

Western Australia
**Mines Safety and Inspection Amendment
Bill 2004**

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**Mines Safety and Inspection Amendment
Bill 2004**

A Bill for

**An Act to amend the *Mines Safety and Inspection Act 1994* and to
make consequential amendments to the *Industrial Relations Act 1979*
and the *Occupational Safety and Health Act 1984*.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Mines Safety and Inspection Amendment Act 2004*.

5 2. Commencement

(1) This Act, other than —

- (a) Part 7 Division 2; and
- (b) section 88(4),

comes into operation on a day fixed by proclamation.

10 (2) Different days may be fixed under subsection (1) for different provisions.

(3) Part 7 Division 2 comes into operation —

- 15 (a) on the day on which section 70 of the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* comes into operation and immediately after that coming into operation; or
- (b) if on that day Part 7 Division 1 of this Act has not yet come into operation, on the day on which that Division comes into operation.

20 (4) Section 88(4) comes into operation —

- (a) on the day on which section 115 of the *Occupational Safety and Health Legislation Amendment and Repeal Act 2004* comes into operation; or
- 25 (b) if on that day section 88(1) of this Act has not yet come into operation, on the day on which that subsection comes into operation.

3. The Act amended

The amendments in this Act, except those in sections 87 and 94, are to the *Mines Safety and Inspection Act 1994**.

[* Reprinted as at 17 March 2000.

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*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 250.]*

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Part 2 — Amendments relating to general occupational safety and health duties

4. Section 3 amended

- 5 (1) Section 3 is amended by inserting before “The objects” the subsection designation “(1)”.
- (2) At the end of section 3 the following subsection is inserted —
- “
- (2) In subsection (1) —
- 10 “**employer**” and “**employee**” include a person taken to be an employer and an employee respectively by operation of section 15A, 15B or 15C.
- ”.

5. Part 2 Division 2 heading inserted

- 15 After section 8B the following heading is inserted —
- “
- Division 2 — General duties**
- ”.

6. Section 9 amended

Section 9(3) and (4) are repealed.

7. Section 11A inserted

- 20 After section 11 the following section is inserted —
- “
- 11A. Duty of manager to inform person who makes a report under section 11**
- 25 (1) Where a report is made under section 11(1)(a) or (b) or (3) in relation to a mine, the manager of the mine must, within a reasonable time after the report is received by him or her —
- (a) investigate the occurrence, situation, injury or
- 30 harm that was reported;

- (b) determine the action, if any, that the manager intends to take in respect of the matter; and
- (c) notify the person who made the report of the determination so made.

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

”.

8. Section 12 amended

10 Section 12(1) is repealed and the following subsections are inserted instead —

“

(1) A self-employed person working at a mine must take reasonable care to ensure his or her own safety and health at work.

15 (2) An employer or self-employed person at a mine must, so far as is practicable, ensure that the safety or health of a person, not being (in the case of an employer) an employee of the employer, is not adversely affected wholly or in part as a result of —

20 (a) work that has been or is being undertaken by —

(i) the employer or any employee of the employer; or

(ii) the self-employed person;

or

25 (b) any hazard that arises from or is increased by —

(i) the work referred to in paragraph (a); or

(ii) the system of work that has been or is being operated by the employer or the self-employed person.

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”.

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9. Sections 12B and 12C inserted

After section 12A the following sections are inserted —

“

12B. Duties placed on corporation to which section 15A, 15B or 15C applies

(1) If section 15A, 15B or 15C makes any other provision of this Act apply to a corporation as if it were the employer of a particular person, this section and section 12C apply to the corporation at such times as the other provision is made to apply.

(2) A corporation to which this section applies that carries on operations at a mine must, so far as is practicable, ensure that the safety or health of a person is not adversely affected wholly or in part as a result of —

(a) work that has been or is being undertaken by —

(i) the corporation; or

(ii) a person carrying out work under the direction of the corporation;

or

(b) any hazard that arises from or is increased by —

(i) the work referred to in paragraph (a); or

(ii) the system of work that has been or is being operated by the corporation.

12C. Breaches of section 12B

(1) If a corporation contravenes section 12B(2) in circumstances of gross negligence, the corporation commits an offence and is liable to a level 4 penalty.

(2) If —

(a) a corporation —

(i) contravenes section 12B(2); and

- (ii) by the contravention causes the death of, or serious harm to, a person;
and
(b) subsection (1) does not apply,
5 the corporation commits an offence and is liable to a level 3 penalty.
- (3) If —
(a) a corporation contravenes section 12B(2); and
(b) neither subsection (1) nor subsection (2)
10 applies,
the corporation commits an offence and is liable to a level 2 penalty.
- (4) A corporation charged with an offence under —
(a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
15 (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).
20 ”.

10. Part 2 Divisions 3 and 4 inserted

After section 15 the following Divisions are inserted in Part 2 —

“

25 **Division 3 — Certain workplace situations to be treated as employment**

15A. Contract work arrangements

- (1) This section applies where a person (the “**principal**”) in the course of mining operations engages a contractor (the “**contractor**”) to carry out work for the principal.
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- (2) Where this section applies, section 9 has effect —
- (a) as if the principal were the employer of —
- (i) the contractor; and
- (ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned, in relation to matters over which the principal has the capacity to exercise control; and
- (b) as if —
- (i) the contractor; and
- (ii) any person referred to in paragraph (a)(ii), were employees of the principal in relation to matters over which the principal has the capacity to exercise control.
- (3) Where this section applies, the further duties referred to in subsection (4) apply —
- (a) as if the principal were the employer of —
- (i) the contractor; and
- (ii) any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned; and
- (b) as if —
- (i) the contractor; and
- (ii) any person referred to in paragraph (a)(ii), were employees of the principal.
- (4) The further duties mentioned in subsection (3) are —
- (a) the duties of an employee under section 10; and

- (b) the duties of an employer under section 15D(2).
- (5) An agreement or arrangement is void for the purposes of this section if it purports to give control to —
- (a) a contractor; or
- (b) a person referred to in subsection (2)(a)(ii),
- of any matter that —
- (c) comes within section 9 or 15D(2); and
- (d) is a matter over which the principal has the capacity to exercise control,
- but this subsection does not prevent the making of a written agreement as mentioned in section 15D(3).
- (6) A purported waiver by a contractor of a right that arises directly or indirectly under this section is void.
- (7) Nothing in this section derogates from —
- (a) the duties of the principal to the contractor; or
- (b) the duties of the contractor to any person employed or engaged by the contractor.

15B. Labour arrangements in general

- (1) This section applies where —
- (a) a person (the **“worker”**) for remuneration carries out work for another person (the **“person mentioned in subsection (1)(a)”**) in the course of mining operations;
- (b) that person has the power of direction and control in respect of the work in a similar manner to the power of an employer under a contract of employment;

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- (c) there is no contract of employment between the worker and that person; and
 - (d) neither section 15A nor section 15C applies.
- (2) Where this section applies, section 9 has effect as if —
 - (a) the person mentioned in subsection (1)(a) were the employer of the worker; and
 - (b) the worker were the employee of that person,in relation to any matter that —
 - (c) comes within section 9; and
 - (d) is a matter over which that person has the capacity to exercise control.
- (3) Where this section applies, section 10 has effect as if —
 - (a) the person mentioned in subsection (1)(a) were the employer of the worker; and
 - (b) the worker were the employee of that person.
- (4) An agreement or arrangement is void for the purposes of this section to the extent that it purports to give control to the worker of any matter that —
 - (a) comes within section 9; and
 - (b) is a matter over which the person mentioned in subsection (1)(a) has the capacity to exercise control.
- (5) This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing.
- (6) A purported waiver by a worker of a right that arises directly or indirectly under this section is void.

15C. Labour hire arrangements

(1) In this section —

“**agent**” —

- 5 (a) means a person who carries on a business of providing workers to carry out work for clients of the person; and
- (b) includes a group training organisation as defined in section 7(1) of the *Industrial Relations Act 1979*;

10 “**worker**” includes an employee or a contractor.

(2) This section applies where, under a labour hire arrangement, work is carried out for remuneration by a worker for a client of an agent (the “**client**”) in the course of mining operations carried on by the client.

15 (3) A labour hire arrangement exists where —

- (a) an agent has for remuneration agreed with the client to provide a worker to carry out work for the client;
- 20 (b) there is no contract of employment between the worker and the client in relation to the work;
- (c) there is an agreement (which may be a contract of employment) between the worker and the agent as to the carrying out of work including in respect of remuneration and other
- 25 entitlements; and
- (d) that agreement applies to the carrying out of the work by the worker for the client.

(4) Where this section applies, section 9 has effect as if —

- 30 (a) each of the agent and the client were the employer of the worker; and
- (b) the worker were an employee of each of the agent and the client,

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in relation to any matter that —

(c) comes within section 9; and

(d) as regards —

(i) the agent, is a matter over which the agent has the capacity to exercise control; or

(ii) the client, is a matter over which the client has the capacity to exercise control.

(5) Where this section applies, section 10 has effect as if —

(a) each of the agent and the client were the employer of the worker; and

(b) the worker were an employee of each of the agent and the client.

(6) This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing.

(7) A purported waiver by a worker of a right that arises directly or indirectly under this section is void.

Division 4 — Other duties

15D. Duty of employer in respect of certain residential accommodation

(1) In this section —

“residential premises” —

(a) means residential premises that are situated outside —

(i) a townsite within the meaning in section 26(1) of the *Land Administration Act 1997*; and

- (ii) the metropolitan region as defined in section 6 of the *Metropolitan Region Town Planning Scheme Act 1959*;
- and
- 5 (b) includes land and outbuildings that are intended to be used in connection with the occupation of the premises; but
- 10 (c) does not include any premises that come within paragraph (k) of the definition of “mining operations” in section 4(1).
- (2) Where —
- (a) an employee who is employed in mining operations occupies residential premises that are owned by or under the control of the
- 15 employee’s employer; and
- (b) the occupancy is necessary for the purposes of the employment because other accommodation is not reasonably available in the area concerned,
- 20 the employer must, so far as is practicable, maintain the premises so that the employee occupying the premises is not exposed to hazards at the premises.
- (3) Subsection (2) does not apply if the occupancy is pursuant to a written agreement containing terms that
- 25 might reasonably be expected to apply to a letting of the residential premises to a tenant.

15E. Breaches of section 15D

- 30 (1) If an employer contravenes section 15D(2) in circumstances of gross negligence, the employer commits an offence and is liable to a level 4 penalty.

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- (2) If —
- (a) an employer —
- (i) contravenes section 15D(2); and
- (ii) by the contravention causes the death of, or serious harm to, an employee occupying premises as mentioned in that section;
- and
- (b) subsection (1) does not apply,
- the employer commits an offence and is liable to a level 3 penalty.
- (3) If —
- (a) an employer contravenes section 15D(2); and
- (b) neither subsection (1) nor subsection (2) applies,
- the employer commits an offence and is liable to a level 2 penalty.
- (4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence if the person proves that the death or serious harm, as the case may be, would not have occurred if the employee had taken reasonable care to ensure the employee's own safety and health at the premises concerned.
- (5) An employer charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
- (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

15F. Notification of hazard to the principal employer and manager

(1) In this section —

“**mine**” includes the means of access to and egress
from a mine.

(2) If —

(a) the employer of any employee; or

(b) a self-employed person carrying out work,

at a mine becomes of the opinion that —

(c) a situation exists at the mine that could
constitute a hazard to any person;

(d) the hazard is one that the principal employer at,
and the manager of, the mine have a duty to
remedy under section 13; and

(e) the situation has not come to the attention of
either of those persons,

the employer or self-employed person must, so far as it
is reasonably practicable to do so, give notice of the
situation to either the principal employer or the
manager.

(3) A notice under subsection (2) must be given as soon as
is reasonably practicable after the employer or
self-employed person becomes of the opinion
mentioned in that subsection.

(4) An employer or self-employed person who fails to
comply with subsection (2) commits an offence.

”.

s.

11. Section 20A inserted

After the heading to Part 3 Division 2 the following section is inserted —

“

5 **20A. Extended meaning of “employer” and “employee”**

In this Division —

“**employer**” and “**employee**” include a person taken to be an employer and an employee respectively by operation of section 15A, 15B or 15C.

10

”.

12. Section 21 amended

Section 21(6) is repealed and the following subsection is inserted instead —

“

15 (6) For the purposes of this section a mine is to be taken to include —

(a) a workplace that relates to but is not a mine or part of a mine; and

20

(b) in relation to a particular mine, residential premises that an employer at the mine is or was under a duty to maintain by virtue of section 15D(2).

”.

13. Section 104 amended

25 After section 104(1) the following subsection is inserted —

“

(1a) In subsection (1)(c), (z), (zc) and (zk) —

“**employer**” and “**employee**” include a person taken to be an employer and an employee respectively by operation of section 15A, 15B or 15C, and “**employed**” has a corresponding meaning.

30

”.

Part 3 — Amendments relating to offences and penalties

14. Section 4 amended

Section 4(4) is amended by deleting “9(8), 10(5), 12(3), 13(3)
and 14(6)” and inserting instead —

“

8B(2), 9A(2), 10A(2), 12A(2), 12C(2), 13A(2), 15(2),
15E(2), 99A(2)(a)(iv) and 100A(2)(a)(iii)

”.

15. Sections 4A and 4B inserted

After section 4 the following sections are inserted —

“

4A. Penalty levels defined

(1) Where a person is liable to a level one penalty for an
offence against this Act the person is liable —

(a) if the offence was committed by the person as
an employee —

(i) for a first offence, to a fine of \$5 000;
and

(ii) for a subsequent offence, to a fine of
\$6 250;

(b) if paragraph (a) does not apply —

(i) in the case of an individual —

(I) for a first offence, to a fine of
\$25 000; and

(II) for a subsequent offence, to a
fine of \$31 250;

or

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- 5
- (ii) in the case of a corporation —
- (I) for a first offence, to a fine of \$50 000; and
- (II) for a subsequent offence, to a fine of \$62 500.
- (2) Where a person is liable to a level 2 penalty for an offence against this Act the person is liable —
- (a) in the case of an individual —
- 10 (i) for a first offence, to a fine of \$100 000; and
- (ii) for a subsequent offence, to a fine of \$125 000;
- or
- (b) in the case of a corporation —
- 15 (i) for a first offence, to a fine of \$200 000; and
- (ii) for a subsequent offence, to a fine of \$250 000.
- (3) Where a person is liable to a level 3 penalty for an offence against this Act the person is liable —
- 20 (a) in the case of an individual —
- (i) for a first offence, to a fine of \$200 000; and
- (ii) for a subsequent offence, to a fine of \$250 000;
- 25 or
- (b) in the case of a corporation —
- (i) for a first offence, to a fine of \$400 000; and
- 30 (ii) for a subsequent offence, to a fine of \$500 000.

- (4) Where a person is liable to a level 4 penalty for an offence against this Act the person is liable —
- (a) in the case of an individual —
- (i) for a first offence, to a fine of \$250 000 and imprisonment for 2 years; and
- (ii) for a subsequent offence, to a fine of \$312 500 and imprisonment for 2 years;
- or
- (b) in the case of a corporation —
- (i) for a first offence, to a fine of \$500 000; and
- (ii) for a subsequent offence, to a fine of \$625 000.

4B. Meaning of “first offence” and “subsequent offence”

- (1) In this section —
- “relevant day”** means the day on which section 15 of the *Mines Safety and Inspection Amendment Act 2004* comes into operation.
- (2) For the purposes of this Act —
- (a) an offence is a first offence committed by a person if, at the time when the offence is committed, the person has not previously been convicted of any offence against this Act committed on or after the relevant day; and
- (b) an offence is a subsequent offence committed by a person if, at the time when the offence is committed, the person has previously been convicted of one or more offences against this Act committed on or after the relevant day.

”.

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16. Section 15 repealed

Section 15 is repealed.

17. Part 2 Division 1 inserted

After the heading to Part 2 the following Division is inserted —

5 “

Division 1 — Preliminary

8A. General and particular duties

- (1) A duty imposed on a person under this Part —
- 10 (a) does not affect the application of any other more specific duty imposed on that person under this Act; and
- (b) applies despite any other more specific duty imposed on that person under this Act.
- (2) Subsection (1) has effect subject to section 101A.

15 **8B. Meaning of gross negligence in relation to certain breaches of this Part**

- (1) This section applies to a contravention of section 9(1), 10(1) or (3), 12(1) or (2), 12B(2), 13, 14(1), (2), (3) or (4) or 15D(2).
- 20 (2) For the purposes of this Part, a contravention of a provision mentioned in subsection (1) is committed in circumstances of gross negligence if —
- (a) the offender —
- 25 (i) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty is owed under that provision; but
- (ii) acted or failed to act in disregard of that likelihood;

- and
- (b) the contravention did in fact cause the death of,
or serious harm to, such a person.

”.

5 **18. Section 9 amended**

Section 9(7), (8) and (9) are repealed.

19. Section 9A inserted

After section 9 the following section is inserted —

“

10 **9A. Breaches of section 9(1)**

- (1) If an employer contravenes section 9(1) in
circumstances of gross negligence, the employer
commits an offence and is liable to a level 4 penalty.

- (2) If —

- 15 (a) an employer —
 (i) contravenes section 9(1); and
 (ii) by the contravention causes the death
of, or serious harm to, an employee;

and

- 20 (b) subsection (1) does not apply,
the employer commits an offence and is liable to a
level 3 penalty.

- (3) If —

- 25 (a) an employer contravenes section 9(1); and
 (b) neither subsection (1) nor subsection (2)
applies,

the employer commits an offence and is liable to a
level 2 penalty.

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- (4) An employer charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
 - (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

20. Section 10 amended

Section 10(4), (5) and (6) are repealed.

21. Section 10A inserted

After section 10 the following section is inserted —

“

10A. Breaches of section 10(1) or (3)

- (1) If an employee contravenes section 10(1) or (3) in circumstances of gross negligence, the employee commits an offence and is liable —
- (a) for a first offence, to a fine of \$25 000; and
 - (b) for a subsequent offence, to a fine of \$31 250.
- (2) If —
- (a) an employee —
 - (i) contravenes section 10(1) or (3); and
 - (ii) by the contravention causes the death of, or serious harm to, a person;
- and
- (b) subsection (1) does not apply,
- the employee commits an offence and is liable —
- (c) for a first offence, to a fine of \$20 000; and
 - (d) for a subsequent offence, to a fine of \$25 000.

- 5 (3) If —
- (a) an employee contravenes section 10(1) or (3);
and
- (b) neither subsection (1) nor subsection (2)
applies,
- the employee commits an offence and is liable —
- (c) for a first offence, to a fine of \$10 000; and
- (d) for a subsequent offence, to a fine of \$12 500.
- 10 (4) An employee charged with an offence under —
- (a) subsection (1) may, instead of being convicted
of that offence, be convicted of an offence
under subsection (2) or (3); or
- (b) subsection (2) may, instead of being convicted
of that offence, be convicted of an offence
under subsection (3).
- 15

”.

22. Section 12 amended

Section 12(2), (3) and (4) are repealed.

23. Section 12A inserted

20 After section 12 the following section is inserted —

“

12A. Breaches of section 12

- 25 (1) If an employer or a self-employed person contravenes
section 12(1) or (2) in circumstances of gross
negligence, the employer or the self-employed person
commits an offence and is liable to a level 4 penalty.
- (2) If —
- (a) an employer or self-employed person —
- (i) contravenes section 12(1) or (2); and

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- (ii) by the contravention causes the death of, or serious harm to, a person;

and

- (b) subsection (1) does not apply,

5 the employer or self-employed person commits an offence and is liable to a level 3 penalty.

- (3) If —

- (a) an employer or self-employed person contravenes section 12(1) or (2); and

- 10 (b) neither subsection (1) nor subsection (2) applies,

the employer or self-employed person commits an offence and is liable to a level 2 penalty.

- 15 (4) An employer or self-employed person charged with an offence under —

- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or

- 20 (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

24. Section 13 amended

Section 13 is amended as follows:

- 25 (a) in subsection (1) by deleting the subsection designation;
- (b) by repealing subsections (2), (3) and (4).

25. Section 13A inserted

After section 13 the following section is inserted —

“

13A. Breaches of section 13

- 5 (1) If a person contravenes section 13 in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.
- (2) If —
- (a) a person —
- 10 (i) contravenes section 13; and
- (ii) by the contravention causes the death of, or serious harm to, a person —
- (I) who is at; or
- (II) who is using the means of
- 15 access to or egress from, the workplace;
- and
- (b) subsection (1) does not apply,
- 20 the person commits an offence and is liable to a level 3 penalty.
- (3) If —
- (a) a person contravenes section 13; and
- (b) neither subsection (1) nor subsection (2) applies,
- 25 the person commits an offence and is liable to a level 2 penalty.
- (4) A person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence
- 30 under subsection (2) or (3); or

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- (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

5 **26. Section 14 amended**

Section 14(5), (6) and (7) are repealed.

27. Section 15 inserted

After section 14 the following section is inserted —

“

10 **15. Breaches of section 14**

- (1) If a person contravenes section 14(1), (2), (3) or (4) in circumstances of gross negligence, the person commits an offence and is liable to a level 4 penalty.

- (2) If —

- 15 (a) a person —

- (i) contravenes section 14(1), (2), (3) or (4); and

- (ii) by the contravention causes the death of, or serious harm to, a person to whom a duty is owed under that subsection;

20

and

- (b) subsection (1) does not apply,

the person commits an offence and is liable to a level 3 penalty.

25

- (3) If —

- (a) a person contravenes section 14(1), (2), (3) or (4); and

- (b) neither subsection (1) nor subsection (2) applies,

the person commits an offence and is liable to a level 2 penalty.

- 5 (4) A person charged with an offence under —
- (a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or
- 10 (b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

”.

28. Part 9 Division 1 heading inserted

After the heading to Part 9 the following heading is inserted —

15 “

Division 1 — General provisions

”.

29. Section 94 replaced

20 Section 94 is repealed and the following section is inserted instead —

“

94. General penalty

25 If a person commits an offence against this Act for which a penalty is not otherwise provided, the person is liable to a level one penalty.

”.

30. Section 95 amended

Section 95(2) is amended by deleting “and is liable to a fine not exceeding \$1 000 in the case of a corporation and \$200 in the

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case of an individual for every day on which the offence is so continued.” and inserting instead —

“

and is liable to a fine not exceeding —

- 5 (a) \$200, where the offence is committed by a person as an employee;
- (b) \$1 000, where the offence is committed by an individual and paragraph (a) does not apply; and
- 10 (c) \$2 000, where the offence is committed by a corporation,

for every day on which the offence is so continued.

”.

31. Section 97 replaced and transitional provision

- 15 (1) Section 97 is repealed and the following section is inserted instead —

“

97. Time limit for prosecutions

20 Proceedings for an offence against this Act must be commenced within 3 years after the offence was committed.

”.

- (2) Section 97 of the *Mines Safety and Inspection Act 1994* as in force immediately before the commencement of subsection (1)
- 25 applies to an offence against that Act committed before that commencement as if subsection (1) had not been enacted.

32. Section 98 amended

- (1) Section 98(1)(b) is amended by deleting “of persons”.

(2) After section 98(1)(b) the following paragraphs are inserted —

“

- 5 (ba) a particular person was an employer of a particular person or particular persons at a mine;
- (bb) a particular person was a principal or a contractor, within the meaning given by section 15A(1), at a mine;
- 10 (bc) a particular person was, at a mine, a principal, within the meaning given by section 15A(1), in relation to a particular contractor or particular contractors within the meaning so given;

”.

15 (3) Section 98(2)(b) is amended by inserting after “the authority of” —

“ an inspector or ”.

(4) After section 98(3) the following subsection is inserted —

“

- 20 (4) In proceedings for an offence against this Act, production of a copy of —
- (a) a code of practice;
- (b) an Australian Standard; or
- (c) an Australian/New Zealand Standard,
- 25 purporting to be certified by the State mining engineer to be a true copy as at any date or during any period is, without proof of the signature of the State mining engineer, sufficient evidence of the contents of the code of practice or Standard as at that date or during that period.

30

”.

S.

33. Section 99 amended

Section 99(1) is amended by inserting after “under this Act” —
“ , other than an offence to which section 99A applies, ”.

34. Section 99A inserted

5 After section 99 the following section is inserted —

“

99A. Vicarious responsibility for offences involving gross negligence

(1) In this section —

10 “**manager**” has the meaning given by section 99(2);
“**superior officer**”, except as otherwise provided,
means an employer, manager or supervisor or a
person purporting to act in that capacity.

15 (2) Where a person commits an offence under
section 9A(1), 10A(1), 12A(1) or 15(1), the following
provisions apply —

(a) a superior officer in relation to the person also
commits that offence if it is proved that —

20 (i) the superior officer, being an employer
or manager or a person purporting to act
in that capacity, knowingly permitted or
employed the person to commit the
offence;

25 (ii) the offence was attributable to any
neglect on the part of the superior
officer; or

30 (iii) the superior officer consented to or
connived in the acts or omissions to
which section 8B(2)(a)(ii) applied that
were proved against the person,

in circumstances where the superior officer —

- 25

35. Section 100 amended

- 30 and inserting instead —

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(3) After section 100(2) the following subsection is inserted —

“

(3) A person convicted of an offence by virtue of this section is liable to the penalty to which an individual who is convicted of that offence is liable.

”.

36. Section 100A inserted

After section 100 the following section is inserted —

“

100A. Responsibility of officers of corporation for offences involving gross negligence

(1) In this section —

“**officer**” means a director, manager, secretary or other officer of a corporation or a person purporting to act in that capacity.

(2) Where a corporation commits an offence under section 9A(1), 12A(1), 12C(1), 13A(1) or 15E(1) the following provisions apply —

(a) an officer also commits that offence if it is proved that —

(i) the offence was attributable to any neglect on the part of the officer; or

(ii) the officer consented to or connived in the acts or omissions to which section 8B(2)(a)(ii) applied that were proved against the corporation,

in circumstances where the officer —

(iii) knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty was owed; but

- (iv) acted or failed to act as mentioned in subparagraph (i) or (ii) in disregard of that likelihood;
- 5 (b) if paragraph (a) does not apply, an officer commits an offence under section 9A(2), 12A(2), 12C(2), 13A(2) or 15E(2), as the case may require, if it is proved that the offence of the corporation —
- (i) occurred with the consent or connivance of the officer; or
- 10 (ii) was attributable to any neglect on the part of the officer.
- 15 (3) A person convicted of an offence by virtue of this section is liable to the penalty to which an individual who is convicted of that offence is liable.
- ”.

37. Section 101A inserted

After section 101 the following section is inserted —

- “
- 20 **101A. No double jeopardy**
- A person is not liable to be punished twice under this Act in respect of any act or omission.
- ”.

38. Part 9 Division 2 inserted

25 After section 101A the following Division is inserted —

- “
- Division 2 — Undertaking by offender in lieu of payment of fine**
- 101B. Terms used in this Division**
- 30 In this Division —

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“convicted” means found guilty of an offence, whether after a plea of guilty or otherwise;

“court” means a safety and health magistrate exercising jurisdiction under section 96A;

5 **“relevant offence”** means an offence against —

(a) section 21(5), 29(4), 55(7), 60(8), 61(2), 65(2), 66(3) or 70(4);

(b) any provision of Part 3 Division 3; or

(c) the regulations.

10 **101C. Court may allow offender to make election**

(1) Where —

(a) a person (the **“offender”**) is convicted of one or more relevant offences; and

(b) the court has fined the offender,

15 the court may, subject to subsection (2), make an order allowing the offender to elect either —

(c) to pay the fine or fines; or

(d) as an alternative, to enter into an undertaking with the State mining engineer under
20 section 101G not later than a day specified by the court.

(2) A court is not to make an order under this section unless the court is satisfied that —

25 (a) the breach of the relevant offence did not result in physical harm to any person;

(b) the offender wishes an order to be made and the prosecutor does not oppose that being done;

30 (c) the offender and the State mining engineer are likely to reach agreement on the provisions of the proposed undertaking within the time that the court proposes to specify under subsection (1)(d); and

- (d) the cost to the offender of complying with the proposed undertaking will be substantially equivalent to the amount of the fine or fines imposed.

5 (3) After the court has fined the offender, the court may adjourn the proceedings to allow —

- (a) the offender time to consider whether the offender wishes an order to be made; and
- 10 (b) the prosecutor time to consider whether to oppose that being done,

as mentioned in subsection (2)(b).

(4) Nothing in this Division limits the powers of a court under the *Sentencing Act 1995*.

101D. Making of election

15 (1) An election is made, pursuant to an order under section 101C(1), by the offender —

- (a) lodging an election in writing with the court in which the order was made; and
- 20 (b) serving a copy of the election on the State mining engineer,

not later than 28 days after the day on which the order was made.

- (2) If —
- (a) an order is made under section 101C(1); but
 - 25 (b) the offender fails to make an election in accordance with subsection (1),

the offender is taken, at the expiry of the period mentioned in subsection (1), to have elected to pay the fine or fines.

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101E. Failure to enter into undertaking

An election under section 101D to enter into an undertaking lapses if the undertaking is for any reason not entered into before the time allowed under section 101C(1)(d).

101F. Time for payment of fines

- (1) The liability of the offender to pay the fine or fines in connection with which an order is made under section 101C(1) is suspended by the making of the order.
- (2) If the offender elects to pay the fine or fines, for the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* the fine or fines are taken to have been imposed on the day on which the election is made.
- (3) If the offender is taken by section 101D(2) to have elected to pay the fine or fines, for the purposes of the section referred to in subsection (2) the fine or fines are taken to have been imposed at the time mentioned in section 101D(2).
- (4) If —
 - (a) the offender elects to enter into an undertaking; but
 - (b) the election lapses under section 101E,for the purposes of the section referred to in subsection (2) the fine or fines are taken to have been imposed on the day specified under section 101C(1)(d).

101G. Nature and terms of undertaking

- (1) An undertaking for the purposes of this Division is a document by which the offender gives undertakings to the State mining engineer that the offender will —
 - (a) take the action specified in the undertaking;

- (b) bear the costs and expenses of doing so; and
 - (c) complete all of the required action before a day specified in the document.
- 5 (2) The action required to be taken by the offender is to come within the provisions described in section 101H(2) or (3).
- (3) The provisions of the undertaking are to be such as are agreed between the State mining engineer and the offender.
- 10 (4) The State mining engineer is to furnish a copy of an undertaking, and of any amendment made under section 101K, to the court concerned.

101H. What may be included in undertaking

- 15 (1) In this section —
 - “**specified**” means specified in the undertaking;
 - “**specified mine**” includes a specified class of mine.
- (2) An undertaking is to provide for the offender to do one or more of the following —
 - 20 (a) to take specified steps for the improvement of occupational safety and health —
 - (i) at or in respect of —
 - (I) any specified mine; or
 - (II) any specified part or parts of any specified mine;
 - 25 or
 - (ii) in connection with the business or operations of the offender;
 - (b) to take specified steps to publicise details of —
 - 30 (i) any specified offence;
 - (ii) its consequences;

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- (iii) the amount of the fine or fines imposed
and the fact that the undertaking has
been entered into under this Division; or
- (iv) any other related matter;
- 5 (c) to remedy any consequence of a specified
offence, so far as it is practicable to do so, but
not in a way that is excluded by subsection (4);
- (d) to carry out a specified project or activity for
the improvement of occupational safety and
10 health —
- (i) in the community;
- (ii) in a particular section of the community;
or
- (iii) in connection with a particular kind of
15 activity in the State.
- (3) The State mining engineer may require that an
undertaking contain any incidental or supplementary
provision that the State mining engineer considers
20 necessary or expedient to achieve its purpose,
including provision for —
- (a) the reporting of matters; and
- (b) providing proof of compliance,
- to the State mining engineer.
- (4) An undertaking cannot provide for the offender to take
25 any action —
- (a) that the offender has a duty to take in order to
comply with any provision of this Act; or
- (b) for the taking of which an improvement notice
or a prohibition notice could be issued under
30 Part 3 Division 3.

101I. Effect of undertaking

The liability of the offender to pay the fine or fines in connection with which the undertaking is given —

- (a) is suspended by the giving of the undertaking;
and
- (b) is cancelled by the full discharge of the offender's obligations under the undertaking.

101J. Failure to comply with undertaking

- (1) An offender commits an offence if the offender fails to fully discharge the obligations under an undertaking before the day specified in the undertaking in accordance with section 101G(1)(c).
- (2) A court that convicts an offender of an offence against subsection (1) must order that the fine or fines to which the undertaking relates be paid in addition to any penalty imposed for the offence against subsection (1).
- (3) For the purposes of section 32 of the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, the fine or fines to which an order under subsection (2) applies are taken to be imposed on the day on which that order is made.

101K. Amendment of undertaking

An undertaking may be amended by an instrument in writing signed by the offender and the State mining engineer.

101L. Undertaking may be published

The State mining engineer may cause an undertaking to be published in any manner the State mining engineer thinks fit including —

- (a) by publication in a newspaper; or

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- (b) by posting a copy of the undertaking on an internet website maintained by the department.

”.

39. Section 104 amended

5 Section 104(4) is repealed and the following subsections are inserted instead —

“

10 (4) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding —

(a) in the case of an offence committed by a person as an employee —

- 15 (i) for a first offence, a fine of \$5 000; and
- (ii) for a subsequent offence, a fine of \$6 250;

(b) in the case of an offence committed by an individual where paragraph (a) does not apply —

- 20 (i) for a first offence, a fine of \$25 000; and
- (ii) for a subsequent offence, a fine of \$31 250;

or

(c) in the case of an offence committed by a corporation —

- 25 (i) for a first offence, a fine of \$50 000; and
- (ii) for a subsequent offence, a fine of \$62 500,

and if the offence is a continuing one a further penalty not exceeding —

30 (d) \$200, in the case of an offence committed by a person as an employee;

- (e) \$1 000, in the case of an offence committed by an individual where paragraph (d) does not apply; and
- (f) \$2 000, in the case of an offence committed by a corporation,

5

for each day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of an inspector to the offender.

- (4a) In subsection (4)(a) and (d) —

10

“**employee**” includes a person who is taken to be an employee by operation of section 15A, 15B or 15C to the extent that a regulation applies to such a person.

”.

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Part 4 — Amendments relating to mine management

40. Section 32 amended

(1) After section 32(1) the following subsections are inserted —

“

5 (1a) If mining operations begin at a mine and subsection (1)
has not been complied with, an offence against
subsection (1) is committed by the person who the
State mining engineer determines to have been the
principal employer at the mine when the mining
10 operations began.

 (1b) In proceedings against a person under subsection (1a) it
is a defence if the person proves that there were no
reasonable grounds for the State mining engineer’s
determination that the person was the principal
15 employer at the mine when the mining operations
began.

”.

(2) Section 32(4) is amended as follows:

- (a) by inserting after “mining operations are” —
20 “ to be ”;
- (b) by inserting after “provided in writing” —
“ , before mining operations begin, ”.

(3) After section 32(4) the following subsections are inserted —

“

25 (5) If mining operations begin at a mine and subsection (4)
has not been complied with, each person who is a
member of the syndicate or other association of
persons concerned commits an offence.

30 (6) Where a duty arises under subsection (1) or (4) to
provide to the district inspector the name and address
of a partnership, syndicate or other association of

persons (an “**association**”) there is also a duty to provide the name and address of each member of the association.

”.

5 **41. Section 32A inserted**

After section 32 the following section is inserted —

“

32A. Change of principal employer or of particulars provided

- 10 (1) If there is a change in the identity of the principal employer at a mine, the new principal employer must, not later than 7 days after the change occurs, provide to the district inspector for the region where the mine is situated particulars of —
- 15 (a) the name and address of —
- (i) the new principal employer; or
- (ii) each person who is a member of the partnership, syndicate or other association of persons that comprises the new principal employer,
- 20 as the case may be; and
- (b) the day on which the change occurred.
- 25 (2) If there is a change to the name or address of a principal employer at a mine, the principal employer must, not later than 7 days after the change occurs, provide particulars of the change to the district inspector for the region where the mine is situated.
- 30 (3) If —
- (a) the principal employer at a mine, or the person who under section 32(4) has assumed the duties of the principal employer at a mine, is a

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partnership, syndicate or other association of persons (the “**association**”); and

- (b) there is a change —
- (i) in the membership of the association; or
 - (ii) to the name or address of any member of the association,

the principal employer must, not later than 7 days after the change occurs, provide particulars of the change to the district inspector for the region where the mine is situated.

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

”.

42. Section 33A inserted

After section 33 the following section is inserted —

“

33A. Registered manager may make appointments on behalf of principal employer

- (1) It is sufficient compliance with a provision of section 34(1) or (2), 35(1), 36(1) or (2), 37(1), 38(1), (2) or (3) or 39(2) (a “**relevant provision**”) that requires the principal employer in relation to a mine —
- (a) to make a particular managerial appointment for the mine; or
 - (b) to inform the district inspector for the region in which the mine is situated concerning the appointment,

if the appointment is made, or the information is given, on behalf of the principal employer by the registered manager in accordance with authority given by the principal employer to do so.

- (2) It is open to the registered manager of a mine in exercising a power to appoint —
- (a) an underground manager; or
 - (b) a quarry manager,
- 5 for the mine under section 35 or 37, to appoint himself or herself to that position.
- (3) If the registered manager —
- (a) makes an appointment; or
 - (b) gives information to a district inspector,
- 10 for the purposes of a relevant provision the registered manager is conclusively presumed to do so under and in accordance with authority given by the principal employer.
- (4) Nothing in this section affects the obligation of the
- 15 principal employer to comply with a relevant provision.
- ”.

43. Section 34 amended

- (1) Section 34(3) is amended as follows:
- 20 (a) by inserting after “If the registered manager” —
- “ or an alternate registered manager ”;
- (b) by inserting after “, the registered manager” —
- “ or the alternate registered manager ”;
- (c) by deleting “registered manager’s deputy” and inserting
- 25 instead —
- “
- deputy of the registered manager or the alternate registered manager
- ”.

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- (2) Section 34(4), (5) and (6) are repealed and the following subsections are inserted instead —

“

- (4) Each —

5

(a) alternate registered manager; and

(b) deputy appointed under subsection (3),

is deemed to be the registered manager, and has the powers, functions and duties of a registered manager under this Act, during any period of duty of the alternate or deputy.

10

- (5) The appointment of —

(a) a deputy or alternate of a registered manager; or

(b) a deputy of an alternate registered manager,

does not relieve the registered manager, or the alternate registered manager, from responsibility for the exercise and performance of powers, functions and duties under this Act except during a period of duty mentioned in subsection (4).

15

”.

20 **44. Section 36 amended**

- (1) Section 36(4) is repealed.

- (2) Section 36(5) is amended by deleting “, (3) or (4)” and inserting instead —

“ or (3) ”.

25

- (3) Section 36(7) is repealed.

- (4) Section 36(8) is amended as follows:

- (a) by deleting “to be subject to the duties imposed on underground managers” and inserting instead —

“
has the powers, functions and duties of an underground
manager
”;

- 5 (b) by deleting “of powers” and inserting instead —
“ and performance of powers, functions ”.

45. Section 38 amended

- (1) Section 38(4) is repealed.
- 10 (2) Section 38(5) is amended by deleting “, (3) or (4)” and inserting
instead —
“ or (3) ”.
- (3) Section 38(7) is repealed.
- (4) Section 38(8) is amended as follows:
- 15 (a) by deleting “to be subject to the duties imposed on
quarry managers by” and inserting instead —
“
has the powers, functions and duties of a quarry
manager under
”;
- 20 (b) by deleting “of powers” and inserting instead —
“ and performance of powers, functions ”.

46. Section 38A inserted

After section 38 the following section is inserted —

- 25 “
**38A. Periods of duty and related matters to be shown in
record book**
- (1) The registered manager for a mine and any alternate
registered manager for a mine must each maintain a log

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in the record book of his or her periods of duty as
registered manager for the mine.

Penalty: \$5 000.

- 5 (2) Without limiting subsection (1), the log maintained by
the registered manager and the log maintained by any
alternate registered manager must include, in
accordance with the regulations, particulars of —
- 10 (a) each period during which a person appointed
under section 34(3) acted as deputy of the
registered manager or the alternate registered
manager, as the case may be; and
- (b) the name of the person who so acted during the
period.
- 15 (3) The underground manager and any alternate
underground manager must each maintain a log in the
record book of his or her periods of duty as
underground manager for the mine.
- Penalty: \$5 000.
- 20 (4) Without limiting subsection (3), the log maintained by
the underground manager and the log maintained by
any alternate underground manager must include, in
accordance with the regulations, particulars of —
- 25 (a) each period during which a person appointed
under section 36(3) acted as deputy of the
underground manager or the alternate
underground manager, as the case may be; and
- (b) the name of the person who so acted during the
period.
- 30 (5) The quarry manager and any alternate quarry manager
must each maintain a log in the record book of his or
her periods of duty as quarry manager for the mine.
- Penalty: \$5 000.

(6) Without limiting subsection (5), the log maintained by the quarry manager and the log maintained by any alternate quarry manager must include, in accordance with the regulations, particulars of —

- 5 (a) each period during which a person appointed under section 38(3) acted as deputy of the quarry manager or the alternate quarry manager, as the case may be; and
- 10 (b) the name of the person who so acted during the period.

”.

47. Section 39 amended

After section 39(1) the following subsection is inserted —

“

- 15 (1a) A notice is sufficiently given to the principal employer at a mine for the purposes of subsection (1) if it is given to the registered manager of the mine.

”.

48. Section 40 amended

20 Section 40(4) is amended by deleting “a log attached to the record book and kept at the mine.” and inserting instead —

“ the record book in accordance with section 38A. ”.

s.

Part 5 — Amendments relating to safety and health representatives and committees

49. Section 4 amended

5 Section 4(1) is amended in the definition of “safety and health committee” by inserting after “section 65” —
“ or 67A ”.

50. Section 21 amended

After section 21(5) the following subsection is inserted —
“
10 (5a) In subsection (5) —
“the safety and health representative of that mine”
includes a safety and health representative elected
for a group of employees pursuant to a scheme
under section 55A if any member of the group
15 works at the mine.
”.

51. Section 25 amended

After section 25(1) the following subsection is inserted —
“
20 (1a) In subsection (1) —
“the safety and health representative” —
(a) if there is more than one safety and health
representative for the mine, means any such
representative who has functions relevant to
25 the matters concerned; and
(b) includes a safety and health representative
elected for a group of employees pursuant to
a scheme under section 55A if any member
of the group works at the mine.
30 ”.

52. Section 53 amended

After section 53(3) the following subsection is inserted —

“

(4) If a scheme has been established under section 55A, the references in this section to **“the mine”** and **“a mine”** include —

- (a) if the scheme applies to more than one mine, each mine to which the scheme applies; and
- (b) if under the scheme a safety and health representative is elected for a group of employees, each mine or part of a mine at which any member of the group works.

”.

53. Section 54 amended

(1) Section 54 is amended by inserting before “An employee” the subsection designation “(1)”.

(2) At the end of section 54 the following subsection is inserted —

“

(2) The fact that a notice under subsection (1) requires an election for the mine at which the employee works does not prevent —

- (a) the establishment of a scheme under section 55A that extends beyond that mine; or
- (b) the making of a determination under section 55(4a) for that purpose.

”.

54. Section 55 amended

(1) Section 55(4) is amended after paragraph (b) by deleting “and” and inserting —

“

- (ba) the matters, areas or kinds of work in respect of which each safety and health representative is

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to perform functions, so far as those things are not to be dealt with by provision of a kind mentioned in section 55B(2) or (3);

- 5 (bb) how a vacancy in an office of safety and health representative that occurs in the circumstances mentioned in section 57(2)(b), (ba), (c) or (d) is to be dealt with; and

”.

- (2) After section 55(4) the following subsection is inserted —

10

“

- (4a) The employer and the delegate or delegates consulting under subsection (3a) may determine that provision of a kind mentioned in section 55B(2) or (3) should be made.

15

”.

- (3) Section 55(5) is repealed and the following subsection is inserted instead —

“

20

- (5) For the purposes of subsection (4)(c), but without limiting the generality of that provision, the employer and the delegate or delegates consulting under subsection (3a) may determine that —

25

- (a) the Electoral Commissioner; or
(b) an organisation registered under Part II Division 4 of the *Industrial Relations Act 1979*,

is to be requested to conduct an election.

”.

55. Sections 55A, 55B and 55C inserted

After section 55 the following sections are inserted —

“

55A. Election scheme may be established

(1) In this section —

“**consulting parties**” means the employer and the
delegate or delegates consulting under
section 55(3a), and includes any delegate or
delegates appointed under section 55C.

(2) If the consulting parties in respect of a mine have made
a determination referred to in section 55(4a), a written
agreement may be made between the consulting parties
establishing a scheme under this section.

(3) If the consulting parties cannot reach agreement on any
matter for the purposes of subsection (2) they may refer
the matter to the State mining engineer, who is to
attempt to resolve it to the satisfaction of the consulting
parties.

(4) If the State mining engineer is unable to resolve the
matter, he or she is to refer it to the Tribunal for
determination.

(5) If subsection (4) applies, references in this Division to
a scheme under this section are references to a scheme
consisting of the provisions of —

- (a) an agreement under subsection (2); and
- (b) the determination of the Tribunal under
subsection (4).

55B. What may be included in a scheme

(1) In this section —

“**contractor**” and “**principal**” have the meanings
given to those terms in section 15A(1).

S.

- 5 (2) A scheme under section 55A (a “**scheme**”) may include provision for the election of one or more safety and health representatives for —
- (a) one or more mines in addition to the mine referred to in section 55A(2); or
- (b) any group of employees of the employer concerned that constitutes a distinct unit of the employer’s workforce,
- 10 or may make provision for both of those matters, as the case may require.
- (3) A scheme may despite any provision of this Part —
- (a) provide for —
- 15 (i) a contractor; and
- (ii) any person employed by a contractor, to be treated, for the purposes of this Part, as employees of the principal who engages the contractor; and
- 20 (b) provide for the principal who engages a contractor to be treated, for the purposes of this Part, as the employer of —
- (i) the contractor; and
- (ii) any person employed by the contractor.
- (4) A scheme may make provision for —
- 25 (a) the scheme to apply to any subsequent election of one or more safety and health representatives; and
- (b) the manner in which an amendment may be made to the scheme after it has been determined.

55C. Appointment of further delegates may be required

(1) In this section —

“**additional employees**” means employees who have not been invited to appoint a delegate or delegates under section 55(1) or (2) because that subsection has not become applicable to the mine at which they work.

(2) A scheme under section 55A cannot make provision of the kind mentioned in section 55B(2) that will affect additional employees unless subsection (3) of this section is complied with.

(3) If it is proposed that such provision be made the employer must invite any additional employees at a mine to appoint a delegate or delegates in accordance with subsection (4).

(4) Additional employees who work at a mine may, upon being invited under subsection (3) to do so, appoint a delegate or delegates from amongst their number to represent them for the purposes of making an agreement under section 55A(2).

”.

56. Section 56 amended

(1) Section 56(1) is repealed and the following subsection is inserted instead —

“

(1) In this section —

“**election**” means an election required for the purpose of electing one or more safety and health representatives following —

(a) the giving of a notice under section 54 in relation to a mine; or

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- (b) a decision of an employer under section 55(2);

“relevant employee”, in relation to an election, means —

- 5 (a) an employee who works at the mine to which the election relates; or
- (b) if a scheme has been established under section 55A for the election, an employee who —
 - 10 (i) works at a mine; or
 - (ii) is a member of a group of employees, to which the scheme applies.

”.

- 15 (2) Section 56(6), (7) and (8) are repealed and the following subsections are inserted instead —

“

- (6) Subject to this section, an election is to be conducted and safety and health representatives are to be elected in accordance with —
 - 20 (a) any determination under section 55; and
 - (b) if applicable, a scheme established under section 55A.
- (7) If there is any inconsistency between a determination under section 55 and a scheme established under section 55A, the latter prevails.
 - 25
- (8) An election is to be by secret ballot.
- (8a) Every relevant employee is entitled to vote at an election.
- (8b) A person is not eligible to be elected as a safety and health representative for a mine unless the person —
 - 30 (a) is a relevant employee; and

5 (b) where the representative to be elected will be
required to perform his or her functions in
relation to underground mining operations, has
had a total of a least 12 months' experience as a
person engaged in underground mining
operations.

”.

(3) Section 56(9) is amended by inserting after “If” —
“
10 , after the relevant steps provided for by or under this
Division have been taken,
”.

(4) Section 56(10), (10a) and (10b) are repealed and the following
subsections are inserted instead —
15 “

(10) The person conducting an election must —
(a) give notice of the result to —
(i) a person elected as a safety and health
representative; and
20 (ii) the employer concerned;
and
(b) give notice of the result to the State mining
engineer in the prescribed form and provide
such further particulars as are prescribed in that
25 form.

(10a) A notice under subsection (10)(a) must be in writing
and must —
(a) specify the day on which the election was
completed; and
30 (b) be given not later than the 7th day after that day.
”.

S.

57. Saving provision for existing safety and health representatives

5 The amendments made by section 56 do not affect the continuation in office of any safety and health representative who held office under Part 5 Division 1 of the *Mines Safety and Inspection Act 1994* immediately before the commencement of that section.

58. Section 57 amended

10 (1) Section 57(1) is amended by inserting after “2 years” —
“
commencing on the 10th day after the day specified for the purposes of section 56(10a)(a) in respect of that person
”.

15 (2) Section 57(2) is amended by deleting paragraph (b) and “or” after it and inserting instead —
“
20 (b) the person ceases to be an employee who works at a mine for which the person was elected; or
(ba) if the person was elected for a group of employees pursuant to a scheme under section 55A, the person ceases to be an employee who belongs to that group of employees; or
25
”.

59. Section 59 amended

(1) Section 59(2) is amended by deleting paragraph (b) and “or” after it and inserting instead —
“
30 (b) a relevant employee; or
”.

(2) After section 59(4) the following subsection is inserted —

“

(5) In subsection (2)(b) —

“**relevant employee**” means —

- 5 (a) an employee who works at the mine concerned;
- 10 (b) if the safety and health representative was elected for more than one mine pursuant to a scheme established under section 55A, an employee who works at any such mine; or
- 15 (c) if under a scheme referred to in paragraph (b) the safety and health representative was elected for a group of employees, an employee who is a member of the group.

”.

60. Section 60 amended

(1) After section 60(1) the following subsection is inserted —

“

20 (1a) This section also applies in relation to a mine or a part of a mine if —

- (a) pursuant to a scheme under section 55A, a safety and health representative has been elected for a group of employees; and
- 25 (b) any member of the group works at that mine or at that part of a mine.

”.

(2) Section 60(5) is repealed and the following subsection is inserted instead —

30 “

(5) The employer of a safety and health representative must ensure that the safety and health representative

S.

receives any entitlement that becomes due to him or her under subsection (7a) or section 62.

”.

(3) After section 60(7) the following subsection is inserted —

5

“

(7a) Where a safety and health representative attends a course of training —

(a) for which, under section 62, the representative is entitled to take time off work; and

10

(b) that is prescribed for the purposes of this paragraph,

the employer is liable to pay, to the extent that is prescribed —

(c) the tuition fee for the course; and

15

(d) other costs incurred by the representative in connection with attendance at the course.

”.

61. Section 62 amended

20 (1) Section 62 is amended by inserting before “The regulations” the subsection designation “(1)”.

(2) Section 62 is amended as follows:

(a) by deleting “time that a safety and health representative is to be permitted to take off work, with pay and other benefits,” where it first occurs and inserting instead —

25

“

entitlements of a safety and health representative

”;

- (b) by deleting “time that a safety and health representative is to be permitted to take off work, with pay and other benefits,” in the second place where it occurs and inserting instead —

5 “ entitlements ”.

- (3) At the end of section 62 the following subsection is inserted —

“

- (2) In subsection (1) —

“**entitlements**” means —

- 10 (a) the time that a safety and health representative is to be permitted to take off work with pay and other benefits; and
- (b) payments to which a safety and health representative is entitled for attendance at a course of training in his or her own time.

15

”.

62. Section 62A inserted

After the heading to Part 5 Division 2 the following section is inserted —

20 “

62A. Interpretation

- (1) In this Division —

“**allowed period**” means —

- (a) 3 months; or
- 25 (b) such longer period as the State mining engineer may allow on application by a consultation party;

“**consultation party**” means a person who comes within section 67B(2)(a), (b) or (c);

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“prescribed requirements” means —

(a) the provisions of —

(i) an agreement under section 67B(2);
and

(ii) section 67B(3);

(b) the terms of a determination of —

(i) the State mining engineer, under
section 67C; or

(ii) the Tribunal, under section 67F,

in respect of the mine concerned or, if any
agreement under section 67D applies, any
mine concerned; and

(c) any requirement of the regulations.

(2) In this Division references to a **“safety and health
representative for the mine”** or a **“safety and health
representative for a mine”** include a safety and health
representative elected for a group of employees
pursuant to a scheme under section 55A if any member
of the group works at the mine concerned.

”.

63. Section 63 amended

(1) At the beginning of section 63 the following subsection is
inserted —

“

(1) In this section —

“mine”, where an agreement under section 67B(2)
applies to the establishment of a safety and health
committee, means any mine in relation to which
the committee may perform functions.

”.

(2) Section 63 is amended by inserting before “The functions” the
subsection designation “(2)”.

64. Sections 64, 65, 66 and 67 replaced by sections 64 to 67F

Sections 64, 65, 66 and 67 are repealed and the following sections are inserted instead —

“

5

64. Employees to appoint representatives

Whenever required for the purpose of making an agreement under section 67B(2) or 67D(1) in respect of a mine, the employees who work at the mine are to appoint, from amongst their number, one or more employees —

10

- (a) to represent them for that purpose; or
- (b) as may be required, to replace any employee previously appointed under this section.

15

65. Obligation of employer to establish a safety and health committee

- (1) An employer must, in accordance with the prescribed requirements, establish a safety and health committee for a mine within the allowed period after —

20

- (a) the coming into operation of a regulation requiring the employer to do so;
- (b) service on the employer of a notice by the State mining engineer requiring the employer to do so; or
- (c) being requested under section 66(1) to do so,

25

unless, in the case mentioned in paragraph (c), the State mining engineer has decided under section 67 that a safety and health committee is not required to be established for the mine concerned.

30

- (2) If an employer contravenes subsection (1), the employer commits an offence.

S.

66. Request for establishment of safety and health committee

- 5 (1) An employee who works at a mine may request an employer at the mine to establish a safety and health committee for the mine.
- (2) If a request is made under subsection (1), the employer must within 21 days after the request is received either —
- 10 (a) notify —
- (i) the employee who made the request; and
- (ii) any safety and health representative for the mine,
- 15 that the employer agrees to the request; or
- (b) under section 67, refer to the State mining engineer the question whether a safety and health committee should be established for the mine.
- 20 (3) If an employer contravenes subsection (2), the employer commits an offence.

67. Referral of question to State mining engineer

- (1) If —
- 25 (a) a request has been made to an employer under section 66(1) in respect of a mine; and
- (b) the employer considers that the circumstances of the case are such that the employer should not be required to establish a safety and health committee for the mine,
- 30 the employer may refer to the State mining engineer the question of whether a safety and health committee should be so established.

(2) The employer must give notice of a referral under this section to —

- (a) the employee concerned; and
- (b) any safety and health representative for the mine.

(3) The State mining engineer is to —

- (a) decide a question referred to the State mining engineer under subsection (1); and
- (b) notify the employer and the employee concerned of the decision.

67A. Employer may establish a safety and health committee

An employer at a mine may, on the employer's own initiative and in accordance with the prescribed requirements, establish a safety and health committee for the mine if —

- (a) a regulation referred to in section 65(1)(a) has not come into operation;
- (b) a notice referred to in section 65(1)(b) has not been served on the employer; or
- (c) a request has not been made under section 66(1),

in respect of the mine.

67B. How safety and health committee to be constituted

(1) In this section —

“**mine**”, where an agreement under section 67D applies, includes 2 or more mines.

(2) Subject to subsection (3), the composition, and the manner in which persons become members, of a safety

S.

and health committee for a mine are to be determined by agreement in writing between —

- (a) the employer or employers at the mine;
- (b) any safety and health representative for the mine; and
- (c) the employees appointed under section 64 in respect of the mine.

- (3) At least one half of the members of a safety and health committee for a mine must be persons each of whom is —

- (a) a safety and health representative for the mine; or
- (b) an employee who works at the mine and holds office as a member representing other employees.

67C. State mining engineer may make determination in certain cases

- (1) This section applies if —

- (a) a consultation party considers that discussions for the purpose of making an agreement under section 67B —
 - (i) cannot commence or continue because there are no employees appointed under section 64 in respect of the mine concerned;
 - (ii) have not been commenced or continued in good faith by any party;
 - (iii) are being unreasonably delayed; or
 - (iv) have broken down;
- or
- (b) the employer concerned considers that for some other reason it is unlikely that the employer will

be able to comply with section 65 within the
allowed period under that section.

- (2) The employer or other consultation party may refer to the State mining engineer for determination —
- (a) the matters that are required to be settled by agreement under section 67B; or
- (b) any particular matter mentioned in paragraph (a) on which the parties cannot agree.
- (3) On such a referral, the State mining engineer is to —
- (a) make any necessary determination; and
- (b) notify the employer or other party concerned of the determination.

67D. Functions of committee may cover more than one mine

- (1) If —
- (a) an employer —
- (i) is under an obligation by operation of section 65(1); or
- (ii) wishes to take action for the purposes of section 67A,
- in respect of more than one mine; and
- (b) a safety and health committee has not been established for one or more of those mines,
- the parties concerned may agree in writing that one safety and health committee is to be established to perform functions in relation to each of the mines to which paragraph (b) applies.
- (2) For the purposes of subsection (1) the parties concerned are —
- (a) the employer or employers at;

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- (b) any safety and health representative for; and
- (c) the employees appointed under section 64 in respect of,

any mine to which subsection (1)(b) applies.

- 5 (3) An agreement under subsection (1) may provide —
- (a) for the establishment of a safety and health committee to perform functions in relation to more than one mine; and
 - (b) for that committee to have subcommittees for
10 each mine —
 - (i) to advise the committee on the performance of its functions in relation to that mine; and
 - (ii) to perform some or all of those
15 functions as the delegate of the committee in accordance with the terms of a delegation to it.
- (4) The composition of any subcommittee referred to in subsection (3) is to be determined by the parties
20 referred to in subsection (2).

67E. Amendment of agreement and abolition of committee

- (1) In this section —
- “relevant parties”**, in respect of a mine, means —
- (a) the employer or employers at the mine; and
 - (b) each member for the time being of the safety and health committee for the mine.
- (2) Where —
- (a) an agreement has been made under
30 section 67B(2); or

- 5 (b) the matters referred to in section 67B(2) are governed by provisions consisting —
- (i) wholly of a determination made under section 67C, whether or not it has been varied or confirmed under section 67F; or
- 10 (ii) partly of an agreement under section 67B(2) and partly of a determination made under section 67C, whether or not it has been varied or confirmed under section 67F,
- the relevant parties may by agreement in writing made between them —
- 15 (c) vary —
- (i) the agreement or provisions; or
- (ii) if applicable, the agreement or provisions as previously varied under this subsection;
- and
- 20 (d) make any transitional provision that is necessary or expedient in respect of the variation.
- 25 (3) Where a safety and health committee has been established for a mine, the relevant parties may by agreement in writing —
- (a) abolish the committee; and
- (b) make any transitional provision that is necessary or expedient in respect of the abolition.
- 30 (4) If the relevant parties cannot agree on the exercise of a power referred to in subsection (2) or (3), any such party may refer to the State mining engineer for determination any question —

S.

- 5
- (a) whether the agreement or provisions concerned should be varied;
 - (b) as to the manner in which the agreement or provisions should be varied; or
 - (c) whether a safety and health committee should be abolished,

or as to transitional provisions that should be made in respect of such a matter.

- 10
- (5) On such a referral, the State mining engineer is to —
- (a) make any necessary determination; and
 - (b) notify the relevant parties of the determination.

67F. Review of State mining engineer's decision

- 15
- (1) Where the State mining engineer has made a decision under section 67(3) in respect of a mine —
- (a) an employer at the mine;
 - (b) a safety and health representative for the mine; or
 - (c) an employee who works at the mine,
- may refer the decision to the Tribunal for review.
- 20
- (2) Where the State mining engineer has made a determination under section 67C(3) in respect of one or more mines —
- (a) an employer at;
 - (b) a safety and health representative for; or
 - 25 (c) an employee appointed under section 64 in respect of,
- a mine concerned, may refer the determination to the Tribunal for review.

- (3) Where the State mining engineer has made a determination under section 67E(5) in respect of —
- (a) an agreement; or
 - (b) a safety and health committee,
- 5 a relevant party, within the meaning in that section, in relation to the mine concerned may refer the determination to the Tribunal for review.
- (4) The Tribunal may confirm, vary or revoke a decision or determination of the State mining engineer referred
- 10 to it under this section.

”.

65. Savings and transitional provisions for existing safety and health committees

- 15 (1) The repeal of sections 65 and 66 of the *Mines Safety and Inspection Act 1994* (the “**MSI Act**”) by section 64 does not affect the status of a safety and health committee that is in existence under the MSI Act immediately before that repeal.
- (2) Any such committee is to be taken, after the commencement of section 64, to have been established under section 65 or 67A of
- 20 the MSI Act inserted by section 64, as the case may require.
- (3) If before the commencement of section 64 —
- (a) a request was made in respect of a mine under section 64(1) of the MSI Act repealed by section 64; but
 - (b) a safety and health committee had not been established
- 25 for the mine under section 65 of the MSI Act so repealed,
- the duty of the employer under section 65 of the MSI Act to establish a safety and health committee for the mine lapses on that commencement.

s.

66. Section 68 replaced

Section 68 is repealed and the following section is inserted instead —

“

5 **68. Procedure of safety and health committees**

Except as provided in the regulations, a safety and health committee may determine its own procedure.

”.

67. Sections 68A, 68B, 68C and 68D inserted

10 After the heading to Part 5 Division 3 the following sections are inserted —

“

68A. Discrimination against safety and health representative in relation to employment

15 (1) An employer or a prospective employer at a mine must not cause disadvantage to a person for the dominant or substantial reason that the person —

- 20 (a) is or was a safety and health representative; or
(b) is performing or has performed any function as a safety and health representative.

(2) For the purposes of subsection (1) an employer causes disadvantage to a person if the employer —

- 25 (a) dismisses the person from employment;
(b) demotes the person or fails to give the person a promotion that the person could reasonably have expected;
(c) detrimentally alters the person’s employment position; or
30 (d) detrimentally alters the person’s pay or other terms and conditions of employment.

(3) For the purposes of subsection (1) a prospective employer causes disadvantage to a person if the prospective employer refuses to employ the person.

5 (4) An employer or prospective employer who contravenes subsection (1) commits an offence.

68B. Discrimination against safety and health representative in relation to contract for services

10 (1) In this section —
“**contractor**” and “**principal**” have the meanings given to those terms in section 15A(1).

(2) Where a scheme under section 55A makes provision of the kind described in section 55B(3), a principal must not —

- 15 (a) terminate the engagement of a contractor; or
(b) subject a contractor to any other detriment,

for the dominant or substantial reason that the contractor or a person employed by the contractor —

- 20 (c) is or was a safety and health representative; or
(d) is performing or has performed any function as a safety and health representative.

(3) A principal who contravenes subsection (2) commits an offence.

68C. Claim may be referred to the Tribunal

- 25 (1) A person may —
(a) refer to the Tribunal —
(i) a claim that the person’s employer or a prospective employer has caused disadvantage to the person in contravention of section 68A; or

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- (ii) in the case of a contractor referred to in section 68B, a claim that the principal has contravened that section;
- and
- 5 (b) request the Tribunal to make one or more of the orders provided for by section 68D.
- (2) Subsection (1) applies whether or not —
- (a) the employer or prospective employer has been convicted of an offence under section 68A(4);
- 10 or
- (b) the principal has been convicted of an offence under section 68B(3).
- (3) A referral under subsection (1) may also be made on a person's behalf by an agent or legal practitioner referred to in section 31 of the *Industrial Relations Act 1979*.
- 15

68D. Remedies that may be granted

- (1) If, on the hearing of a claim under section 68C(1)(a)(i), the Tribunal is satisfied that an employer or a
- 20 prospective employer has contravened section 68A, the Tribunal may —
- (a) in the case of an employer, order the employer —
- (i) to reinstate the claimant if the claimant was dismissed from employment;
- 25 (ii) to pay to the claimant such sum of money as the Tribunal considers adequate as compensation for loss of employment or loss of earnings; or
- 30 (iii) both to reinstate the claimant and to pay the claimant the sum of money referred to in subparagraph (ii),
- as the Tribunal thinks fit; or

- (b) in the case of a prospective employer, order that person to pay the claimant such sum of money as the Tribunal thinks fit.
- (2) If, on the hearing of a claim under section 68C(1)(a)(ii), the Tribunal is satisfied that a principal has contravened section 68B, the Tribunal may order the principal to pay the claimant such sum of money as the Tribunal thinks fit.
- (3) In determining a claim under section 68C(1)(a)(i) the Tribunal may make any order of the kind mentioned in section 23A(3), (4) and (5)(a) of the *Industrial Relations Act 1979* as if the claim were a claim to which section 23A of that Act applies.
- (4) In the determination of the amount of compensation for any loss of employment, loss of earnings or detriment —
- (a) the Tribunal is to have regard to any redress the claimant has obtained under another enactment; and
- (b) the claimant is not entitled to compensation both under this section and otherwise for the same loss of employment, loss of earnings or detriment.
- ”.

68. Section 69 amended

Section 69 is amended as follows:

- (a) in subsection (1) by deleting “because the” and inserting instead —
- “ for the dominant or substantial reason that the ”;
- (b) in subsection (1)(a) and (b) by deleting “a safety and health representative or” in both places where it occurs;

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- (c) in subsection (2) by deleting “because” and inserting instead —
“ for the dominant or substantial reason ”.

69. Section 70 amended

- 5 (1) Section 70(2) and (3) are repealed and the following subsections are inserted instead —

“

- (2) In subsection (1) —

“the relevant procedure” means —

- 10 (a) the procedure agreed between the manager of the mine and the employers and employees at the mine as applying in respect of the mine concerned; or
- 15 (b) if no procedure is so agreed, the procedure prescribed for that purpose in the regulations;

“the safety and health representative” —

- 20 (a) if there is more than one safety and health representative for a mine, means any such representative provided for in the relevant procedure; and
- 25 (b) may, in respect of a mine, include a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine.

- (3) Where attempts to resolve an issue as mentioned in subsection (1) do not succeed and —

- 30 (a) one or more safety and health representatives are provided for in the relevant procedure under subsection (1); and

(b) there is a safety and health committee,
in respect of the mine concerned, the safety and health
representative or representatives must refer the issue to
the safety and health committee for it to attempt to
5 resolve the issue.

”.

70. Section 72 amended

After section 72(2) the following subsection is inserted —

“

10 (2aa) In subsection (2) —

“safety and health representative” —

(a) if there is more than one safety and health
representative for the mine, means any such
representative whose functions are relevant
15 to the issues involved; and

(b) includes a safety and health representative
elected for a group of employees pursuant to
a scheme under section 55A if the employee
is a member of the group.

20

”.

71. Section 77 amended

After section 77(2) the following subsection is inserted —

“

25 (3) In subsection (2) —

“safety and health representative for the mine”
includes a safety and health representative elected
for a group of employees pursuant to a scheme
under section 55A if any member of the group
works at the mine.

30

”.

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Part 5 Amendments relating to safety and health representatives and committees

S.

72. Section 104 amended

After section 104(1)(ba) the following paragraph is inserted —

“

(bb) dealing with the establishment of safety and health committees by employers;

”.

5

**Part 6 — Amendments to provide for improvement
notices, prohibition notices and provisional
improvement notices**

73. Section 4 amended

5 Section 4(1) is amended by inserting the following definitions in
their appropriate alphabetical positions —

“

“improvement notice” means an improvement notice
 issued under Part 3 Division 3;

10 **“prohibition notice”** means a prohibition notice issued
 under Part 3 Division 3;

“provisional improvement notice” means a
 provisional improvement notice issued under
 Part 3 Division 4;

15

”.

74. Section 22 repealed

Section 22 is repealed.

75. Section 23 amended

Section 23(1)(a) is amended as follows:

- 20 (a) after subparagraph (iii) by deleting “and”;
- (b) by deleting subparagraph (iv).

76. Sections 30 and 31 replaced by Divisions 3 and 4

Sections 30 and 31 are repealed and the following Divisions are
inserted instead —

S.

“

Division 3 — Improvement notices and prohibition notices

Subdivision 1 — Improvement notices

5 **30. Issue of improvement notice**

- (1) Subsection (2) applies where an inspector or an assistant inspector is of the opinion that a person —
- 10 (a) is contravening any provision of this Act; or
- (b) has contravened any provision of this Act in circumstances that make it likely that the contravention will continue or be repeated.
- (2) The inspector or assistant inspector may issue to the person an improvement notice requiring the person to remedy —
- 15 (a) the contravention or likely contravention; or
- (b) the matters or activities occasioning the contravention or likely contravention.
- (3) The issue of an improvement notice in respect of a contravention at a mine is to be notified as follows —
- 20 (a) if the manager of the mine is not the person to whom the notice is issued, the inspector or assistant inspector who issues the notice must, as soon as is practicable, give a copy of the notice to the manager;
- 25 (b) the manager must then give a copy of the notice to the principal employer at the mine, if the principal employer is not the person to whom it is issued;
- 30 (c) the manager of a mine must give to the principal employer at the mine a copy of any improvement notice issued to the manager.

- (4) A manager who fails to comply with subsection (3)(b) or (c) commits an offence.

31. Contents of improvement notice

An improvement notice must —

- 5 (a) state the opinion of the inspector or assistant
inspector in terms of section 30(1)(a) or (b), as
the case may be;
- (b) state reasonable grounds for that opinion;
- 10 (c) specify the provision of this Act in respect of
which that opinion is held;
- (d) state the time before which the person is
required to remedy —
- (i) the contravention or likely
contravention; or
- 15 (ii) the matters or activities occasioning the
contravention or likely contravention;
- and
- (e) contain a brief summary of the right to have the
notice reviewed under Subdivision 7.

20 **31A. Failure to comply with improvement notice**

- (1) If a person —
- (a) is issued with an improvement notice; and
- (b) does not comply with the notice within the time
specified in it,
- 25 the person commits an offence.
- (2) Subsection (1) has effect subject to —
- (a) the provisions in sections 31B and 31BC for the
suspension of notices; and
- (b) the exercise of the power conferred by
- 30 section 31BE.

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- (3) No person is precluded by a contract from doing such acts and things as are necessary to comply with an improvement notice or is liable under any contract to any penalty for doing such acts and things.

5 **31AA. Notification of compliance**

- (1) As soon as is practicable after the requirements of an improvement notice in relation to a mine have been complied with, the manager of the mine must give written notice of the compliance —
- 10 (a) to the inspector or assistant inspector who issued the notice; or
- (b) if that officer is not reasonably available at the relevant time, to the district inspector for the region in which the mine is situated.
- 15 (2) A manager who fails to comply with subsection (1) commits an offence.

Subdivision 2 — Prohibition notices in respect of mines

31AB. Grounds for prohibition notice

- 20 This Subdivision applies where an inspector or an assistant inspector is of the opinion that —
- (a) a contravention of any provision of this Act —
- (i) is occurring at a mine; or
- (ii) has occurred at a mine in circumstances that make it likely that the contravention
- 25 will continue or be repeated,
- and any matter or activity occasioning the contravention constitutes or is likely to constitute a hazard to any person; or
- (b) a mine, or any plant, mining practice or
- 30 hazardous substance at or related to a mine —
- (i) is dangerous; or

- (ii) is likely to become dangerous,
so as to constitute a hazard to any person.

31AC. Issue of prohibition notice for hazard arising from breach of Act

- 5 (1) Where section 31AB(a) applies, the inspector or
assistant inspector may issue a prohibition notice —
- (a) to the person who —
 - (i) is carrying on the activity or is in
control of the matter or activity; or
 - 10 (ii) has or may be reasonably presumed to
have control over the matter or activity,
(which may be the principal employer or the
manager); and
 - (b) in every case to the principal employer or the
15 manager.
- (2) The notice is to —
- (a) require the person referred to in
subsection (1)(a) to remedy the matter or
activity; and
 - 20 (b) in accordance with section 31AE, impose
requirements to be complied with by the
principal employer or the manager until an
inspector or assistant inspector is satisfied that
the relevant matters and activities have been
25 remedied.

31AD. Issue of prohibition notice for other hazards

- (1) Where section 31AB(b) applies, the inspector or
assistant inspector may issue a prohibition notice —
- (a) to the person who has, or may be reasonably
30 presumed to have, control over the plant,
mining practice or hazardous substance

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concerned (which may be the principal employer or the manager); and

- (b) in every case to the principal employer or the manager.

5 (2) The notice is to —

- (a) require the person referred to in subsection (1)(a) to remove the hazard or likely hazard; and
- 10 (b) in accordance with section 31AE, impose requirements to be complied with by the principal employer or the manager until an inspector or assistant inspector is satisfied that the hazard or likely hazard has been removed.

31AE. Prohibition of mining operations

15 In exercise of the powers conferred by sections 31AC(2)(b) and 31AD(2)(b) an inspector or assistant inspector may require the principal employer or the manager —

- 20 (a) to stop work at the mine or any specified part of the mine;
- (b) to refrain from doing any specified thing at or in relation to the mine;
- (c) to remove all persons from the mine or any specified part of the mine; or
- 25 (d) to take any combination of steps under paragraphs (a), (b) and (c),

except to the extent that provision is made in the prohibition notice either with or without conditions or restrictions for —

- 30 (e) any specified work, practice or activity to be carried out or any specified thing to be done at the mine; or

- (f) any person to be at the mine or the part concerned.

31AF. Contents of prohibition notice under this Subdivision

- 5 A prohibition notice under this Subdivision must —
- (a) state the opinion of the inspector or assistant inspector in terms of section 31AB(a) or (b), as the case may require;
 - (b) state reasonable grounds for that opinion;
 - 10 (c) specify —
 - (i) where section 31AB(a) applies, the provision of this Act; or
 - (ii) where section 31AB(b) applies, the mine, or the plant, mining practice or hazardous substance,
 - 15 in respect of which that opinion is held; and
 - (d) contain a brief summary of the right to have the notice reviewed under Subdivision 7.

31AG. Failure to comply with prohibition notice

- 20 (1) A person issued with a prohibition notice under this Subdivision commits an offence if the person does not comply with —
- (a) the notice; or
 - (b) such of the provisions of the notice as are
 - 25 applicable to the person,
- as the case may require.
- (2) Subsection (1) has effect subject to —
- (a) the provisions in sections 31B and 31BC for the suspension of notices; and

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(b) the exercise of the power conferred by section 31BE.

(3) No person is precluded by a contract from doing such acts and things as are necessary to comply with a prohibition notice under this Subdivision or is liable under any contract to any penalty for doing such acts and things.

Subdivision 3 — Prohibition notices in relation to occupation of residential premises by employee

31AH. Issue of prohibition notice

- (1) Subsection (2) applies where an inspector or an assistant inspector is of the opinion that —
- (a) an employee is, or is likely to be, in occupation of residential premises as mentioned in section 15D(2); and
- (b) the employer concerned is contravening, or is likely to contravene, that section in relation to such occupation.
- (2) The inspector or assistant inspector may issue to the employer, and any employee, concerned a prohibition notice prohibiting the occupation of the premises by an employee of the employer until an inspector or assistant inspector is satisfied that an employee occupying the premises is not, or will not be, exposed to any hazard at the premises.
- (3) An inspector or assistant inspector who issues a prohibition notice under subsection (2) must, as soon as is practicable, give a copy of the notice to the manager of the mine at which the employee concerned is employed.

31AI. Contents of prohibition notice under this Subdivision

A prohibition notice under this Subdivision must —

- 5 (a) state the opinion of the inspector or assistant inspector in terms of section 31AH(1);
- (b) state reasonable grounds for that opinion;
- (c) specify the premises and any hazard in respect of which that opinion is held; and
- 10 (d) contain a brief summary of the right to have the notice reviewed under Subdivision 7.

31AJ. Failure to comply with prohibition notice

- (1) If an employee occupies residential premises in contravention of a prohibition notice under section 31AH —
 - 15 (a) the employer issued with the notice commits an offence unless the employer shows that all reasonably practicable steps were taken by the employer to prevent the occupation; and
 - (b) the employee who occupies the premises commits an offence unless the employee shows
20 that there was reasonable excuse for that occupation.
- (2) Subsection (1) has effect subject to —
 - 25 (a) the provisions in sections 31B and 31BC for the suspension of notices; and
 - (b) the exercise of the power conferred by section 31BE.
- (3) No person is precluded by a contract from doing such
30 acts and things as are necessary to comply with a prohibition notice under this Subdivision or is liable under any contract to any penalty for doing such acts and things.

S.

Subdivision 4 — Display of improvement notices and prohibition notices

31AK. Improvement notices

The manager of a mine who —

- 5 (a) is issued with an improvement notice; or
 (b) is given a copy of an improvement notice under section 30(3),

10 must, as soon as is practicable, cause the notice, or a copy of it, to be displayed in accordance with the prescribed requirements.

31AL. Prohibition notices in respect of mines

15 The manager of a mine who is issued with a prohibition notice under Subdivision 2 must, as soon as is practicable, cause the notice, or a copy of it, to be displayed in accordance with the prescribed requirements.

31AM. Prohibition notices in respect of residential premises

20 An employer who is issued with a prohibition notice under Subdivision 3 must, as soon as is practicable, cause the notice, or a copy of it, to be displayed at the residential premises concerned.

31AN. Offence to remove displayed notice

- 25 (1) A person must not remove an improvement notice or a prohibition notice displayed under this Subdivision before the requirements of the notice have been satisfied, taking into account any modification made under section 31AZ or 31BB.

- (2) Subsection (1) does not apply in respect of a notice that —
- (a) is suspended under section 31B or 31BC; or
 - (b) has ceased to have effect.

5 **31AO. Modifications of notice to be displayed**

- (1) This section applies where an improvement notice or a prohibition notice is modified under section 31AZ or 31BB.
- 10 (2) The manager of the mine concerned, or the employer concerned, must cause a copy of the decision of the State mining engineer or the Tribunal to be displayed with, and in the same manner as is required for, the improvement notice or prohibition notice.

15 **31AP. Failure to comply with provision of this Subdivision**

A person who fails to comply with a duty imposed on the person by this Subdivision commits an offence.

Subdivision 5 — General duty of principal employer and manager in respect of notices

20 **31AQ. General duty, improvement notices**

- (1) Subsection (2) applies where —
- (a) an improvement notice is issued in relation to a mine; and
 - (b) the person issued with the notice is not the principal employer at, or the manager of, the mine.
- 25 (2) The principal employer and the manager must take all reasonably practicable steps to ensure that the person issued with the notice complies with it.

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- (3) A principal employer or manager who fails to comply with subsection (2) commits an offence.

31AR. General duty, prohibition notices

- (1) In subsection (2) —

5

“other responsible person” means a person who —

- (a) is required to comply with any provision of a prohibition notice issued in respect of a mine; but
- (b) is not the principal employer at, or the manager of, the mine.

10

- (2) The principal employer at, and the manager of, a mine in relation to which a prohibition notice is issued must take all reasonably practicable steps to ensure that any other responsible person complies with such of the provisions of the notice as are applicable to the person.

15

- (3) A principal employer or manager who fails to comply with subsection (2) commits an offence.

31AS. Other provisions relating to general duty

- (1) The duties imposed by this Subdivision —

20

- (a) have effect subject to —

- (i) the provisions in sections 31B and 31BC for the suspension of notices; and
- (ii) the exercise of the power conferred by section 31BE;

25

and

- (b) are in addition to any duty that a principal employer or a manager has under section 32(2) or 43(2)(c).

30

- (2) A principal employer or manager is not precluded by a contract from doing such acts and things as are

necessary to comply with a duty imposed by this
Subdivision and is not liable under any contract to any
penalty for doing such acts and things.

**Subdivision 6 — Entry of notices and related matters in
mine record book**

31AT. Improvement and prohibition notices

The manager of a mine who —

- (a) is issued with —
 - (i) an improvement notice; or
 - (ii) a prohibition notice under
Subdivision 2;
- or
- (b) is given a copy of —
 - (i) an improvement notice under
section 30(3); or
 - (ii) a prohibition notice under
section 31AH(3),

must securely affix a copy of the notice to a page in the
record book for the mine.

31AU. Referrals for review

The manager of a mine who —

- (a) under section 31AY(1) or 31BA(1) refers an
improvement notice or a prohibition notice for
review; or
- (b) is given a copy of a duly completed prescribed
form under section 31AY(4) or 31BA(3),

must securely affix a copy of the duly completed
prescribed form to a page in the record book for the
mine.

S.

31AV. Decisions on review

The manager of a mine who is given a notice under section 31AZ(3) or 31BB(3) of a decision and reasons must securely affix a copy of the notice to a page in the record book for the mine.

5

31AW. Permissions for continuation of work

The manager of a mine who, under section 31B(3) or 31BC(3), is given a copy of a permission referred to in that section must securely affix the copy to a page in the record book for the mine.

10

31AX. Failure to comply with provision of this Subdivision

A manager who fails to comply with a duty imposed on the manager by this Subdivision commits an offence.

Subdivision 7 — Review of improvement notices and prohibition notices

15

31AY. Notice may be referred for review

- (1) An improvement notice or prohibition notice issued in relation to a mine may, in accordance with subsection (3), be referred to the State mining engineer for review.
- (2) A referral may be made by —
 - (a) a person issued with the notice; or
 - (b) the principal employer at, or the manager of, the mine.
- (3) A reference under subsection (1) may be made only in the prescribed form duly completed and —
 - (a) in the case of an improvement notice, must be made within the time specified in the notice as the time before which the notice is required to be complied with; or

20

25

30

(b) in the case of a prohibition notice must be made —

(i) not later than 7 days after the day on which the notice was issued; or

5 (ii) within such further period as the State mining engineer may allow.

(4) A person, other than the manager of a mine concerned, that refers a notice for review must, as soon as is practicable, give a copy of the duly completed
10 prescribed form to such manager.

(5) If a person fails to comply with subsection (4), the person commits an offence.

31AZ. Review by State mining engineer

(1) On a reference under section 31AY, the State mining
15 engineer is to inquire into the circumstances relating to the improvement notice or prohibition notice, and may —

(a) affirm the notice;

20 (b) affirm the notice with such modifications as the State mining engineer considers appropriate; or

(c) cancel the notice,

and, subject to section 31BB and the exercise of the power conferred by section 31BE, the notice has effect or, as the case may be, ceases to have effect
25 accordingly.

(2) In dealing with a reference for the review of a prohibition notice the State mining engineer may —

30 (a) refer to an expert chosen by the State mining engineer such matters as appear to him or her to be appropriate; and

(b) accept the advice of that expert.

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(3) The State mining engineer is to give notice in writing of —

- (a) the decision on the reference; and
- (b) the reasons for the decision,

5 to —

- (c) the person who referred the notice for review; and
- (d) if that person is not the manager of a mine concerned, to such manager.

10 **31B. Effect of notice pending review by State mining engineer**

(1) Pending the decision of the State mining engineer on a reference under section 31AY —

- 15 (a) the operation of an improvement notice is suspended; and
- (b) the operation of a prohibition notice continues, except to the extent that the State mining engineer —
 - 20 (i) permits any work, practice or activity to be carried out or any thing to be done;
 - (ii) permits any person to be at the mine concerned or at a part of the mine; or
 - 25 (iii) in the case of a prohibition notice under Subdivision 3, permits any occupation of the premises concerned.

(2) A permission given by the State mining engineer under subsection (1)(b) —

- 30 (a) is to be in writing;
- (b) may be subject to such restrictions and conditions as the State mining engineer thinks fit to impose for the safety of —

- 5

15

- 20

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- (4) If a person fails to comply with subsection (3), the person commits an offence.

31BB. Determination by Tribunal

- 5 (1) On a reference under section 31BA, the Tribunal is to inquire into the circumstances relating to the improvement notice or prohibition notice, and may —
- (a) affirm the decision of the State mining engineer;
- 10 (b) affirm the decision of the State mining engineer with such modifications as the Tribunal considers appropriate; or
- (c) revoke the decision of the State mining engineer and make such other decision with respect to the notice as the Tribunal thinks fit,
- 15 and the notice has effect or, as the case may be, ceases to have effect accordingly.
- (2) A review under this section —
- (a) is to be in the nature of a rehearing; and
- 20 (b) is to be completed by the Tribunal as quickly as is practicable.
- (3) The Tribunal is to give notice in writing of —
- (a) its decision on the reference; and
- (b) the reasons for the decision,
- to —
- 25 (c) the person who referred the matter for review; and
- (d) if that person is not the manager of a mine concerned, to such manager.

31BC. Effect of notice pending review by Tribunal

- (1) Pending the decision on a reference under section 31BA, irrespective of the decision of the State mining engineer under section 31AZ —
- 5 (a) the operation of an improvement notice is suspended; and
- (b) the operation of a prohibition notice continues, except to the extent that the Tribunal —
- 10 (i) permits any work, practice or activity to be carried out or any thing to be done;
- (ii) permits any person to be at the mine concerned or at a part of the mine; or
- (iii) in the case of a prohibition notice under Subdivision 3, permits any occupation of the premises concerned.
- 15
- (2) A permission given by the Tribunal under subsection (1)(b) —
- (a) is to be in writing;
- (b) may be subject to such restrictions and conditions as the Tribunal thinks fit to impose for the safety of —
- 20 (i) employees and other persons at a mine; or
- (ii) in the case of a prohibition notice under Subdivision 3, any employee occupying the premises concerned;
- 25
- and
- (c) is to be taken to be of no effect during any period when any such condition or restriction is
- 30 not being observed according to its tenor.

s.

- (3) The Tribunal is to give a copy of any permission given under subsection (1)(b) to the manager of a mine concerned.

Subdivision 8 — General

5 **31BD. Notices may include directions**

- (1) An inspector or assistant inspector who issues an improvement notice or a prohibition notice may include in the notice directions as to the measures to be taken to remedy any contravention, likely
10 contravention, hazard, matters or activities to which the notice relates.
- (2) A direction under subsection (1) may —
- (a) refer to any code of practice; and
- (b) offer the person issued with the notice a choice
15 of ways in which to remedy the contravention, likely contravention, hazard, matters or activities to which the notice relates.

31BE. Further power of State mining engineer to cancel notice

- 20 (1) The State mining engineer may, on his or her own initiative, cancel an improvement notice or a prohibition notice in respect of a mine by giving notice in writing of —
- (a) the cancellation; and
- 25 (b) the reasons for the cancellation,
- to —
- (c) the person who was issued with the notice;
- (d) the principal employer at a mine if the principal employer is not the person referred to in
30 paragraph (c); and

- (e) the manager of the mine if the manager is not the person referred to in paragraph (c).
- (2) The State mining engineer may, on his or her own initiative, cancel a prohibition notice issued under section 31AH by giving notice in writing of —
- 5 (a) the cancellation; and
- (b) the reasons for the cancellation,
- to the employer and the employee concerned.
- (3) The power conferred by subsection (1) or (2) is not to be exercised in respect of a notice —
- 10 (a) during a period when a referral of the notice is awaiting a determination of the State mining engineer under section 31AZ; or
- (b) after a decision in respect of the notice has been referred to the Tribunal under section 31BA,
- 15 but otherwise may be exercised at any time and whether or not the notice concerned has been affirmed under section 31AZ(1).

20 **Division 4 — Issue of provisional improvement notices
by safety and health representative**

31BF. Definition

In this Division —

25 **“qualified representative”** means a safety and health representative who has completed a course of training prescribed for the purposes of this definition.

31BG. Issue of provisional improvement notices

- (1) Subsection (2) applies where a qualified representative —

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- 5
- (a) is of the opinion that a person —
- (i) is contravening any provision of this Act; or
- (ii) has contravened any provision of this Act in circumstances that make it likely that the contravention will continue or be repeated;
- and
- 10 (b) has undertaken the consultations required by section 31BH.
- (2) The qualified representative may issue to the person a provisional improvement notice requiring the person to remedy —
- 15 (a) the contravention or likely contravention; or
- (b) the matters or activities occasioning the contravention or likely contravention.
- (3) A qualified representative may exercise the power conferred by subsection (2) only —
- 20 (a) in respect of a mine for which the qualified representative was elected; or
- (b) if, pursuant to a scheme under section 55A, the qualified representative was elected for a group of employees, in respect of a mine at which any member of the group works.
- 25 (4) The issue of a provisional improvement notice in respect of a contravention at a mine is to be notified as follows —
- 30 (a) if the manager of the mine is not the person to whom the notice is issued, the qualified representative who issues the notice must, as soon as is practicable, give a copy of the notice to the manager;

- (b) the manager must then give a copy of the notice to the principal employer at the mine, if the principal employer is not the person to whom it is issued;
- 5 (c) the manager of a mine must give to the principal employer at the mine a copy of any provisional improvement notice issued to the manager.
- (5) A manager who fails to comply with subsection (4)(b) or (c) commits an offence.
- 10

31BH. Consultation required before issue

- (1) In this section —
“consult” means consult about the matters or activities to which an intended notice will relate.
- 15 (2) Before issuing a provisional improvement notice a qualified representative must —
- (a) consult with the person who is to be issued with the notice; and
- (b) if there is any other safety and health representative for the mine concerned, consult with another representative for that mine so far as it is reasonably practicable to do so.
- 20
- (3) The reference in subsection (2) to a safety and health representative includes a safety and health representative elected for a group of employees pursuant to a scheme under section 55A if any member of the group works at the mine concerned.
- 25
- (4) The regulations may make provision requiring a qualified representative, in specified circumstances, to consult with a person who holds a prescribed office in the department before issuing a provisional improvement notice.
- 30

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31BI. Contents of notice

- (1) A provisional improvement notice must —
- (a) state the opinion of the qualified representative in terms of section 31BG(1)(a)(i) or (ii), as the case may be;
 - (b) state reasonable grounds for that opinion;
 - (c) specify the provision of this Act in respect of which the opinion is held;
 - (d) state the day before which the person is required to remedy —
 - (i) the contravention or likely contravention; or
 - (ii) the matters or activities occasioning the contravention or likely contravention;
- and
- (e) contain a brief summary of the right to have the notice reviewed by an inspector under section 31BN.
- (2) The day specified for the purposes of subsection (1)(d) must be more than 7 days after the day on which the notice is issued.

31BJ. Provisional improvement notices may include directions

- (1) A qualified representative may include in a provisional improvement notice directions as to the measures to be taken to remedy —
- (a) any contravention or likely contravention; or
 - (b) matters or activities,
- to which the notice relates.

- (2) Any direction under subsection (1) may —
 - (a) refer to any code of practice; and
 - (b) offer the person issued with the notice a choice of ways in which to effect the remedy.

5 **31BK. Display of provisional improvement notices**

- (1) The manager of a mine who —
 - (a) is issued with a provisional improvement notice; or
 - (b) is given a copy of a provisional improvement
10 notice under section 31BG(4),

must, as soon as is practicable, cause the notice, or a copy of it, to be displayed in accordance with the prescribed requirements.
- 15 (2) A person commits an offence if the person removes a provisional improvement notice displayed under subsection (1) before the requirements of the improvement notice have been satisfied, taking into account any modification made under section 31BN(4).
- 20 (3) Subsection (2) does not apply in respect of a provisional improvement notice that has ceased to have effect.
- 25 (4) If a provisional improvement notice is modified by an inspector under section 31BN(4), the manager must cause a copy of the inspector's decision to be displayed with, and in the same manner as is required for, the provisional improvement notice.
- (5) A manager who fails to comply with subsection (1) or (4) commits an offence.

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31BL. Failure to comply with notice

- (1) If a person —
- (a) is issued with a provisional improvement notice; and
 - (b) does not comply with the notice within the time specified in it,
- the person commits an offence.
- (2) Subsection (1) does not apply if the right conferred by section 31BN(1) is exercised.

31BM. General duty of principal employer and manager in respect of provisional improvement notice

- (1) Subsection (2) applies where —
- (a) a provisional improvement notice is issued in relation to a mine; and
 - (b) the person issued with the notice is not the principal employer at, or the manager of, the mine.
- (2) The principal employer and the manager must take all reasonably practicable steps to ensure that the person issued with the notice complies with it.
- (3) Subsection (2) does not apply if the right conferred by section 31BN(1) is exercised.
- (4) The duty imposed by subsection (2) is in addition to any duty that the principal employer or the manager may have under section 32(2) or 43(2)(c).
- (5) A principal employer or manager who fails to comply with subsection (2) commits an offence.
- (6) A principal employer or manager is not precluded by a contract from doing such acts and things as are necessary to comply with subsection (2) and is not

liable under any contract to any penalty for doing such acts and things.

31BN. Review of notice by an inspector

- 5 (1) A person issued with a provisional improvement notice in relation to a mine, or the principal employer at, or manager of, the mine may, in writing delivered or sent to the department (a “**review notice**”), require that an inspector review the notice.
- 10 (2) A review notice —
- (a) may be sent —
- (i) by letter addressed to, and posted to a place of business of, the department;
- (ii) by transmission to a facsimile number used by the department; or
- 15 (iii) by electronic data transmission to an email address used by the department;
- and
- (b) must be received by the department not later than the day specified in the provisional improvement notice for the purposes of section 31BI(1)(d).
- 20 (3) The operation of the provisional improvement notice is suspended by the receipt by the department of a review notice in accordance with this section.
- 25 (4) Where a review notice is received by the department in accordance with this section, an inspector must as soon as is practicable —
- (a) attend at the mine; and
- (b) inquire into the circumstances relating to the notice,
- 30 and having done so may —
- (c) affirm the notice;

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- (d) affirm the notice with modifications; or
 - (e) cancel the notice.
- (5) If an inspector affirms a provisional improvement notice, with or without modifications, the notice as so affirmed has effect as if it had been issued by the inspector under section 30.
- (6) Where an inspector reviews a provisional improvement notice he or she is to give notice in writing —
 - (a) of the result of the review; and
 - (b) of any modifications to the notice,to —
 - (c) the person who required an inspector to review the notice; and
 - (d) if that person is not the manager of the mine concerned, to such manager.

31BO. Entries in mines record book

- (1) The manager of a mine who —
 - (a) is issued with a provisional improvement notice under section 31BG(2); or
 - (b) is given a copy of a provisional improvement notice under section 31BG(4),must securely affix a copy of the notice to a page in the record book for the mine.
- (2) The manager of a mine who is given notice under section 31BN(6) of the result of a review must securely affix a copy of the notice to a page in the record book for the mine.
- (3) A manager of a mine who fails to comply with subsection (1) or (2) commits an offence.

”.

77. Transitional provision for directions given before commencement

5 Sections 22, 23(1)(a)(iv), 30 and 31 of the *Mines Safety and Inspection Act 1994* continue to have effect for the purposes of a direction under section 22 of that Act given before the commencement of this Part as if sections 74, 75 and 76 had not been enacted.

78. Section 71 amended

10 Section 71(2)(a) is amended by deleting “section 22” and inserting instead —

“ Part 3 Division 3 ”.

79. Section 89 amended

After section 89(1) the following subsection is inserted —

“

15 (1a) Subsection (1)(b) has effect subject to the provisions of —

- (a) Part 3 Division 3 Subdivision 6; and
- (b) section 31BO.

”.

Part 7 — Amendments to provide for the Occupational Safety and Health Tribunal to determine certain matters

Division 1 — Amendments to the *Mines Safety and Inspection Act 1994*

5

80. Section 4 amended

Section 4(1) is amended by inserting after the definition of “trainee” the following definition —

“

10

“**Tribunal**” has the meaning given by section 51G(2) of the *Occupational Safety and Health Act 1984*;

”.

81. Section 96A amended

(1) Section 96A is amended by inserting before “Every proceeding” the subsection designation “(1)”.

15

(2) At the end of section 96A the following subsection is inserted —

“

20

(2) When exercising jurisdiction under subsection (1) a safety and health magistrate constitutes a court of summary jurisdiction.

”.

82. Part 9 Division 3 heading inserted

After section 101L the following heading is inserted —

25

“

Division 3 — Jurisdiction of Occupational Safety and Health Tribunal

”.

83. Section 102 replaced and transitional provisions

- (1) Section 102 is repealed and the following section is inserted instead —

“

5 **102. Determination of certain matters and appeals by Tribunal**

- (1) This section applies where —

- 10 (a) under section 31BA, 55(6), 55A(4), 56(11), 59(1), 62(1), 67F(1), (2) or (3) or 74(2) a matter is referred to the Tribunal;
- (b) under section 68C a claim is referred to the Tribunal; or
- (c) under section 52 or 86 a person appeals to the Tribunal.

- 15 (2) Where this section applies —

- (a) the matter, claim or appeal may be heard and determined; and
- (b) a determination made by the Tribunal on the matter, claim or appeal has effect, and may
- 20 be —
- (i) appealed against; and
- (ii) enforced,

as if it were —

- 25 (c) a matter in respect of which jurisdiction is conferred on the Tribunal by Part VIB of the *Occupational Safety and Health Act 1984* (“**Part VIB**”); or
- (d) a determination made for the purposes of Part VIB.

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Division 1 Amendments to the Mines Safety and Inspection Act 1994

s.

- (3) The provisions of —
- (a) Part VIB; and
 - (b) the *Industrial Relations Act 1979* applied by that Part,
- 5 have effect for the purposes of this section with all necessary changes.
- (4) In the operation of subsection (3), section 51J(1) of the of the *Occupational Safety and Health Act 1984* has effect as if it were expressed to apply where a matter
- 10 has been referred to the Tribunal for determination under section 55(6), 55A(4), 56(11), 62(1), 67F or 74(2) of this Act.
- ”.
- (2) A matter referred to a safety and health magistrate under the
- 15 *Mines Safety and Inspection Act 1994* and not finally determined before the commencement of subsection (1) —
- (a) may continue to be dealt with; and
 - (b) any order made in such a proceeding may be appealed against and enforced,
- 20 as if subsection (1) had not been enacted.
- (3) A determination or decision of a safety and health magistrate made before the commencement of subsection (1) may be the subject of —
- (a) an application for leave to appeal; and
 - (b) an appeal for which leave is granted,
- 25 under section 54B(2) of the *Occupational Safety and Health Act 1984*, as applied by the section repealed by subsection (1), as if subsection (1) had not been enacted.

84. Various references to a safety and health magistrate amended

- 5 (1) Each provision specified in the Table to this subsection is amended by deleting “a safety and health magistrate” and inserting instead —
- “ the Tribunal ”.

Table

| | |
|-----------|----------|
| s. 55(6) | s. 59(4) |
| s. 56(11) | s. 62 |
| s. 59(1) | s. 74(2) |
| s. 59(3) | |

- 10 (2) Each provision specified in the Table to this subsection is amended by deleting “the safety and health magistrate” and inserting instead —
- “ the Tribunal ”.

Table

| | |
|----------|-------|
| s. 59(3) | s. 62 |
| s. 59(4) | |

85. Section 52 amended and transitional provision

- 15 (1) Section 52 is amended by deleting “Minister” in each place where it occurs and inserting instead —
- “ Tribunal ”.
- 20 (2) An appeal brought under section 52 of the *Mines Safety and Inspection Act 1994* but not finally determined before the commencement of subsection (1), may be dealt with and determined under that section as if subsection (1) had not been enacted.

Mines Safety and Inspection Amendment Bill 2004

Part 7 Amendments to provide for the Occupational Safety and Health Tribunal to determine certain matters

Division 2 Amendments to the Industrial Relations Act 1979

s. 85A

85A. Section 76 amended

Section 76 is amended by deleting all words in subsection (1) before paragraph (a) and inserting instead —

“

5 Where a person suffers injury in an accident at a mine
and is disabled by that accident from performing his or
her duties of employment as they were being
performed at the time the accident occurred, the
manager must cause notice of the accident to be
10 given —

”.

86. Section 86 amended and transitional provision

(1) Section 86 is amended by deleting “Minister” in each place where it occurs and inserting instead —

15 “ Tribunal ”.

(2) An appeal brought under section 86 of the *Mines Safety and Inspection Act 1994* but not finally determined before the commencement of subsection (1), may be dealt with and determined under that section as if subsection (1) had not been enacted.
20

Division 2 — Amendments to the *Industrial Relations Act 1979*

87. The *Industrial Relations Act 1979* amended

(1) The amendments in this section are to the *Industrial Relations Act 1979**.

25 [* Reprint 9 as at 18 June 2004.]

- (2) Section 7(3) is repealed and the following subsection is inserted instead —

“

(3) A matter or claim that has been referred, or appeal that has been brought, to the Tribunal provided for by section 51G of the *Occupational Safety and Health Act 1984* under a provision mentioned in —

(a) subsection (1) of that section; or

(b) section 102(1) of the *Mines Safety and Inspection Act 1994*,

is not an industrial matter.

”.

- (3) Section 8(2a)(b) is amended by inserting after “that Act” —

“ and the *Mines Safety and Inspection Act 1994* ”.

- (4) Section 113(1)(d)(ii) is deleted and the following subparagraph is inserted instead —

“

(ii) the referral, bringing, hearing and determination of matters, claims and appeals under —

(I) the *Occupational Safety and Health Act 1984*; and

(II) the *Mines Safety and Inspection Act 1994*;

”.

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Part 8 — Miscellaneous amendments

88. Section 4 amended

- (1) Section 4(1) is amended by inserting in the appropriate alphabetical positions —

5

“

“apprentice” —

- (a) means an apprentice under the *Industrial Training Act 1975*; or
- (b) if Part 7 of the *Vocational Education and Training Act 1996* comes into operation, means a person who, as an employee, has entered into an apprenticeship within the meaning of that term in section 58 of that Act;

10

15

“Australian Standard” means a document having that title published by Standards Australia;

“Australian/New Zealand Standard” means a document having that title published jointly by —

20

- (a) Standards Australia; and
- (b) the Standards Council of New Zealand;

“import” means to bring into the State, whether from outside Australia or otherwise;

25

“trainee” means a person belonging to a class of persons defined by the regulations as trainees for the purposes of this Act;

”.

- (2) Section 4(1) is amended by deleting the definition of “employee” and inserting instead —

30

“

“employee” means —

- (a) a person by whom work is done at a mine under a contract of employment; and

- (b) an apprentice or trainee who works at a mine;

”.

- (3) Section 4(1) is amended by deleting the definition of “employer” and inserting instead —

“

“employer” means —

- (a) a person who employs an employee at a mine under a contract of employment; and
- (b) in relation to an apprentice or trainee, a person who employs the apprentice or trainee at a mine under an apprenticeship or traineeship scheme under the *Industrial Training Act 1975*;

”.

- (4) Section 4(1) is amended by inserting the following definition in the appropriate alphabetical position —

“

“Mining Industry Advisory Committee” means the committee referred to in section 14A(2) of the *Occupational Safety and Health Act 1984*;

”.

- (5) Section 4(1) is amended in the definition of “mining operations” by inserting after paragraph (e) the following paragraph —

“

- (ea) the transport of ore or other mining product that takes place on a road that is not a road as defined in the *Road Traffic Act 1974*; and

”.

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- (6) Section 4(1) is amended by deleting the definition of “self-employed person” and inserting instead —

“

“**self-employed person**” means an individual who works for gain or reward otherwise than —

- (a) under a contract of employment; or
- (b) as an apprentice or trainee, whether or not the individual is an employer;

”.

- (7) Section 4(1) is amended by deleting the definition of “supply” and inserting instead —

“

“**supply**”, in relation to any plant or substance, includes supply and re-supply by way of —

- (a) sale (including by auction), exchange, lease, hire, or hire-purchase, whether as principal or agent;
- (b) the disposal in a manner referred to in paragraph (a) of assets of a business that include any plant or substance; and
- (c) the disposal of all of the shares in a company that owns any plant or substance;

”.

89. Section 6A inserted

After section 6 the following section is inserted —

“

6A. Application of this Act to a workplace under the Occupational Safety and Health Act 1984

- (1) In this section —

“**specified**” means specified in an instrument under this section;

“workplace” has the meaning given by the
Occupational Safety and Health Act 1984.

- 5 (2) The Minister and the Minister for the time being
administering the *Occupational Safety and Health*
Act 1984 may, by instrument in writing, jointly declare
that for a specified period —
- (a) this Act; or
- (b) any specified provision of this Act,
- 10 applies, to the exclusion of any inconsistent provision
of the *Occupational Safety and Health Act 1984*, to or
in relation to —
- (c) a specified workplace, or a specified part of a
workplace, as if it were a mine or a part of a
mine;
- 15 (d) a specified activity as if it were a mining
operation; and
- (e) a specified act, matter or thing as if it were an
act, matter or thing to which this Act applies.
- 20 (3) The reference in subsection (2) to any inconsistent
provision of the *Occupational Safety and Health*
Act 1984 does not include any provision of Part II of
that Act.
- 25 (4) An instrument under this section may contain
provisions of a savings or transitional nature in relation
to the application of this Act or the *Occupational*
Safety and Health Act 1984 to any person, activity,
matter or thing.
- 30 (5) An instrument under this section is subsidiary
legislation for the purposes of the *Interpretation*
Act 1984.

”.

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90. Section 21 amended

- (1) After section 21(1)(c) the following paragraph is inserted —

“

- 5 (ca) provide information to any person for the
purpose of facilitating compliance with this
Act;

”.

- (2) Section 21(1)(i) is deleted and the following paragraphs are
inserted instead —

“

10

- (i) in accordance with subsections (1a) and (1b),
interview any person who the district inspector
or special inspector (the “**inspector**”) has
reasonable grounds to believe —

15

- (i) is, or was at any time during the
preceding 3 years —

(I) an employee working at a
mine; or

20

(II) an employee occupying
residential premises mentioned
in section 15D(2),

in relation to which the inspector is
inquiring;

25

- (ii) was at such a mine or such residential
premises at a time that is relevant to a
matter about which the inspector is
inquiring; or

30

- (iii) may otherwise be able to provide
information relevant to a matter about
which the inspector is inquiring;

- (ia) require the attendance of any person for an
interview under paragraph (i);

”.

(3) After section 21(1) the following subsections are inserted —

“

(1a) An interview referred to in subsection (1)(i) is to be conducted in private if —

5 (a) the inspector considers that to be appropriate;
 or

 (b) the person to be interviewed so requests,

but this subsection does not limit the operation of subsection (3).

10 (1b) Subsection (1a) may be invoked during an interview by —

 (a) the inspector; or

 (b) the person being interviewed,

15 in which case that subsection applies to the remainder of the interview.

”.

91. Section 102A inserted

After the heading to Part 10 the following section is inserted —

“

20 **102A. Visitors to comply with directions**

(1) In this section —

“**authorised person**”, in relation to a mine, means —

 (a) a managerial officer at the mine;

25 (b) an employer of any employee at the mine,
 including a person who is an employer by operation of section 15A, 15B or 15C; and

 (c) any self-employed person carrying out work at the mine;

30 “**conduct**” includes a failure to do a particular act or thing;

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“employee” includes a person who is an employee by operation of section 15A, 15B or 15C;

“managerial officer”, in relation to a mine, means —

- (a) the principal employer at the mine;
- 5 (b) the registered manager and any underground manager or quarry manager at the mine; and
- (c) a person appointed as an alternate or deputy of an officer referred to in paragraph (b).

(2) Subsection (3) applies if —

- 10 (a) a person (a **“visitor”**) is at a mine otherwise than in the capacity of —
 - (i) a managerial officer;
 - (ii) an employer;
 - (iii) an employee; or
 - 15 (iv) a self-employed person;and
- (b) an authorised person believes on reasonable grounds that —
 - (i) any conduct of the visitor at the mine; or
 - 20 (ii) the presence of the visitor at the mine or a particular part of the mine,constitutes a hazard to any person.

(3) The authorised person may direct the visitor —

- 25 (a) to immediately cease engaging in the conduct concerned; or
- (b) to immediately leave the mine and not to return as a visitor to the mine until permitted by the authorised person to do so.

- (4) A person who, without reasonable excuse, fails to comply with a direction given to the person under subsection (3) commits an offence.

”.

5 **92. Section 104 amended**

After section 104(1)(c) the following paragraph is inserted —

“

- (ca) without limiting paragraph (c), imposing duties on persons in relation to —

- 10 (i) the identification of hazards at mines;
 (ii) the assessment of risks resulting from such hazards; and
 (iii) the taking of remedial or other action;

”.

15 **93. Section 110 amended**

Section 110 is amended as follows:

- (a) in subsection (1) by deleting “the expiration of 5 years from its commencement, and in the course of that” and inserting instead —

20

“

1 December 2009 and every fifth anniversary of that day, and in the course of such a

”;

25

- (b) in subsection (2) by deleting “the review” and inserting instead —

“ such a review ”.

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94. Occupational Safety and Health Act 1984 amended

- (1) The amendment in this section is to the *Occupational Safety and Health Act 1984**.

[* Reprinted as at 22 March 1999.

5 For subsequent amendments see *Western Australian
Legislation Information Tables for 2003, Table 1, p. 267.*]

- (2) After section 4(1a) the following subsection is inserted —

“

- 10 (1b) This Act has effect subject to any instrument for the
time being in force under section 6A of the *Mines
Safety and Inspection Act 1994*.

”.
