** The office of a member of the council becomes vacant if the member—

- (a) finishes a term of office and is not reappointed; or
- (b) resigns by notice of resignation given to the Minister; or
- (c) is absent from 3 consecutive meetings of the council without leave of the council and without reasonable excuse; or
- (d) is removed from office by the Minister for any reason or none.

### **Times and places of meetings of the council**

**75.(1)** The council may hold its meetings at the times and places it decides.

**(2)** However, the council must meet at least twice a year.

**(3)** The chairperson—

- (a) may call a meeting of the council at any time; and

(b) must call a meeting if asked by at least 4 members.

(4) Also, the Minister may call a meeting of the council at any time.

### **Presiding at meetings of the council**

**76.(1)** The chairperson must preside at all meetings of the council at which the chairperson is present.

(2) In the absence of the chairperson, an inspector nominated by the chairperson presides.

### **Quorum and voting at meetings of the council**

**77.(1)** At a meeting of the council—

- (a) 4 members constitute a quorum; and
- (b) a question must be decided by a majority of the votes of the members present and voting; and
- (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(2) A quorum must include—

- (a) a member who represents operators; and
- (b) a member who represents workers; and
- (c) a member who represents inspectors.

### **Recommendation to Minister if vote not unanimous**

**78.(1)** If the council gives advice or makes a recommendation to the Minister about a matter, the council must advise the Minister whether the council's decision about the matter was unanimous.

(2) If the decision was not unanimous, the council must advise the Minister of the views of the minority.

### **Taking part in meetings by telephone etc.**

**79.(1)** The council may permit members to take part in a particular meeting, or all meetings, by any technology permitting contemporaneous communication with other council members.

**(2)** A member who takes part in a meeting of the council under a permission under subsection (1) is taken to be present at the meeting.

### **Resolutions without meetings**

**80.(1)** If at least 6 members of the council sign a document containing a statement that they are in favour of a resolution stated in the document, the resolution is taken to have been passed at a meeting of the council held on the day when the last of the members signing the document signs the document.

**(2)** However, the 6 members must include—

- (a)** a member who represents operators; and
- (b)** a member who represents workers; and
- (c)** a member who represents inspectors.

**(3)** If, a resolution is, under subsection (1), taken to have been passed at a council meeting, each member must be advised immediately of the matter and be given a copy of the terms of the resolution.

**(4)** For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to be a single document.

### **Minutes by the council**

**81.** The council must keep minutes of its proceedings.

### **Committees**

**82.** The council may appoint committees to advise it on a particular issue.

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

### *Division 1—Purpose of part*

#### **Purpose of pt 7**

**83.** The main purposes of this part are—

- (a) to provide for the selection or election of site safety and health representatives and to state their functions and powers; and
- (b) to provide for site safety and health committees and to state their functions and powers.

### *Division 2—Site safety and health representatives*

#### **Selection or election of site safety and health representatives**

**84.(1)** The workers at a mine may select or elect up to 2 of their number to be site safety and health representatives for the mine for the term decided by the workers.

**(2)** If there is more than 1 site senior executive at a mine, the workers in each part of the mine for which a site senior executive has responsibility may select or elect 2 workers to be site safety and health representatives for each part for the term decided by the workers.

**(3)** However, the workers and the site senior executive may decide that there are to be more than 2 site safety and health representatives for the mine or part of the mine if they consider this is necessary because of the size and complexity of operations.

**(4)** The workers and the site senior executive may also decide an area (“**area of representation**”) within the mine or part of the mine for which 1 or more site safety and health representatives are to have responsibility.

**(5)** A worker does not need any qualifications to be selected or elected as a safety and health representative but must have been a worker for at least



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2 years and must receive appropriate training for a safety and health competency mentioned in section 86.

(6) When performing functions or exercising powers under this part, a site safety and health representative is taken to be performing part of the worker's duties as a worker.

### **How site safety and health representatives are selected or elected**

**85.(1)** If workers can not agree on the selection of site safety and health representatives, an election by workers must be held to choose the representatives.

(2) A site senior executive must, if asked by the workers, help workers in the selection or election of site safety and health representatives.

Maximum penalty for subsection (2)—40 penalty units.

### **Site safety and health representative must obtain qualifications**

**86.** A person must not continue to act as a site safety and health representative for more than 3 months after the representative's selection or election unless the person has a safety and health competency established by the council for a site safety and health representative.

Maximum penalty—40 penalty units.

### **Site safety and health representative must perform functions and exercise powers appropriately**

**87.** A site safety and health representative must perform the functions and exercise the powers of a site safety and health representative under this Act for safety and health purposes and for no other purpose.

Maximum penalty—40 penalty units.

### **Ceasing to be a site safety and health representative**

**88.** A worker stops being a site safety and health representative if the worker—

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- (a) tells the site senior executive that the worker resigns as site safety and health representative; or
- (b) stops being a worker at the mine; or
- (c) is removed from office by a vote of workers.

### **Removal from office by Minister**

**89.(1)** The Minister may remove a site safety and health representative from office by notice if the Minister considers the representative is not performing the representative's functions satisfactorily.

**(2)** The notice must contain the Minister's reasons for removing the site safety and health representative from office.

### **Selection or election after removal from office**

**90.(1)** If a site safety and health representative is removed from office by the Minister, another site safety and health representative may be selected or elected under this division.

**(2)** However, another person must not be selected or elected to be a site safety and health representative until after—

- (a) the time for filing an appeal under part 13, division 1 has ended; or
- (b) if an appeal against the Minister's decision has been filed—an Industrial Magistrates Court has confirmed the Minister's decision to remove the site safety and health representative.

**(3)** The provisions of this division apply to the selection or election.

### **Functions and powers for area of representation**

**91.** If a site safety and health representative has an area of representation within the mine or part of the mine the representative may exercise the powers and perform the functions of a site safety and health representative for the area of representation only.

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### **Functions of site safety and health representatives**

**92.(1)** A site safety and health representative has the following functions—

- (a) to inspect parts of the operations and participate in inspections and investigations conducted by the site senior executive, a supervisor or an inspector;
- (b) to review procedures in place at the mine to control the risk to workers so that it is at an acceptable level;
- (c) to review the circumstances of injuries, illnesses and high potential incidents;
- (d) to consult with supervisors about corrective and preventive action, and about other safety and health matters;
- (e) to consult with district workers' representatives, inspectors, advisers and independent experts;
- (f) to help in the resolution of safety and health issues;
- (g) to investigate complaints from workers about safety and health;
- (h) to refer safety and health matters to the site safety and health committee as appropriate.

**(2)** The site senior executive and supervisors at the mine must give reasonable help to a site safety and health representative in carrying out the representative's functions.

Maximum penalty—40 penalty units.

**(3)** The site senior executive or the site senior executive's representative may accompany the site safety and health representative during an inspection.

**(4)** A site safety and health representative who makes an inspection of the mine must—

- (a) make a written report on the inspection; and
- (b) give a copy of the report to the site senior executive; and
- (c) if the inspection indicates the existence or possible existence of danger, immediately—

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- (i) notify the site senior executive or the responsible supervisor;  
and
- (ii) send a copy of the report to an inspector.

(5) If a site safety and health representative believes a safety and health management system is inadequate or ineffective, the representative must inform the site senior executive.

(6) If the site safety and health representative is not satisfied the site senior executive is taking the action necessary to make the safety and health management system adequate and effective, the representative must advise an inspector.

(7) The inspector must investigate the matter and report the results of the investigation in the mine record.

### **Powers of site safety and health representative**

**93.** A site safety and health representative has the following powers—

- (a) subject to section 91, to enter any part of the mine at any time to carry out the functions of the site safety and health representative, if reasonable notice is given to the site senior executive or the site senior executive's representative;
- (b) to examine any documents relevant to safety and health held by the site senior executive under this Act, if the site safety and health representative has reason to believe the documents contain information required to assess whether procedures are in place at the mine to achieve an acceptable level of risk to workers.

### **Stopping operations by site safety and health representatives**

**94.(1)** This section applies if a site safety and health representative reasonably believes operations pose a serious danger to the safety and health of workers at the mine.

(2) The site safety and health representative must first notify and consult with the site senior executive or an appropriate supervisor so that action may be taken to remove the danger to the safety and health of workers.

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(3) If consultation is not possible because immediate action to safeguard workers is necessary or if consultation does not lead to agreement on the action to be taken, a site safety and health representative may—

- (a) stop the operations or part of the operations; and
- (b) evacuate persons to a safe location.

(4) The site safety and health representative must give a written report to the site senior executive about the action taken under subsection (3) and the reasons for the action.

### **When operations may be restarted**

95. If action has been taken by the site safety and health representative under section 94(3), the site senior executive must ensure that the operations are not restarted until the risk to workers from the operations is at an acceptable level.

Maximum penalty—200 penalty units.

### **Site safety and health representative not to unnecessarily impede production**

96. A site safety and health representative must not unnecessarily impede production at a mine when exercising the representative's powers or performing the representative's functions.

Maximum penalty—200 penalty units.

### **Protection of site safety and health representatives performing functions**

97. A mine operator, site senior executive, contractor or other supervisor must not prevent or attempt to prevent a site safety and health representative from performing his or her functions or penalise a safety and health representative for performing his or her functions.

Maximum penalty—200 penalty units.

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***Division 3—Site safety and health committees***

**Site safety and health committees**

**98.(1)** A site senior executive for a mine or part of a mine must establish a safety and health committee for the mine or part if—

- (a) asked by a site safety and health representative; or
- (b) directed by the chief inspector.

Maximum penalty—100 penalty units.

**(2)** However, the workers and the site senior executive may decide that there is to be more than 1 safety and health committee for the mine or part of the mine if they consider this is necessary because of the size and complexity of operations.

**(3)** If more than 1 committee is established, the area of the mine or part to be covered by each committee must be decided.

**Membership of committee**

**99.(1)** A site safety and health committee for a mine or part of a mine consists of at least 2 members being—

- (a) a site safety and health representative for the mine or part; and
- (b) the site senior executive for the mine or part or the site senior executive's representative.

**(2)** The committee may include other members (“**nominated members**”) nominated by the site senior executive and the workers.

**(3)** A committee member must be a worker in the mine or part.

**(4)** At least half the nominated members must be workers nominated by workers and must work in the area of the mine covered by the committee.

**Functions of safety and health committee**

**100.** A safety and health committee has the following functions—

- (a) to facilitate consultation and cooperation between management

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and workers in initiating, developing and implementing management of risk from operations;

- (b) to encourage an active interest in safety and health matters at the mine;
- (c) to review the circumstances of injuries, illness and high potential incidents, and recommend appropriate action;
- (d) to consider any proposed changes to operations that may reasonably be expected to affect the control of risk, and make appropriate recommendations;
- (e) to carry out inspections;
- (f) to consider matters referred to the committee by a safety and health representative;
- (g) to help in the resolution of safety and health issues;
- (h) to perform other functions to promote safety and health.

### **Times of meetings**

**101.** Meetings of a site safety and health committee are to be held at the times it decides, but must be held at least once every 3 months.

### **Proceedings at meetings**

**102.** A site safety and health committee must keep minutes of its meetings, but may otherwise conduct its proceedings in the way it decides.

### **Minutes to be made available**

**103.** The site senior executive must make the minutes of a meeting of a site safety and health committee available at all reasonable times for inspection by workers at the mine and by an inspector.

Maximum penalty—40 penalty units.

***Division 4—Duties of site senior executive***

**Provision for help to representatives and committees**

**104.** The site senior executive must—

- (a) provide appropriate training during working time to persons selected or elected to be site safety and health representatives within 3 months of selection or election; and
- (b) provide to site safety and health committees access to appropriate facilities necessary to perform their functions; and
- (c) ensure that site safety and health representatives and committee members receive their normal pay for time spent—
  - (i) in performing their functions; or
  - (ii) undergoing training for a safety and health competency established by the council for a site safety and health representative.

Maximum penalty—40 penalty units.

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

**105.(1)** Subject to section 91,<sup>11</sup> a site senior executive must tell a site safety and health representative at the mine about the following things if they are within the representative's area of representation—

- (a) an injury or illness to a person from operations that causes an absence from work of the person;
- (b) a high potential incident happening at the mine;
- (c) any proposed changes to the operations, or plant or substances used at the mine, that affect, or may affect, the safety and health of persons at the mine;
- (d) the presence of an inspector or inspection officer at the mine if the

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<sup>11</sup> Section 91 (Functions and powers for area of representation)



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representative is at the mine;

- (e) a directive given by an inspector or inspection officer about a matter.

Maximum penalty—40 penalty units.

(2) The site senior executive must tell each representative as soon as practicable after the thing comes to the site senior executive's knowledge.

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

**106.(1)** A site senior executive for a mine must display a notice as required by subsections (2) to (4) advising the identity of each site safety and health representative for the mine.

Maximum penalty—40 penalty units.

(2) The site senior executive must display the notice within 5 days after the site senior executive is notified of the representative's selection or election.

(3) If the mine has only 1 site safety and health representative, the site senior executive must display the notice in 1 or more conspicuous positions at the mine in a way likely to come to the attention of workers at the mine.

(4) If the mine has more than 1 site safety and health representative, the site senior executive must display a notice about each representative's identity in a conspicuous position in the mine or part of the mine covered by the representative in a way likely to come to the attention of workers in the mine or part.

## **PART 8—DISTRICT WORKERS’ REPRESENTATIVES**

### *Division 1—Purposes of part*

#### **Purposes of pt 8**

**107.** The main purposes of this part are to provide for the appointment of district workers’ representatives and to state their functions and powers.

### *Division 2—District workers’ representatives*

#### **Nomination and appointment of district workers’ representatives**

**108.(1)** The Minister may appoint up to 4 persons to be district workers’ representatives from nominees for the positions.

(2) The term of office of a district workers’ representative must not be more than 4 years.

(3) An industrial organisation with members in the mining industry may nominate individuals to be district workers’ representatives.

(4) The Minister is to appoint, from the persons nominated, persons who satisfy the Minister they—

- (a) have appropriate competencies and adequate experience to perform the functions of a district workers’ representative; and
- (b) are in a position to adequately represent the safety and health interests of a majority of workers.

(5) A district workers’ representative is appointed under this Act and not under the *Public Service Act 1996*.

#### **Funding of district workers’ representative**

**109.(1)** A district workers’ representative is entitled to the remuneration and allowances decided by the Minister.

(2) The representative holds office on the conditions not provided by this Act decided by the Minister.

### **Termination of appointment**

**110.(1)** The Minister may end the appointment of a district workers' representative by notice if the Minister considers the representative is not performing the representative's functions satisfactorily.

(2) The notice must contain the Minister's reasons for ending the appointment of the district workers' representative.

### **Appointment after termination**

**111.(1)** If a person's appointment as district workers' representative is ended by the Minister, the Minister may appoint another person to be district workers' representative.

(2) However, the Minister must not appoint another person to be a district workers' representative unless—

- (a) the time for filing an appeal under part 13, division 1<sup>12</sup> has ended; or
- (b) if an appeal against the Minister's decision has been filed, an industrial magistrate's court has confirmed the Minister's decision to end the appointment of the district workers' representative.

(3) The provisions of this division about nomination and appointment apply to the appointment.

### **Filling of temporary vacancy**

**112.** If a person is temporarily unable to perform the functions of a district workers' representative, the Minister may appoint a substitute in the way and for the term the Minister considers appropriate.

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<sup>12</sup> Part 13 (Appeals), division 1 (Appeals against particular decisions of Minister or board of examiners)

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**Persons not to pretend to be district workers' representatives if not appointed**

**113.** A person not appointed as a district workers' representative must not pretend to be a district workers' representative.

Maximum penalty—40 penalty units.

**District workers' representative restricted to safety and health purposes**

**114.** A district workers' representative must not perform a function or exercise a power of a district workers' representative under this Act for a purpose other than a safety and health purpose.

Maximum penalty—40 penalty units.

**Functions of district workers' representatives**

**115.(1)** A district workers' representative has the following functions—

- (a) to help, represent and advise workers on matters relating to safety and health;
- (b) to inspect mines to assess whether the level of risk to the safety and health of workers is at an acceptable level;
- (c) to participate in inspections by inspectors and inspection officers;
- (d) to participate in investigations into serious accidents and high potential incidents and other matters related to safety or health at mines;
- (e) to investigate complaints from workers regarding safety or health at mines;
- (f) to help in relation to initiatives to improve safety or health at mines.

**(2)** The following persons may accompany the district workers' representative during an inspection—

- (a) the site senior executive or a person representing the site senior executive;

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- (b) a site safety and health representative or a person representing the site safety and health representative.
- (3) A district workers' representative who makes an inspection of the mine must—
  - (a) make a written report on the inspection; and
  - (b) give a copy of the report to the site senior executive and send a copy to an inspector; and
  - (c) if the inspection indicates the existence or possible existence of danger, immediately notify the site senior executive or the responsible supervisor.

### **Powers of district workers' representatives**

**116.(1)** A district workers' representative has the following powers—

- (a) to make inquiries about the operations of mines relevant to the safety or health of workers;
- (b) to enter any part of a mine at any time to carry out the representative's functions, if reasonable notice of the proposed entry is given to the site senior executive or the site senior executive's representative;
- (c) to examine any documents relevant to safety and health held by persons with obligations under this Act, if the representative has reason to believe the documents contain information required to assess whether procedures are in place at a mine to achieve an acceptable level of risk to workers;
- (d) to copy safety and health management system documents, including standard work instructions and training records;
- (e) to require the person in control or temporarily in control of a mine to give the representative reasonable help in the exercise of a power under paragraphs (a) to (d);
- (f) to issue a directive under section 164.<sup>13</sup>

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<sup>13</sup> Section 164 (Directive to suspend operations for unacceptable level of risk)

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(2) A person in control or temporarily in control of a mine required to help the district workers' representative under subsection (1)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(3) If the district workers' representative requires access to documents for subsection (1)(c), a person with an obligation under the Act with access to the documents must produce them as soon as reasonably practicable after being asked, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

### **District workers' representative not to unnecessarily impede production**

**117.** A district workers' representative must not unnecessarily impede production at a mine when exercising the representative's powers, or performing the representative's functions.

Maximum penalty—200 penalty units.

### **Inadequate or ineffective safety and health management systems**

**118.(1)** If a district workers' representative believes a safety and health management system is inadequate or ineffective, the representative must advise the site senior executive stating the reasons for the representative's belief.

(2) If the district workers' representative is not satisfied the site senior executive is taking the action necessary to make the safety and health management system adequate and effective, the representative must advise an inspector.

(3) The inspector must investigate the matter and report the results of the investigation in the mine record.

### **Identity cards**

**119.(1)** The chief executive must give each district workers' representative an identity card.

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(2) The identity card must—

- (a) contain a recent photograph of the representative; and
- (b) be signed by the representative; and
- (c) identify the person as a district workers' representative under this Act.

### **Failure to return identity card**

**120.** A person who ceases to be a district workers' representative must return the person's identity card to the chief executive as soon as practicable, but within 21 days, after ceasing to be a district workers' representative, unless the person has a reasonable excuse.

Maximum penalty—40 penalty points.

### **Production or display of identity card**

**121.(1)** A district workers' representative may exercise a power in relation to another person only if the representative—

- (a) first produces the representative's identity card for the other person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the district workers' representative must produce the identity card for the other person's inspection at the first reasonable opportunity.

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

### *Division 1—Inspectors and inspection officers*

#### **Appointments**

**122.(1)** The chief executive must appoint officers or employees of the public service as inspectors or inspection officers.

**(2)** The chief executive must appoint an inspector to be chief inspector of mines.

#### **Qualifications for appointment as inspector**

**123.** The chief executive may appoint a person as an inspector only if the chief executive considers the person has—

- (a) a professional engineering qualification relevant to operations from an Australian university or an equivalent qualification; and
- (b) appropriate competencies, and adequate experience, at senior level in operations, to effectively perform an inspector's functions under this Act.

#### **Qualifications for appointment as inspection officer**

**124.** The chief executive may appoint a person as an inspection officer only if the chief executive considers the person has appropriate competencies, or other adequate experience, to effectively perform an inspection officer's functions under this Act.

#### **Functions of inspectors and inspection officers**

**125.** Inspectors and inspection officers have the following functions—

- (a) to enforce this Act;
- (b) to monitor safety and health performance at mines;



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- (c) to inspect and audit mines to assess whether risk is at an acceptable level;
- (d) to help persons to achieve the purposes of this Act by providing advice and information on how the purposes are to be achieved;
- (e) to check that safety and health management systems and procedures are in place to control risk to persons affected by operations;
- (f) to provide the advice and help that may be required from time to time during emergencies at mines that may affect the safety or health of persons;
- (g) if unsafe practices or conditions at mines are detected, to ensure timely corrective or remedial action is being taken and, if not, require it to be taken;
- (h) to investigate serious accidents and high potential incidents and other matters at mines that affect the successful management of risk to persons;
- (i) to investigate complaints about matters relating to safety or health resulting from operations.

### **Further functions of inspectors**

**126.** Inspectors have the following additional functions—

- (a) to advise the chief inspector on safety and health at mines;
- (b) to make recommendations to the chief inspector about prosecutions under this Act.

### **Identity cards**

**127.(1)** The chief executive must give each inspector and inspection officer an identity card.

**(2)** The identity card must—

- (a) contain a recent photograph of the inspector or inspection officer; and

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- (b) be signed by the inspector or inspection officer; and
- (c) identify the person as an inspector or inspection officer under this Act.

### **Failure to return identity card**

**128.** A person who ceases to be an inspector or inspection officer must return the person's identity card to the chief executive as soon as practicable, but within 21 days, after ceasing to be an inspector or inspection officer, unless the person has a reasonable excuse.

Maximum penalty—40 penalty points.

### **Production or display of identity card**

**129.(1)** An inspector or inspection officer may exercise a power in relation to another person only if the inspector or inspection officer—

- (a) first produces the inspector's or inspection officer's identity card for the other person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the other person.

**(2)** However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector or inspection officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

## ***Division 2—Powers of inspectors and inspection officers***

### ***Subdivision 1—Power to enter places***

#### **Entry to places**

**130.(1)** An inspector or inspection officer may enter a place if—

- (a) its occupier consents to the entry; or

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- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is a mine; or
- (e) it is a workplace under the control of a person who has an obligation under this Act and is—
  - (i) open for carrying on business; or
  - (ii) otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an inspector or inspection officer may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector or inspection officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(e), a workplace does not include a part of the place where a person resides.

(4) An inspector or inspection officer who enters a mine or workplace must not unnecessarily impede production.

(5) In this section—

**“workplace”** means a workplace to which the *Workplace Health and Safety Act 1995* applies.

***Subdivision 2—Procedure for entry***

**Consent to entry**

**131.(1)** This section applies if an inspector or inspection officer intends to ask an occupier of a place to consent to the inspector or inspection officer or another inspector or inspection officer entering the place.

(2) Before asking for the consent, the inspector or inspection officer must

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tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the inspector or inspection officer may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector or inspection officer consent to enter the place and exercise powers under this part; and
- (d) the time and date the consent was given.

(5) If the occupier signs an acknowledgment, the inspector or inspection officer must immediately give a copy to the occupier.

(6) A court must find the occupier did not consent to an inspector or inspection officer entering the place under this part if—

- (a) an issue arises in a proceeding before the court whether the occupier of a place consented to the entry; and
- (b) an acknowledgment is not produced in evidence for the entry; and
- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

### **Application for warrant**

**132.(1)** An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **Issue of warrant**

**133.(1)** The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place, or may be at the place, within the next 7 days.

**(2)** The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force—
  - (i) enter the place and any other place necessary for entry; and
  - (ii) exercise the inspector’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant’s issue, the warrant ends.

### **Special warrants**

**134.(1)** An inspector may apply for a warrant (a “**special warrant**”) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector’s remote location.

**(2)** Before applying for the warrant, the inspector must prepare an

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application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

(a) the magistrate must tell the inspector—

(i) what the terms of the warrant are; and

(ii) the date and time the warrant was issued; and

(b) the inspector must complete a form of warrant (a “**warrant form**”) and write on it—

(i) the magistrate’s name; and

(ii) the date and time the magistrate issued the warrant; and

(iii) the terms of the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.

(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) A court must find the exercise of the power by an inspector was not authorised by a special warrant if—

(a) an issue arises in a court proceeding whether the exercise of the power was authorised by a special warrant; and

(b) the warrant is not produced in evidence; and

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- (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

### **Warrants—procedure before entry**

**135.(1)** This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.

**(2)** Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's notice of appointment or other document evidencing the appointment;
- (b) give the person a copy of the warrant or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 134(6),<sup>14</sup> a copy of the facsimile warrant or warrant form;
- (c) tell the person the inspector is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

**(3)** However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

### ***Subdivision 3—General powers***

#### **General powers after entering mine or other places**

**136.(1)** This section applies to an inspector or inspection officer who enters a mine or other place.

**(2)** However, if an inspector or inspection officer enters a place to get the occupier's consent to enter premises, this section applies to the inspector or

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<sup>14</sup> Section 134 (Special warrants)

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inspection officer only if the consent is given or the entry is otherwise authorised.

(3) For monitoring and enforcing compliance with this Act, the inspector or inspection officer may—

- (a) search any part of the mine or other place; or
- (b) inspect, measure, test, photograph or film any part of the mine or other place or anything at the mine or other place; or
- (c) take a thing, or a sample of or from a thing, at the mine or other place for analysis or testing; or
- (d) copy a document at the mine or other place; or
- (e) take into or onto the mine or other place any persons, equipment and materials the inspector or inspection officer reasonably requires for exercising a power under this division; or
- (f) require a person at the mine or other place, to give the inspector or inspection officer reasonable help to exercise the inspector's or inspection officer's powers under paragraphs (a) to (e); or
- (g) require a person at the mine or other place, to answer questions by the inspector or inspection officer to help the inspector or inspection officer ascertain whether this Act is being or has been complied with.

(4) When making a requirement mentioned in subsection (3)(f) or (g), the inspector or inspection officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

### **Failure to help inspector or inspection officer**

**137.** A person required to give reasonable help under section 136(3)(f)<sup>15</sup> must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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<sup>15</sup> Section 136 (General powers after entering mine or other places)



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### **Failure to answer questions**

**138.(1)** A person of whom a requirement is made under section 136(3)(g) must not, unless the person has a reasonable excuse, fail to comply with a requirement to answer a question.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for the person to fail to comply with the requirement if complying with the requirement might tend to incriminate the person.

(3) This section is subject to section 156.<sup>16</sup>

### **Site senior executive must help inspector or inspection officer**

**139.(1)** An inspector or inspection officer may require a site senior executive to help the inspector or inspection officer in the performance of the inspector's or inspection officer's functions.

(2) A site senior executive required to help an inspector or inspection officer must comply with the requirement, unless the site senior executive has a reasonable excuse.

Maximum penalty—100 penalty units.

## ***Subdivision 4—Power to seize evidence***

### **Seizing evidence at mine or other place**

**140.** An inspector or inspection officer who enters a mine or other place under this part may seize a thing at the mine or other place if the inspector or inspection officer reasonably believes the thing is evidence of an offence against this Act.

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<sup>16</sup> Section 156 (Person must answer question about serious accident or high potential incident)

### Securing things after seizure

**141.** Having seized a thing, an inspector or inspection officer may—

- (a) move the thing from the place where it was seized (the “**place of seizure**”); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- 1 Sealing a thing and marking it to show access to it is restricted.
2. Sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.

### Tampering with things subject to seizure

**142.** If an inspector or inspection officer restricts access to a thing seized, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an inspector’s or inspection officer’s approval.

Maximum penalty—100 penalty units.

### Powers to support seizure

**143.(1)** To enable a thing to be seized, an inspector may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the stated place for a reasonable time.

**(2)** The requirement—

- (a) must be made by notice; or
- (b) if for any reason it is not practicable to give notice, may be made orally and confirmed by notice as soon as practicable.

**(3)** A person of whom the requirement is made must comply with the requirement, at the person’s expense, unless the person has a reasonable

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excuse.

Maximum penalty—100 penalty units.

(4) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

### **Receipts to be given on seizure**

**144.(1)** As soon as practicable after an inspector or inspection officer seizes a thing, the inspector or inspection officer must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector or inspection officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

### **Forfeiture**

**145.(1)** A thing that has been seized under this subdivision is forfeited to the State if the inspector or inspection officer who seized the thing—

- (a) can not find its owner, after making reasonable inquiries; or
- (b) can not return it to its owner, after making reasonable efforts.

(2) In applying subsection (1)—

- (a) subsection (1)(a) does not require the inspector or inspection officer to make inquiries if it would be unreasonable in the particular circumstances to make inquiries to find the owner; and
- (b) subsection (1)(b) does not require the inspector or inspection officer to make efforts if it would be unreasonable in the particular circumstances to make efforts to return the thing to its owner.

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(3) Regard must be had to a thing's nature, condition and value in deciding—

- (a) whether it is reasonable to make inquiries or efforts; and
- (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

**Return of things that have been seized**

**146.(1)** If a thing has been seized but not forfeited, the inspector or inspection officer must return it to its owner—

- (a) at the end of 6 months; or
- (b) if a board of inquiry or coroner's inquest involving the thing is started within 6 months, at the end of the inquiry or inquest; or
- (c) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.

(2) However, unless the thing has been forfeited, the inspector or inspection officer must immediately return a thing seized as evidence to its owner if the inspector or inspection officer stops being satisfied its continued retention as evidence is necessary.

**Access to things that have been seized**

**147.(1)** Until a thing that has been seized is forfeited or returned, an inspector or inspection officer must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

(3) For this section, if an inspector has required a person to take a thing to a stated place by a stated reasonable time under section 143<sup>17</sup> the inspector

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<sup>17</sup> Section 143 (Powers to support seizure)

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may require the person to return the thing to the place from which it was taken.

- (4) The person must return the thing at the person's expense.

***Subdivision 5—Power to stop and secure plant and equipment***

**Inspector may stop and secure plant and equipment**

**148.(1)** If an inspector or inspection officer believes plant or equipment at a mine is likely to cause serious bodily injury or create an immediate threat to health, the inspector or inspection officer may stop the operation of the plant or equipment and prevent it from being further operated.

(2) If an inspector or inspection officer has taken action under subsection (1), the inspector or inspection officer must confirm the action by entry in the mine record.

(3) The site senior executive must ensure that the plant or equipment is not returned to operation until the risk to persons from the plant or equipment is at an acceptable level.

Maximum penalty for subsection (3)—200 penalty units.

***Subdivision 6—Power to obtain information***

**Power to require name and address**

**149.(1)** This section applies if—

- (a) an inspector or inspection officer finds a person committing an offence against this Act; or
- (b) an inspector or inspection officer finds a person in circumstances that lead, or has information that leads, the inspector or inspection officer reasonably to suspect the person has just committed an offence against this Act.

(2) The inspector or inspection officer may require the person to state the person's name and residential address.

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(3) When making the requirement, the inspector or inspection officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.

(4) The inspector or inspection officer may require the person to give evidence of the correctness of the stated name or residential address if the inspector or inspection officer reasonably suspects the stated name or address to be false.

(5) A requirement under subsection (2) or (4) is a **“personal details requirement”**.

#### **Failure to give name or address**

**150.(1)** A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) A person does not commit an offence against subsection (1) if—

- (a) the person was required to state the person's name and residential address by an inspector or inspection officer who suspected the person had committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

#### **Power to require production of documents**

**151.(1)** An inspector or inspection officer may require a person who has a safety and health obligation under this Act to make available, or produce, for inspection by the inspector or inspection officer, at a reasonable time and place nominated by the inspector or inspection officer, a document to which the person has access that relates or is related to the person's obligations under this Act.

(2) The inspector or inspection officer may keep the document to copy it.

(3) If the inspector or inspection officer copies the document, or an entry in the document, the inspector or inspection officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

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(4) The inspector or inspection officer must return the document to the person as soon as practicable after copying it.

(5) However, if a requirement (“**document certification requirement**”) is made of a person under subsection (3), the inspector or inspection officer may keep the document until the person complies with the requirement.

(6) Also, an inspector may keep the document if the inspector believes it is required for the investigation of a serious accident or high potential incident.

(7) A requirement under subsection (1) is a “**document production requirement**”.

### **Failure to produce document**

**152.(1)** A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) It is not a reasonable excuse to fail to produce the document that producing the document might incriminate the person.

(3) If the requirement is made in relation to an investigation of a serious accident or high potential incident and the document is the personal property of an individual to whom the requirement is directed, before requiring the production of the document, the inspector must advise the person of the following—

- (a) that if the document might incriminate the person, the person may claim, before producing the document, that producing the document might incriminate the person;
- (b) the document is admissible as evidence in a proceeding against the person for an offence under this Act but is not admissible in any other proceeding for an offence.

(4) If a document that is personal property, produced under a document production requirement, might incriminate the person and the person claims, before producing the document, that producing the document might incriminate the person—

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- (a) the document is admissible in a proceeding against the person for an offence under this Act; and
- (b) the document or anything obtained as a direct or indirect result of the person's producing the document is not admissible in any other proceeding for an offence against the person.

### **Failure to certify copy of document**

**153.** A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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

**154.(1)** An inspector may require a person to attend before the inspector and to answer questions—

- (a) relevant to the discharge of the person's safety and health obligations under this Act; or
- (b) on safety and health matters relevant to operations; or
- (c) to ascertain whether this Act is being complied with; or
- (d) relevant to any action carried out by the inspector under this Act.

**(2)** A requirement made of a person under this section to attend before an inspector must—

- (a) be made by notice given to the person; and
- (b) state a reasonable time and place for the person's attendance.

**(3)** When making a requirement under this section, the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.



### **Failure to comply with requirement about attendance**

**155.(1)** A person of whom a requirement is made under section 154<sup>18</sup> must not, unless the person has a reasonable excuse—

- (a) fail to attend before the inspector at the time and place stated in the relevant notice; or
- (b) when attending before the inspector fail to comply with a requirement to answer a question.

Maximum penalty—40 penalty units.

(2) It is a reasonable excuse for a person to fail to comply with a requirement to answer a question if complying with the requirement might tend to incriminate the person.

(3) This section is subject to section 156.

### **Person must answer question about serious accident or high potential incident**

**156.(1)** This section applies if a person refuses to answer a question about a serious accident or high potential incident asked by an inspector.

(2) If the inspector requires the person to answer the question, the inspector must advise the person of the following—

- (a) that if the answer might incriminate the person, the person may claim, before giving the answer, that giving the answer might incriminate the person;
- (b) the effect of making the claim on the admissibility of the answer and any information, document or other thing obtained as a direct or indirect result of the person giving the answer as evidence in any proceeding against the person.

(3) The person must answer the question, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

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<sup>18</sup> Section 154 (Power to require attendance of persons before an inspector to answer questions)

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(4) It is not a reasonable excuse to fail to answer the question that answering might tend to incriminate the person.

(5) Subsection (6) applies if an answer might incriminate the person and the person claims, before giving the answer, that giving the answer might incriminate the person.

(6) Neither the answer nor any information, document or other thing obtained as a direct or indirect result of the person giving the answer is admissible in any proceeding against the person, other than a proceeding in which the falsity or misleading nature of the answer is relevant.

*Subdivision 7—Additional powers of chief inspector*

**Additional powers of chief inspector**

**157.** The chief inspector has the powers of an inspector and the following additional powers—

- (a) to initiate prosecutions for offences under the Act;
- (b) to give a directive under section 169;<sup>19</sup>
- (c) to review, and confirm, vary or set aside, directives given by inspectors, inspection officers or district workers' representatives.

*Division 3—Directives by inspectors, inspection officers and district workers' representatives*

*Subdivision 1—Power to give and way of giving directives*

**Directive may be given**

**158.** A directive may be given by a person, and for a matter, mentioned in subdivision 2.

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<sup>19</sup> Section 169 (Directive to provide independent engineering study)

### **How directive is given**

**159.(1)** Other than for sections 163, 164 and 167,<sup>20</sup> the directive must be given in writing to the operator for the mine to which the directive relates.

**(2)** The person giving the directive must give a copy of the directive to the site senior executive for the mine.

**(3)** Failure to comply with subsection (2) does not affect the validity of the directive.

### **How directive is given for ss 163, 164 and 167**

**160.** For sections 163, 164 and 167, a directive is to be given in the way stated in the sections.

### *Subdivision 2—Matters for which directives may be given*

#### **Directive to ensure worker competent**

**161.** If an inspector believes that a particular task at a mine should be performed only by persons with a particular competency, the inspector may give a directive that the task be performed only by a person with the competency.

#### **Directive to carry out test**

**162.** If an inspector reasonably suspects a risk from operations is not at an acceptable level, the inspector may give a directive to carry out stated tests to decide whether risk is at an acceptable level.

#### **Directive to reduce risk**

**163.(1)** If an inspector or inspection officer reasonably believes a risk from operations may reach an unacceptable level, the inspector or officer

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<sup>20</sup> Sections 163 (Directive to reduce risks), 164 (Directive to suspend operations for unacceptable level of risk) and 167 (Directive to isolate site)

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may give a directive to any person to take stated corrective or preventative action to prevent the risk reaching an unacceptable level.

(2) The directive may be given orally or by notice.

(3) If the directive is given orally, the person giving the directive must confirm the directive by notice to the person in control of the mine or part of the mine affected by the directive and to the relevant site senior executive.

(4) Failure to comply with subsection (3) does not affect the validity of the directive.

### **Directive to suspend operations for unacceptable level of risk**

**164.(1)** If an inspector, inspection officer or district workers' representative believes risk from operations is not at an acceptable level, the inspector, officer or representative may give a directive to any person to suspend operations in all or part of the mine.

(2) The directive may be given orally or by notice.

(3) If the directive is given orally, the person giving the directive must confirm the directive by notice to the person in control of the mine or part of the mine affected by the directive and to the relevant site senior executive.

(4) Failure to comply with subsection (3) does not affect the validity of the directive.

### **Directive to review safety and health management system**

**165.** If an inspector believes the safety and health management system for a mine is ineffective, the inspector may give a directive to review the safety and health management system and make it effective.

### **Directive to suspend operations for ineffective safety and health management system**

**166.** If an inspector believes there is not an effective safety and health management system for a mine or part of a mine, the inspector may give a directive suspending operations in all or part of the mine.

### **Directive to isolate site**

**167.(1)** If an inspector believes it is necessary to preserve evidence after a serious accident or high potential incident, the inspector may give a directive to any person to isolate and protect the accident or incident site.

(2) The directive may be given orally or by notice.

(3) If the directive is given orally, the inspector must confirm the directive by notice to the person in control of the mine or part of the mine affected by the directive and to the relevant site senior executive.

(4) Failure to comply with subsection (3) does not affect the validity of the directive.

### **Directive about separate part of the mine**

**168.(1)** This section applies if part of a mine taken to be a separate part of a mine under section 21(4) is operated in a way so that it is no longer a separate part of a mine under section 21(4).

(2) An inspector may give a directive to a person to operate the part of the mine so that it is a separate part of a mine under section 21(4).

(3) If the directive is not complied with, an inspector may give a further directive suspending operations in the part of the mine.

### **Directive to provide independent engineering study**

**169.(1)** The chief inspector may give a directive to provide an independent engineering study about—

- (a) risks arising out of operations; or
- (b) the safety of part or all of any plant, building or structure at the mine; or
- (c) a serious accident or high potential incident at the mine.

(2) The directive must state—

- (a) the reasons for and objectives of the study; and
- (b) that the person who undertakes the study must be a person approved by the chief inspector.

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(3) For subsection (2)(b), the chief inspector may approve a person only if the person—

- (a) has relevant professional qualifications and experience for the study; and
- (b) is not an employee of the operator for the mine or of a contractor at the mine.

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

**Records must be kept**

**170.(1)** An inspector, inspection officer or district workers' representative must keep an accurate record of all reports and directives given by the inspector, officer or representative under this Act.

(2) An inspector, inspection officer or district workers' representative must make a written report of every inspection of a mine made by the inspector, officer or representative under this Act.

(3) An inspector, inspection officer or district workers' representative must give the operator and the site senior executive of the mine a copy of the report as soon as practicable after making it.

**Directives**

**171.(1)** If an inspector, inspection officer or district workers' representative has given a directive, the inspector, officer or representative—

- (a) must enter it in the mine record as soon as reasonably practicable after giving it; and
- (b) must state the reason for the directive in the mine record.

(2) A person to whom a directive is given must comply with the directive as soon as reasonably practicable.

Maximum penalty—800 penalty units or 2 years imprisonment.

(3) The site senior executive must enter in the mine record the action taken to comply with the directive as soon as practicable after the action is

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taken.

Maximum penalty—40 penalty units.

(4) The site senior executive must make copies of directives available for inspection by workers.

Maximum penalty—40 penalty units.

(5) A directive remains effective until—

- (a) for a directive by a district workers' representative—it is withdrawn in writing by the representative or an inspector; or
- (b) for a directive by an inspector—it is withdrawn in writing by the inspector or another inspector; or
- (c) for a directive of an inspection officer—it is withdrawn in writing by the inspection officer or an inspector; or
- (d) for a directive by a district workers' representative, an inspection officer or an inspector and not otherwise withdrawn—the chief inspector varies or sets aside the directive after reviewing it under subdivision 4; or
- (e) the Industrial Court stays, varies or sets aside the directive.

***Subdivision 4—Review of directives***

**Application for review**

**172.** A person who has received a directive from an inspector (other than the chief inspector), inspection officer or district workers' representative may apply under this division for the directive to be reviewed.<sup>21</sup>

**Procedure for review**

**173.(1)** The application must—

- (a) be made in writing to the chief inspector; and

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<sup>21</sup> A district workers' representative may give a directive under section 116 (Powers of district workers' representatives).

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(b) be supported by enough information to allow the chief inspector to decide the application.

(2) The application must be made to the chief inspector within—

(a) 7 days after the day on which the person received the directive; or

(b) the longer period, within 2 months after the day, the chief inspector in special circumstances allows.

(3) The chief inspector must consider the application within 7 days after receiving it and immediately advise the applicant in writing whether the chief inspector considers the applicant has complied with subsection (1).

(4) If the chief inspector does not consider the application is supported by enough information to allow the chief inspector to decide the application, the chief inspector must advise the applicant what further information the chief inspector requires.

(5) When the chief inspector is satisfied the applicant has complied with subsection (1), the chief inspector must immediately advise the applicant in writing of that fact.

### **Review of directive**

**174.(1)** The chief inspector must, within 14 days after giving the advice mentioned in section 173(5), review the directive and make a decision (the “**review decision**”)—

(a) to confirm the directive appealed against; or

(b) to vary or set aside the directive appealed against.

(2) The chief inspector may give a directive in substitution for a directive the chief inspector decides to set aside.

(3) Within 7 days after making the review decision, the chief inspector must give notice of the decision to the applicant.

(4) The notice must—

(a) include the reasons for the review decision; and

(b) if the notice does not set aside the directive, tell the applicant of the applicant’s right of appeal against the decision.



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(5) If the chief inspector does not—

- (a) review the directive within the time allowed under subsection (1);  
or
- (b) having reviewed the directive, advise the applicant of the review decision within the time allowed under subsection (3);

the applicant may appeal against the directive under part 13.<sup>22</sup>

### **Stay of operation of directive**

**175.(1)** If a person applies under this division for a directive to be reviewed, the person may immediately apply to the Industrial Court for a stay of the directive.

(2) The court may stay the directive to secure the effectiveness of the review and any later appeal to the court.

(3) A stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(4) The period of a stay must not extend past the time when the chief inspector reviews the directive and any later period the court allows the person to enable the person to appeal against the decision.

(5) An application made for a review of a directive affects the directive, or the carrying out of the directive, only if the directive is stayed.

(6) However, a directive under section 164<sup>23</sup> must not be stayed.

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<sup>22</sup> Part 13 (Appeals)

<sup>23</sup> Section 164 (Directive to suspend operations for unacceptable level of risk)

#### ***Division 4—General enforcement offences***

##### **False or misleading statements**

**176.(1)** A person must not state anything to an inspector or inspection officer the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to allege and prove that the statement made was ‘false or misleading’ to the person’s knowledge, without specifying which.

##### **False or misleading documents**

**177.(1)** A person must not give an inspector, inspection officer or district workers’ representative a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the inspector, inspection officer or district workers’ representative, to the best of the person’s ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) Also, a person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—100 penalty units.

(4) It is enough for a complaint for an offence against subsection (1) or (3) to allege and prove that the document or entry was ‘false or misleading to the person’s knowledge’, without specifying which.

### **Obstructing inspectors, inspection officers or district workers' representatives**

**178.(1)** A person must not obstruct an inspector, inspection officer or district workers' representative in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

**(2)** If a person has obstructed an inspector, inspection officer or district workers' representative and the inspector, officer or representative decides to proceed with the exercise of the power, the inspector, officer or representative must warn the person that—

- (a) it is an offence to obstruct the inspector, officer or representative, unless the person has a reasonable excuse; and
- (b) the inspector, officer or representative considers the person's conduct an obstruction.

## **PART 10—BOARD OF EXAMINERS**

### *Division 1—Purposes of part*

#### **Purposes of pt 10**

**179.** The main purposes of this part are to provide for a board of examiners and to state its functions.

### *Division 2—Board of examiners and its functions*

#### **Inspector for pt 10**

**180.** In this part—

“**inspector**” includes an inspector appointed under the *Coal Mining Safety and Health Act 1999*.

### **Board of examiners**

**181.** The board of examiners is established.

### **Functions of the board of examiners**

**182.** The board of examiners has the following functions—

- (a) to decide the competencies necessary for holders of certificates of competency;
- (b) to assess applicants, or have applicants assessed, for certificates of competency;
- (c) to grant certificates of competency to persons who have demonstrated to the board's satisfaction the appropriate competencies necessary to hold the certificates;
- (d) to ensure the competencies under this Act are consistent with the competencies required by other States for the holders of certificates of competency.

### **Membership and conduct of board proceedings**

**183.(1)** The board of examiners is to consist of a chairperson and at least 6 other members.

**(2)** An inspector is to be chairperson.

**(3)** Each member must have at least 10 years practical experience in the mining industry.

**(4)** No more than 3 members may be inspectors.

**(5)** At least 6 of the members must be currently engaged in the mining industry.

**(6)** Inspectors and district workers' representatives are taken to be currently engaged in the mining industry.

**(7)** A member may be appointed for a term of not more than 5 years.

### **Board of examiners to appoint secretary**

**184.** The board of examiners must appoint a person to be secretary to the board.

### **Appointment of board of examiners**

**185.(1)** The members of the board of examiners are to be appointed by the Governor in Council by gazette notice.

**(2)** The members who are not inspectors are appointed under this Act and not the *Public Service Act 1996*.

### **Quorum and voting at meetings of the board**

**186.** At a meeting of the board of examiners—

- (a) a quorum consists of half the number of members appointed to the board or, if that number is not a whole number, the next higher whole number; and
- (b) a question must be decided by a majority of the votes of the members present and voting; and
- (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

### **Presiding at meetings of the board of examiners**

**187.(1)** The chairperson must preside at all meetings of the board of examiners at which the chairperson is present.

**(2)** In the absence of the chairperson, an inspector nominated by the chairperson presides.

**(3)** The inspector nominated must be a member of the board.

### **Conditions of appointment**

**188.(1)** A member of the board of examiners, other than a member who

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is an inspector, is entitled to be paid the fees and allowances decided by the Governor in Council.

(2) A member holds office on conditions not provided by this Act that are decided by the Minister.

### **Proceedings of the board of examiners**

**189.(1)** The way the board of examiners is to conduct its proceedings may be prescribed under a regulation.

(2) If the way the board is to conduct its proceedings is not prescribed, the board may conduct its proceedings in the way it considers appropriate.

### **Committees**

**190.** The board may appoint committees to advise it on particular issues.

## ***Division 3—General***

### **Examiners to be qualified**

**191.** A person must not assess an applicant for a certificate of competency unless the person has appropriate qualifications and experience to assess the applicant.

Maximum penalty—100 penalty units.

### **Obtaining certificates of competency by fraud**

**192.(1)** A person must not become, or attempt to become, the holder of a certificate of competency by giving false information to the board of examiners.

Maximum penalty—400 penalty units.

(2) The board of examiners may cancel a certificate of competency by notice to the holder if the board is satisfied that the holder obtained the certificate of competency by giving false information to the board.

### **Return of certificate of competency**

**193.** The holder of a certificate of competency must, unless the holder has a reasonable excuse, immediately return the certificate to the board of examiners if—

- (a) the board has given the holder notice under section 192(2); or
- (b) an industrial magistrate suspends or cancels the certificate under section 237.<sup>24</sup>

Maximum penalty—400 penalty units.

### **Annual report**

**194.(1)** As soon as practicable, but within 4 months, after the end of each financial year, the board of examiners must prepare and give to the Minister a report on the board's operations for the year.

**(2)** The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving it.

## **PART 11—ACCIDENTS AND INCIDENTS**

### *Division 1—Notification of accidents, incidents and inspections*

#### **Notice of accidents, incidents or diseases**

**195.(1)** On becoming aware of a serious accident or high potential incident at a mine or as a result of operations, the site senior executive for the mine must immediately notify an inspector and a district workers' representative about the accident or incident either orally or by notice.

Maximum penalty—40 penalty units.

- (2)** If the site senior executive makes an oral report under subsection (1),

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<sup>24</sup> Section 237 (Court may order suspension or cancellation of certificate)

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the executive must confirm the report by notice within 48 hours.

Maximum penalty—40 penalty units.

(3) However, if the serious accident results in death, the site senior executive must confirm the oral report by notice within 24 hours.

Maximum penalty—80 penalty units.

(4) As soon as practicable after receiving a report of a disease at a mine or as a result of operations, prescribed under a regulation as a disease that must be reported under this section, the site senior executive must give an inspector and a district workers' representative notice about the disease.

Maximum penalty—40 penalty units.

### **Place of accident must be inspected**

**196.** As soon as practicable after receiving a report of a serious accident causing death at a mine, an inspector must inspect the place of the accident, investigate the accident to determine its nature and cause, and report the findings of the investigation to the chief inspector.

### *Division 2—Site of accident or incident*

#### **Site not to be interfered with without permission**

**197.(1)** A person must not interfere with a place at a mine that is the site of a serious accident or high potential incident of a type prescribed by regulation, without the permission of an inspector.

Maximum penalty—200 penalty units.

(2) Permission under subsection (1) must not be unreasonably withheld.

(3) For this division, action taken to save life or prevent further injury at a place is not interference with the place.

#### **Action to be taken in relation to site of accident or incident**

**198.(1)** If there is a serious accident or a high potential incident at a mine,



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the site senior executive must—

- (a) carry out an investigation to decide the causes of the accident or incident; and
- (b) prepare a report about the accident or incident that includes recommendations to prevent the accident or incident happening again; and
- (c) if the accident or incident is a type prescribed by regulation, forward the report to an inspector within 1 month after the accident or incident.

Maximum penalty—100 penalty units.

(2) The site senior executive must ensure that the place of the accident or incident is not interfered with until—

- (a) all relevant details about the accident or incident have been recorded and, if possible, photographed; and
- (b) sufficient measurements have been taken to allow the development of an accurate plan of the site; and
- (c) a list of witnesses to the accident or incident has been compiled.

Maximum penalty—100 penalty units.

## **PART 12—BOARDS OF INQUIRY**

### *Division 1—General*

#### **Minister may establish boards of inquiry**

**199.(1)** The Minister may establish a board of inquiry about a serious accident or high potential incident by gazette notice.

(2) The notice, or a later gazette notice, may specify issues relevant to the inquiry including, for example, the membership of the board, who is the chairperson of the board, and its terms of reference.

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(3) The Minister may exercise powers under this section for a serious accident or high potential incident—

- (a) whether or not the accident or incident has been investigated by an inspector; and
- (b) whether or not a board of inquiry had previously inquired into the accident or incident.

### **Role of board of inquiry**

**200.(1)** The board of inquiry must—

- (a) inquire into the circumstances and probable causes of the relevant serious accident or high potential incident; and
- (b) give the Minister a written report of the board's findings.

(2) The report may contain the recommendations the board considers appropriate and other relevant matters.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.

(4) However, if the board gives the Minister a separate report of issues that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

### **Conditions of appointment**

**201.(1)** A member of the board of inquiry is entitled to be paid the fees and allowances decided by the Governor in Council.

(2) A member holds office on conditions not provided by this Act that are decided by the Minister.

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

**202.** As soon as practicable after the board of inquiry is established, the chief executive must consult with the chairperson of the board and arrange—

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- (a) for the services of officers and employees of the department and other persons to be made available to the board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

***Division 2—Conduct of inquiry***

**Procedure**

**203.(1)** When conducting its inquiry, the board of inquiry—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

**(2)** In conducting the inquiry, the board—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself in any way it considers appropriate, including by holding hearings; and
- (c) may decide the procedures to be followed for the inquiry; and
- (d) must give a person involved in the serious accident or high potential incident the opportunity of defending all claims made against the person.

**(3)** However, the board must comply with this division and any procedural rules prescribed under a regulation.

**(4)** The chairperson of the board presides at the inquiry.

**Notice of inquiry**

**204.** The chairperson of the board of inquiry must give at least 14 days notice of the time and place of the inquiry to—

- (a) any person the chairperson considers may be concerned in the serious accident or high potential incident the subject of the inquiry; and

- (b) any other person the chairperson reasonably believes should be given the opportunity to appear at the inquiry.

### **Inquiry to be held in public except in special circumstances**

**205.(1)** The inquiry must be held in public.

(2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.

(3) The board may give a direction under subsection (2) only if it is satisfied it is proper to make the direction in the special circumstances of the case.

### **Protection of members, legal representatives and witnesses**

**206.(1)** A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a Supreme Court judge performing the functions of a judge.

(2) A lawyer or other person appearing before the inquiry for someone has the same protection and immunity as a lawyer appearing for a party in a proceeding in the Supreme Court.

(3) A person summoned to attend or appearing before the inquiry as a witness has the same protection as a witness in a proceeding in the Supreme Court.

### **Record of proceedings to be kept**

**207.** The board of inquiry must keep a record of its proceedings.

### **Representation**

**208.** A person may be represented before the inquiry by a lawyer or agent.

### **Board's powers on inquiry**

**209.(1)** In conducting the inquiry, the board may—

- (a) act in the absence of any person who has been given a notice under section 204<sup>25</sup> or some other reasonable notice; and
- (b) receive evidence on oath or by statutory declaration; and
- (c) adjourn the inquiry; and
- (d) disregard any defect, error, omission or insufficiency in a document.

**(2)** A member of the board may administer an oath to a person appearing as a witness before the inquiry.

### **Notice to witness**

**210.(1)** The chairperson of the board of inquiry may, by notice (“**attendance notice**”) given to a person, require the person to attend at the inquiry at a stated time and place to give evidence or produce stated documents or things.

**(2)** A person required to appear as a witness before the inquiry is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

### **Inspection of documents or things**

**211.(1)** If a document or thing is produced to the board at the inquiry, the board may—

- (a) inspect the document or thing; and
- (b) copy or photograph the document or thing if it is relevant to the inquiry.

**(2)** The board may also take possession of the document or thing, and keep it while it is necessary for the inquiry.

**(3)** While it keeps a document or thing, the board must permit a person

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<sup>25</sup> Section 204 (Notice of inquiry)

otherwise entitled to possession of it to inspect, copy or photograph the document or thing, at a reasonable place and time the board decides.

### **Inquiry may continue despite court proceedings unless otherwise ordered**

**212.** The inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

### **Offences by witnesses**

**213.(1)** A person given an attendance notice must not fail, without reasonable excuse to—

- (a) attend as required by the notice; or
- (b) continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—30 penalty units.

**(2)** A person appearing as a witness at the inquiry must take an oath when required by the chairperson of the board.

Maximum penalty—30 penalty units.

**(3)** Also, a person appearing as a witness at the inquiry must not fail, without reasonable excuse—

- (a) to answer a question the person is required to answer by a member of the board; or
- (b) to produce a document or thing the person is required to produce under an attendance notice.

Maximum penalty—30 penalty units.

**(4)** It is a reasonable excuse to refuse to answer a question or produce a document or thing on the ground that the answer or production of the document or thing might tend to incriminate the person.

### **Contempt of board**

**214.** A person must not—

- (a) deliberately interrupt a board of inquiry; or
- (b) create or continue, or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
- (c) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—30 penalty units.

### **Change of membership of board**

**215.** The inquiry of a board of inquiry is not affected by a change in its membership.

## **PART 13—APPEALS**

### ***Division 1—Appeals against particular decisions of Minister or board of examiners***

#### **Appeals against Minister’s decisions**

**216.** The following persons may appeal against the Minister’s decision under the following provisions to an Industrial Magistrates Court under this division—

- (a) a person who is removed from office as site safety and health representative—section 89;<sup>26</sup>
- (b) a person whose appointment as district workers’ representative has been terminated—section 110.<sup>27</sup>

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<sup>26</sup> Section 89 (Removal from office by Minister)

<sup>27</sup> Section 110 (Termination of appointment)

### **Appeals against board of examiner's decision**

**217.** A person whose certificate of competency has been cancelled by the board of examiners under section 192<sup>28</sup> may appeal against the board's decision to an Industrial Magistrates Court under this division.

### **How to start appeal**

**218.(1)** An appeal is started by the appellant—

- (a) filing a notice of appeal with an Industrial Magistrates Court; and
- (b) serving a copy of the notice on—
  - (i) if the appeal is against the Minister's decision—the Minister; or
  - (ii) if the appeal is against the board of examiners' decision—the board of examiners.

**(2)** The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.

**(3)** The court may at any time extend the period for filing the notice of appeal.

**(4)** The notice of appeal must state the grounds of the appeal.

### **Stay of operation of decision**

**219.(1)** An Industrial Magistrates Court may stay a decision appealed against to secure the effectiveness of the appeal.

**(2)** A stay—

- (a) may be given on conditions the court considers appropriate; and
- (b) has effect for the period stated by the court; and
- (c) may be revoked or amended by the court.

**(3)** The period of a stay given by the court must not extend past the time when the court decides the appeal.

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<sup>28</sup> Section 192 (Obtaining certificates of competency by fraud)



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(4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

### **Hearing procedures**

**220.(1)** Unless this division otherwise provides, the practice and procedure for the appeal are to be in accordance with the rules of court or, if the rules make no provision or insufficient provision, in accordance with the directions of the court.

(2) An appeal must be by way of rehearing, unaffected by the original decision-maker's decision.

(3) In deciding an appeal, an Industrial Magistrates Court—

- (a) is not bound by the rules of evidence; and
- (b) must observe natural justice.

(4) In this section—

**“original decision-maker”** means the Minister or the board of examiners.

### **Powers of court on appeal**

**221.(1)** In deciding an appeal, an Industrial Magistrates Court may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the matter to the original decision-maker with directions that the court considers appropriate.

(2) In substituting another decision, the court has the same powers as the original decision-maker.

(3) If the court substitutes another decision, the substituted decision is taken to be the decision of the original decision-maker.

(4) The court may make an order for costs it considers appropriate.

(5) In this section—

**“original decision-maker”** means the Minister or the board of examiners.

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### **Appeal to District Court on questions of law only**

**222.(1)** An appellant may appeal against the decision of an Industrial Magistrates Court to the District Court, but only on a question of law.

**(2)** On hearing the appeal, the court may make any order for costs it considers appropriate.

### ***Division 2—Appeals against chief inspectors directives and review decisions***

#### **Who may appeal**

**223.** A person whose interests are affected by the following may appeal to the Industrial Court—

- (a) a directive given by the chief inspector;
- (b) a review decision of the chief inspector under part 9, division 3, subdivision 4.<sup>29</sup>

#### **How to start appeal**

**224.(1)** An appeal is started by—

- (a) filing a notice of appeal with the registrar of the Industrial Court; and
- (b) complying with any rules of court applying to the appeal.

**(2)** The notice of appeal must be filed within 30 days after—

- (a) if the appeal is from a directive—the day the appellant receives the directive; or
- (b) if the appeal is from a review decision—the day the appellant receives reasons for the review decision.

**(3)** The court may at any time extend the period for filing the notice of

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<sup>29</sup> Part 9 (Inspectors and inspection officers and directives), division 3 (Directives by inspectors, inspection officers and district workers' representatives), subdivision 4 (Review of directives)

appeal.

(4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

### **Stay of operation of directive or review decision**

**225.(1)** The Industrial Court may grant a stay of a directive or review decision appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on the conditions the court considers appropriate; and
- (b) operates for the period fixed by the court; and
- (c) may be revoked or amended by the court.

(3) The period of a stay must not extend past the time when the court decides the appeal.

(4) An appeal against a directive or review decision affects the directive or decision, or the carrying out of the directive or decision, only if the directive or decision is stayed.

(5) However, the following must not be stayed—

- (a) a directive by the chief inspector under section 164;<sup>30</sup>
- (b) a review decision about a directive given by another person under section 164.

### **Hearing procedures**

**226.(1)** The procedure for an appeal is to be in accordance with the rules of court applying to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the Industrial Court.

(2) An appeal is by way of rehearing, unaffected by the chief inspector's directive or review decision.

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<sup>30</sup> Section 164 (Directive to suspend operations for unacceptable level of risk)

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### **Assessors**

**227.** If the Industrial Court is satisfied the appeal involves an issue of special knowledge and skill, the court may appoint 1 or more assessors to help it in deciding the appeal.

### **Powers of court on appeal**

**228.(1)** In deciding an appeal, the Industrial Court may—

- (a) confirm the directive or review decision appealed against; or
- (b) vary the directive or review decision appealed against; or
- (c) set aside the directive or review decision appealed against and make a directive or decision in substitution for the directive or review decision set aside; or
- (d) set aside the directive or review decision appealed against and return the issue to the chief inspector with directions the court considers appropriate.

**(2)** If on appeal the court acts under subsection (1)(b) or (c), the directive or decision is taken, for this Act (other than this part), to be that of the chief inspector.

## **PART 14—LEGAL PROCEEDINGS**

### *Division 1—Evidence*

#### **Application of div 1**

**228A.** This division applies to a proceeding under this Act.

#### **Proof of appointments and authority unnecessary**

**229.(1)** It is not necessary to prove—

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- (a) the appointment of the chief executive, the chief inspector, an inspector, an inspection officer, a district workers' representative or a site safety and health representative; or
- (b) the authority of the chief executive, the chief inspector, an inspector, an inspection officer, a district workers' representative or a site safety and health representative to do anything under this Act.

(2) Subsection (1) does not apply if reasonable notice is given to the party relying on the appointment or authority that the appointment or authority is to be challenged.

### **Proof of signatures unnecessary**

**230.** A signature purporting to be the signature of the chief executive, the chief inspector, an inspector, an inspection officer, a district workers' representative or a site safety and health representative is evidence of the signature it purports to be.

### **Evidentiary aids**

**231.(1)** A certificate stating any of the following matters is evidence of the matter—

- (a) a stated document is—
  - (i) an appointment or a copy of an appointment; or
  - (ii) a directive or a copy of a directive given under this Act; or
  - (iii) a decision, or a copy of a decision, given or made under this Act; or
  - (iv) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
- (b) on a stated day, or during a stated period, a stated certificate, approval or appointment was, or was not, in force for a stated person or thing;
- (c) on a stated day, or during a stated period, a standard issued or published by National Occupational Health and Safety

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Commission or Standards Australia or something in the standard was, or was not, in force;

- (d) on a stated day a stated person was given a stated directive, direction, requirement or notice under this Act;
- (e) a stated amount is payable under this Act by a stated person and has not been paid.

(2) A document purporting to be published by or under the authority of National Occupational Health and Safety Commission or Standards Australia is, on its production in a proceeding, evidence of the matters appearing on and in the document.

(3) In a complaint starting 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.

(4) Any instrument, equipment or installation used by an inspector or inspection officer or analyst in accordance with any conditions prescribed under a relevant document for its use is taken to be accurate and precise in the absence of evidence to the contrary.

(5) In this section—

**“certificate”** means a certificate purporting to be signed by the chief executive, the chief inspector, an inspector, an inspection officer, a district workers' representative or a site safety and health representative.

### **Expert reports**

**232.(1)** An expert report is admissible in evidence in a proceeding under this Act, whether or not the person making the report (the **“expert”**) attends to give oral evidence in the proceeding.

(2) However, if the expert does not attend to give oral evidence in the proceeding, the report is admissible only with the court's leave.

(3) In deciding whether to grant leave, the court must have regard to the following—

- (a) the contents of the report;

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- (b) why the expert does not intend to give oral evidence;
- (c) the risk that its admission or exclusion from evidence will result in unfairness to a party, in particular having regard to a party's ability to dispute the contents of the report if the expert does not give oral evidence;
- (d) any other relevant circumstance.

(4) An expert report when admitted is evidence of any fact or opinion of which the expert could have given oral evidence.

(5) In this section—

**“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.

### **Analyst's certificate or report**

**233.** The production by the prosecutor or the defendant in a prosecution of a signed analyst's report stating any of the following is evidence of them—

- (a) the analyst's qualifications;
- (b) the analyst took, or received from a stated person, the sample mentioned in the report;
- (c) the analyst analysed the sample on a stated day, or during a stated period, and at a stated place;
- (d) the results of the analysis.

## ***Division 2—Proceedings***

### **Proceedings for offences**

**234.(1)** A prosecution for an offence against this Act is by way of summary proceedings before an industrial magistrate.

(2) More than 1 contravention of a safety and health obligation under section 31 may be charged as a single charge if the acts or omissions giving

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rise to the claimed contravention happened within the same period and in relation to the same mine.

(3) A person dissatisfied with a decision of an industrial magistrate in proceedings brought under subsection (1) who wants to appeal must appeal to the Industrial Court.

(4) The *Workplace Relations Act 1997* applies, with necessary changes, to a proceeding before an industrial magistrate brought under subsection (1) and to a proceeding on appeal before the Industrial Court brought under subsection (3).

(5) A prosecution for an offence against this Act must be started by complaint of the chief inspector or someone else authorised by the Minister or by the Attorney-General.

(6) In this section—

**“person dissatisfied with a decision”** in a proceeding means—

- (a) a party to the proceeding; or
- (b) a person bound by the decision; or
- (c) if a person other than the chief inspector started the proceeding, the chief inspector.

### **Recommendation to prosecute**

**235.(1)** The following persons may recommend to the chief inspector that there be a prosecution for an offence against this Act—

- (a) an inspector;
- (b) a district workers’ representative;
- (c) a site senior executive.

(2) Subsection (1) does not limit the chief inspector’s power to prosecute.

### **Limitation on time for starting proceedings**

**236.** A proceeding for an offence against this Act must start—

- (a) within 1 year after the commission of the offence; or



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- (b) within 6 months after the offence comes to the complainant's knowledge but within 3 years after the commission of the offence.

### **Court may order suspension or cancellation of certificate**

**237.(1)** This section applies if a person convicted of an offence against this Act is the holder of a certificate of competency.

(2) The industrial magistrate, on application by the complainant during the proceedings for the offence, may suspend or cancel the certificate of competency of the person convicted.

(3) A person dissatisfied with the industrial magistrate's decision to suspend or cancel the person's certificate of competency who wants to appeal the decision, must appeal to the Industrial Court.

### **Forfeiture on conviction**

**238.(1)** On conviction of a person for an offence against this Act, an Industrial Magistrates Court may order the forfeiture to the State of—

- (a) anything used to commit the offence; or  
(b) anything else the subject of the offence.

(2) The court may make the order—

- (a) whether or not the thing has been seized; and  
(b) if the thing has been seized, whether or not the thing has been returned to its owner.

(3) The court may make any order to enforce the forfeiture it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **Dealing with forfeited things**

**239.(1)** On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief

executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may destroy the thing.

### **Responsibility for acts or omissions of representatives**

**240.(1)** Subsections (2) and (3) apply in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

- (a) 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
- (b) the representative had the state of mind.

(3) 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.

(4) In this section—

**“representative”** means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

**“state of mind”** of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

### **Executive officers must ensure corporation complies with Act**

**241.(1)** The executive officers of a corporation must ensure that the corporation complies with this Act.

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(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

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

## **Representation**

**242.** A party to a proceeding under this Act may be represented by the party's lawyer or agent.

## **Costs of investigation**

**243.(1)** If a court convicts a person of an offence against this Act, the court may order the person to pay the department's reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence.

(2) This section does not limit the orders for costs the court may make.

## **Recovery of fees**

**244.(1)** A fee payable under this Act and not paid may be recovered by the chief executive—

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- (a) in summary proceedings under the *Justices Act 1886*; or
- (b) by action for a debt in a court of competent jurisdiction.

(2) A fee may also be recovered in a proceeding for an offence against this Act.

(3) An order made under subsection (2) is enforceable under the *Justices Act 1886* as an order for payment of money made by a magistrate under that Act.

(4) If an order is made under subsection (2)—

- (a) the order may be filed in the registry of a Magistrates Court; and
- (b) on being filed, is taken to be an order made by a Magistrates Court and may be enforced accordingly.

***Division 3—Evidentiary provisions***

**Service of documents**

**245.(1)** If a document is required or permitted under this Act to be given to a person, the document may be given to the person by facsimile transmission directed and sent to—

- (a) the last transmission number given to the giver of the document by the person as the facsimile transmission number for service of documents on the person; or
- (b) the facsimile transmission number operated—
  - (i) at the address of the person last known to the giver of the document; or
  - (ii) if the person is a company, at the company's registered office.

(2) A document given in accordance with subsection (1) is taken to have been given on the day the copy is transmitted.

(3) This section does not limit any other means of giving documents

authorised or permitted by law including, for example, under the *Acts Interpretation Act 1954*, part 10.<sup>31</sup>

### **How document to be given to operator**

**246.** A document to be given to an operator for a mine, is taken to have been given to the operator if it is—

- (a) addressed to the operator; and
- (b) given to the site senior executive at the mine.

## **PART 15—OFFENCES**

### **Person not to encourage refusal to answer questions**

**247.(1)** A person must not encourage or influence, or attempt to encourage or influence, by general direction, promise of advantage, threat of dismissal or otherwise, a worker to refuse to answer questions put to the worker by an inspector, inspection officer or district workers' representative.

Maximum penalty—40 penalty units.

**(2)** To remove any doubt, subsection (1) does not apply to the provision of legal advice to a worker by a lawyer.

### **Impersonating inspector or inspection officers and others**

**248.** A person must not pretend to be an inspector, inspection officer, site safety and health representative or district workers' representative.

Maximum penalty—40 penalty units.

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<sup>31</sup> *Acts Interpretation Act 1954*, part 10 (Service of documents)

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### **Protection for officers**

**249.(1)** A person must not disadvantage an officer for exercising the officer's powers under this Act.

Maximum penalty—500 penalty units.

(2) In this section—

**“officer”** means—

- (a) an inspector; or
- (b) an inspection officer; or
- (c) a district workers' representative; or
- (d) a site safety and health representative.

## **PART 16—GENERAL**

### *Division 1—General safety matters*

#### **Person must not employ underage persons underground**

**250.** A person must not employ a person under the age of 16 as an underground worker.

Maximum penalty—100 penalty units.

#### **Workers may request information**

**251.** The site senior executive must make available for inspection, by workers employed at the mine, a copy of the safety and health management system.

Maximum penalty—100 penalty units.

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**Action where risk is unacceptable**

**252.(1)** If the level of risk from a hazard at a mine or an area within a mine is not within acceptable limits, a worker, if competent and able to eliminate the danger from the hazard, must take the action necessary to eliminate the danger.

Maximum penalty—100 penalty units.

**(2)** If the worker is not competent or able to eliminate the danger, the worker—

- (a) if the hazard is equipment, substances or operations—must stop the use of the equipment, substances or operations; or
- (b) if stopping the use of equipment, substances or operations does not bring risk within acceptable limits or the risk is not caused by the use of equipment, substances or operations—must withdraw from the mine or the area within the mine.

Maximum penalty—100 penalty units.

**(3)** Also, if the worker is not competent or able to eliminate the danger, the worker must—

- (a) take measures to prevent immediate danger to other workers that the worker is able reasonably to take; and
- (b) immediately report the situation to the worker's supervisor.

Maximum penalty—100 penalty units.

**(4)** If subsection (2)(b) applies, a supervisor of workers must ensure that the workers are withdrawn from the mine or the area within the mine.

Maximum penalty—100 penalty units.

**(5)** If action has been taken under subsection (2)(a), a person must not use the equipment or substances or resume operations until the risk—

- (a) has been assessed by a competent person; and
- (b) has been treated as necessary to reduce the risk to an acceptable level.

Maximum penalty—100 penalty units.

**(6)** If action has been taken under subsection (2)(b), a person must not

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re-enter the mine or the area within the mine until the risk—

- (a) has been assessed by a competent person; and
- (b) has been treated as necessary to reduce the risk to an acceptable level.

Maximum penalty for subsection (6)—100 penalty units.

### **Where worker exposed to immediate personal danger**

**253.(1)** Subject to section 252(1) and (2), if a worker (the “**original worker**”) reasonably believes that there is serious danger to the original worker’s safety or health, the original worker has the right—

- (a) to remove himself or herself to a position of safety; and
- (b) to refuse to undertake a task allocated to the original worker that may place the worker in serious danger.

**(2)** The operator or the operator’s representative must not disadvantage the original worker for exercising the worker’s rights under subsection (1).

Maximum penalty—200 penalty units.

**(3)** Subsection (4) applies if the operator or the operator’s representative subsequently asks or directs another worker (the “**subsequent worker**”) to place himself or herself in the position from which the original worker has removed himself or herself, or to undertake a task that the original worker has refused to undertake.

**(4)** The operator or the operator’s representative must advise the subsequent worker that the original worker exercised rights under subsection (1) because the original worker believed that there was a serious danger to the original worker’s safety or health.

Maximum penalty for subsection (4)—200 penalty units.

### **Representation by worker**

**254.(1)** A worker may make, either personally or by a representative, a representation to an inspector or inspection officer about—

- (a) an alleged contravention of this Act; or



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(b) a thing or practice at the mine that is, or is likely to be, dangerous.

(2) The inspector or inspection officer must investigate the matter and make a written report of the investigation to the worker or the worker's representative.

(3) The name of the person making a representation must not be disclosed except for a prosecution under subsection (4).

(4) A worker must not make a false or frivolous representation.

Maximum penalty for subsection (4)—40 penalty units.

***Division 2—Miscellaneous***

**Disclosure of information**

**255.(1)** A person must not disclose information concerning the personal affairs of a person or commercially sensitive information obtained by the person in the administration of this Act, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in the administration of this Act; or
- (c) in a proceeding under this Act or a report of the proceeding; or
- (d) in a proceeding before a court in which the information is relevant to the issue before the court.

Maximum penalty—100 penalty units.

(2) However, the chief inspector may communicate anything that comes to the chief inspector's knowledge under this Act to an officer or authority responsible for administering a law of Queensland, the Commonwealth or another State about safety and health in mining.

(3) This section does not limit the *Freedom of Information Act 1992*.

**Protection from liability**

**256.(1)** An official does not incur civil liability for an act done, or

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omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

“**official**” means—

- (a) the Minister; or
- (b) the chief inspector; or
- (c) an inspector; or
- (d) an inspection officer; or
- (e) a person acting under the direction of or helping an inspector; or
- (f) a member of the council; or
- (g) a district workers’ representative or a site safety and health representative.

## **PART 17—ADMINISTRATION**

### **Delegations**

**257.(1)** The Minister or chief executive may delegate his or her powers under this Act to an appropriately qualified public service employee.

(2) In this section—

“**appropriately qualified**” includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

A person’s classification level in the public service.

### **Delegation of chief inspector’s powers**

**258.(1)** The chief inspector may delegate any of the chief inspector’s

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powers to an inspector.

(2) However, the chief inspector may delegate a power to an inspector only if the chief inspector is satisfied the inspector has the expertise and experience to properly exercise the power.

(3) Also, the chief inspector must not delegate to an inspector the power to review an inspector's directive under section 174.<sup>32</sup>

### **Notices about industry statistics or information**

**259.(1)** The chief executive may, by notice, require a person to keep and give the chief executive statistics or other information in the person's custody, possession or power about the mining industry.

*Examples of matters the notice may require—*

1. The keeping and giving of records of production, disposal, sales and employment numbers.
2. The compilation and giving of statistics, returns and other information, including about attendance and absenteeism for work at mines.
3. That the records, statistics, returns or other information must be in an approved form.

(2) The chief executive may, by notice, amend a notice.

(3) The person must comply with the notice, unless the person has a reasonable excuse for not complying.

Maximum penalty for subsection (3)—40 penalty units.

### **Chief executive to keep records**

**260.(1)** The chief executive must keep and maintain records that include—

- (a) a database of information about—
  - (i) hazards associated with operations and methods of controlling the hazards; and

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<sup>32</sup> Section 174 (Review of directive)

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- (ii) lost time accidents and illnesses and high potential incidents;  
and
- (b) plans showing the extent of operations undertaken at abandoned mines; and
- (c) current guidelines.

(2) The chief executive, on payment by a person of a reasonable fee decided by the chief executive, must give a person access to the records.

### **Approved forms**

**261.** The chief inspector may approve forms for use under this Act.

## **PART 18—REGULATIONS**

### **Regulation-making power**

**262.(1)** The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may be made about the following—

- (a) risk management practices including criteria to be used in assessing whether risk is at an acceptable level;
- (b) safety and health management systems;
- (c) conditions in the work and local environments, the monitoring of those environments, and the use of personal protective equipment where limits are exceeded;
- (d) processes and methods of operation;
- (e) design and layout of facilities;
- (f) the use, production and disposal of material;
- (g) the design, use and maintenance of plant, equipment and tools;
- (h) procedures and standard work instructions;

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- (i) the competency, fitness and monitoring of persons and the monitoring of their work;
- (j) the monitoring, reporting, recording and investigation of injuries, illnesses and other effects on persons, and other incidents and situations with the potential to cause harm;
- (k) provisions for handling emergencies;
- (l) the gathering, recording, analysis, flow, and use of safety and health data and information.

**(3)** Without limiting subsection (1), a regulation may specify requirements for the following—

- (a) notifications, returns, and other information to be provided by the site senior executive to the inspectorate;
- (b) protection of confidentiality of personally and commercially sensitive information;
- (c) the methods of keeping records and their availability;
- (d) proceedings of the council;
- (e) the qualifications and experience of inspectors, inspection officers, site safety and health representatives and district workers' representatives.

**(4)** Without limiting subsection (1), a regulation may set fees payable under this Act.

**(5)** A regulation may create offences and prescribe penalties of not more than 400 penalty units for offences against the regulation.

## **PART 19—TRANSITIONAL PROVISIONS AND REPEALS**

### *Division 1—Definitions*

#### **Definitions for pt 19**

263. In this part—

“**commencement**” means the commencement of this section.

“**former Act**” means the *Mines Regulation Act 1964*.

### *Division 2—Transitional matters*

#### **Existing certificates of competency**

264. If a certificate of competency issued by the board of examiners under the former Act and in force at the commencement is mentioned in this Act, it is taken to be a certificate of competency granted under this Act.

#### **Approvals by inspector**

265. If an approval of the chief inspector or an inspector for a stated use for stated plant is in force under the former Act at the commencement, and a certificate by a testing authority is required under this Act for the stated use for the stated plant, the approval of the chief inspector or inspector is taken to be a certificate given under this Act.

#### **Board of examiners**

266.(1) The board of examiners established under the former Act is taken to be the board of examiners under this Act for 6 months after the commencement.

(2) A person who immediately before the commencement was a member of the board of examiners continues to be a member for 6 months

after the commencement.

(3) To remove doubt, for this Act, the board of examiners has only the functions and powers set out in this Act.

### **Existing chief inspector to be chief inspector**

**267.** A person who, immediately before the commencement, was the chief inspector of mines under the former Act, is taken to be appointed as the chief inspector under this Act.

### **Existing inspector to be inspector**

**268.** A person who, immediately before the commencement, was an inspector under the former Act is taken to be appointed as an inspector under this Act.

### **Existing inspection officer to be inspection officer**

**269.** A person who, immediately before the commencement, was an inspection officer under the former Act is taken to be appointed as an inspection officer under this Act.

### **Existing district workers' representative**

**270.** A person who, immediately before the commencement, held an appointment as a district workers' representative under the former Act is taken to be appointed as a district workers' representative under this Act until the day the person's appointment under the former Act would have ended.

### **Mine record book taken to be mine record**

**271.** The mine record book under the former Act is taken to be the mine record under this Act.

*Mining and Quarrying Safety and Health Act  
1999*

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**Warden may finish inquiry into accident**

**272.(1)** If a warden has started an inquiry into an accident under the former Act and the inquiry has not been finished at the commencement, the warden may finish the inquiry under the former Act as if it had not been repealed.

(2) In this section—

“**warden**” means a warden under the *Mineral Resources Act 1989*.

***Division 3—Repeal***

**Repeal**

**273.** The *Mines Regulation Act 1964* is repealed.



## SCHEDULE 2

### DICTIONARY

section 8

“**acceptable level**”, of risk to a person from operations, see section 26.

“**accident**” see section 16.

“**area of representation**”, of a safety and health representative, see section 84(4).

“**attendance notice**” see section 210.

“**board of examiners**” see section 181.

“**bodily harm**” see Criminal Code, section 1.

“**certificate of competency**” means a certificate of competency granted by the board of examiners.

“**chief inspector**” means the chief inspector of mines.

“**competence**”, for a task at a mine, see section 13.

“**consultation**”, with workers, see section 14.

“**conviction**” includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

“**council**” see section 66.

“**district workers’ representative**” see section 24.

“**executive officer**” of a corporation means a person who is—

- (a) a member of the governing body of the corporation; or
- (b) concerned with, or takes part in, the corporations management, whatever the person’s position is called and whether or not the person is a director of the corporation.

“**exploration permit**” has the meaning given in the *Mineral Resources Act* 1989.

## SCHEDULE 2 (continued)

“**explosive**” has the meaning given in the *Explosives Act 1999*.

“**facility description**”, for a mine, means a written document that shows or describes—

- (a) the processes used and materials handled at the mine; and
- (b) the layout of operations at the mine; and
- (c) the major items of plant and equipment at the mine.

“**fossick**” has the meaning given in the *Fossicking Act 1994*.

“**grievous bodily harm**” see Criminal Code, section 1.

“**guideline**” see part 5.

“**hard rock**” means rock that must be broken to enable it to be excavated.

“**hazard**” see section 20.

“**high potential incident**” see section 18.

“**holder**” means the holder under the *Mineral Resources Act 1989* of a prospecting permit, exploration permit, mineral development licence, mining lease or mining claim.

“**industrial organisation**” means an association of employees registered under the *Industrial Organisations Act 1997* as an industrial organisation of employees.

“**inspection officer**” means a person appointed an inspection officer under this Act.

“**inspector**”—

- (a) generally, means a person appointed as an inspector under this Act; and
- (b) for part 10, see section 180.

“**mine**” see section 9.

“**mineral**” has the meaning given in the *Mineral Resources Act 1989*, but does not include coal.

“**mineral development licence**” has the meaning given in the *Mineral*

## SCHEDULE 2 (continued)

*Resources Act 1989.*

**“mine record”** see section 59.

**“mining claim”** has the meaning given in the *Mineral Resources Act 1989*.

**“mining lease”** has the meaning given in the *Mineral Resources Act 1989*.

**“mining project”** means mining carried on under 2 or more mining leases as a single integrated undertaking.

**“mining tenure”**, for land, means a prospecting permit, exploration permit, mineral development licence, mining lease or mining claim for the land under the *Mineral Resources Act 1989*.

**“notice”** means signed written notice.

**“obstruct”** includes hinder, resist and attempt to obstruct.

**“operations”** see section 10.

**“operator”** see section 21.

**“plant”** includes—

- (a) machinery, equipment, appliance, pressure vessel, implement and tool; and
- (b) personal protective equipment; and
- (c) a component of plant and a fitting, connection, accessory or adjunct to plant.

**“product”** includes as mined material, waste material, treated and semi-treated material.

**“prospecting permit”** has the meaning given in the *Mineral Resources Act 1989*.

**“residual risk”** means the remaining level of risk after measures to control risk have been taken under this Act.

**“risk”** see section 19.

**“risk management”** see section 27.

**“safety and health”** see section 12.

## SCHEDULE 2 (continued)

**“safety and health management system”** see section 55.

**“safety and health obligations”** see section 30.

**“separate part of a mine”** see section 21(4).

**“serious accident”** see section 17.

**“site safety and health representative”** see section 25.

**“site senior executive”**, for a mine, see section 22.

**“standard work instruction”** see section 15.

**“supervisor”** see section 23.

**“supplier”** of plant, equipment or goods means a person who contracts to supply plant, equipment or goods to operators.

**“treatment”** means any process that takes place on land the subject of a prospecting permit, exploration permit, mineral development licence, mining lease or mining claim that is carried out with the objective of preparing material won in operations for its end purpose.

**“unacceptable level of risk”** means risk that is not at an acceptable level.

**“underground mine”** means a mine where workers normally work beneath the surface of the earth, and includes structures, apparatus and equipment that extend continuously from the surface into an underground mine, but does not include the surface operations of the mine.

**“worker”** is an individual who carries out work at a mine and includes—

- (a) an employee of the operator; and
- (b) a contractor or employee of a contractor.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 April 2001. Future amendments of the Mining and Quarrying Safety and Health Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

## 4 List of legislation

### **Mining and Quarrying Safety and Health Act 1999 No. 40**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

pt 1 div 4, pts 6, 12 and sch 2 commenced 29 October 1999 (1999 SL No. 244)

remaining provisions commenced 16 March 2001 (2001 SL No. 16) (proposed commencement 2 September 2001 (automatic commencement under AIA s 15DA(2) (2000 SL No. 226 s 2)))

as amended by—

### **Mining and Other Legislation Amendment Act 2000 No. 18 pts 1, 5**

date of assent 8 June 2000

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

## 5 List of annotations

### **Person not relieved of obligations**

s 33 amd 2000 No. 46 s 3 sch

### **Duration of appointment**

s 72 amd 2000 No. 18 s 17

### **Membership and conduct of board proceedings**

s 183 amd 2000 No. 18 s 18

### **Site not to be interfered with without permission**

s 197 amd 2000 No. 18 s 19

### **Action to be taken in relation to site of accident or incident**

s 198 amd 2000 No. 18 s 20

### **Application of div 1**

s 228A ins 2000 No. 18 s 21

### **Proof of appointments and authority unnecessary**

s 229 amd 2000 No. 18 s 22

## **PART 19—TRANSITIONAL PROVISIONS AND REPEALS**

### **Division 4—Consequential amendments**

om R1 (see RA s 40)

**SCHEDULE 1—AMENDMENT OF OTHER ACTS**  
om R1 (see RA s 40)

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