



Mining and Quarrying Safety and Health Act 1999

Current as at [Not applicable]

Indicative reprint note

This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Mines Legislation (Resources Safety) Amendment Bill 2018. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act.***

The point-in-time date for this indicative reprint is the introduction date for the Mines Legislation (Resources Safety) Amendment Bill 2018—20 March 2018.

Detailed information about indicative reprints is available on the ***Information*** page of the Queensland legislation website.

© State of Queensland 2018



This work is licensed under a Creative Commons Attribution 4.0 International License.



Queensland

Mining and Quarrying Safety and Health Act 1999

Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	15
2	Commencement	15
Division 2	Operation of Act	
3	Act binds all persons	15
4	What does this Act apply to	16
5	Who does this Act apply to	16
5A	Relationship with Rail Safety National Law (Queensland)	16
Division 3	Objects of Act	
6	Objects of Act	17
7	How objects are to be achieved	17
Division 4	Interpretation	
Subdivision 1	Dictionary	
8	Definitions—the dictionary	18
Subdivision 2	Other important terms	
9	Meaning of mine	18
10	Meaning of operations	19
11	Meaning of quarry	21
12	Meaning of safety and health	22
13	Meaning of competence	22
14	Meaning of consultation	22
15	Meaning of standard work instruction	22
16	Meaning of accident	22
17	Meaning of serious accident	22
18	Meaning of high potential incident	23

Not authorised—indicative only

Contents

19	Meaning of risk	23
20	Meaning of hazard	23
21	Meaning of operator	23
22	Meaning of site senior executive	24
23	Meaning of supervisor	25
24	Meaning of district workers' representative	25
25	Meaning of site safety and health representative	25
Part 2	Basic concepts	
Division 1	Control and management of risk	
26	What is an acceptable level of risk	26
27	Risk management	26
28	What happens if the level of risk is unacceptable	27
Division 2	Cooperation	
29	Cooperation to achieve objects of Act	27
Part 3	Safety and health obligations	
Division 1	Preliminary	
30	Obligations for safety and health	28
31	Discharge of obligations	29
32	Person may owe obligations in more than 1 capacity	30
33	Person not relieved of obligations	30
34	How obligation can be discharged if regulation or guideline made	31
35	How obligations can be discharged if no regulation or guideline made	31
Division 2	Generally applicable safety and health obligations	
36	Obligations of persons generally	32
Division 3	Obligations of holders, operators, site senior executives and others	
37	Obligations of holders	33
38	Obligations of operators	34
39	Obligations of site senior executive for mine	35
40	Obligations of contractors	37
41	Obligations of designers, manufacturers, importers and suppliers of plant etc. for use at mines	38
42	Obligations of erectors and installers of plant	40
42A	Obligations of designers, constructors and erectors of earthworks	40
43	Obligations of manufacturers, importers and suppliers of substances for use at mines	41
44	Obligations of service providers	42

Division 3A	Obligations of officers of corporations	
44A	Obligation of officers of corporations	44
Division 4	Defences	
45	Defences for div 2, 3 or 3A	45
Part 4	Provisions about the operation of mines	
Division 1	Notices about mines	
46	Notices by holder	46
47	Notices by operator	47
47A	Notice about underground gasification activities	48
Division 2	Management of mines	
48	Appointment of operator	49
49	Appointment of site senior executive	49
50	Management structure for safe operations at mines	50
51	Competencies of supervisors	51
52	Appointment of another site senior executive during temporary absence 51	
53	Additional requirements for management of underground mines	51
54	Appointment of another underground mine manager during temporary absence	52
54A	Appointment of ventilation officer	52
54B	Absence of ventilation officer	54
Division 3	Safety and health management systems	
55	Safety and health management system	55
56	Review of safety and health management system	56
Division 4	Records and reporting	
57	Management structure to be recorded in the mine record	57
58	Plans of mine workings	57
59	Mine record	59
60	Display of reports and directives	60
Division 5	Protection of abandoned mines	
61	Responsibility for protecting abandoned mines	60
Part 5	Guidelines	
62	Purpose of guidelines	61
63	Guidelines	61
64	Use of guidelines in proceedings	62
Part 6	Industry consultative arrangements	

Contents

Division 1	Purposes of part	
65	Purposes of pt 6	62
Division 2	Mining safety and health advisory committee and its functions	
66	Mining safety and health advisory committee	62
67	Functions of committee	62
68	Annual report	63
Division 3	Membership and conduct of committee proceedings	
69	Membership of committee	64
70	Organisations to submit names to Minister	64
71	Appointment of members—persons from panels	64
71A	Appointment of members—inspectors	65
72	Duration of appointment	66
73	Conditions of appointment	66
74	Member ceasing as member	66
74A	Substitute members	66
75	Times and places of meetings of the committee	67
76	Presiding at meetings of the committee	67
77	Quorum and voting at meetings of the committee	68
78	Recommendation to Minister if vote not unanimous	68
79	Taking part in meetings by telephone etc.	68
80	Resolutions without meetings	69
81	Minutes by the committee	69
82	Subcommittees	69
Part 7	Site safety and health representatives and committees	
Division 1	Purpose of part	
83	Purpose of pt 7	70
Division 2	Site safety and health representatives	
84	Selection or election of site safety and health representatives . .	70
85	How site safety and health representatives are selected or elected	71
86	Site safety and health representative must obtain qualifications .	71
87	Site safety and health representative must perform functions and exercise powers appropriately	72
88	Ceasing to be a site safety and health representative	72
89	Removal from office by Minister	72
90	Selection or election after removal from office	72
91	Functions and powers for area of representation	73

92	Functions of site safety and health representatives	73
93	Powers of site safety and health representative	74
94	Stopping operations by site safety and health representatives . .	75
95	When operations may be restarted	75
96	Site safety and health representative not to unnecessarily impede production	76
97	Protection of site safety and health representatives performing functions 76	
Division 3	Site safety and health committees	
98	Site safety and health committees	76
99	Membership of site safety and health committee	77
100	Functions of site safety and health committee	77
101	Times of meetings	78
102	Proceedings at meetings	78
103	Minutes to be made available	78
Division 4	Duties of site senior executive	
104	Provision for help to representatives and committees	78
105	Site senior executive to tell site safety and health representatives about certain things	79
106	Site senior executive to display identity of site safety and health representatives	80
Part 8	District workers' representatives	
Division 1	Purposes of part	
107	Purposes of pt 8	80
Division 2	District workers' representatives	
108	Nomination and appointment of district workers' representatives	81
109	Funding of district workers' representative	81
110	Termination of appointment	81
111	Appointment after termination	82
112	Filling of temporary vacancy	82
113	Persons not to pretend to be district workers' representatives if not appointed	82
114	District workers' representative restricted to safety and health purposes 83	
115	Functions of district workers' representatives	83
116	Powers of district workers' representatives	84
117	District workers' representative not to unnecessarily impede production 85	

Not authorised—indicative only

Contents

118	Inadequate or ineffective safety and health management systems	85
119	Identity cards	85
120	Failure to return identity card	86
121	Production or display of identity card	86
Part 9	Inspectors and other officers and directives	
Division 1	Inspectors and inspection officers	
122	Appointments	86
123	Qualifications for appointment as inspector	87
124	Qualifications for appointment as inspection officer	87
124A	Appointment conditions and limit on powers and functions	87
125	Functions of inspectors and inspection officers	87
126	Further functions of inspectors	88
Division 2	Authorised officers	
126A	Appointments	89
126B	Qualifications for appointment as authorised officer	89
126C	Appointment conditions and limit on functions and powers	89
126D	Functions of authorised officers	90
126E	Information about functions and powers	90
Division 3	Identity cards for inspectors, inspection officers and authorised officers	
127	Identity cards	91
128	Failure to return identity card	91
129	Production or display of identity card	91
Division 4	Powers of inspectors, inspection officers and authorised officers	
Subdivision 1	Preliminary	
129A	Definition for div 4	92
Subdivision 2	Power to enter places	
130	Entry to places	92
Subdivision 3	Procedure for entry	
131	Consent to entry	93
132	Application for warrant	94
133	Issue of warrant	94
134	Special warrants	95
135	Warrants—procedure before entry	96
135A	Entry to residential premises	97
Subdivision 4	General powers	

136	General powers after entering mine or other places	98
137	Failure to help officer	99
138	Failure to answer questions	99
139	Site senior executive must help officer	99
Subdivision 5	Power to seize evidence	
140	Seizing evidence at mine or other place	99
141	Securing things after seizure	100
142	Tampering with things subject to seizure	100
143	Powers to support seizure	100
144	Receipts to be given on seizure	101
145	Forfeiture	101
146	Return of seized things	102
147	Access to things that have been seized	103
Subdivision 6	Power to stop and secure plant and equipment	
148	Officer may stop and secure plant and equipment	104
Subdivision 7	Power to obtain information	
149	Power to require name and address	104
150	Failure to give name or address	105
151	Power to require production of documents	105
152	Failure to produce document	106
153	Failure to certify copy of document	106
154	Power to require attendance of persons before an officer to answer questions	107
155	Failure to comply with requirement about attendance	107
156	Use of particular evidence in proceedings	108
Subdivision 8	Additional powers of chief inspector	
157	Additional powers of chief inspector	108
Division 5	Directives by inspectors, inspection officers and district workers' representatives	
Subdivision 1	Power to give and way of giving directives	
158	Directive may be given	109
159	How directive is given	109
160	How directive is given for ss 163, 164 and 167	109
Subdivision 2	Matters for which directives may be given	
161	Directive to ensure worker competent	109
162	Directive to carry out test	110

Contents

163	Directive to reduce risk	110
164	Directive to suspend operations for unacceptable level of risk . .	110
165	Directive to review safety and health management system	111
166	Directive to suspend operations for ineffective safety and health management system	111
167	Directive to isolate site	111
168	Directive about separate part of the mine	112
169	Directive to provide independent engineering study	112
Subdivision 3	Recording of directives and other matters	
170	Records must be kept	113
171	Directives	113
Subdivision 4	Review of directives	
172	Application for review	114
173	Procedure for review	115
174	Review of directive	115
175	Stay of operation of directive	116
Division 6	General enforcement offences	
176	False or misleading statements	117
177	False or misleading documents	117
178	Obstructing inspectors, officers or district workers' representatives	118
Part 10	Board of examiners	
179	Purpose of pt 10	118
180	Functions of the board of examiners	118
181	Examiners to be qualified	119
181A	Board of examiners may consider previous suspension, cancellation or surrender of certificate of competency or site senior executive notice 119	
182	Obtaining certificates of competency or site senior executive notices by fraud	120
183	Return of certificate of competency or site senior executive notice	120
184	Effect on particular appointments of suspension, cancellation or surrender of certificate of competency or site senior executive notice 121	
185	Register to be kept by board of examiners	121
Part 10A	Suspension and cancellation of certificates of competency and site senior executive notices by chief executive	
186	Grounds for suspension or cancellation	122
187	Notice of proposed action	123

188	Submission against taking of proposed action	124
189	Decision to take proposed action	124
Part 11	Accidents and incidents	
Division 1	Notification, information and inspections	
195	Notice of accidents, incidents, deaths or diseases	125
195A	Requirement to give primary information	128
196	Place of accident must be inspected	130
Division 2	Site of accident or incident	
197	Site not to be interfered with without permission	130
198	Action to be taken in relation to site of accident or incident	131
Part 12	Boards of inquiry	
Division 1	General	
199	Minister may establish boards of inquiry	132
200	Role of board of inquiry	132
201	Conditions of appointment	133
202	Chief executive to arrange for services of staff and financial matters for board of inquiry	133
Division 2	Conduct of inquiry	
203	Procedure	133
204	Notice of inquiry	134
205	Inquiry to be held in public except in special circumstances	134
206	Protection of members, legal representatives and witnesses	134
207	Record of proceedings to be kept	135
208	Representation	135
209	Board's powers on inquiry	135
210	Notice to witness	135
211	Inspection of documents or things	136
212	Inquiry may continue despite court proceedings unless otherwise ordered	136
213	Offences by witnesses	136
214	Contempt of board	137
215	Change of membership of board	137
Part 13	Appeals	
Division 1	Appeals against particular decisions of Minister, chief executive or board of examiners	
216	Appeals against Minister's decisions	138
216A	Appeals against chief executive's decisions	138

Contents

217	Appeals against board of examiners' decision	138
218	How to start appeal	139
219	Stay of operation of decision	139
220	Hearing procedures	140
221	Powers of court on appeal	140
222	Appeal to District Court on questions of law only	141
Division 2	Appeals against chief inspector's directives and particular decisions	
223	Who may appeal	141
224	How to start appeal	141
225	Stay of operation of directive or review decision	142
226	Hearing procedures	143
227	Assessors	143
228	Powers of court on appeal	143
Part 14	Legal proceedings	
Division 1	Evidence	
228A	Application of div 1	144
229	Proof of appointments and authority unnecessary	144
230	Proof of signatures unnecessary	144
231	Evidentiary aids	145
232	Expert reports	146
233	Analyst's certificate or report	147
Division 2	Proceedings	
234	Proceedings for offences	147
235	Recommendation to prosecute	148
236	Limitation on time for starting proceedings	148
237	Court may order suspension or cancellation of certificate or notice	149
238	Forfeiture on conviction	149
239	Dealing with forfeited things	150
240	Responsibility for acts or omissions of representatives	150
242	Representation	151
243	Costs of investigation	151
244	Recovery of fees	151
Division 3	Evidentiary provisions	
245	Service of documents	152
246	How document to be given to operator	152

Part 14A	Injunctions	
246A	Applying for injunction	153
246B	Grounds for injunction	153
246C	Court's powers for injunction	153
246D	Terms of injunction	154
Part 14B	Civil penalties	
246E	Definitions for part	155
246F	Liability for civil penalties	155
246G	Giving of notice proposing imposition of civil penalty	156
246H	Submission against proposed imposition of civil penalty	156
246I	Giving of penalty notice	157
246J	Civil penalty can not be imposed after criminal proceeding	158
246K	Criminal proceeding after civil penalty imposed	158
Part 15	Offences	
247	Person not to encourage refusal to answer questions	159
248	Impersonating inspectors, officers or representatives	159
249	Protection for officers	159
Part 16	General	
Division 1	General safety matters	
250	Person must not employ underage persons underground	160
250A	Underage persons not to operate or maintain plant	160
251	Workers may request information	160
252	Action where risk is unacceptable	160
253	Where worker exposed to immediate personal danger	162
254	Representations about safety and health matters	162
254A	Protection from reprisal	163
254B	Damages entitlement for reprisal	164
Division 2	Miscellaneous	
254C	Public statements	164
255	Disclosure of information	165
256	Protection from liability	166
Part 17	Administration	
257	Delegations	166
258	Delegation of chief inspector's powers	167
259	Notices about industry statistics or information	167
260	Chief executive to keep records	168

Contents

261	Approved forms	168
Part 18	Regulations	
262	Regulation-making power	169
Part 19	Transitional and repeal provisions for Act No. 40 of 1999	
Division 1	Definitions	
263	Definitions for pt 19	171
Division 2	Transitional matters	
264	Existing certificates of competency	172
265	Approvals by inspector	172
266	Board of examiners	172
267	Existing chief inspector to be chief inspector	172
268	Existing inspector to be inspector	173
269	Existing inspection officer to be inspection officer	173
270	Existing district workers' representative	173
271	Mine record book taken to be mine record	173
272	Warden may finish inquiry into accident	173
Division 3	Repeal	
273	Repeal	174
Part 20	Other transitional and validation provisions	
Division 1	Transitional provisions for Mines and Energy Legislation Amendment Act 2011	
274	Definitions for div 1	174
275	Existing certificates of competency	174
276	Existing decisions and assessments of the former board	175
277	References to mining safety and health advisory council	175
278	Continuation of mining safety and health advisory council and appointment of members	175
Division 2	Transitional provision for Mines and Energy Legislation Amendment Act 2011	
279	Application of appeal costs provision to undecided appeals	176
Division 3	Transitional and validation provision for Water Reform and Other Legislation Amendment Act 2014	
280	Return of seized things	176
Division 4	Validation provision for Land and Other Legislation Amendment Act 2017	
281	Validation of particular appointments	177
Division 5	Transitional provisions for Mines Legislation (Resources Safety) Amendment Act 2018	

282	Definition for division	178
283	Appointment of site senior executives during 1-year transitional period 178	
284	Appointment of ventilation officers for underground mines during 3-year transitional period	178
285	Continuation of exemptions for particular opal or gem mines for 3-year transitional period	178
Schedule 2	Dictionary	180

Not authorised—indicative only

Not authorised—indicative only

Mining and Quarrying Safety and Health Act 1999

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

Part 1 Preliminary

Division 1 Introduction

1 Short title

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

2 Commencement

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

Division 2 Operation of Act

3 Act binds all persons

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

[s 4]

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

4 What does this Act apply to

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

5 Who does this Act apply to

This Act applies to—

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

5A Relationship with Rail Safety National Law (Queensland)

- (1) This section applies if—
- (a) this Act, in the absence of this section, would apply to a mining railway; and
 - (b) the Rail Safety National Law (Queensland) also applies to the mining railway.
- (2) This Act does not apply to the mining railway to the extent that the Rail Safety National Law (Queensland) applies.
- (3) In this section—
- mining railway* means a railway that is in a mine other than a railway mentioned in the Rail Safety National Law (Queensland), section 7(1)(a).

Division 3 Objects of Act

6 Objects of Act

The objects of this Act are—

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

7 How objects are to be achieved

The objects of this Act are to be achieved by—

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

[s 8]

- (i) providing for appropriate emergency preparedness; and
- (j) *providing for the health assessment and health surveillance of persons who are, will be or have been workers.*

Division 4 Interpretation

Subdivision 1 Dictionary

8 Definitions—the dictionary

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

Subdivision 2 Other important terms

9 Meaning of *mine*

- (1) A *mine* is any of the following places—
 - (a) a place where operations are carried on, continuously or from time to time, within the boundaries of land the subject of a mining tenure;
 - (b) a place where operations are carried on, continuously or from time to time, on land adjoining, adjacent to, or contiguous with, the boundaries of land the subject of a mining tenure and within which is a place mentioned in paragraph (a);
 - (c) a place where operations are carried on, continuously or from time to time, unlawfully because land at the place is not the subject of a mining tenure;
 - (d) a place that was a mine while works are done to secure it after its abandonment;

-
- (e) a place where tourism, education or research related to mining happens that is declared under a regulation to be a mine;
 - (f) a quarry;
 - (g) a place that was a mine, or part of a mine, while—
 - (i) operations are carried on, continuously or from time to time; and
 - (ii) an authorisation to enter land under the *Mineral Resources Act 1989*, section 344A(3) is in force for the place.
- (2) A **mine** includes buildings for administration, accommodation and associated facilities at a place mentioned in subsection (1) or adjoining, adjacent to, or contiguous with, the place.
- (3) Despite subsection (1)(d), a place that was a mine is not a **mine** after its abandonment merely because work is being done at the place by or for the State—
- (a) to ensure public safety; or
 - (b) to rehabilitate it; or
 - (c) to secure it.
- (4) A **mine** does not include a mine or part of a mine declared under a regulation to be a mine or part of a mine to which this Act does not apply.

Note—

If a declaration is made, the *Work Health and Safety Act 2011* applies to the place because schedule 1, part 2, division 1, section 2(1)(b) of that Act would not apply.

10 Meaning of **operations**

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

[s 10]

- (a) extracting, loading, transporting, crushing, concentrating, storing, smelting, electrowinning, leaching and processing of minerals or hard rock;
 - (b) disposing of mineral or waste products in connection with winning, extracting or processing minerals or hard rock;
 - (c) constructing, erecting, maintaining or demolishing of any dam, excavation, building, plant, machinery or equipment that is required for winning, or winning and treating, minerals or hard rock or the disposal of mineral or waste products;
 - (d) rehabilitating of a place after operations.
- (2) The following are not *operations*—
- (a) winning clay for and manufacture of bricks and other ceramics;
 - (b) airborne geophysical surveys;
 - (c) fossicking;
 - (d) smelting, refining, stockpiling and processing operations on land that—
 - (i) are not adjoining, adjacent to, or contiguous with, mines where minerals or hard rock are excavated; or
 - (ii) are adjoining, adjacent to or contiguous with, but are not an integral part of, mines where minerals or hard rock are excavated;
 - (e) transport to and from a mine on public roads or public railways or within a pipeline;
 - (f) air transport to and from a mine;
 - (g) pastoral activities;
 - (h) underground gasification activities on land the subject of—
 - (i) a mineral development licence or mining lease for activities relating to mineral (f); or

- (ii) an exploration permit if the chief inspector has made a declaration under section 47A;
- (i) an operation exempted by regulation.

11 Meaning of *quarry*

- (1) A *quarry* is a place on land where operations are carried on, continuously or from time to time, to produce construction or road building material.

Examples of construction or road building material—

aggregates, road base, manufactured sand, rail ballast, armour rock, landscaping products

- (2) However, a place on land where operations are carried on, continuously or from time to time, to produce construction or road building material is not a *quarry* if the operations are carried on—
- (a) to produce construction or road building material substantially for use at a construction site at the place, or that adjoins, is adjacent to, or contiguous with, the place; or
 - (b) to excavate building foundations as part of construction work; or
 - (c) to extract, but not crush, river sand or gravel; or
 - (d) to redevelop the place as a place for any of the following—
 - (i) housing;
 - (ii) a shopping complex;
 - (iii) an industrial estate;
 - (iv) a recreation area;
 - (v) a landfill site.

- (3) In this section—

construction site means a place on land where construction work is performed.

[s 12]

construction work see the *Work Health and Safety Regulation 2011*.

12 Meaning of *safety and health*

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

13 Meaning of *competence*

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

14 Meaning of *consultation*

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

15 Meaning of *standard work instruction*

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

16 Meaning of *accident*

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

17 Meaning of *serious accident*

A *serious accident* at a mine is an accident at a mine that causes—

- (a) the death of a person; or

-
- (b) a person to be admitted to a hospital as an inpatient for treatment for the injury.

18 Meaning of *high potential incident*

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

19 Meaning of *risk*

- (1) *Risk* means the risk of injury or illness to a person arising out of a hazard.
- (2) Risk is measured in terms of consequences and likelihood.

20 Meaning of *hazard*

Hazard means a thing or a situation with potential to cause injury or illness to a person.

21 Meaning of *operator*

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

[s 22]

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

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

(3) If—

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

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

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

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

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

22 Meaning of *site senior executive*

- (1) The *site senior executive* for a mine is the most senior officer employed or otherwise engaged by the operator for the mine who—
 - (a) is located at or near the mine; and

-
- (b) has responsibility for the mine.
- (2) Subsection (1)(a) does not require an officer with responsibility for exploration activities under a prospecting permit, an exploration permit or mineral development licence to be located at or near the mine.
- (3) If the officer only has responsibility for a separate part of a mine, the officer's responsibilities and safety and health obligations under this Act as a site senior executive for a mine are limited to the separate part of the mine for which the officer has responsibility.

23 Meaning of *supervisor*

A *supervisor* at a mine is a worker who is authorised by the site senior executive to give directions to other workers.

24 Meaning of *district workers' representative*

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

25 Meaning of *site safety and health representative*

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

Part 2 Basic concepts

Division 1 Control and management of risk

26 What is an acceptable level of risk

- (1) For risk to a person from operations to be at an *acceptable level*, the operations must be carried out so that the level of risk from the operations is—
 - (a) within acceptable limits; and
 - (b) as low as reasonably achievable.
- (2) To decide whether risk is within acceptable limits and as low as reasonably achievable regard must be had to—
 - (a) the likelihood of injury or illness to a person arising out of the risk; and
 - (b) the severity of the injury or illness.

27 Risk management

- (1) Risk is effectively managed when all persons individually and as part of their respective workgroups and organisations, take action to keep risk at an acceptable level.
- (2) In particular, effective risk management is achieved when persons apply risk management procedures and practices that are appropriate for the nature of the risk, operation or task being performed.
- (3) Risk management is the systematic application of policies, procedures and practices to—
 - (a) identify, analyse, and assess risk; and
 - (b) avoid or remove unacceptable risk; and
 - (c) monitor levels of risk and the adverse consequences of retained residual risk; and

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

28 What happens if the level of risk is unacceptable

- (1) If there is an unacceptable level of risk to persons at a mine, this Act requires that—
 - (a) persons be evacuated to a safe location; and
 - (b) action be taken to reduce the risk to an acceptable level.
- (2) Action to reduce the risk to an acceptable level may include stopping the use of specified plant or substances.
- (3) The action may be taken by the operator for the mine, the site senior executive for the mine, district workers' representatives, site safety and health representatives, workers, inspectors or inspection officers.

Division 2 Cooperation

29 Cooperation to achieve objects of Act

- (1) This Act seeks to achieve cooperation between operators, site senior executives and workers to achieve the objects of the Act.
- (2) Cooperation is an important strategy in achieving the objects of the Act and is achieved—
 - (a) at an industry level by—
 - (i) the establishment of the mining safety and health advisory committee under part 6; and

[s 30]

- (ii) the appointment of district workers' representatives under part 8; and
- (b) at mine level by—
 - (i) the selection or election of site safety and health representatives and the establishment of site safety and health committees under part 7; and
 - (ii) the process of involving workers in the management of risk.

Part 3 Safety and health obligations

Division 1 Preliminary

30 Obligations for safety and health

- (1) Workers or other persons at mines or persons who may affect safety and health at mines or as a result of operations, have obligations under division 2 (*safety and health obligations*).
- (2) The following persons have obligations under division 3 (also *safety and health obligations*)—
 - (a) holder;
 - (b) operator;
 - (c) site senior executive;
 - (d) contractor;
 - (e) designer, manufacturer, importer and supplier of plant for use at a mine;
 - (f) erector and installer of plant at a mine;
 - (g) manufacturer, importer and supplier of substances for use at a mine;
 - (h) person who supplies a service at a mine.

- (3) *If a corporation has an obligation under this Act, an officer of the corporation has obligations under division 3A (also **safety and health obligations**).*

31 Discharge of obligations

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

Maximum penalty—

- (a) *if the contravention caused multiple deaths—*
- (i) *for an offence committed by a corporation—30,000 penalty units; or*
 - (ii) *for an offence committed by an officer of a corporation—6,000 penalty units or 3 years imprisonment; or*
 - (iii) *otherwise—3,000 penalty units or 3 years imprisonment; or*
- (b) *if the contravention caused death or grievous bodily harm—*
- (i) *for an offence committed by a corporation—15,000 penalty units; or*
 - (ii) *for an offence committed by an officer of a corporation—3,000 penalty units or 2 years imprisonment; or*
 - (iii) *otherwise—1,500 penalty units or 2 years imprisonment; or*
- (c) *if the contravention caused bodily harm—*
- (i) *for an offence committed by a corporation—7,500 penalty units; or*
 - (ii) *for an offence committed by an officer of a corporation—1,500 penalty units or 1 year's imprisonment; or*
 - (iii) *otherwise—750 penalty units or 1 year's imprisonment; or*

[s 32]

- (d) *if the contravention involved exposure to a substance that is likely to cause death or grievous bodily harm—*
 - (i) *for an offence committed by a corporation—7,500 penalty units; or*
 - (ii) *for an offence committed by an officer of a corporation—1,500 penalty units or 1 year’s imprisonment; or*
 - (iii) *otherwise—750 penalty units or 1 year’s imprisonment; or*
- (e) *otherwise—*
 - (i) *for an offence committed by a corporation—5,000 penalty units; or*
 - (ii) *for an offence committed by an officer of a corporation—1,000 penalty units or 6 months imprisonment; or*
 - (iii) *otherwise—500 penalty units or 6 months imprisonment.*

32 Person may owe obligations in more than 1 capacity

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

Example—

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

33 Person not relieved of obligations

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

34 How obligation can be discharged if regulation or guideline made

- (1) If a regulation prescribes a way of achieving an acceptable level of risk, a person may discharge the person's safety and health obligation in relation to the risk only by following the prescribed way.
- (2) If a regulation prohibits exposure to a risk, a person may discharge the person's safety and health obligation in relation to the risk only by ensuring that the prohibition is not contravened.
- (3) Subject to subsections (1) and (2), if a guideline states a way or ways of achieving an acceptable level of risk, a person discharges the person's safety and health obligation in relation to the risk only by—
 - (a) adopting and following a stated way; or
 - (b) adopting and following another way that achieves a level of risk that is equal to or better than the acceptable level.

Note—

For this section and the following section, see defences provided for under division 4.

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

- (1) This section applies if there is no regulation or guideline prescribing or stating a way to discharge the person's safety and health obligation in relation to a risk.
- (2) The person may choose an appropriate way to discharge the person's safety and health obligation in relation to the risk.
- (3) However, the person discharges the person's safety and health obligation in relation to the risk only if the person takes reasonable precautions, and exercises proper diligence, to ensure the obligation is discharged.

Division 2 Generally applicable safety and health obligations

36 Obligations of persons generally

- (1) A worker or other person at a mine or a person who may affect safety and health of persons at a mine or as a result of operations, has the following obligations—
 - (a) to comply with this Act, standard work instructions, and procedures applying to the worker or person that form part of a safety and health management system for the mine;
 - (b) if the worker or other person has information that other persons need to know to fulfil their obligations or duties under this Act, or to protect themselves from the risk of injury or illness—to give the information to the other persons;
 - (c) to take any other reasonable and necessary course of action to ensure that persons are not exposed to unacceptable levels of risk.
- (2) A worker or other person at a mine has the following additional obligations at the mine—
 - (a) to manage the risk of injury or illness to himself or herself or any other person in the worker's or other person's own work and activities, so that the risk is at an acceptable level;
 - (b) to ensure, to the extent of the responsibilities and duties allocated to the worker or other person, that the risk of injury or illness to any person is managed in the work and activities under the worker's or other person's control, supervision, or leadership, so that the risk is at an acceptable level;
 - (c) to the extent of the worker's or other person's involvement, to participate in and conform to the risk management practices of the operations;

- (d) to comply with instructions given for safety and health of persons by the mine operator or site senior executive for the mine or a supervisor at the mine;
- (e) to work at the mine only if the worker or other person is in a fit condition to carry out the work without affecting the safety and health of others;
- (f) not to do anything wilfully or recklessly that might adversely affect the safety and health of someone else at the mine.

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

37 Obligations of holders

- (1) *This section applies if the holder proposes to appoint under section 48 another person as the operator for a mine.*
- (2) The holder must—
 - (a) for a mine that is required, under this division, to have a safety and health management system—
 - (i) *inform the proposed operator, by notice, of all relevant information available to the holder that may help the proposed operator to ensure the site senior executive for the mine develops and implements a safety and health management system for the mine; and*
 - (ii) *include in the contract with the operator an obligation on the operator to establish a safety and health management system for the mine; or*
 - (b) *for a mine that is not required, under this division, to have a safety and health management system—inform the proposed operator, by notice, of all relevant information available to the holder about known, or potential, hazards at the mine.*

Maximum penalty—100 penalty units.

- (3) A contract under subsection (2)(a)(ii) must be in writing.

38 Obligations of operators

- (1) An operator for a mine has the following obligations—
- (a) to ensure the risk to workers while at the operator's mine is at an acceptable level, including, for example, by—
 - (i) providing a safe place of work and safe plant; and
 - (ii) maintaining plant in a safe state;
 - (b) to ensure the operator's own safety and health and the safety and health of others is not affected by the way the operator conducts operations;
 - (c) to appoint a site senior executive for the mine;
 - (d) to ensure the site senior executive for the mine—
 - (i) develops and implements a safety and health management system for the mine; and
 - (ii) develops, implements and maintains a management structure for the mine that helps ensure the safety and health of persons at the mine;
 - (e) to audit and review the effectiveness and implementation of the safety and health management system to ensure the risk to persons from operations is at an acceptable level;
 - (f) to provide adequate resources to ensure the effectiveness and implementation of the safety and health management system.
- (2) Without limiting subsection (1), an operator has an obligation not to operate a mine without a safety and health management system for the mine.
- (3) *Subsection (1)(d) to (f) and subsection (2) do not apply to an operator of a mine that is an opal or gem mine, if no more than 4 workers are employed at the mine.*
- (4) However, a regulation may specify an opal or gem mine mentioned in subsection (3) to be a mine to which

subsection (1)(d) to (f) and subsection (2) apply because of the size, nature or complexity of the mine's operations.

39 Obligations of site senior executive for mine

- (1) A site senior executive for a mine has the following obligations in relation to the safety and health of persons who may be affected by operations—
- (a) to ensure the risk to persons from operations is at an acceptable level;
 - (b) *to ensure the risk to persons from any plant or substance provided by the site senior executive for the performance of work is at an acceptable level;*
 - (c) *to develop and implement a safety and health management system for all persons at the mine, including contractors and service providers;*
 - (d) *to give a contractor at the mine information in the site senior executive's possession about all relevant components of the mine's safety and health management system, required by the contractor to—*
 - (i) *identify risks arising in relation to any work to be undertaken by the contractor at the mine; and*
 - (ii) *comply with section 40(1)(d);*
 - (e) *to give a service provider at the mine information in the site senior executive's possession about all relevant components of the mine's safety and health management system, required by the service provider to—*
 - (i) *identify risks arising in relation to any service to be provided by the service provider at the mine; and*
 - (ii) *comply with section 44(1)(f);*
 - (f) *to review safety and health management plans of contractors and service providers within the meaning of section 40 or 44 and, if necessary, require changes to be*

- made to those plans to enable them to be integrated with the mine's safety and health management system;*
- (g) to develop, implement and maintain a management structure for the mine that helps ensure the safety and health of persons at the mine;
- (h) *to ensure no work is undertaken by a worker at the mine until the worker—*
- (i) *has been inducted in the mine's safety and health management system to the extent it relates to the work to be undertaken by the worker; and*
- (ii) *has received training about hazards and risks at the mine to the extent they relate to the work to be undertaken by the worker; and*
- (iii) *has received training so the worker is competent to perform the worker's duties;*
- (i) to provide for—
- (i) adequate planning, organisation, leadership and control of operations; and
- (ii) the carrying out of critical work at the mine that requires particular technical competencies; and
- (iii) adequate supervision and control of operations on each shift at the mine; and
- (iv) regular monitoring and assessment of the working environment, work procedures, equipment, and installations at the mine; and
- (v) appropriate inspection of each workplace at the mine including, where necessary, pre-shift inspections; and
- (vi) *adequate supervision and monitoring of contractors and service providers at the mine.*
- (2) *Subsection (1)(c) to (f) and (h)(i) does not apply to a site senior executive of a mine that is an opal or gem mine, if no more than 4 workers are employed at the mine.*

- (3) *However, a regulation may specify an opal or gem mine mentioned in subsection (2) to be a mine to which subsection (1)(c) to (f) and (h)(i) applies because of the size, nature or complexity of the mine's operations.*

40 Obligations of contractors

- (1) *A contractor at a mine has the following obligations—*
- (a) *to ensure the contractor complies with this Act to the extent it relates to the work undertaken by the contractor;*
 - (b) *to ensure the contractor complies with the mine's safety and health management system to the extent it relates to the work undertaken by the contractor;*
 - (c) *to ensure the contractor's own safety and health, and the safety and health of others, is not adversely affected by the way the contractor undertakes work at the mine;*
 - (d) *to ensure no work is undertaken by the contractor until the contractor—*
 - (i) *has given the site senior executive for the mine a safety and health management plan; and*
 - (ii) *has made all changes to the contractor's safety and health management plan required by the site senior executive to enable the plan to be integrated with the mine's safety and health management system;*
 - (e) *to ensure no work is undertaken by the contractor until the contractor and each worker engaged by the contractor—*
 - (i) *has been inducted in the mine's safety and health management system to the extent it relates to the work to be undertaken by the contractor or worker; and*
 - (ii) *has received training about hazards and risks at the mine to the extent they relate to the work to be undertaken by the contractor or worker.*

[s 41]

(2) *Subsection (1)(b), (d) and (e)(i) does not apply if the mine is not required to have a safety and health management system.*

(3) *In this section—*

safety and health management plan, of a contractor, means a plan that—

(a) *identifies the work to be undertaken by the contractor; and*

(b) *states how the contractor intends to comply with the contractor's obligations under this section.*

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

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

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

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

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

(a) to take all reasonable steps to ensure appropriate information about the safe use of the plant is available, including information about the maintenance necessary for the safe use of the plant;

(b) *if the designer, manufacturer, importer or supplier becomes aware of a hazard or defect associated with the*

plant that may create an unacceptable level of risk to users of the plant, to inform the chief inspector of—

- (i) the nature of the hazard or defect and its significance; and*
 - (ii) any modifications or controls of which the designer, manufacturer, importer or supplier is aware that have been developed to eliminate or correct the hazard or defect or manage the risk; and*
 - (iii) the name of each operator, contractor or service provider the designer, manufacturer, importer or supplier has supplied the plant to; and*
 - (iv) the steps taken to notify the operators, contractors and service providers about the matters mentioned in subparagraphs (i) and (ii);*
- (c) to take the action the chief inspector reasonably requires to prevent the use of unsafe plant anywhere.

Example of subsection (4)(c)—

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

- (5) For subsection (4)(a), information is **appropriate** if the information states—
- (a) the use for which the plant has been designed and tested; and
 - (b) any conditions that must be followed if the plant is to be used safely so that risk to persons is at an acceptable level.
- (6) If a supplier of plant becomes aware of a hazard or defect associated with the plant the supplier has supplied to an operator for a mine or to a contractor for use at a mine that may create an unacceptable level of risk to users of the plant, the supplier has an obligation to take all reasonable steps to inform the operator or contractor—
- (a) of the nature of the hazard or defect and its significance; and

[s 42]

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

42 Obligations of erectors and installers of plant

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

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

42A Obligations of designers, constructors and erectors of earthworks

- (1) A designer of earthworks at a mine has an obligation to ensure the earthworks are designed so that, when used properly, the risk to persons from the use of the earthworks is at an acceptable level.

Examples of earthworks—

tailings dam, berm

- (2) A constructor or erector of earthworks at a mine has an obligation—
 - (a) to construct or erect the earthworks in a way that is safe and does not expose persons to an unacceptable level of risk; and
 - (b) to ensure nothing about the way the earthworks are constructed or erected makes the earthworks unsafe or likely to expose persons to an unacceptable level of risk when used properly.

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

- (1) A manufacturer or importer of a substance for use at a mine has the following obligations—
 - (a) to ensure the substance is safe so that, when used properly, the risk to persons from the use of the substance is at an acceptable level;
 - (b) to ensure the substance undergoes appropriate levels of testing and examination to ensure compliance with the obligation imposed by paragraph (a).
- (2) Also, a manufacturer, importer or supplier of a substance for use at a mine has the following obligations—
 - (a) to ensure appropriate information about the safe use, storage and disposal of the substance is provided with the substance;
 - (b) *if the manufacturer, importer or supplier becomes aware of a hazard or defect associated with the substance that may create an unacceptable level of risk to users of the substance, to inform the chief inspector of—*
 - (i) *the nature of the hazard or defect and its significance; and*
 - (ii) *any modifications or controls of which the manufacturer, importer or supplier is aware that have been developed to eliminate or correct the hazard or defect or manage the risk; and*
 - (iii) *the name of each operator, contractor or service provider the manufacturer, importer or supplier has supplied the substance to; and*
 - (iv) *the steps taken to notify the operators, contractors and service providers about the matters mentioned in subparagraphs (i) and (ii);*
 - (c) to take the action the chief inspector reasonably requires to prevent the use of an unsafe substance at a mine.

Example of subsection (2)(c)—

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

- (3) For subsection (2)(a), information is **appropriate** if the information clearly identifies the substance and states—
 - (a) the precautions, if any, to be taken for the safe use, storage or disposal of the substance; and
 - (b) the risks, if any, associated with the use, storage or disposal of the substance.
- (4) *If a supplier of a substance for use at a mine becomes aware of a hazard or defect associated with the substance that may create an unacceptable level of risk to users of the substance, the supplier has an obligation to take all reasonable steps to inform each operator, contractor or service provider to whom the supplier has supplied the substance of—*
 - (a) *the nature of the hazard or defect and its significance; and*
 - (b) *any modifications or controls the supplier is aware of that have been developed to eliminate or correct the hazard or defect or manage the risk.*

44 Obligations of service providers

- (1) *A person who provides a service (a **service provider**) at a mine has the following obligations—*
 - (a) *to ensure the service provider complies with this Act to the extent it relates to the service provided;*
 - (b) *to ensure the service provider complies with the mine's safety and health management system to the extent it relates to the service provided;*
 - (c) *to ensure the safety and health of workers or other persons is not adversely affected by the service provided;*

-
- (d) *if the service provider is present at the mine—to ensure the service provider’s own safety and health is not adversely affected by the service provided;*
- (e) *to ensure the fitness for use of plant at the mine is not adversely affected by the service provided;*
- (f) *to ensure the service is not provided until the service provider—*
- (i) *has identified the risks arising in relation to any service to be provided by the service provider at the mine; and*
 - (ii) *has either given the site senior executive for the mine a safety and health management plan or notified the site senior executive that the service provider wishes to adopt the mine’s safety and health management system; and*
 - (iii) *if the service provider has given the site senior executive a safety and health management plan—has made all changes to the plan required by the site senior executive to enable the plan to be integrated with the mine’s safety and health management system;*
- (g) *to ensure the service is not provided until the service provider and each worker engaged by the service provider—*
- (i) *has been inducted in the mine’s safety and health management system to the extent it relates to the service to be provided by the service provider or worker; and*
 - (ii) *has received training about hazards and risks at the mine to the extent they relate to the service to be provided by the service provider or worker.*
- (2) *Subsection (1)(b), (f)(ii) and (iii) and (g)(i) does not apply if the mine is not required to have a safety and health management system.*
- (3) *In this section—*

safety and health management plan, of a service provider, means a plan that—

- (a) *identifies the service to be provided by the service provider; and*
- (b) *states how the service provider intends to comply with the service provider's obligations under this section.*

Division 3A Obligations of officers of corporations

44A Obligation of officers of corporations

- (1) *If a corporation has an obligation under this Act, an officer of the corporation must exercise due diligence to ensure the corporation complies with the obligation.*
- (2) *An officer of a corporation may be convicted or found guilty of an offence under this Act relating to an obligation of the officer whether or not the corporation has been convicted or found guilty of an offence under this Act relating to an obligation of the corporation.*
- (3) *In this section, **due diligence** includes taking reasonable steps—*
 - (a) *to acquire and keep up-to-date knowledge of mine safety and health matters; and*
 - (b) *to gain an understanding of the nature of operations at a mine and generally of the hazards and risks associated with those operations; and*
 - (c) *to ensure the corporation has available for use, and uses, appropriate resources and processes to eliminate or minimise risks to safety and health from work carried out as part of operations; and*
 - (d) *to ensure the corporation has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information; and*

- (e) *to ensure the corporation has, and implements, processes for complying with any obligation of the corporation under this Act; and*
- (f) *to verify the provision and use of the resources and processes mentioned in paragraphs (c) to (e).*

Example for paragraph (f)—

If the corporation is the operator for a mine, verifying the provision and use of the resources and processes to ensure the operator complies with the requirement under section 38(1)(e) (including, for example, having regard to each report given by the operator in relation to an audit of the effectiveness and implementation of the mine's safety and health management system).

(4) *In this section—*

officer, of a corporation, does not include a person appointed as, or whose position reports directly or indirectly to, the site senior executive for a mine.

Division 4 Defences

45 Defences for div 2, 3 or 3A

- (1) *It is a defence in a proceeding against a person for a contravention of an obligation imposed on the person under division 2, 3 or 3A in relation to a risk for the person to prove—*
 - (a) *if a regulation has been made about the way to achieve an acceptable level of risk—the person followed the way prescribed in the regulation to prevent the contravention; or*
 - (b) *subject to paragraph (a), if a guideline has been made stating a way or ways to achieve an acceptable level of a risk—*
 - (i) *that the person adopted and followed a stated way to prevent the contravention; or*

[s 46]

- (ii) that the person adopted and followed another way that achieved a level of risk that is equal to or better than the acceptable level to prevent the contravention; or
 - (c) if no regulation prescribes or no guideline states a way to discharge the person's safety and health obligation in relation to the risk—that the person took reasonable precautions and exercised proper diligence to prevent the contravention.
- (2) Also, it is a defence in a proceeding against a person for an offence against section 31 for the person to prove that the commission of the offence was due to causes over which the person had no control.
 - (3) The Criminal Code, sections 23 and 24, do not apply in relation to a contravention of section 31.
 - (4) In this section, a reference to a guideline is a reference to the guideline in force at the time of the contravention.

Part 4 Provisions about the operation of mines

Division 1 Notices about mines

46 Notices by holder

- (1) If a holder appoints an operator, the holder must, for each mine or part of a mine for which the operator is appointed, give an inspector for the region in which the mine is situated written notice of—
 - (a) the name and address of the operator; and
 - (b) the name of, and a description of the land (including its boundary) comprising, the mine or part of the mine.

Maximum penalty—40 penalty units.

- (2) Notice must be given within 14 days of the appointment.
- (3) The holder must not change the operator for a mine without first giving an inspector for the region in which the mine is situated written notice.

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

47 Notices by operator

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

Maximum penalty—40 penalty units.

- (2) For subsection (1)(b), the facility description must include enough information to decide the risk management measures that will be necessary for an effective safety and health management system.
- (3) Before operations start, the operator must give an inspector for the region in which the mine is situated notice of the day operations are to start.

[s 47A]

Maximum penalty—40 penalty units.

- (4) Also, the operator must, within 7 days after the appointment, give an inspector for the region in which the mine is situated notice of the following appointments including the name and address of the person appointed—
- (a) the appointment of a site senior executive;
 - (b) an appointment under section 52.

Maximum penalty—40 penalty units.

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

Maximum penalty—40 penalty units.

47A Notice about underground gasification activities

- (1) This section applies if the site senior executive for a mine gives the chief inspector notice that particular exploration activities at the mine are underground gasification activities.
- (2) The chief inspector may by notice declare the activities to be underground gasification activities, with the agreement of the chief inspector, petroleum and gas.
- (3) The chief inspector must give the site senior executive a copy of the notice.
- (4) In this section—

chief inspector, petroleum and gas means the chief inspector under the *Petroleum and Gas (Production and Safety) Act 2004*.

Division 2 Management of mines

48 Appointment of operator

- (1) The holder for a mine may appoint a person as the operator for the mine or a separate part of a mine.
- (2) An appointment of a person as operator for a part of a mine that is not a separate part of a mine is ineffective.

49 Appointment of site senior executive

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

Maximum penalty—500 penalty units.

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

Maximum penalty—500 penalty units.

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

- (a) the mines are part of a mining project; or
- (b) the mines consist only of exploration activities under an exploration permit, mineral development licence or mining lease; or
- (c) the mines are adjacent and operations for winning, or winning and treating, minerals or hard rock are carried on at only 1 of the mines; or
- (d) the mines comprise mines forming part of a mining project and adjacent mines, and the adjacent mines consist only of exploration activities under an exploration permit, mineral development licence or mining lease; or
- (e) not more than 10 workers are employed at each mine.

[s 50]

- (4) *If more than 10 workers are employed at a mine or the mine is prescribed by regulation to be a mine to which this subsection applies, an operator for the mine must not appoint a person to be site senior executive for the mine, or a separate part of the mine, unless the person holds a site senior executive notice.*

Maximum penalty—500 penalty units.

- (5) *A regulation may prescribe a mine to be a mine to which subsection (4) applies because of the size, nature or complexities of the mine's operations.*

- (6) In this section—

appoint includes employ and purport to appoint.

50 Management structure for safe operations at mines

- (1) The site senior executive must—

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

Maximum penalty—40 penalty units.

- (2) The document must—

- (a) state the responsibilities of the site senior executive; and
- (b) state the responsibilities and competencies required for senior positions in the structure; and
- (c) state the names of the persons holding the senior positions and their competencies; and
- (ca) *state the name of the person who is responsible for establishing and implementing a system for managing contractors and service providers at the mine; and*
- (d) provide for a competent person to perform the duties of a supervisor while the supervisor is absent.

Maximum penalty—40 penalty units.

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

51 Competencies of supervisors

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

- (a) is competent to perform the task assigned; and
- (b) if there is a safety and health competency for supervisors recognised by the committee, has the relevant competency.

Maximum penalty—100 penalty units.

52 Appointment of another site senior executive during temporary absence

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

Maximum penalty—100 penalty units.

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

53 Additional requirements for management of underground mines

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

Maximum penalty—400 penalty units.

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

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

[s 54]

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

Maximum penalty—400 penalty units.

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

Maximum penalty—200 penalty units.

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

Maximum penalty—40 penalty units.

54 Appointment of another underground mine manager during temporary absence

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

Maximum penalty—100 penalty units.

- (2) To remove doubt, section 53(2) to (5) applies to an appointment under subsection (1).
- (3) The person acting as the underground mine manager is subject to all of the obligations of an underground mine manager.

54A Appointment of ventilation officer

- (1) *This section applies to an underground mine.*

- (2) *The site senior executive for the mine must appoint a person as the ventilation officer for the mine.*

Maximum penalty—200 penalty units.

- (3) *The site senior executive must not appoint a person as the ventilation officer for the mine unless—*

(a) *if more than 10 persons but not more than 20 persons work underground in the mine or the mine is prescribed by regulation to be a mine to which this paragraph applies—the site senior executive is satisfied the person is competent to perform the duties of the ventilation officer for the mine; or*

(b) *if more than 20 persons work underground in the mine or the mine is prescribed by regulation to be a mine to which this paragraph applies—the person has competencies recognised by the committee as appropriate for the duties and responsibilities of the position.*

Maximum penalty—200 penalty units.

- (4) *A regulation may prescribe an underground mine to be a mine to which subsection (3)(a) or (b) applies because of the size, nature or complexities of the mine's operations.*

- (5) *The ventilation officer for the mine is responsible for—*

(a) *the implementation of the mine's ventilation system; and*

(b) *the establishment of effective standards of ventilation for the mine.*

- (6) *The site senior executive must not appoint a person as ventilation officer at more than 1 mine at the same time unless the chief inspector gives the site senior executive notice that the chief inspector is satisfied the person can effectively carry out the duties of the ventilation officer at the mines.*

Maximum penalty for subsection (6)—200 penalty units.

54B Absence of ventilation officer

- (1) *This section applies if the ventilation officer appointed under section 54A for an underground mine is temporarily absent from duty.*
- (2) *If the absence is for not more than 14 days, the duties and responsibilities of the ventilation officer are taken to be assumed by the underground mine manager during the absence.*
- (3) *Subsection (2) applies regardless of whether the underground mine manager satisfies any requirements that apply under section 54A(3)(a) or (b) for appointing a person as the ventilation officer for the mine.*
- (4) *An inspector may, by notice—*
 - (a) *require an underground mine manager assuming the duties and responsibilities of the ventilation officer to demonstrate to the inspector's satisfaction that the manager can effectively carry out the duties and responsibilities of both the underground mine manager and the ventilation officer; and*
 - (b) *if the underground mine manager can not satisfy the inspector as mentioned in paragraph (a)—require the site senior executive for the mine to appoint a person to act as the ventilation officer during the remainder of the absence.*
- (5) *If the absence is for more than 14 days or the site senior executive is given a notice under subsection (4)(b), the site senior executive for the mine must appoint a person to act as the ventilation officer during the absence.*

Maximum penalty—200 penalty units.

- (6) *The site senior executive must not appoint a person under subsection (5) unless the person satisfies any requirements that apply under section 54A(3)(a) or (b) for appointing a person as the ventilation officer for the mine.*

Maximum penalty—200 penalty units.

Division 3 Safety and health management systems

55 Safety and health management system

- (1) *The safety and health management system, for a mine, is a single system that incorporates risk management elements and practices that ensure the safety and health of persons who may be affected by operations.*
- (2) *The safety and health management system must be a single, auditable documented system that—*
 - (a) *forms part of an overall management system; and*
 - (b) *includes organisational structure, planning activities, responsibilities, practices, procedures and resources for developing, implementing, maintaining and reviewing a safety and health policy.*
- (3) *The safety and health management system must provide a single, comprehensive and integrated system for the management of all aspects of risks to safety and health in relation to the operation of the mine.*
- (4) *The safety and health management system for a mine must be in place before operations start at the mine.*
- (5) The safety and health management system must be effective to achieve an acceptable level of risk by—
 - (a) defining the operator's safety and health policy; and
 - (b) containing a plan to implement the operator's safety and health policy; and
 - (c) stating how the operator intends to develop the capabilities and support mechanisms necessary to achieve the policy; and
 - (d) including procedures for the operation of the mine and standard work instructions; and
 - (e) containing a way of—

[s 56]

- (i) measuring, monitoring and evaluating the performance of the safety and health management system; and
 - (ii) taking the action necessary to prevent or correct matters that do not conform with the safety and health management system; and
- (f) containing a plan to regularly review and continually improve the safety and health management system so that risk to persons at the mine is at an acceptable level; and
- (g) if there is a significant change to the mining operations of the mine, containing a plan to immediately review the safety and health management system so that risk to persons is at an acceptable level.

56 Review of safety and health management system

- (1) This section applies if—
- (a) a safety and health management system has been developed for a new mine; or
 - (b) it is proposed to change a safety and health management system at an existing mine.
- (2) The site senior executive must review the system in consultation with—
- (a) workers, to the extent they are affected by the system; or
 - (b) appropriate site safety and health representatives and committees.

Maximum penalty—200 penalty units.

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

Division 4 Records and reporting

57 Management structure to be recorded in the mine record

- (1) The site senior executive must enter in the mine record details of—
 - (a) the management structure and of the persons holding senior positions in the structure; and
 - (b) changes to the management structure.Maximum penalty—50 penalty units.
- (2) The details must be entered within 7 days after the establishment of, or changes to, the management structure.

58 Plans of mine workings

- (1) A site senior executive must keep at the mine—
 - (a) plans showing, as far as practicable—
 - (i) the extent of the mine workings and the current position of any part of the mine workings; and
 - (ii) for an underground mine, the significant topographical features on the surface above the mine; and
 - (b) plans showing the extent of mining undertaken at or near the mine; and
 - (c) information likely to be required to evaluate the effect of the mine on—
 - (i) the safety of adjoining mines; and
 - (ii) any potential uncontrolled flow of material into the mine workings; and
 - (d) information likely to be required to evaluate the effect of any adjoining mine on the safety of the mine.Maximum penalty—100 penalty units.

[s 58]

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

Maximum penalty—100 penalty units.

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

Maximum penalty—100 penalty units.

Note—

The plans given to the chief inspector form part of the database under section 260.

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

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

Maximum penalty—100 penalty units.

- (5) The accuracy of the plans mentioned in this section must be certified by—

- (a) for a mine other than an underground mine—a person having the competencies for surface mining surveying recognised by the committee, or registered as a surveyor or surveying associate under the *Surveyors Act 2003*; or
(b) for an underground mine—a person having the competencies for underground mining surveying recognised by the committee.

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

59 Mine record

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

Maximum penalty—200 penalty units.

- (2) For subsection (1), a matter must be kept in the mine record for 7 years after the matter is included in the record.
- (3) Subsection (2) applies whether the matter was included under this Act or the repealed *Mines Regulation Act 1964*.
- (4) The operator must ensure the mine record, relating to the previous 6 months at least, is available at all reasonable times for inspection by each of the following—
- (a) workers at the mine;
 - (b) the site senior executive.

Maximum penalty—200 penalty units.

- (5) If a person (the **former operator**) who is the operator for a mine is replaced by another person (the **new operator**) as the operator for the mine, the former operator must give the new

[s 60]

operator the mine record for the mine as soon as practicable after being replaced.

Maximum penalty—200 penalty units.

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

Maximum penalty—400 penalty units.

60 Display of reports and directives

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

Maximum penalty—100 penalty units.

Division 5 Protection of abandoned mines

61 Responsibility for protecting abandoned mines

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

Maximum penalty—800 penalty units.

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

Maximum penalty—800 penalty units.

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

Maximum penalty—800 penalty units.

- (4) If an abandoned mine is not safe and made secure, the chief executive may make it safe and secure and recover the cost of making it safe and secure from the person with the obligation to ensure the mine is safe and made secure.
- (5) A conviction under this section with or without penalty does not affect the chief executive's ability to recover the cost of making the mine safe and secure.
- (6) In this section—
environmental authority see the *Environmental Protection Act 1994*, schedule 4.
holder, for a mine, includes the holder of an environmental authority to carry out operations for land on which the mine is located.

Part 5 Guidelines

62 Purpose of guidelines

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

63 Guidelines

- (1) The Minister may make guidelines.
- (2) The Minister must notify the making of a guideline by gazette notice.
- (3) The chief executive must keep a copy of each guideline and any document applied, adopted or incorporated by the guideline available for inspection, without charge, during normal business hours at each department office dealing with safety and health.
- (4) The chief executive, on payment by a person of a reasonable fee decided by the chief executive, must give a copy of a guideline to the person.

64 Use of guidelines in proceedings

A guideline is admissible in evidence in a proceeding if—

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

Part 6 Industry consultative arrangements

Division 1 Purposes of part

65 Purposes of pt 6

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

Division 2 Mining safety and health advisory committee and its functions

66 Mining safety and health advisory committee

The mining safety and health advisory committee (the *committee*) is established.

67 Functions of committee

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

-
- (2) Without limiting subsection (1), the committee must discharge its primary function by periodically reviewing—
 - (a) the effectiveness of this Act, regulations and guidelines; and
 - (b) the effectiveness of the control of risk to any person from operations.
 - (3) The committee also has the functions of—
 - (a) establishing, recognising and publishing—
 - (i) the competencies accepted by it as qualifying a person to perform stated tasks; and
 - (ii) the safety and health competencies required to perform the duties of a person under this Act; and
 - (b) if asked by the Minister, making recommendations about individuals nominated to be district workers' representatives.
 - (4) In periodically reviewing effectiveness under subsection (2), the committee must have regard to the following—
 - (a) the risk management performance of the mining industry;
 - (b) the appropriateness of guidelines;
 - (c) education, training, and standards of competency within the mining industry;
 - (d) the implementation of recommendations from inspectors' investigations, coroners' inquests, boards of inquiry, and other sources;
 - (e) the promotion of community knowledge and awareness of safety and health in the mining industry;
 - (f) any other matter referred to it by the Minister.

68 Annual report

- (1) As soon as practicable, but within 4 months, after the end of each financial year, the commissioner, as chairperson of the

committee, must prepare and give to the Minister a report on the committee's operations for the year.

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

Division 3 Membership and conduct of committee proceedings

69 Membership of committee

- (1) *The committee is to consist of 10 members, 1 of whom is the chairperson.*
- (2) The chairperson of the committee is the commissioner.

70 Organisations to submit names to Minister

- (1) The following organisations, within 1 month of being asked to do so by the Minister, may submit a panel of names of individuals experienced in mining operations the organisations nominate to be members of the committee—
 - (a) organisations representing operators;
 - (b) industrial organisations representing workers.
- (2) Only 1 panel may be submitted by all organisations representing operators.
- (3) Only 1 panel may be submitted by all industrial organisations representing workers.
- (4) Each panel must include 6 or more names.

71 Appointment of members—persons from panels

- (1) The Minister must appoint 3 persons from each panel to be members of the committee.

- (2) One of the persons appointed from the panel submitted by organisations representing operators must represent quarry operators.
- (3) One of the persons appointed from the panel submitted by industrial organisations representing workers must be a member of the industrial organisation that represents the majority of the workers in Queensland.
- (5) *The Minister may appoint a person under subsection (1) only if the person is experienced in operations or the Minister otherwise considers the person appropriate to be a member of the committee.*
- (6) In selecting a person for appointment under subsection (1), the Minister must also consider the following in relation to the person—
 - (a) breadth of experience in the mining industry;
 - (b) demonstrated commitment to promoting safety and health standards in the mining industry;
 - (c) practical knowledge of the mining industry and of relevant legislation.
- (7) If a panel of names is not submitted to the Minister within the stated time, the Minister may appoint 3 persons the Minister considers appropriate to be members of the committee.
- (8) *The members mentioned in this section must be appointed under this Act and not the Public Service Act 2008.*

71A Appointment of members—inspectors

- (1) *The chief inspector is a member of the committee.*
- (2) *The Minister must appoint 2 other inspectors to be members of the committee.*

72 Duration of appointment

A member of the committee may be appointed, or reappointed, by the Minister under section 71(1) for a term of not more than 3 years.

73 Conditions of appointment

- (1) A member of the committee is not entitled to any remuneration, other than the reimbursement of reasonable expenses and travel allowance.
- (2) A member holds office on the conditions not provided by this Act that are decided by the Governor in Council.

74 Member ceasing as member

The office of a member of the committee becomes vacant if the member—

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

74A Substitute members

- (1) The Minister may appoint 2 persons (*substitute members*) from each panel submitted under section 70(1), in addition to the persons appointed under section 71(1), to take part in meetings of the committee in place of a member (*original member*) appointed from the same panel.
- (2) One of the persons appointed from the panel submitted by industrial organisations representing workers must be a member of the industrial organisation that represents the majority of the workers in Queensland.

- (3) When appointing a substitute member, the Minister must consider the matters mentioned in section 71(6)(a), (b) and (c).
- (4) A substitute member may be appointed, or reappointed, for a term of not more than 3 years.
- (5) A person stops being a substitute member if, for any reason or none, the Minister gives the person written notification that the person is no longer a substitute member.
- (6) While taking part in a meeting in place of an original member, a substitute member is a member of the committee and—
 - (a) is not entitled to any remuneration, other than the reimbursement of reasonable expenses and travel allowance; and
 - (b) is subject to the conditions, mentioned in section 73(2) and applying to the original member, that are capable of applying to the substitute member.

75 Times and places of meetings of the committee

- (1) The committee may hold its meetings at the times and places it decides.
- (2) However, the committee must meet at least twice a year.
- (3) The chairperson—
 - (a) may call a meeting of the committee at any time; and
 - (b) must call a meeting if asked by at least 4 members.
- (4) Also, the Minister may call a meeting of the committee at any time.

76 Presiding at meetings of the committee

- (1) The chairperson must preside at all meetings of the committee at which the chairperson is present.
- (2) In the absence of the chairperson, an inspector nominated by the chairperson presides.

77 Quorum and voting at meetings of the committee

- (1) At a meeting of the committee—
 - (a) 4 members constitute a quorum; and
 - (b) a question must be decided by a majority of the votes of the members present and voting; and
 - (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (2) A quorum must include—
 - (a) a member who represents operators; and
 - (b) a member who represents workers; and
 - (c) a member who represents inspectors.

78 Recommendation to Minister if vote not unanimous

- (1) If the committee gives advice or makes a recommendation to the Minister about a matter, the committee must advise the Minister whether the committee's decision about the matter was unanimous.
- (2) If the decision was not unanimous, the committee must advise the Minister of the views of the minority.

79 Taking part in meetings by telephone etc.

- (1) The committee may permit members to take part in a particular meeting, or all meetings, by any technology permitting contemporaneous communication with other committee members.
- (2) A member who takes part in a meeting of the committee under a permission under subsection (1) is taken to be present at the meeting.

80 Resolutions without meetings

- (1) If at least 6 members of the committee sign a document containing a statement that they are in favour of a resolution stated in the document, the resolution is taken to have been passed at a meeting of the committee held on the day when the last of the members signing the document signs the document.
- (2) However, the 6 members must include—
 - (a) a member who represents operators; and
 - (b) a member who represents workers; and
 - (c) a member who represents inspectors.
- (3) If, a resolution is, under subsection (1), taken to have been passed at a committee meeting, each member must be advised immediately of the matter and be given a copy of the terms of the resolution.
- (4) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more members, are taken to be a single document.

81 Minutes by the committee

The committee must keep minutes of its proceedings.

82 Subcommittees

The committee may appoint subcommittees to advise it on particular issues.

Part 7 **Site safety and health representatives and committees**

Division 1 **Purpose of part**

83 **Purpose of pt 7**

The main purposes of this part are—

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

Division 2 **Site safety and health representatives**

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

- (1) The workers at a mine may select or elect up to 2 of their number to be site safety and health representatives for the mine for the term decided by the workers.
- (2) If there is more than 1 site senior executive at a mine, the workers in each part of the mine for which a site senior executive has responsibility may select or elect 2 workers to be site safety and health representatives for each part for the term decided by the workers.
- (3) However, the workers and the site senior executive may decide that there are to be more than 2 site safety and health representatives for the mine or part of the mine if they consider this is necessary because of the size and complexity of operations.

- (4) The workers and the site senior executive may also decide an area (*area of representation*) within the mine or part of the mine for which 1 or more site safety and health representatives are to have responsibility.
- (5) A worker does not need any qualifications to be selected or elected as a safety and health representative but must have been a worker for at least 2 years and must receive appropriate training for a safety and health competency mentioned in section 86.
- (6) When performing functions or exercising powers under this part, a site safety and health representative is taken to be performing part of the worker's duties as a worker.

85 How site safety and health representatives are selected or elected

- (1) If workers can not agree on the selection of site safety and health representatives, an election by workers must be held to choose the representatives.
- (2) A site senior executive must, if asked by the workers, help workers in the selection or election of site safety and health representatives.

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

86 Site safety and health representative must obtain qualifications

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

Maximum penalty—40 penalty units.

[s 87]

87 Site safety and health representative must perform functions and exercise powers appropriately

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

Maximum penalty—40 penalty units.

88 Ceasing to be a site safety and health representative

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

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

89 Removal from office by Minister

- (1) The Minister may remove a site safety and health representative from office by notice if the Minister considers the representative is not performing the representative's functions satisfactorily.
- (2) The notice must contain the Minister's reasons for removing the site safety and health representative from office.

90 Selection or election after removal from office

- (1) If a site safety and health representative is removed from office by the Minister, another site safety and health representative may be selected or elected under this division.
- (2) However, another person must not be selected or elected to be a site safety and health representative until after—
 - (a) the time for filing an appeal under part 13, division 1 has ended; or

-
- (b) if an appeal against the Minister's decision has been filed—an Industrial Magistrates Court has confirmed the Minister's decision to remove the site safety and health representative.
 - (3) The provisions of this division apply to the selection or election.

91 Functions and powers for area of representation

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

92 Functions of site safety and health representatives

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

[s 93]

- (h) to refer safety and health matters to the site safety and health committee as appropriate.
- (2) The site senior executive and supervisors at the mine must give reasonable help to a site safety and health representative in carrying out the representative's functions.
Maximum penalty—40 penalty units.
- (3) The site senior executive or the site senior executive's representative may accompany the site safety and health representative during an inspection.
- (4) A site safety and health representative who makes an inspection of the mine must—
 - (a) make a written report on the inspection; and
 - (b) give a copy of the report to the site senior executive; and
 - (c) if the inspection indicates the existence or possible existence of danger, immediately—
 - (i) notify the site senior executive or the responsible supervisor; and
 - (ii) send a copy of the report to an inspector.
- (5) If a site safety and health representative believes a safety and health management system is inadequate or ineffective, the representative must inform the site senior executive.
- (6) If the site safety and health representative is not satisfied the site senior executive is taking the action necessary to make the safety and health management system adequate and effective, the representative must advise an inspector.
- (7) The inspector must investigate the matter and report the results of the investigation in the mine record.

93 Powers of site safety and health representative

A site safety and health representative has the following powers—

- (a) subject to section 91, to enter any part of the mine at any time to carry out the functions of the site safety and

health representative, if reasonable notice is given to the site senior executive or the site senior executive's representative;

- (b) to examine any documents relevant to safety and health held by the site senior executive under this Act, if the site safety and health representative has reason to believe the documents contain information required to assess whether procedures are in place at the mine to achieve an acceptable level of risk to workers.

94 Stopping operations by site safety and health representatives

- (1) This section applies if a site safety and health representative reasonably believes operations pose a serious danger to the safety and health of workers at the mine.
- (2) The site safety and health representative must first notify and consult with the site senior executive or an appropriate supervisor so that action may be taken to remove the danger to the safety and health of workers.
- (3) If consultation is not possible because immediate action to safeguard workers is necessary or if consultation does not lead to agreement on the action to be taken, a site safety and health representative may—
 - (a) stop the operations or part of the operations; and
 - (b) evacuate persons to a safe location.
- (4) The site safety and health representative must give a written report to the site senior executive about the action taken under subsection (3) and the reasons for the action.

95 When operations may be restarted

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

[s 96]

Maximum penalty—200 penalty units.

96 Site safety and health representative not to unnecessarily impede production

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

Maximum penalty—200 penalty units.

97 Protection of site safety and health representatives performing functions

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

Maximum penalty—200 penalty units.

Division 3 Site safety and health committees

98 Site safety and health committees

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

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

Maximum penalty—100 penalty units.

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

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

99 Membership of site safety and health committee

- (1) A site safety and health committee for a mine or part of a mine consists of at least 2 members being—
- (a) a site safety and health representative for the mine or part; and
 - (b) the site senior executive for the mine or part or the site senior executive's representative.
- (2) The site safety and health committee may include other members (*nominated members*) nominated by the site senior executive and the workers.
- (3) A site safety and health committee member must be a worker in the mine or part.
- (4) At least half the nominated members must be workers nominated by workers and must work in the area of the mine covered by the site safety and health committee.

100 Functions of site safety and health committee

A site safety and health committee has the following functions—

- (a) to facilitate consultation and cooperation between management and workers in initiating, developing and implementing management of risk from operations;
- (b) to encourage an active interest in safety and health matters at the mine;
- (c) to review the circumstances of injuries, illness and high potential incidents, and recommend appropriate action;
- (d) to consider any proposed changes to operations that may reasonably be expected to affect the control of risk, and make appropriate recommendations;
- (e) to carry out inspections;

[s 101]

- (f) to consider matters referred to the committee by a safety and health representative;
- (g) to help in the resolution of safety and health issues;
- (h) to perform other functions to promote safety and health.

101 Times of meetings

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

102 Proceedings at meetings

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

103 Minutes to be made available

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

Maximum penalty—40 penalty units.

Division 4 Duties of site senior executive

104 Provision for help to representatives and committees

The site senior executive must—

- (a) provide appropriate training during working time to persons selected or elected to be site safety and health representatives within 3 months of selection or election; and

- (b) provide to site safety and health committees access to appropriate facilities necessary to perform their functions; and
- (c) ensure that site safety and health representatives and committee members receive their normal pay for time spent—
 - (i) in performing their functions; or
 - (ii) undergoing training for a safety and health competency established by the committee for a site safety and health representative.

Maximum penalty—40 penalty units.

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

- (1) A site senior executive for a mine must ensure a site safety and health representative at the mine is informed of the following things—
 - (a) an injury or illness caused to a person from operations at the site safety and health representative's area of responsibility that causes an absence from work of the person for more than 1 shift;
 - (b) a high potential incident happening at the mine;
 - (c) any proposed changes to the operations, or plant or substances used at the mine, that affect, or may affect, the safety and health of persons at the mine;
 - (d) the presence of an inspector or inspection officer at the mine if the representative is at the mine;
 - (e) a directive given by an inspector or inspection officer about a matter.

Maximum penalty—40 penalty units.

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

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

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

Maximum penalty—40 penalty units.

- (2) The site senior executive must display the notice within 5 days after the site senior executive is notified of the representative's selection or election.
- (3) If the mine has only 1 site safety and health representative, the site senior executive must display the notice in 1 or more conspicuous positions at the mine in a way likely to come to the attention of workers at the mine.
- (4) If the mine has more than 1 site safety and health representative, the site senior executive must display a notice about each representative's identity in a conspicuous position in the mine or part of the mine covered by the representative in a way likely to come to the attention of workers in the mine or part.

Part 8 District workers' representatives

Division 1 Purposes of part

107 Purposes of pt 8

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

Division 2 District workers' representatives

108 Nomination and appointment of district workers' representatives

- (1) The Minister may appoint up to 4 persons to be district workers' representatives from nominees for the positions.
- (2) The term of office of a district workers' representative must not be more than 4 years.
- (3) An industrial organisation with members in the mining industry may nominate individuals to be district workers' representatives.
- (4) The Minister is to appoint, from the persons nominated, persons who satisfy the Minister they—
 - (a) have appropriate competencies and adequate experience to perform the functions of a district workers' representative; and
 - (b) are in a position to adequately represent the safety and health interests of a majority of workers.
- (5) A district workers' representative is appointed under this Act and not under the *Public Service Act 2008*.

109 Funding of district workers' representative

- (1) A district workers' representative is entitled to the remuneration and allowances decided by the Minister.
- (2) The representative holds office on the conditions not provided by this Act decided by the Minister.

110 Termination of appointment

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

[s 111]

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

111 Appointment after termination

- (1) If a person's appointment as district workers' representative is ended by the Minister, the Minister may appoint another person to be district workers' representative.
- (2) However, the Minister must not appoint another person to be a district workers' representative unless—
 - (a) the time for filing an appeal under part 13, division 1 has ended; or
 - (b) if an appeal against the Minister's decision has been filed, an Industrial Magistrates Court has confirmed the Minister's decision to end the appointment of the district workers' representative.
- (3) The provisions of this division about nomination and appointment apply to the appointment.

112 Filling of temporary vacancy

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

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

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

Maximum penalty—40 penalty units.

114 District workers' representative restricted to safety and health purposes

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

Maximum penalty—40 penalty units.

115 Functions of district workers' representatives

- (1) A district workers' representative has the following functions—
 - (a) to help, represent and advise workers on matters relating to safety and health;
 - (b) to inspect mines to assess whether the level of risk to the safety and health of workers is at an acceptable level;
 - (c) to participate in inspections by inspectors and inspection officers;
 - (d) to participate in investigations into serious accidents and high potential incidents and other matters related to safety or health at mines;
 - (e) to investigate complaints from workers regarding safety or health at mines;
 - (f) to help in relation to initiatives to improve safety or health at mines.
- (2) The following persons may accompany the district workers' representative during an inspection—
 - (a) the site senior executive or a person representing the site senior executive;
 - (b) a site safety and health representative or a person representing the site safety and health representative.
- (3) A district workers' representative who makes an inspection of the mine must—
 - (a) make a written report on the inspection; and

[s 116]

- (b) give a copy of the report to the site senior executive and send a copy to an inspector; and
- (c) if the inspection indicates the existence or possible existence of danger, immediately notify the site senior executive or the responsible supervisor.

116 Powers of district workers' representatives

- (1) A district workers' representative has the following powers—
 - (a) to make inquiries about the operations of mines relevant to the safety or health of workers;
 - (b) to enter any part of a mine at any time to carry out the representative's functions, if reasonable notice of the proposed entry is given to the site senior executive or the site senior executive's representative;
 - (c) to examine any documents relevant to safety and health held by persons with obligations under this Act, if the representative has reason to believe the documents contain information required to assess whether procedures are in place at a mine to achieve an acceptable level of risk to workers;
 - (d) to copy safety and health management system documents, including standard work instructions and training records;
 - (e) to require the person in control or temporarily in control of a mine to give the representative reasonable help in the exercise of a power under paragraphs (a) to (d);
 - (f) to issue a directive under section 164.
- (2) A person in control or temporarily in control of a mine required to help the district workers' representative under subsection (1)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) If the district workers' representative requires access to documents for subsection (1)(c), a person with an obligation

under the Act with access to the documents must produce them as soon as reasonably practicable after being asked, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

117 District workers' representative not to unnecessarily impede production

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

Maximum penalty—200 penalty units.

118 Inadequate or ineffective safety and health management systems

- (1) If a district workers' representative believes a safety and health management system is inadequate or ineffective, the representative must advise the site senior executive stating the reasons for the representative's belief.
- (2) If the district workers' representative is not satisfied the site senior executive is taking the action necessary to make the safety and health management system adequate and effective, the representative must advise an inspector.
- (3) The inspector must investigate the matter and report the results of the investigation in the mine record.

119 Identity cards

- (1) The chief executive must give each district workers' representative an identity card.
- (2) The identity card must—
 - (a) contain a recent photograph of the representative; and
 - (b) be signed by the representative; and

- (c) identify the person as a district workers' representative under this Act.

120 Failure to return identity card

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

Maximum penalty—40 penalty points.

121 Production or display of identity card

- (1) A district workers' representative may exercise a power in relation to another person only if the representative—
 - (a) first produces the representative's identity card for the other person's inspection; or
 - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the district workers' representative must produce the identity card for the other person's inspection at the first reasonable opportunity.

Part 9 Inspectors and other officers and directives

Division 1 Inspectors and inspection officers

122 Appointments

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

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

123 Qualifications for appointment as inspector

The chief executive may appoint a person as an inspector only if the chief executive considers the person has appropriate competencies and adequate experience to effectively perform an inspector's functions under this Act.

124 Qualifications for appointment as inspection officer

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

124A Appointment conditions and limit on powers and functions

- (1) A person who is appointed as an inspector or inspection officer holds office on any conditions stated in—
- (a) the person's instrument of appointment; or
 - (b) a signed notice given to the person by the chief executive.
- (2) The instrument of appointment, a notice given to the person by the chief executive or a regulation may limit the person's functions or powers under this Act for the office.

125 Functions of inspectors and inspection officers

Inspectors and inspection officers have the following functions—

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

[s 126]

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

126 Further functions of inspectors

Inspectors have the following additional functions—

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

Division 2 Authorised officers

126A Appointments

The chief executive may appoint officers or employees of the public service as authorised officers.

126B Qualifications for appointment as authorised officer

- (1) The chief executive may only appoint a person as an authorised officer after deciding the functions the person may perform under this Act having regard to the person's competencies and experience.
- (2) If the chief executive decides that the functions the person may perform as an authorised officer are limited because of the person's competencies and experience, the chief executive, when appointing the person as an authorised officer, must correspondingly limit the extent to which the person may perform functions or exercise powers as provided under section 126C.

126C Appointment conditions and limit on functions and powers

- (1) A person who is appointed as an authorised officer holds office on any conditions stated in—
 - (a) the person's instrument of appointment; or
 - (b) a signed notice given to the person by the chief executive.
- (2) The instrument of appointment, a notice given to the person by the chief executive or a regulation may limit the person's functions or powers under this Act for the office.
- (3) An authorised officer is also subject to the directions of the chief inspector in performing the functions or exercising the powers.
- (4) This section applies despite any other provision of this Act.

126D Functions of authorised officers

Subject to sections 126B and 126C, authorised officers have the following functions—

- (a) to monitor safety and health performance at mines;
- (b) to inspect and audit mines to assess whether risk is at an acceptable level;
- (c) to help persons to achieve the purposes of this Act by providing advice and information on how the purposes are to be achieved;
- (d) to check that safety and health management systems and procedures are in place to control risk to persons affected by operations;
- (e) to investigate serious accidents and high potential incidents at mines;
- (f) to investigate matters at mines that affect the successful management of risk to persons;
- (g) to investigate complaints about matters relating to safety or health resulting from operations;
- (h) to investigate whether persons required to provide information to the chief executive under this Act have provided the information and whether the information is correct.

126E Information about functions and powers

- (1) This section applies if before exercising a power or further exercising a power in relation to a person, an authorised officer is asked by the person for information about the authorised officer's functions or powers under the Act.
- (2) The authorised officer must only exercise, or continue to exercise, the power in relation to the person if the authorised officer first produces for the person's inspection a list of the authorised officer's functions and powers under the Act.

Division 3 Identity cards for inspectors, inspection officers and authorised officers

127 Identity cards

- (1) The chief executive must give each inspector, inspection officer and authorised officer an identity card.
- (2) The identity card must—
 - (a) contain a recent photograph of the inspector, inspection officer or authorised officer; and
 - (b) be signed by the inspector, inspection officer or authorised officer; and
 - (c) identify the person as an inspector, inspection officer or authorised officer under this Act.

128 Failure to return identity card

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

Maximum penalty—40 penalty points.

129 Production or display of identity card

- (1) An inspector, inspection officer or authorised officer may exercise a power in relation to another person only if the inspector, inspection officer or authorised officer—
 - (a) first produces the inspector's or officer's identity card for the other person's; or
 - (b) has the identity card displayed so it is clearly visible to the other person.

[s 129A]

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

Division 4 Powers of inspectors, inspection officers and authorised officers

Subdivision 1 Preliminary

129A Definition for div 4

In this division—

officer means an inspector, an inspection officer or an authorised officer.

Subdivision 2 Power to enter places

130 Entry to places

- (1) An officer may enter a place if—
- (a) its occupier consents to the entry; or
 - (b) it is a public place and the entry is made when it is open to the public; or
 - (c) the entry is authorised by a warrant; or
 - (d) it is a mine; or
 - (e) *it is, or the officer reasonably suspects it is, a workplace.*
- (2) *For subsection (1)(a), for the purpose of asking the occupier of a place for consent to enter, an officer may, without the occupier's consent or a warrant—*

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
 - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) *For subsection (1)(e), an entry may be made with, or without, the consent of the person with management or control of the workplace.*
- (4) An officer who enters a mine or workplace must not unnecessarily impede production.

Subdivision 3 Procedure for entry

131 Consent to entry

- (1) This section applies if an officer intends to ask an occupier of a place to consent to the officer or another officer entering the place.
- (2) Before asking for the consent, the officer must tell the occupier—
 - (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the officer may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
 - (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the officer or other officer consent to enter the place and exercise powers under this part; and
 - (d) the time and date the consent was given.

[s 132]

- (5) If the occupier signs an acknowledgement, the officer must immediately give a copy to the occupier.
- (6) A court must find the occupier did not consent to an officer entering the place under this part if—
 - (a) an issue arises in a proceeding before the court whether the occupier of a place consented to the entry; and
 - (b) an acknowledgement is not produced in evidence for the entry; and
 - (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

132 Application for warrant

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

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

133 Issue of warrant

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
 - (b) the evidence is at the place, or may be at the place, within the next 7 days.
- (2) The warrant must state—

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

134 Special warrants

- (1) An inspector may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy (*facsimile warrant*) to the inspector if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the inspector—
 - (a) the magistrate must tell the inspector—
 - (i) what the terms of the warrant are; and
 - (ii) the date and time the warrant was issued; and

[s 135]

- (b) the inspector must complete a form of warrant (a *warrant form*) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the terms of the warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find the exercise of the power by an inspector was not authorised by a special warrant if—
 - (a) an issue arises in a court proceeding whether the exercise of the power was authorised by a special warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

135 Warrants—procedure before entry

- (1) This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's notice of appointment or other document evidencing the appointment;
 - (b) give the person a copy of the warrant or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 134(6), a copy of the facsimile warrant or warrant form;
 - (c) tell the person the inspector is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

135A Entry to residential premises

Despite anything else in this division, the powers of an officer under this division in relation to entering a place are not exercisable in relation to any part of a place that is used for residential purposes other than—

- (a) *with the consent of the person with the management or control of the place; or*
- (b) *under the authority conferred by a search warrant; or*
- (c) *for the purpose only of gaining access to a suspected workplace, but only—*
 - (i) *if the officer reasonably believes no reasonable alternative access is available; and*
 - (ii) *at a reasonable time having regard to the times at which the officer believes work is being carried out at the place to which access is sought; or*
- (d) *if the place is a mine.*

Subdivision 4 General powers

136 General powers after entering mine or other places

- (1) This section applies to an officer who enters a mine or other place.
- (2) However, if an officer enters a place to get the occupier's consent to enter premises, this section applies to the officer only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with this Act, or for conducting an investigation under this Act, the officer may—
 - (a) search any part of the mine or other place; or
 - (b) inspect, measure, test, photograph or film any part of the mine or other place or anything at the mine or other place; or
 - (c) take a thing, or a sample of or from a thing, at the mine or other place for analysis or testing; or
 - (d) copy a document at the mine or other place; or
 - (e) take into or onto the mine or other place any persons, equipment and materials the officer reasonably requires for exercising a power under this division; or
 - (f) require a person at the mine or other place, to give the officer reasonable help to exercise the officer's powers under paragraphs (a) to (e); or
 - (g) require a person at the mine or other place, to answer questions by the officer to help the officer ascertain whether this Act is being or has been complied with, or for the purpose of conducting an investigation under this Act.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

137 Failure to help officer

A person required to give reasonable help under section 136(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

138 Failure to answer questions

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

Maximum penalty—40 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.
- (3) However, subsection (2) does not apply if the requirement relates to a serious accident or high potential incident.

139 Site senior executive must help officer

- (1) An officer may require a site senior executive to help the officer in the performance of the officer's functions.
- (2) A site senior executive required to help an officer must comply with the requirement, unless the site senior executive has a reasonable excuse.

Maximum penalty—100 penalty units.

Subdivision 5 Power to seize evidence

140 Seizing evidence at mine or other place

An officer who enters a mine or other place under this part may seize a thing at the mine or other place if the officer

reasonably believes the thing is evidence of an offence against this Act.

141 Securing things after seizure

Having seized a thing, an officer may—

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

Examples of restricting access to a thing—

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

142 Tampering with things subject to seizure

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

Maximum penalty—100 penalty units.

143 Powers to support seizure

- (1) To enable a thing to be seized, an officer may require the person in control of it—
 - (a) to take it to a stated reasonable place by a stated reasonable time; and
 - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—
 - (a) must be made by notice; or

- (b) if for any reason it is not practicable to give notice, may be made orally and confirmed by notice as soon as practicable.
- (3) A person of whom the requirement is made must comply with the requirement, at the person's expense, unless the person has a reasonable excuse.
Maximum penalty—100 penalty units.
- (4) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.

144 Receipts to be given on seizure

- (1) As soon as practicable after an officer seizes a thing, the officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

145 Forfeiture

- (1) A thing that has been seized under this subdivision is forfeited to the State if the officer who seized the thing—
 - (a) can not find its owner, after making reasonable inquiries; or
 - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—

[s 146]

- (a) subsection (1)(a) does not require the officer to make inquiries if it would be unreasonable in the particular circumstances to make inquiries to find the owner; and
 - (b) subsection (1)(b) does not require the officer to make efforts if it would be unreasonable in the particular circumstances to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if making inquiries or efforts—what inquiries or efforts, including the period over which they are made, are reasonable.

146 Return of seized things

- (1) This section applies if a seized thing has some intrinsic value and is not forfeited.
- (2) If the thing is not returned to its owner within 1 year after it was seized, the owner may apply to the chief inspector for its return.
- (3) Within 30 days after receiving the application, the chief inspector must—
 - (a) if the chief inspector is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner written notice of the decision, including the grounds for retaining the thing; or
 - (b) otherwise—return the thing to the owner.
- (4) If, at any time after the thing was seized, the chief inspector stops being satisfied there are reasonable grounds for retaining it, the chief inspector must return it to its owner.
- (5) Without limiting subsections (2) and (3), there are reasonable grounds for retaining the thing if—
 - (a) the thing is being, or is likely to be, examined; or

- (b) the thing is needed, or may be needed, for the purposes of—
 - (i) an investigation, board of inquiry, coroner's inquest or proceeding for an offence against this Act that is likely to be started; or
 - (ii) an investigation, board of inquiry, coroner's inquest or proceeding for an offence against this Act that has been started but not completed; or
 - (iii) an appeal from a decision in a proceeding for an offence against this Act; or
 - (c) it is not lawful for the owner to possess the thing.
- (6) In this section—

examine includes analyse, test, measure, weigh, grade, gauge and identify.

owner, of a seized thing, includes a person who would be entitled to possession of the thing had it not been seized.

147 Access to things that have been seized

- (1) Until a thing that has been seized is forfeited or returned, an officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) For this section, if an officer has required a person to take a thing to a stated place by a stated reasonable time under section 143 the officer may require the person to return the thing to the place from which it was taken.
- (4) The person must return the thing at the person's expense.

Subdivision 6 Power to stop and secure plant and equipment

148 Officer may stop and secure plant and equipment

- (1) If an officer believes plant or equipment at a mine is likely to cause serious bodily injury or create an immediate threat to health, the officer may stop the operation of the plant or equipment and prevent it from being further operated.
- (2) If an officer has taken action under subsection (1), the officer must confirm the action by entry in the mine record.
- (3) The site senior executive must ensure that the plant or equipment is not returned to operation until the risk to persons from the plant or equipment is at an acceptable level.

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

Subdivision 7 Power to obtain information

149 Power to require name and address

- (1) This section applies if—
 - (a) an officer finds a person committing an offence against this Act; or
 - (b) an officer finds a person in circumstances that lead, or has information that leads, the officer reasonably to suspect the person has just committed an offence against this Act.
- (2) The officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The officer may require the person to give evidence of the correctness of the stated name or residential address if the

officer reasonably suspects the stated name or address to be false.

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

150 Failure to give name or address

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

Maximum penalty—40 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
 - (a) the person was required to state the person's name and residential address by an officer who suspected the person had committed an offence against this Act; and
 - (b) the person is not proved to have committed the offence.

151 Power to require production of documents

- (1) An officer may require a person who has a safety and health obligation under this Act to make available, or produce, for inspection by the officer, at a reasonable time and place nominated by the officer, a document to which the person has access that relates or is related to the person's obligations under this Act.
- (2) The officer may keep the document to copy it.
- (3) If the officer copies the document, or an entry in the document, the officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The officer must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (*document certification requirement*) is made of a person under subsection (3), the

[s 152]

officer may keep the document until the person complies with the requirement.

- (6) Also, the officer may keep the document if the officer believes it is required for the investigation of a serious accident or high potential incident.
- (6A) If an officer keeps a document under subsection (6), the officer must give a copy of the document to the person responsible for keeping the document.
- (7) A requirement under subsection (1) is a *document production requirement*.
- (8) When making a document production requirement or document certification requirement, an officer must warn the person of whom the requirement is made that it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

152 Failure to produce document

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

Maximum penalty—200 penalty units.

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

153 Failure to certify copy of document

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

Maximum penalty—100 penalty units.

154 Power to require attendance of persons before an officer to answer questions

- (1) An officer may require a person to attend before the officer and to answer questions—
 - (a) relevant to the discharge of the person's safety and health obligations under this Act; or
 - (b) on safety and health matters relevant to operations; or
 - (c) to ascertain whether this Act is being complied with; or
 - (d) relevant to any action carried out by the officer under this Act.
- (2) A requirement made of a person under this section to attend before an officer must—
 - (a) be made by notice given to the person; and
 - (b) state a reasonable time and place for the person's attendance.
- (3) When making a requirement under this section, the officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

155 Failure to comply with requirement about attendance

- (1) A person of whom a requirement is made under section 154 must not, unless the person has a reasonable excuse—
 - (a) fail to attend before the officer at the time and place stated in the relevant notice; or
 - (b) when attending before the officer fail to comply with a requirement to answer a question.

Maximum penalty—40 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a requirement to answer a question if complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty.

- (3) However, subsection (2) does not apply if the requirement relates to a serious accident or high potential incident.

156 Use of particular evidence in proceedings

- (1) Subsection (2) applies in relation to any answer given by an individual in response to a requirement under section 136(3)(g) or 154(1).
- (2) Neither the answer nor any information, document or other thing obtained as a direct or indirect result of the answer is admissible in any proceeding against the individual, other than a proceeding in which the falsity or misleading nature of the answer is relevant.
- (3) If a document, produced under a document production requirement, is the personal property of an individual of whom the requirement is made and the document might incriminate the individual or make the individual liable to a penalty—
 - (a) the document is admissible in a proceeding against the individual for an offence under this Act; but
 - (b) neither the document nor anything obtained as a direct or indirect result of the individual producing the document is admissible in any other proceeding against the individual for an offence.

Subdivision 8 Additional powers of chief inspector

157 Additional powers of chief inspector

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

- (a) to give a directive under section 169;
- (b) to review, and confirm, vary or set aside, directives given by inspectors, inspection officers or district workers' representatives.

Division 5 Directives by inspectors, inspection officers and district workers' representatives

Subdivision 1 Power to give and way of giving directives

158 Directive may be given

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

159 How directive is given

- (1) Other than for sections 163, 164 and 167, the directive must be given in writing to the operator for the mine to which the directive relates.
- (2) The person giving the directive must give a copy of the directive to the site senior executive for the mine.
- (3) Failure to comply with subsection (2) does not affect the validity of the directive.

160 How directive is given for ss 163, 164 and 167

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

Subdivision 2 Matters for which directives may be given

161 Directive to ensure worker competent

If an inspector believes that a particular task at a mine should be performed only by persons with a particular competency,

the inspector may give a directive that the task be performed only by a person with the competency.

162 Directive to carry out test

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

163 Directive to reduce risk

- (1) If an inspector or inspection officer reasonably believes a risk from operations may reach an unacceptable level, the inspector or officer may give a directive to any person to take stated corrective or preventative action to prevent the risk reaching an unacceptable level.
- (2) The directive may be given orally or by notice.
- (3) If the directive is given orally, the person giving the directive must confirm the directive by notice to the person in control of the mine or part of the mine affected by the directive and to the relevant site senior executive.
- (4) Failure to comply with subsection (3) does not affect the validity of the directive.

164 Directive to suspend operations for unacceptable level of risk

- (1) If an inspector, inspection officer or district workers' representative believes risk from operations is not at an acceptable level, the inspector, officer or representative may give a directive to any person to suspend operations in all or part of the mine.
- (2) The directive may be given orally or by notice.
- (3) If the directive is given orally, the person giving the directive must confirm the directive by notice to the person in control of

the mine or part of the mine affected by the directive and to the relevant site senior executive.

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

165 Directive to review safety and health management system

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

166 Directive to suspend operations for ineffective safety and health management system

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

167 Directive to isolate site

- (1) If an inspector or inspection officer believes it is necessary to preserve evidence after a serious accident or high potential incident, the inspector or inspection officer may give a directive to any person to isolate and protect the accident or incident site.
- (2) The directive may be given orally or by notice.
- (3) If the directive is given orally, the inspector or inspection officer must confirm the directive by notice to the person in control of the mine or part of the mine affected by the directive and to the relevant site senior executive.
- (4) Failure to comply with subsection (3) does not affect the validity of the directive.

168 Directive about separate part of the mine

- (1) This section applies if part of a mine taken to be a separate part of a mine under section 21(4) is operated in a way so that it is no longer a separate part of a mine under section 21(4).
- (2) An inspector may give a directive to a person to operate the part of the mine so that it is a separate part of a mine under section 21(4).
- (3) If the directive is not complied with, an inspector may give a further directive suspending operations in the part of the mine.

169 Directive to provide independent engineering study

- (1) The chief inspector may give a directive to provide an independent engineering study about—
 - (a) risks arising out of operations; or
 - (b) the safety of part or all of any plant, building or structure at the mine; or
 - (c) a serious accident or high potential incident at the mine.
- (2) The directive must state—
 - (a) the reasons for and objectives of the study; and
 - (b) that the person who undertakes the study must be a person approved by the chief inspector.
- (3) For subsection (2)(b), the chief inspector may approve a person only if the person—
 - (a) has relevant professional qualifications and experience for the study; and
 - (b) is not an employee of the operator for the mine or of a contractor at the mine.

Subdivision 3 Recording of directives and other matters

170 Records must be kept

- (1) An inspector, inspection officer or district workers' representative must keep an accurate record of all reports and directives given by the inspector, officer or representative under this Act.
- (1A) An authorised officer must keep an accurate record of all reports given by the authorised officer under this Act.
- (2) An inspector, inspection officer, authorised officer or district workers' representative must make a written report of every inspection of a mine made by the inspector, officer or representative under this Act.
- (3) An inspector, inspection officer, authorised officer or district workers' representative must give the operator and the site senior executive of the mine a copy of the report as soon as practicable after making it.

171 Directives

- (1) If an inspector, inspection officer or district workers' representative has given a directive, the inspector, officer or representative—
 - (a) must enter it in the mine record as soon as reasonably practicable after giving it; and
 - (b) must state the reason for the directive in the mine record.
- (2) A person to whom a directive is given must comply with the directive as soon as reasonably practicable.
Maximum penalty—800 penalty units or 2 years imprisonment.
- (3) The site senior executive must enter in the mine record the action taken to comply with the directive as soon as practicable after the action is taken.

[s 172]

Maximum penalty—40 penalty units.

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

Maximum penalty—40 penalty units.

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

Subdivision 4 Review of directives

172 Application for review

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

Note—

A district workers' representative may give a directive under section 116.

173 Procedure for review

- (1) The application must—
 - (a) be made in writing to the chief inspector; and
 - (b) be supported by enough information to allow the chief inspector to decide the application.
- (2) The application must be made to the chief inspector within—
 - (a) 7 days after the day on which the person received the directive; or
 - (b) the longer period, within 2 months after the day, the chief inspector in special circumstances allows.
- (3) The chief inspector must consider the application within 7 days after receiving it and immediately advise the applicant in writing whether the chief inspector considers the applicant has complied with subsection (1).
- (4) If the chief inspector does not consider the application is supported by enough information to allow the chief inspector to decide the application, the chief inspector must advise the applicant what further information the chief inspector requires.
- (5) When the chief inspector is satisfied the applicant has complied with subsection (1), the chief inspector must immediately advise the applicant in writing of that fact.

174 Review of directive

- (1) The chief inspector must, within 14 days after giving the advice mentioned in section 173(5), review the directive and make a decision (the *review decision*)—
 - (a) to confirm the directive appealed against; or
 - (b) to vary or set aside the directive appealed against.
- (2) The chief inspector may give a directive in substitution for a directive the chief inspector decides to set aside.
- (3) Within 7 days after making the review decision, the chief inspector must give notice of the decision to the applicant.

[s 175]

- (4) The notice must—
 - (a) include the reasons for the review decision; and
 - (b) if the notice does not set aside the directive, tell the applicant of the applicant's right of appeal against the decision.
- (5) If the chief inspector does not—
 - (a) review the directive within the time allowed under subsection (1); or
 - (b) having reviewed the directive, advise the applicant of the review decision within the time allowed under subsection (3);

the applicant may appeal against the directive under part 13.

175 Stay of operation of directive

- (1) If a person applies under this division for a directive to be reviewed, the person may immediately apply to the Industrial Court for a stay of the directive.
- (2) The court may stay the directive to secure the effectiveness of the review and any later appeal to the court.
- (3) A stay—
 - (a) may be given on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be revoked or amended by the court.
- (4) The period of a stay must not extend past the time when the chief inspector reviews the directive and any later period the court allows the person to enable the person to appeal against the decision.
- (5) An application made for a review of a directive affects the directive, or the carrying out of the directive, only if the directive is stayed.
- (6) However, a directive under section 164 must not be stayed.

Division 6 General enforcement offences

176 False or misleading statements

- (1) A person must not state anything to an inspector, inspection officer, authorised officer or district workers' representative the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

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

177 False or misleading documents

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

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
 - (a) tells the inspector, inspection officer, authorised officer or district workers' representative, to the best of the person's ability, how it is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

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

Maximum penalty—100 penalty units.

- (4) It is enough for a complaint for an offence against subsection (1) or (3) to allege and prove that the document or

[s 178]

entry was ‘false or misleading to the person’s knowledge’, without specifying which.

178 Obstructing inspectors, officers or district workers’ representatives

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

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector, inspection officer, authorised officer or district workers’ representative and the inspector, officer or representative decides to proceed with the exercise of the power, the inspector, officer or representative must warn the person that—
- (a) it is an offence to obstruct the inspector, officer or representative, unless the person has a reasonable excuse; and
 - (b) the inspector, officer or representative considers the person’s conduct an obstruction.

Part 10 Board of examiners

179 Purpose of pt 10

The main purpose of this part is to state the functions under this Act of the board of examiners established under the *Coal Mining Safety and Health Act 1999*.

180 Functions of the board of examiners

The board of examiners has the following functions—

- (a) to decide the competencies necessary for holders of certificates of competency;

- (b) to assess applicants, or have applicants assessed, for certificates of competency;
- (c) to grant certificates of competency to persons who have demonstrated to the board's satisfaction the appropriate competencies necessary to hold the certificates;
- (d) to ensure the competencies under this Act are consistent with the competencies required by other States for the holders of certificates of competency;
- (e) *to issue notices (site senior executive notices) to persons who have demonstrated to the board's satisfaction the safety and health competencies, recognised by the committee under section 67, required to perform the duties of a site senior executive for a mine;*
- (f) *to perform any other function conferred on the board of examiners under this Act.*

181 Examiners to be qualified

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

Maximum penalty—100 penalty units.

181A Board of examiners may consider previous suspension, cancellation or surrender of certificate of competency or site senior executive notice

- (1) *This section applies if—*
- (a) *a person has applied for the grant of a certificate of competency or site senior executive notice; and*
 - (b) *a certificate of competency or site senior executive notice previously held by the person was suspended, cancelled or surrendered under this Act.*

[s 182]

- (2) *The board of examiners may have regard to the previous suspension, cancellation or surrender in deciding the application.*
- (3) *Subsection (2) does not limit the matters to which the board of examiners may have regard in deciding the application.*

182 Obtaining certificates of competency or site senior executive notices by fraud

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

Maximum penalty—400 penalty units.

- (2) *The board of examiners may cancel a certificate of competency or site senior executive notice by notice to the holder if the board is satisfied that the holder obtained the certificate of competency or site senior executive notice by giving false information to the board.*
- (3) *If the board of examiners decides to cancel a certificate of competency or site senior executive notice, the board must give notice of the decision to the following persons, to the extent the persons are known to the board—*
 - (a) *for a decision relating to a certificate of competency—the site senior executive for each mine at which the holder works;*
 - (b) *for a decision relating to a site senior executive notice—the operator for each mine at which the holder works.*

183 Return of certificate of competency or site senior executive notice

The holder of a certificate of competency or site senior executive notice must, unless the holder has a reasonable excuse, immediately return the certificate or notice to the board of examiners if—

- (a) the board has given the holder notice under section 182(2); or
- (b) *an industrial magistrate suspends or cancels the certificate or notice under section 237; or*
- (c) *the chief executive suspends or cancels the certificate or notice under part 10A; or*
- (d) *the holder surrenders the certificate or notice.*

Maximum penalty—400 penalty units.

184 Effect on particular appointments of suspension, cancellation or surrender of certificate of competency or site senior executive notice

- (1) *This section applies if—*
 - (a) *a certificate of competency or site senior executive notice held by a person is suspended, cancelled or surrendered under this Act; and*
 - (b) *immediately before the suspension, cancellation or surrender took effect, the person held an appointment under this Act; and*
 - (c) *this Act requires a person to hold the certificate of competency or site senior executive notice to be appointed to the position.*
- (2) *The person's appointment to the position ends on the suspension, cancellation or surrender of the person's certificate of competency or site senior executive notice.*

185 Register to be kept by board of examiners

- (1) *The board of examiners must keep a register of—*
 - (a) *certificates of competency granted by the board; and*
 - (b) *site senior executive notices issued by the board; and*
 - (c) *notices of registration given by the board under a mutual recognition Act.*

- (2) *The register must include the following information—*
- (a) *for a certificate of competency or site senior executive notice—*
 - (i) *the name and contact details of the holder of the certificate or notice; and*
 - (ii) *details of the certificate or notice; and*
 - (iii) *the status of the certificate or notice, including, if it has been suspended, cancelled or surrendered under this Act, details of the suspension, cancellation or surrender;*
 - (b) *for a notice mentioned in subsection (1)(c)—the name and contact details of the person to whom the notice was given;*
 - (c) *any other information prescribed by regulation.*
- (3) *The board of examiners may disclose information in the register, other than the contact details of an individual, to any person or agency.*
- (4) *In this section—*
- mutual recognition Act*** *means—*
- (a) *the Mutual Recognition Act 1992 (Cwlth); or*
 - (b) *the Trans-Tasman Mutual Recognition Act 1997 (Cwlth).*

Part 10A Suspension and cancellation of certificates of competency and site senior executive notices by chief executive

186 Grounds for suspension or cancellation

- (1) *Each of the following is a ground for suspending or cancelling a person's certificate of competency under this part—*

- (a) *the person has contravened a safety and health obligation;*
 - (b) *the person has committed an offence against a law of Queensland or another State (a **corresponding law**) relating to mining safety;*
 - (c) *a certificate, equivalent to a certificate of competency, that was issued to the person under a corresponding law of another State has been suspended or cancelled.*
- (2) *Each of the following is a ground for suspending or cancelling a person's site senior executive notice under this part—*
- (a) *the person has contravened a safety and health obligation;*
 - (b) *the person has committed an offence against a corresponding law.*

187 Notice of proposed action

- (1) *This section applies if the chief executive considers there is a ground to suspend or cancel a person's certificate of competency or site senior executive notice (the **proposed action**).*
- (2) *Before taking the proposed action, the chief executive must give the person a notice (a **proposed action notice**) stating each of the following matters—*
- (a) *the proposed action;*
 - (b) *the ground for the proposed action;*
 - (c) *an outline of the facts and circumstances forming the basis for the ground;*
 - (d) *if the proposed action is to suspend the certificate of competency or site senior executive notice—the proposed period of the suspension;*
 - (e) *that the person may make a written submission to the chief executive, within a stated period of at least 28*

days, to show why the proposed action should not be taken.

188 Submission against taking of proposed action

The person may, within the period stated in the proposed action notice under section 187(2)(e), make a written submission to the chief executive to show why the proposed action should not be taken.

189 Decision to take proposed action

- (1) *This section applies if—*
 - (a) *the period stated in the proposed action notice under section 187(2)(e) has ended; and*
 - (b) *the chief executive has considered any written submission made by the person under section 188; and*
 - (c) *the chief executive still considers a ground exists to take the proposed action.*
- (2) *The chief executive may decide—*
 - (a) *if the proposed action was to suspend the certificate of competency or site senior executive notice—to suspend the certificate or notice for no longer than the proposed period of the suspension stated in the proposed action notice; or*
 - (b) *if the proposed action was to cancel the certificate of competency or site senior executive notice—to cancel the certificate or notice or suspend it for a period.*
- (3) *The chief executive must give the person notice of the decision.*
- (4) *The notice must state each of the following matters—*
 - (a) *the chief executive's decision;*
 - (b) *the reasons for the decision;*

- (c) *that the person may appeal against the decision within 28 days;*
- (d) *how the person may appeal;*
- (e) *that the person may apply for a stay of the decision if the person appeals against it.*
- (5) *The decision takes effect on the day the notice is given to the person.*
- (6) *The chief executive must give notice of the decision to—*
 - (a) *the following persons, to the extent the persons are known to the chief executive—*
 - (i) *for a decision relating to a certificate of competency—the site senior executive for each mine at which the person works;*
 - (ii) *for a decision relating to a site senior executive notice—the operator for each mine at which the person works; and*
 - (b) *the board of examiners.*

Part 11 Accidents and incidents

Division 1 Notification, information and inspections

195 Notice of accidents, incidents, deaths or diseases

- (1) Subject to subsections (2) and (3), as soon as practicable after becoming aware of a serious accident, high potential incident or a death at a mine, the site senior executive for the mine must notify an inspector and a district workers' representative about the accident, incident or death either orally or by notice.

Maximum penalty—40 penalty units.
- (2) Subsection (3) applies to—

[s 195]

- (a) a serious accident at a mine resulting in a person receiving—
 - (i) a bodily injury endangering, or likely to endanger, the person's life; or
 - (ii) an injury causing, or likely to cause, a permanent injury to the person's health; or
 - (b) a high potential incident at a mine of a type prescribed under a regulation; or
 - (c) a death at a mine, whether or not caused by an accident at the mine.
- (3) The site senior executive must, as soon as possible after becoming aware of the accident, incident or death, by notice or orally notify an inspector and a district workers' representative about the accident, incident or death in terms that include the information (the *primary information*) stated in subsection (3A).

Maximum penalty—40 penalty units.

- (3A) For subsection (3), the primary information is all of the following—
- (a) the precise location where the accident, incident or death happened;
 - (b) when the accident, incident or death happened;
 - (c) the number of persons involved in the accident, incident or death;
 - (d) if the notification is about a death, whether or not caused by an accident—the name of the person who died;
 - (e) if the notification is about a serious accident or high potential incident—
 - (i) the name of any person who saw the accident or incident, or who was present when the accident or incident happened; and
 - (ii) the name of any person who was injured as a result of the accident or incident;

-
- (f) if no-one was present when the person mentioned in paragraph (d) died or the person mentioned in paragraph (e)(ii) was injured—the name of the person who found the deceased or injured person;
- (g) a brief description of how the accident, incident or death happened.

Examples of types of descriptions that may be given under paragraph (g)—

- ‘A light vehicle fell into the pit after the light vehicle collided with a truck on a ramp leading into the pit.’
- ‘A worker fell from the top of a storage bin into the wash plant.’

- (3B) If the site senior executive does not know the primary information at the time the notification is made under subsection (3), the site senior executive must—
- (a) take all reasonable steps to find out the primary information as soon as possible; and
- (b) as soon as possible after the primary information becomes known to the site senior executive, give the primary information to the inspector and representative.

Maximum penalty—40 penalty units.

- (3C) It is not a defence in a proceeding under subsection (3) or (3B) that the giving of the primary information might tend to incriminate the site senior executive.
- (3D) The primary information is not admissible in evidence against the site senior executive in any criminal proceeding.
- (3E) Subsection (3D) does not prevent the primary information being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary information.
- (4) If the site senior executive makes an oral report under subsection (1) or (3), the executive must confirm the report by notice within 48 hours.

Maximum penalty—40 penalty units.

[s 195A]

- (5) However, if the oral report relates to a death, the site senior executive must confirm the oral report by notice within 24 hours.

Maximum penalty—80 penalty units.

- (6) *As soon as practicable after receiving a report of a reportable disease at a mine or as a result of operations, the site senior executive must give an inspector and a district workers' representative notice about the disease.*

Maximum penalty—40 penalty units.

- (7) *A person prescribed by regulation who becomes aware that a worker has been diagnosed with a reportable disease must give notice of the diagnosis to the chief inspector.*

Maximum penalty—40 penalty units.

- (8) *In this section—*

***reportable disease** means a disease prescribed by regulation to be a disease that must be reported under this section.*

195A Requirement to give primary information

- (1) For conducting an investigation into a serious accident, high potential incident or death at a mine, an officer may require a person to give the officer any of the following information (***primary information***) about the accident, incident or death—
- (a) the precise location where the accident, incident or death happened;
 - (b) when the accident, incident or death happened;
 - (c) the number of persons involved in the accident, incident or death;
 - (d) if the notification is about a death, whether or not caused by an accident—the name of the person who died;
 - (e) if the notification is about a serious accident or high potential incident—

-
- (i) the name of any person who saw the accident or incident, or who was present when the accident or incident happened; and
 - (ii) the name of any person who was injured as a result of the accident or incident;
- (f) if no-one was present when the person mentioned in paragraph (d) died or the person mentioned in paragraph (e)(ii) was injured—the name of the person who found the deceased or injured person;
- (g) a brief description of how the accident, incident or death happened.

Examples of types of descriptions that may be given under paragraph (g)—

- ‘A light vehicle fell into the pit after the light vehicle collided with a truck on a ramp leading into the pit.’
 - ‘A worker fell from the top of a storage bin into the wash plant.’
- (2) When making a requirement mentioned in subsection (1), the officer must warn the person it is an offence to fail to comply with the requirement.
- (3) A person required to give primary information under subsection (1) must comply with the requirement.
- Maximum penalty—40 penalty units.
- (4) If the officer requires the person to give the officer primary information, it is not a defence in a proceeding under subsection (3) that the giving of the primary information might tend to incriminate the person, unless, in relation to an accident or incident—
- (a) the person is an involved person; and
 - (b) the primary information is the information mentioned in subsection (1)(g).
- (5) Primary information given under subsection (1) is not admissible in evidence against the person in any criminal proceeding.

[s 196]

(6) Subsection (5) does not prevent the primary information being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary information.

(7) In this section—

involved person, for an accident or incident, means an individual who was directly involved in the accident or incident.

Example of an individual who is directly involved in an accident or incident—

- a member of the crew of the deceased or injured person, who was present at the accident or incident
- an individual who was operating plant involved in the accident or incident

officer means an inspector, inspection officer or an authorised officer.

196 Place of accident must be inspected

As soon as practicable after receiving a report of a serious accident causing death at a mine, an inspector must inspect the place of the accident, investigate the accident to determine its nature and cause, and report the findings of the investigation to the chief inspector.

Division 2 Site of accident or incident

197 Site not to be interfered with without permission

(1) A person must not interfere with a place at a mine that is the site of a serious accident or high potential incident of a type prescribed by regulation, without the permission of an inspector.

Maximum penalty—200 penalty units.

(2) Permission under subsection (1) must not be unreasonably withheld.

- (3) For this division, action taken to save life or prevent further injury at a place is not interference with the place.

198 Action to be taken in relation to site of accident or incident

- (1) If there is a serious accident or a high potential incident at a mine, the site senior executive must—
- (a) carry out an investigation to decide the causes of the accident or incident; and
 - (b) prepare a report about the accident or incident that includes recommendations to prevent the accident or incident happening again; and
 - (c) if the accident or incident is a type prescribed by regulation, forward the report to an inspector within 1 month after the accident or incident.

Maximum penalty—100 penalty units.

- (2) The site senior executive must ensure that the place of the accident or incident is not interfered with until—
- (a) all relevant details about the accident or incident have been recorded and, if possible, photographed; and
 - (b) sufficient measurements have been taken to allow the development of an accurate plan of the site; and
 - (c) a list of witnesses to the accident or incident has been compiled.

Maximum penalty—100 penalty units.

- (3) It is not a defence to a proceeding under subsection (1) that the carrying out of an investigation, preparation of a report or forwarding of the report might tend to incriminate the site senior executive or make the executive liable to a penalty.
- (4) A report prepared or forwarded by the site senior executive under subsection (1) is not admissible in evidence against the site senior executive, or any other worker mentioned in the report, in any criminal proceeding other than proceedings about the falsity or misleading nature of the report.

Part 12 **Boards of inquiry**

Division 1 **General**

199 **Minister may establish boards of inquiry**

- (1) The Minister may establish a board of inquiry about a serious accident or high potential incident by gazette notice.
- (2) The notice, or a later gazette notice, may specify issues relevant to the inquiry including, for example, the membership of the board, who is the chairperson of the board, and its terms of reference.
- (3) The Minister may exercise powers under this section for a serious accident or high potential incident—
 - (a) whether or not the accident or incident has been investigated by an inspector; and
 - (b) whether or not a board of inquiry had previously inquired into the accident or incident.

200 **Role of board of inquiry**

- (1) The board of inquiry must—
 - (a) inquire into the circumstances and probable causes of the relevant serious accident or high potential incident; and
 - (b) give the Minister a written report of the board's findings.
- (2) The report may contain the recommendations the board considers appropriate and other relevant matters.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after receiving the report.
- (4) However, if the board gives the Minister a separate report of issues that the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

201 Conditions of appointment

- (1) A member of the board of inquiry is entitled to be paid the fees and allowances decided by the Governor in Council.
- (2) A member holds office on conditions not provided by this Act that are decided by the Minister.

202 Chief executive to arrange for services of staff and financial matters for board of inquiry

As soon as practicable after the board of inquiry is established, the chief executive must consult with the chairperson of the board and arrange—

- (a) for the services of officers and employees of the department and other persons to be made available to the board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

Division 2 Conduct of inquiry

203 Procedure

- (1) When conducting its inquiry, the board of inquiry—
 - (a) must observe natural justice; and
 - (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- (2) In conducting the inquiry, the board—
 - (a) is not bound by the rules of evidence; and
 - (b) may inform itself in any way it considers appropriate, including by holding hearings; and
 - (c) may decide the procedures to be followed for the inquiry; and

[s 204]

- (d) must give a person involved in the serious accident or high potential incident the opportunity of defending all claims made against the person.
- (3) However, the board must comply with this division and any procedural rules prescribed under a regulation.
- (4) The chairperson of the board presides at the inquiry.

204 Notice of inquiry

The chairperson of the board of inquiry must give at least 14 days notice of the time and place of the inquiry to—

- (a) any person the chairperson considers may be concerned in the serious accident or high potential incident the subject of the inquiry; and
- (b) any other person the chairperson reasonably believes should be given the opportunity to appear at the inquiry.

205 Inquiry to be held in public except in special circumstances

- (1) The inquiry must be held in public.
- (2) However, the board may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.
- (3) The board may give a direction under subsection (2) only if it is satisfied it is proper to make the direction in the special circumstances of the case.

206 Protection of members, legal representatives and witnesses

- (1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a Supreme Court judge performing the functions of a judge.

- (2) A lawyer or other person appearing before the inquiry for someone has the same protection and immunity as a lawyer appearing for a party in a proceeding in the Supreme Court.
- (3) A person summoned to attend or appearing before the inquiry as a witness has the same protection as a witness in a proceeding in the Supreme Court.

207 Record of proceedings to be kept

The board of inquiry must keep a record of its proceedings.

208 Representation

A person may be represented before the inquiry by a lawyer or agent.

209 Board's powers on inquiry

- (1) In conducting the inquiry, the board may—
 - (a) act in the absence of any person who has been given a notice under section 204 or some other reasonable notice; and
 - (b) receive evidence on oath or by statutory declaration; and
 - (c) adjourn the inquiry; and
 - (d) disregard any defect, error, omission or insufficiency in a document.
- (2) A member of the board may administer an oath to a person appearing as a witness before the inquiry.

210 Notice to witness

- (1) The chairperson of the board of inquiry may, by notice (*attendance notice*) given to a person, require the person to attend at the inquiry at a stated time and place to give evidence or produce stated documents or things.

[s 211]

- (2) A person required to appear as a witness before the inquiry is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

211 Inspection of documents or things

- (1) If a document or thing is produced to the board at the inquiry, the board may—
 - (a) inspect the document or thing; and
 - (b) copy or photograph the document or thing if it is relevant to the inquiry.
- (2) The board may also take possession of the document or thing, and keep it while it is necessary for the inquiry.
- (3) While it keeps a document or thing, the board must permit a person otherwise entitled to possession of it to inspect, copy or photograph the document or thing, at a reasonable place and time the board decides.

212 Inquiry may continue despite court proceedings unless otherwise ordered

The inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

213 Offences by witnesses

- (1) A person given an attendance notice must not fail, without reasonable excuse to—
 - (a) attend as required by the notice; or
 - (b) continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—30 penalty units.

- (2) A person appearing as a witness at the inquiry must take an oath when required by the chairperson of the board.

Maximum penalty—30 penalty units.

- (3) Also, a person appearing as a witness at the inquiry must not fail, without reasonable excuse—

- (a) to answer a question the person is required to answer by a member of the board; or
(b) to produce a document or thing the person is required to produce under an attendance notice.

Maximum penalty—30 penalty units.

- (4) It is a reasonable excuse for an individual to refuse to answer a question or produce a document or thing on the ground that the answer or production of the document or thing might tend to incriminate the individual or make the individual liable to a penalty.

214 Contempt of board

A person must not—

- (a) deliberately interrupt a board of inquiry; or
(b) create or continue, or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
(c) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—30 penalty units.

215 Change of membership of board

The inquiry of a board of inquiry is not affected by a change in its membership.

Part 13 Appeals

Division 1 Appeals against particular decisions of Minister, chief executive or board of examiners

216 Appeals against Minister's decisions

The following persons may appeal against the Minister's decision under the following provisions to an Industrial Magistrates Court under this division—

- (a) a person who is removed from office as site safety and health representative—section 89;
- (b) a person whose appointment as district workers' representative has been terminated—section 110.

216A Appeals against chief executive's decisions

The following persons may appeal against the chief executive's decision under the following provisions to an Industrial Magistrates Court under this division—

- (a) *a person whose certificate of competency or site senior executive notice is suspended or cancelled by the chief executive—section 189;*
- (b) *a corporation on which a civil penalty is imposed—section 246I.*

217 Appeals against board of examiners' decision

A person whose certificate of competency has been cancelled by the board of examiners under section 182 may appeal against the board's decision to an Industrial Magistrates Court under this division.

218 How to start appeal

- (1) An appeal is started by the appellant—
 - (a) filing a notice of appeal with an Industrial Magistrates Court; and
 - (b) serving a copy of the notice on—
 - (i) if the appeal is against the Minister’s decision—the Minister; or
 - (ii) *if the appeal is against the chief executive’s decision—the chief executive; or*
 - (iii) if the appeal is against the board of examiners’ decision—the board of examiners.
- (2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.
- (3) The court may at any time extend the period for filing the notice of appeal.
- (4) The notice of appeal must state the grounds of the appeal.

219 Stay of operation of decision

- (1) An Industrial Magistrates Court may stay a decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
 - (a) may be given on conditions the court considers appropriate; and
 - (b) has effect for the period stated by the court; and
 - (c) may be revoked or amended by the court.
- (3) The period of a stay given by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

220 Hearing procedures

- (1) Unless this division otherwise provides, the practice and procedure for the appeal are to be in accordance with the rules of court or, if the rules make no provision or insufficient provision, in accordance with the directions of the court.
- (2) An appeal must be by way of rehearing, unaffected by the original decision-maker's decision.
- (3) *However, for deciding an appeal against a decision of the chief executive under section 246I to impose a civil penalty on a corporation, information that was not available to the chief executive in making the decision must not be taken into account.*
- (4) In deciding an appeal, an Industrial Magistrates Court—
 - (a) is not bound by the rules of evidence; and
 - (b) must observe natural justice.
- (5) In this section—
original decision-maker means the Minister, chief executive or the board of examiners.

221 Powers of court on appeal

- (1) In deciding an appeal, an Industrial Magistrates Court may—
 - (a) confirm the decision appealed against; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the matter to the original decision-maker with directions that the court considers appropriate.
- (2) In substituting another decision, the court has the same powers as the original decision-maker.
- (3) If the court substitutes another decision, the substituted decision is taken to be the decision of the original decision-maker.

-
- (4) The court may make an order for costs it considers appropriate.
 - (5) In this section—
original decision-maker means the Minister or the board of examiners.

222 Appeal to District Court on questions of law only

- (1) An appellant may appeal against the decision of an Industrial Magistrates Court to the District Court, but only on a question of law.
- (2) On hearing the appeal, the court may make any order for costs it considers appropriate.

Division 2 Appeals against chief inspector's directives and particular decisions

223 Who may appeal

A person whose interests are affected by the following may appeal to the Industrial Court—

- (a) a decision of the chief inspector under section 146(3)(a) to retain a seized thing;
- (b) a directive given by the chief inspector;
- (c) a review decision of the chief inspector under part 9, division 5, subdivision 4.

224 How to start appeal

- (1) An appeal is started by—
 - (a) filing a notice of appeal with the registrar of the Industrial Court; and
 - (b) complying with any rules of court applying to the appeal.

[s 225]

- (2) The notice of appeal must be filed within 30 days after—
 - (a) if the appeal is from a decision under section 146(3)(a) to retain a seized thing—the day the appellant receives the notice of the decision; or
 - (b) if the appeal is from a directive—the day the appellant receives the directive; or
 - (c) if the appeal is from a review decision—the day the appellant receives reasons for the review decision.
- (3) The court may at any time extend the period for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

225 Stay of operation of directive or review decision

- (1) The Industrial Court may grant a stay of a directive or review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
 - (a) may be given on the conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be revoked or amended by the court.
- (3) The period of a stay must not extend past the time when the court decides the appeal.
- (4) An appeal against a directive or review decision affects the directive or decision, or the carrying out of the directive or decision, only if the directive or decision is stayed.
- (5) However, the following must not be stayed—
 - (a) a directive by the chief inspector under section 164;
 - (b) a review decision about a directive given by another person under section 164.

226 Hearing procedures

- (1) The procedure for an appeal is to be in accordance with the rules of court applying to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the Industrial Court.
- (2) An appeal is by way of rehearing, unaffected by the chief inspector's directive or decision.

227 Assessors

If the Industrial Court is satisfied the appeal involves an issue of special knowledge and skill, the court may appoint 1 or more assessors to help it in deciding the appeal.

228 Powers of court on appeal

- (1) In deciding an appeal, the Industrial Court may—
 - (a) confirm the directive or decision appealed against; or
 - (b) vary the directive or decision appealed against; or
 - (c) set aside the directive or decision appealed against and make a directive or decision in substitution for the directive or decision set aside; or
 - (d) set aside the directive or decision appealed against and return the issue to the chief inspector with directions the court considers appropriate.
- (2) If on appeal the court acts under subsection (1)(b) or (c), the directive or decision is taken, for this Act (other than this part), to be that of the chief inspector.
- (3) The court may make an order for costs it considers appropriate.

Part 14 Legal proceedings

Division 1 Evidence

228A Application of div 1

This division applies to a proceeding under this Act.

229 Proof of appointments and authority unnecessary

- (1) It is not necessary to prove—
 - (a) the appointment of the commissioner, the chief executive, the chief inspector, an inspector, an inspection officer, an authorised officer, a district workers' representative or a site safety and health representative; or
 - (b) the authority of the commissioner, the chief executive, the chief inspector, an inspector, an inspection officer, an authorised officer, a district workers' representative or a site safety and health representative to do anything under this Act.
- (2) Subsection (1) does not apply if reasonable notice is given to the party relying on the appointment or authority that the appointment or authority is to be challenged.

230 Proof of signatures unnecessary

A signature purporting to be the signature of the commissioner, the chief executive, the chief inspector, an inspector, an inspection officer, an authorised officer, a district workers' representative or a site safety and health representative is evidence of the signature it purports to be.

231 Evidentiary aids

- (1) A certificate stating any of the following matters is evidence of the matter—
 - (a) a stated document is—
 - (i) an appointment or a copy of an appointment; or
 - (ii) a directive or a copy of a directive given under this Act; or
 - (iii) a decision, or a copy of a decision, given or made under this Act; or
 - (iv) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
 - (b) *on a stated day, or during a stated period, a stated certificate, notice, approval or appointment was, or was not, in force for a stated person or thing;*
 - (c) on a stated day, or during a stated period, a standard issued or published by National Occupational Health and Safety Commission or Standards Australia or something in the standard was, or was not, in force;
 - (d) on a stated day a stated person was given a stated directive, direction, requirement or notice under this Act;
 - (e) a stated amount is payable under this Act by a stated person and has not been paid;
 - (f) a stated location is within the boundaries of land that is the subject of a stated mining tenure.
- (2) A document purporting to be published by or under the authority of National Occupational Health and Safety Commission or Standards Australia is, on its production in a proceeding, evidence of the matters appearing on and in the document.
- (3) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

[s 232]

- (4) Any instrument, equipment or installation used by an inspector, inspection officer, an authorised officer or analyst in accordance with any conditions prescribed under a relevant document for its use is taken to be accurate and precise in the absence of evidence to the contrary.
- (5) In this section—
certificate means a certificate purporting to be signed by the commissioner, the chief executive, the chief inspector, an inspector, an inspection officer, an authorised officer, a district workers' representative or a site safety and health representative.

232 Expert reports

- (1) An expert report is admissible in evidence in a proceeding under this Act, whether or not the person making the report (the *expert*) attends to give oral evidence in the proceeding.
- (2) However, if the expert does not attend to give oral evidence in the proceeding, the report is admissible only with the court's leave.
- (3) In deciding whether to grant leave, the court must have regard to the following—
 - (a) the contents of the report;
 - (b) why the expert does not intend to give oral evidence;
 - (c) the risk that its admission or exclusion from evidence will result in unfairness to a party, in particular having regard to a party's ability to dispute the contents of the report if the expert does not give oral evidence;
 - (d) any other relevant circumstance.
- (4) An expert report when admitted is evidence of any fact or opinion of which the expert could have given oral evidence.
- (5) In this section—
expert report means a report made by a person that deals entirely or mainly with issues on which the person is qualified

to give expert evidence, but does not include an analyst's report.

233 Analyst's certificate or report

The production by the prosecutor or the defendant in a prosecution of a signed analyst's report stating any of the following is evidence of them—

- (a) the analyst's qualifications;
- (b) the analyst took, or received from a stated person, the sample mentioned in the report;
- (c) the analyst analysed the sample on a stated day, or during a stated period, and at a stated place;
- (d) the results of the analysis.

Division 2 Proceedings

234 Proceedings for offences

- (1) A prosecution for an offence against this Act is by way of summary proceedings before an industrial magistrate.
- (2) More than 1 contravention of a safety and health obligation under section 31 may be charged as a single charge if the acts or omissions giving rise to the claimed contravention happened within the same period and in relation to the same mine.
- (3) A person dissatisfied with a decision of an industrial magistrate in proceedings brought under subsection (1) who wants to appeal must appeal to the Industrial Court.
- (4) The *Industrial Relations Act 2016* applies, with necessary changes, to a proceeding before an industrial magistrate brought under subsection (1) and to a proceeding on appeal before the Industrial Court brought under subsection (3).
- (5) Proceedings for an offence against this Act may only be taken by—

[s 235]

- (a) the commissioner; or
 - (b) the chief executive; or
 - (c) another appropriately qualified person, with the written authorisation of the chief executive, either generally or in a particular case.
- (6) An authorisation under subsection (5)(c) is sufficient authority to continue proceedings in any case where the court amends the charge, warrant or summons.
- (7) In this section—
- person dissatisfied with a decision* in a proceeding means—
- (a) a party to the proceeding; or
 - (b) a person bound by the decision.

235 Recommendation to prosecute

- (1) The following persons may recommend to the commissioner that there be a prosecution for an offence against this Act—
- (a) an inspector;
 - (b) a district workers' representative;
 - (c) a site senior executive.
- (2) Subsection (1) does not limit the commissioner's power to prosecute.

236 Limitation on time for starting proceedings

A proceeding for an offence against this Act must start within the latest of the following periods to end—

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant's knowledge but 3 years after the commission of the offence;
- (c) if the offence involves a breach of an obligation causing death and the death is investigated by a coroner under

the *Coroners Act 2003*—2 years after the coroner makes a finding in relation to the death.

237 Court may order suspension or cancellation of certificate or notice

- (1) *This section applies if a person convicted of an offence against this Act is the holder of a certificate of competency or site senior executive notice.*
- (2) *The industrial magistrate, on application by the complainant during the proceedings for the offence, may suspend or cancel the certificate of competency or site senior executive notice of the person convicted.*
- (3) *A person dissatisfied with the industrial magistrate's decision to suspend or cancel the person's certificate of competency or site senior executive notice who wants to appeal the decision, must appeal to the Industrial Court.*
- (4) *The industrial magistrate must give notice of the decision to suspend or cancel the person's certificate of competency or site senior executive notice to—*
 - (a) *the following persons, to the extent the persons are known to the industrial magistrate—*
 - (i) *for a decision relating to a certificate of competency—the site senior executive for each mine at which the person works;*
 - (ii) *for a decision relating to a site senior executive notice—the operator for each mine at which the person works; and*
 - (b) *the board of examiners.*

238 Forfeiture on conviction

- (1) On conviction of a person for an offence against this Act, an Industrial Magistrates Court may order the forfeiture to the State of—
 - (a) anything used to commit the offence; or

- (b) anything else the subject of the offence.
- (2) The court may make the order—
 - (a) whether or not the thing has been seized; and
 - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

239 Dealing with forfeited things

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the chief executive may destroy the thing.

240 Responsibility for acts or omissions of representatives

- (1) Subsections (2) and (3) apply in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
 - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (3) *An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable precautions and proper diligence, have prevented the act or omission.*

(4) In this section—

representative means—

(a) *of a corporation—an officer, employee or agent of the corporation; or*

(b) of an individual—an employee or agent of the individual.

state of mind of a person includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

242 Representation

A party to a proceeding under this Act may be represented by the party's lawyer or agent.

243 Costs of investigation

(1) If a court convicts a person of an offence against this Act, the court may order the person to pay the department's reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence.

(2) This section does not limit the orders for costs the court may make.

244 Recovery of fees

(1) A fee payable under this Act and not paid may be recovered by the chief executive—

(a) in summary proceedings under the *Justices Act 1886*; or

(b) by action for a debt in a court of competent jurisdiction.

(2) A fee may also be recovered in a proceeding for an offence against this Act.

[s 245]

- (3) An order made under subsection (2) is enforceable under the *Justices Act 1886* as an order for payment of money made by a magistrate under that Act.
- (4) If an order is made under subsection (2)—
 - (a) the order may be filed in the registry of a Magistrates Court; and
 - (b) on being filed, is taken to be an order made by a Magistrates Court and may be enforced accordingly.

Division 3 Evidentiary provisions

245 Service of documents

- (1) If a document is required or permitted under this Act to be given to a person, the document may be given to the person by facsimile transmission directed and sent to—
 - (a) the last transmission number given to the giver of the document by the person as the facsimile transmission number for service of documents on the person; or
 - (b) the facsimile transmission number operated—
 - (i) at the address of the person last known to the giver of the document; or
 - (ii) if the person is a company, at the company's registered office.
- (2) A document given in accordance with subsection (1) is taken to have been given on the day the copy is transmitted.
- (3) This section does not limit any other means of giving documents authorised or permitted by law including, for example, under the *Acts Interpretation Act 1954*, part 10.

246 How document to be given to operator

A document to be given to an operator for a mine, is taken to have been given to the operator if it is—

-
- (a) addressed to the operator; and
 - (b) given to the site senior executive at the mine.

Part 14A Injunctions

246A Applying for injunction

- (1) The commissioner or chief inspector may apply to the District Court for an injunction under this part.
- (2) An injunction under this part may be granted by the District Court against a person at any time.

246B Grounds for injunction

The District Court may grant an injunction if the court is satisfied a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—

- (a) a contravention of this Act; or
- (b) attempting to contravene this Act; or
- (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
- (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention of this Act by a person; or
- (f) conspiring with others to contravene this Act.

246C Court's powers for injunction

- (1) The power of the District Court to grant an injunction restraining a person from engaging in conduct may be exercised—

[s 246D]

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind.
- (2) The power of the court to grant an injunction requiring a person to do an act or thing may be exercised—
 - (a) whether or not it appears to the court that the person intends to fail again, or to continue to fail, to do the act or thing; and
 - (b) whether or not the person has previously failed to do the act or thing.
- (3) An interim injunction may be granted under this part until the application is finally decided.
- (4) The court may rescind or vary an injunction at any time.

246D Terms of injunction

- (1) The District Court may grant an injunction in the terms the court considers appropriate.
- (2) Without limiting the court's power under subsection (1), an injunction may be granted restraining a person from carrying on particular activities—
 - (a) for a stated period; or
 - (b) except on stated terms and conditions.
- (3) Also, the court may grant an injunction requiring a person to take stated action, including action to disclose or publish information, to remedy any adverse consequences of the person's contravention of this Act.

Part 14B **Civil penalties**

246E **Definitions for part**

In this part—

civil penalty obligation means a safety and health obligation, or another obligation under this Act, prescribed by regulation to be a civil penalty obligation.

corresponding offence, in relation to a contravention of a civil penalty obligation, means an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

penalty notice see section 246I(3).

proposed penalty notice see section 246G(2).

relevant corporation means an operator or contractor that is a corporation.

246F **Liability for civil penalties**

- (1) A relevant corporation is liable to pay the State a civil penalty if—
 - (a) the relevant corporation contravenes a civil penalty obligation; or
 - (b) a representative of the relevant corporation contravenes a civil penalty obligation.
- (2) A civil penalty may be imposed on the relevant corporation by a penalty notice given to the corporation by the chief executive.
- (3) The amount of the penalty is—
 - (a) if the civil penalty obligation is a category 1 obligation—1,000 penalty units; or
 - (b) if the civil penalty obligation is a category 2 obligation—750 penalty units; or

[s 246G]

- (c) *if the civil penalty obligation is a category 3 obligation—500 penalty units.*
- (4) *For subsection (3), the category of a civil penalty obligation is the category prescribed by regulation for the obligation.*
- (5) *In this section—*
representative, *of a relevant corporation, means an officer, employee or agent of the corporation.*

246G Giving of notice proposing imposition of civil penalty

- (1) *This section applies if the chief executive reasonably believes a relevant corporation is liable to pay a civil penalty on the grounds of a contravention of a civil penalty obligation.*
- (2) *The chief executive may give the corporation a notice (a **proposed penalty notice**) proposing to impose a civil penalty on the corporation on the grounds of the contravention.*
- (3) *The proposed penalty notice must state each of the following matters—*
 - (a) *that the chief executive proposes to impose a civil penalty on the corporation;*
 - (b) *the grounds for imposing the penalty;*
 - (c) *the facts and circumstances forming the basis for the grounds;*
 - (d) *that the corporation may make a written submission to the chief executive, within a stated period of at least 14 days after the corporation is given the notice, to show why the civil penalty should not be imposed;*
 - (e) *the way in which the submission may be made.*

246H Submission against proposed imposition of civil penalty

The relevant corporation may, within the period stated in the proposed penalty notice under section 246G(3)(d) and in the way stated in the notice, make a written submission to the

chief executive to show why the civil penalty should not be imposed.

246I Giving of penalty notice

- (1) *This section applies if—*
 - (a) *the period stated in the proposed penalty notice under section 246G(3)(d) has ended; and*
 - (b) *the chief executive has considered any submission made under section 246H; and*
 - (c) *the chief executive is satisfied—*
 - (i) *the civil penalty obligation mentioned in the proposed penalty notice has been contravened; and*
 - (ii) *the relevant corporation is liable to a civil penalty on the grounds of the contravention.*
- (2) *The chief executive may decide to impose a civil penalty on the corporation on the grounds of the contravention.*
- (3) *If the chief executive makes a decision under subsection (2), the chief executive must give the corporation a notice (a **penalty notice**) stating each of the following matters—*
 - (a) *the chief executive has decided to impose a civil penalty on the corporation;*
 - (b) *the reasons for the decision;*
 - (c) *the amount of the penalty and the day by which it must be paid;*
 - (d) *that the corporation may appeal to an Industrial Magistrates Court against the decision within 28 days after the corporation is given the penalty notice;*
 - (e) *how to appeal.*
- (4) *The day for payment stated under subsection (3)(c) must not be less than 28 days after the penalty notice is given to the corporation.*

[s 246J]

- (5) *The State may recover the penalty from the corporation as a debt.*

246J Civil penalty can not be imposed after criminal proceeding

- (1) *A civil penalty must not be imposed on a relevant corporation on the grounds of a contravention of a civil penalty obligation if the corporation has been convicted or found guilty of a corresponding offence.*
- (2) *Subsection (3) applies if—*
- (a) *the chief executive has given a relevant corporation a proposed penalty notice in relation to a contravention of a civil penalty obligation; and*
 - (b) *before the chief executive makes a decision under section 246I, a criminal proceeding is started against the corporation for a corresponding offence.*
- (3) *A civil penalty must not be imposed on the corporation on the grounds of the contravention unless the criminal proceeding ends without the corporation being convicted or found guilty of a corresponding offence.*
- (4) *This section applies despite any other provision of this part.*

246K Criminal proceeding after civil penalty imposed

A criminal proceeding may be started against a relevant corporation for a corresponding offence for a contravention of a civil penalty obligation regardless of whether a civil penalty has been imposed on the corporation for the contravention.

Part 15 Offences

247 Person not to encourage refusal to answer questions

- (1) A person must not encourage or influence, or attempt to encourage or influence, by general direction, promise of advantage, threat of dismissal or otherwise, a worker to refuse to answer questions put to the worker by an inspector, inspection officer, authorised officer or district workers' representative.

Maximum penalty—40 penalty units.

- (2) To remove any doubt, subsection (1) does not apply to the provision of legal advice to a worker by a lawyer.

248 Impersonating inspectors, officers or representatives

A person must not pretend to be an inspector, inspection officer, authorised officer, site safety and health representative or district workers' representative.

Maximum penalty—40 penalty units.

249 Protection for officers

- (1) A person must not disadvantage an officer for exercising the officer's powers under this Act.

Maximum penalty—500 penalty units.

- (2) In this section—

officer means—

- (a) an inspector; or
- (b) an inspection officer; or
- (c) an authorised officer; or
- (d) a district workers' representative; or
- (e) a site safety and health representative.

Part 16 General

Division 1 General safety matters

250 Person must not employ underage persons underground

A person must not employ a person under the age of 16 as an underground worker.

Maximum penalty—100 penalty units.

250A Underage persons not to operate or maintain plant

The site senior executive for a mine must not allow a person under the age of 16 to operate or maintain plant at the mine.

Maximum penalty—100 penalty units.

251 Workers may request information

The site senior executive must make available for inspection, by workers employed at the mine, a copy of the safety and health management system.

Maximum penalty—100 penalty units.

252 Action where risk is unacceptable

- (1) If the level of risk from a hazard at a mine or an area within a mine is not within acceptable limits, a worker, if competent and able to eliminate the danger from the hazard, must take the action necessary to eliminate the danger.

Maximum penalty—100 penalty units.

- (2) If the worker is not competent or able to eliminate the danger, the worker—
 - (a) if the hazard is equipment, substances or operations—must stop the use of the equipment, substances or operations; or

- (b) if stopping the use of equipment, substances or operations does not bring risk within acceptable limits or the risk is not caused by the use of equipment, substances or operations—must withdraw from the mine or the area within the mine.

Maximum penalty—100 penalty units.

- (3) Also, if the worker is not competent or able to eliminate the danger, the worker must—
 - (a) take measures to prevent immediate danger to other workers that the worker is able reasonably to take; and
 - (b) immediately report the situation to the worker's supervisor.

Maximum penalty—100 penalty units.

- (4) If subsection (2)(b) applies, a supervisor of workers must ensure that the workers are withdrawn from the mine or the area within the mine.

Maximum penalty—100 penalty units.

- (5) If action has been taken under subsection (2)(a), a person must not use the equipment or substances or resume operations until the risk—
 - (a) has been assessed by a competent person; and
 - (b) has been treated as necessary to reduce the risk to an acceptable level.

Maximum penalty—100 penalty units.

- (6) If action has been taken under subsection (2)(b), a person must not re-enter the mine or the area within the mine until the risk—
 - (a) has been assessed by a competent person; and
 - (b) has been treated as necessary to reduce the risk to an acceptable level.

Maximum penalty for subsection (6)—100 penalty units.

253 Where worker exposed to immediate personal danger

- (1) Subject to section 252(1) and (2), if a worker (the *original worker*) reasonably believes that there is serious danger to the original worker's safety or health, the original worker has the right—
 - (a) to remove himself or herself to a position of safety; and
 - (b) to refuse to undertake a task allocated to the original worker that may place the worker in serious danger.
- (2) The operator or the operator's representative must not disadvantage the original worker for exercising the worker's rights under subsection (1).

Maximum penalty—200 penalty units.

- (3) Subsection (4) applies if the operator or the operator's representative subsequently asks or directs another worker (the *subsequent worker*) to place himself or herself in the position from which the original worker has removed himself or herself, or to undertake a task that the original worker has refused to undertake.
- (4) The operator or the operator's representative must advise the subsequent worker that the original worker exercised rights under subsection (1) because the original worker believed that there was a serious danger to the original worker's safety or health.

Maximum penalty for subsection (4)—200 penalty units.

254 Representations about safety and health matters

- (1) This section applies to a person who is—
 - (a) a worker; or
 - (b) another person with obligations under this Act; or
 - (c) an employee of a person mentioned in paragraph (b).
- (2) The person may make, either personally or by a representative, a representation to an inspector or inspection officer about—

-
- (a) an alleged contravention of this Act; or
 - (b) a thing or practice at the mine that is, or is likely to be, dangerous.
- (3) The inspector or inspection officer must investigate the matter and make a written report of the investigation to the worker or the worker's representative.
- (4) A public service officer must not disclose the name of the person making the representation—
- (a) except for a prosecution under subsection (5); or
 - (b) unless the person consents to the disclosure.
- (5) The person must not make a false or frivolous representation.
Maximum penalty for subsection (5)—40 penalty units.

254A Protection from reprisal

- (1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, the other person—
- (a) has made a complaint, or in any other way has raised, a mine safety issue; or
 - (b) has contacted or given help to an official in relation to a mine safety issue.
- Maximum penalty—40 penalty units.
- (2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.
- (3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.
- (4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.
- (5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

[s 254B]

- (6) This section does not limit or otherwise affect the operation of the *Public Interest Disclosure Act 2010*, chapter 4, part 1 in relation to reprisals.
- (7) In this section—
mine safety issue means an issue about the safety or health of a person or persons while at a mine or as a result of mining operations.

254B Damages entitlement for reprisal

- (1) A reprisal is a tort and a person who takes a reprisal is liable in damages to anyone who suffers detriment as a result.
- (2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.
- (3) If the claim for the damages goes to trial in the Supreme Court or the District Court, it must be decided by a judge sitting without a jury.

Division 2 Miscellaneous

254C Public statements

- (1) The Minister, chief executive, commissioner or chief inspector may make or issue a public statement identifying, and giving information about, the following—
 - (a) the commission of offences against this Act and persons who commit the offences;
 - (b) *investigations conducted under this Act about accidents or high potential incidents at a mine;*
 - (c) *action taken by inspectors, inspection officers, authorised officers or the chief executive to enforce the Act;*
 - (d) *the cancellation or suspension of a certificate of competency or site senior executive notice under section 182(2) or part 10A;*

-
- (e) *any incident or other matter that may be relevant to persons seeking to comply with their safety and health obligations.*
- (2) The public statement may identify particular information and persons.
- (3) The Minister, chief executive, commissioner or chief inspector must not issue a public statement under this section unless satisfied that it is in the public interest to do so.
- (4) *Despite section 256(2), no liability is incurred by the State for the issue of, or for anything done for the purpose of issuing, a public statement under this section in good faith.*
- (5) *No liability is incurred by a person for publishing, in good faith, information that has been included in a public statement under this section.*
- (6) *In this section—*
liability includes liability in defamation.

255 Disclosure of information

- (1) A person must not disclose information concerning the personal affairs of a person or commercially sensitive information obtained by the person in the administration of this Act, unless the disclosure is made—
- (a) with the consent of the person from whom the information was obtained; or
- (b) in the administration of this Act; or
- (c) in a proceeding under this Act or a report of the proceeding; or
- (d) in a proceeding before a court in which the information is relevant to the issue before the court; or
- (e) in a public statement made or issued under section 254C.

Maximum penalty—100 penalty units.

[s 256]

- (2) However, the chief inspector may communicate anything that comes to the chief inspector's knowledge under this Act to an officer or authority responsible for administering a law of Queensland, the Commonwealth or another State about safety and health in mining.
- (3) *Despite subsection (1), the chief inspector or chief executive may disclose to the Regulator or WorkCover, under the Workers' Compensation and Rehabilitation Act 2003, any information the chief inspector or chief executive has that relates to any matter under that Act.*
- (4) This section does not limit the *Right to Information Act 2009* or the *Information Privacy Act 2009*, chapter 3.

256 Protection from liability

- (1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

Example of an act done—

giving information or advice

- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

Part 17 Administration

257 Delegations

- (1) The Minister or chief executive may delegate his or her powers under this Act to an appropriately qualified public service employee.
- (2) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

a person's classification level in the public service

258 Delegation of chief inspector's powers

- (1) The chief inspector may delegate any of the chief inspector's powers to an inspector.
- (2) However, the chief inspector may delegate a power to an inspector only if the chief inspector is satisfied the inspector has the expertise and experience to properly exercise the power.
- (3) Also, the chief inspector must not delegate to an inspector the power to review an inspector's directive under section 174.

259 Notices about industry statistics or information

- (1) The chief executive may, by notice, require a person to keep and give the chief executive statistics or other information in the person's custody, possession or power about the mining industry.

Examples of matters the notice may require—

- 1 the keeping and giving of records of production, disposal, sales and employment numbers
 - 2 the compilation and giving of statistics, returns and other information, including about attendance and absenteeism for work at mines
 - 3 that the records, statistics, returns or other information must be in an approved form
- (2) The chief executive may, by notice, amend a notice.
 - (3) The person must comply with the notice, unless the person has a reasonable excuse for not complying.

Maximum penalty—40 penalty units.

- (4) The chief executive may—
 - (a) use the information to produce statistics and other data; and
 - (b) publish the statistics and other data produced under paragraph (a).

260 Chief executive to keep records

- (1) The chief executive must keep and maintain records that include—
 - (a) a database of information about—
 - (i) hazards associated with operations and methods of controlling the hazards; and
 - (ii) lost time injuries and high potential incidents; and
 - (b) plans showing the extent of operations undertaken at abandoned mines; and
 - (c) current guidelines.
- (2) Information about lost time injuries must include the number of days the injured person was unable to work, regardless of the number of hours that would have been worked by the person each day.
- (3) However, the number of days to be recorded does not include the day of the injury.
- (4) The chief executive, on payment by a person of a reasonable fee decided by the chief executive, must give a person access to the records.
- (5) In this section—

lost time injuries means an injury resulting in the injured person being unable to work the next day or a longer period, whether they are rostered to work or not.

261 Approved forms

The chief inspector may approve forms for use under this Act.

Part 18 Regulations

262 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may be made about the following—
 - (a) risk management practices including criteria to be used in assessing whether risk is at an acceptable level;
 - (b) safety and health management systems;
 - (c) conditions in the work and local environments, the monitoring of those environments, and the use of personal protective equipment where limits are exceeded;
 - (d) processes and methods of operation;
 - (e) design and layout of facilities;
 - (f) the use, production and disposal of material;
 - (g) the design, use and maintenance of plant, equipment and tools;
 - (h) procedures and standard work instructions;
 - (i) *the competency, fitness and monitoring of persons and the monitoring of their work, including requirements for holders of certificates of competency or site senior executive notices to undertake continuing professional development decided by the board of examiners;*
 - (j) the monitoring, reporting, recording and investigation of injuries, illnesses and other effects on persons, and other incidents and situations with the potential to cause harm;
 - (k) provisions for handling emergencies;
 - (l) the gathering, recording, analysis, flow, and use of safety and health data and information;

- (m) *the health of persons who are, will be or have been employed as workers, including about—*
 - (i) *the appointment, qualifications and removal of doctors and other health practitioners for mines; and*
 - (ii) *pre-employment and periodic medical examinations and health assessments to decide a person's fitness for work at a mine and for the purpose of health surveillance; and*
 - (iii) *the ownership, storage, confidentiality and release of the results of medical examinations and health assessments; and*
 - (iv) *reciprocal arrangements between operations for the exchange of information or the recognition of medical examinations or health assessments.*
- (3) Without limiting subsection (1), a regulation may specify requirements for the following—
 - (a) notifications, returns, and other information to be provided by the site senior executive to the inspectorate;
 - (b) protection of confidentiality of personally and commercially sensitive information;
 - (c) the methods of keeping records and their availability;
 - (d) proceedings of the committee;
 - (e) the qualifications and experience of inspectors, inspection officers, authorised officers, site safety and health representatives and district workers' representatives.
- (4) Without limiting subsection (1), a regulation may set fees payable under this Act.
- (5) Without limiting subsection (1) or (4), a regulation may be made about assessing, charging and recovering fees payable to cover the cost of the department's activities carried out for the purposes of safety and health for operations.

-
- (6) Without limiting subsection (5), a regulation may provide for any of the following—
- (a) the types of activities for which fees may be charged and recovered;
 - (b) the fees to be charged;
 - (c) the way the fees are calculated including, for the first time the fees are charged, prescribing the way based on criteria in place before the commencement of the regulation;
 - (d) who must pay the fees;
 - (e) how, when, where, and to whom, the fees must be paid;
 - (f) the calculation of interest payable on unpaid fees;
 - (g) the information that must be provided to the chief executive by the persons who must pay the fees;
 - (h) how, when, where, and to whom, the information is to be provided;
 - (i) investigations by authorised officers to obtain and check the information.
- (7) A regulation may create offences and prescribe penalties of not more than 400 penalty units for offences against the regulation.

Part 19 **Transitional and repeal provisions for Act No. 40 of 1999**

Division 1 **Definitions**

263 **Definitions for pt 19**

In this part—

commencement means the commencement of this section.

former Act means the *Mines Regulation Act 1964*.

Division 2 Transitional matters

264 Existing certificates of competency

If a certificate of competency issued by the board of examiners under the former Act and in force at the commencement is mentioned in this Act, it is taken to be a certificate of competency granted under this Act.

265 Approvals by inspector

If an approval of the chief inspector or an inspector for a stated use for stated plant is in force under the former Act at the commencement, and a certificate by a testing authority is required under this Act for the stated use for the stated plant, the approval of the chief inspector or inspector is taken to be a certificate given under this Act.

266 Board of examiners

- (1) The board of examiners established under the former Act is taken to be the board of examiners under this Act for 6 months after the commencement.
- (2) A person who immediately before the commencement was a member of the board of examiners continues to be a member for 6 months after the commencement.
- (3) To remove doubt, for this Act, the board of examiners has only the functions and powers set out in this Act.

267 Existing chief inspector to be chief inspector

A person who, immediately before the commencement, was the chief inspector of mines under the former Act, is taken to be appointed as the chief inspector under this Act.

268 Existing inspector to be inspector

A person who, immediately before the commencement, was an inspector under the former Act is taken to be appointed as an inspector under this Act.

269 Existing inspection officer to be inspection officer

A person who, immediately before the commencement, was an inspection officer under the former Act is taken to be appointed as an inspection officer under this Act.

270 Existing district workers' representative

A person who, immediately before the commencement, held an appointment as a district workers' representative under the former Act is taken to be appointed as a district workers' representative under this Act until the day the person's appointment under the former Act would have ended.

271 Mine record book taken to be mine record

The mine record book under the former Act is taken to be the mine record under this Act.

272 Warden may finish inquiry into accident

- (1) If a warden has started an inquiry into an accident under the former Act and the inquiry has not been finished at the commencement, the warden may finish the inquiry under the former Act as if it had not been repealed.

- (2) In this section—

warden means a warden under the *Mineral Resources Act 1989*.

Division 3 Repeal

273 Repeal

The *Mines Regulation Act 1964* is repealed.

**Part 20 Other transitional and
validation provisions**

**Division 1 Transitional provisions for Mines
and Energy Legislation Amendment
Act 2011**

274 Definitions for div 1

In this division—

commencement means the day this section commences.

former board means the board of examiners established under previous section 181.

mining safety and health advisory committee means the mining safety and health advisory committee under section 66.

mining safety and health advisory council means the mining safety and health advisory council established under previous section 66.

previous, in relation to a stated provision that includes a number, means the provision as in force immediately before the commencement.

275 Existing certificates of competency

A certificate of competency granted by the former board under previous section 182 and in force at the commencement

is taken to be a certificate of competency granted by the board of examiners.

276 Existing decisions and assessments of the former board

A decision or assessment made by the former board, and in force or effect immediately before the commencement, is taken to be a decision or assessment made by the board of examiners.

277 References to mining safety and health advisory council

From the commencement, a reference in an Act or document to the mining safety and health advisory council is, if the context permits, taken to be a reference to the mining safety and health advisory committee.

278 Continuation of mining safety and health advisory council and appointment of members

- (1) On the commencement, the mining safety and health advisory council continues as the mining safety and health advisory committee.
- (2) Subsection (3) applies to a person who, immediately before the commencement, is a member of the mining safety and health advisory council.
- (3) On the commencement, the person is taken to be a member of the mining safety and health advisory committee.

Division 2 **Transitional provision for Mines and Energy Legislation Amendment Act 2011**

279 **Application of appeal costs provision to undecided appeals**

- (1) The appeal costs provision applies to any appeal under part 13 started, but not decided, before the commencement of this section.
- (2) In this section—

appeal costs provision means section 228(3) as amended under the *Mines and Energy Legislation Amendment Act 2011*.

Division 3 **Transitional and validation provision for Water Reform and Other Legislation Amendment Act 2014**

280 **Return of seized things**

- (1) New section 146 applies in relation to a thing seized under part 9 before the commencement that, on the commencement, is still seized.
- (2) If, at any time before the commencement, a thing seized under part 9 was not returned to its owner within the time required under old section 146—
 - (a) the retention of the thing is taken to have been as lawful as it would have been apart from the non-compliance with old section 146; and
 - (b) the State is not liable to pay compensation, and does not incur any other liability, for the retention of the thing in contravention of old section 146.

-
- (3) Subsection (2) applies for all purposes including a legal proceeding started before the commencement.
 - (4) In this section—
new section 146 means section 146 as in force from the commencement.
old section 146 means section 146 as in force from time to time before the commencement.

Division 4 Validation provision for Land and Other Legislation Amendment Act 2017

281 Validation of particular appointments

- (1) This section applies if, before the commencement, an officer or employee of the public service was purportedly appointed to any of the following offices (each a *relevant office*)—
 - (a) an inspector or inspection officer under section 122(1);
 - (b) for an inspector—the chief inspector of mines under section 122(2);
 - (c) an authorised officer under section 126A.
- (2) The person is declared to always have been validly appointed to the relevant office.
- (3) Anything done or omitted to be done by the person that would have been valid and lawful under this Act had the person been validly appointed to the relevant office is taken to be, and always to have been, valid and lawful.
- (4) Without limiting subsection (3), it is declared that evidence obtained by the person in the purported exercise of a power under this Act is taken to be, and always to have been, lawfully obtained.

Division 5 **Transitional provisions for Mines
Legislation (Resources Safety)
Amendment Act 2018**

282 **Definition for division**

In this division—

amended, in relation to a provision of this Act, means the provision as amended or inserted by the Mines Legislation (Resources Safety) Amendment Act 2018.

283 **Appointment of site senior executives during 1-year
transitional period**

- (1) *This section applies to the appointment of the site senior executive for a mine.*
- (2) *During the period starting on the commencement and ending 1 year after the commencement, amended section 49(4) does not apply to the appointment.*
- (3) *The chief inspector may extend the 1-year period mentioned in subsection (2) in relation to the appointment for a stated mine for a further period of not more than 1 year if satisfied there are exceptional circumstances.*

284 **Appointment of ventilation officers for underground
mines during 3-year transitional period**

- (1) *This section applies to the appointment of the ventilation officer, or acting ventilation officer, for an underground mine.*
- (2) *During the period starting on the commencement and ending 3 years after the commencement, amended section 54A(3) or 54B(6) does not apply to the appointment.*

285 **Continuation of exemptions for particular opal or gem
mines for 3-year transitional period**

- (1) *This section applies to an opal or gem mine if—*

-
- (a) *more than 4, but not more than 10, workers are employed at the mine; and*
- (b) *immediately before the commencement, the mine was not required to have a safety and health management system.*
- (2) *During the period starting on the commencement and ending 3 years after the commencement—*
- (a) *pre-amended sections 38(3) and 39(2) and (3) continue to apply in relation to the mine; and*
- (b) *amended section 40(1)(b), (d) and (e)(i) does not apply to a contractor at the mine if the mine is not required to have a safety and health management system; and*
- (c) *amended section 44(1)(b), (f)(ii) and (iii) and (g)(i) does not apply to a service provider at the mine if the mine is not required to have a safety and health management system.*
- (3) *For subsection (2)(a), pre-amended section 39(2) and (3) applies as if the reference to section 39(1)(c) were a reference to section 39(1)(c) to (f) and (h)(i).*
- (4) *In this section—*
- pre-amended***, *in relation to a provision of this Act, means the provision as in force immediately before the commencement.*

Schedule 2 Dictionary

section 8

acceptable level, of risk to a person from operations, see section 26.

accident see section 16.

area of representation, of a safety and health representative, see section 84(4).

attendance notice see section 210.

authorised officer means a person appointed as an authorised officer under this Act.

board of examiners means the board of examiners established under the *Coal Mining Safety and Health Act 1999*.

bodily harm see Criminal Code, section 1.

certificate of competency means a certificate of competency granted by the board of examiners.

chief executive means the chief executive of the department in which this Act is administered.

Note—

This is also the law under the *Acts Interpretation Act 1954*, section 36 but, because of the particular nature of this Act, is included here to avoid confusion with the chief executive of, for example, a mining company.

chief inspector means the chief inspector of mines.

civil penalty obligation, for part 14B, see section 246E.

commissioner means the Commissioner for Mine Safety and Health under the *Coal Mining Safety and Health Act 1999*.

committee see section 66.

competence, for a task at a mine, see section 13.

consultation, with workers, see section 14.

conviction includes a plea of guilty or a finding of guilt by a court even though a conviction is not recorded.

corresponding offence, in relation to a contravention of a civil penalty obligation, for part 14B, see section 246E.

district workers' representative see section 24.

document certification requirement see section 151(5).

document production requirement see section 151(7).

exploration permit has the meaning given in the *Mineral Resources Act 1989*.

facility description, for a mine, means a written document that shows or describes—

- (a) the processes used and materials handled at the mine; and
- (b) the layout of operations at the mine; and
- (c) the major items of plant and equipment at the mine.

fossick has the meaning given in the *Fossicking Act 1994*.

grievous bodily harm see Criminal Code, section 1.

guideline see part 5.

hard rock means rock that must be broken to enable it to be excavated.

hazard see section 20.

high potential incident see section 18.

holder means the holder under the *Mineral Resources Act 1989* of a prospecting permit, exploration permit, mineral development licence, mining lease or mining claim.

industrial organisation means an association of employees registered under the *Industrial Relations Act 2016* as an employee organisation.

inspection officer means a person appointed an inspection officer under this Act.

inspector means a person appointed as an inspector under this Act.

mine see section 9.

mineral has the meaning given in the *Mineral Resources Act 1989*, but does not include coal.

mineral development licence has the meaning given in the *Mineral Resources Act 1989*.

mineral (f) see the *Mineral Resources Act 1989*, section 6(2)(f).

mine record see section 59.

mining claim has the meaning given in the *Mineral Resources Act 1989*.

mining lease has the meaning given in the *Mineral Resources Act 1989*.

mining project means mining carried on under 2 or more mining leases as a single integrated undertaking.

mining tenure, for land, means a prospecting permit, exploration permit, mineral development licence, mining lease or mining claim for the land under the *Mineral Resources Act 1989*.

notice means signed written notice.

obstruct includes hinder, resist and attempt to obstruct.

officer—

- (a) *of a corporation, means an officer within the meaning of the Corporations Act, section 9, other than a partner in a partnership; or*
- (b) *for part 9, division 4, see section 129A.*

official means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) the commissioner; or
- (d) the chief inspector; or
- (e) an inspector; or

- (f) an inspection officer; or
- (g) an authorised officer; or
- (h) a person acting under the direction of or helping an inspector, inspection officer or authorised officer; or
- (i) a member or a substitute member of the committee; or
- (j) a district workers' representative or a site safety and health representative.

oil shale is any shale or other rock (other than coal) from which a gasification or retorting product may be extracted or produced.

opal or gem mine means a mine at which operations are carried out for opal, gemstones or other semiprecious minerals.

operations see section 10.

operator see section 21.

penalty notice, for part 14B, see section 246I(3).

personal details requirement see section 149(5).

place of seizure see section 141(a).

plant includes—

- (a) machinery, equipment, appliance, pressure vessel, implement and tool; and
- (b) personal protective equipment; and
- (c) a component of plant and a fitting, connection, accessory or adjunct to plant.

product includes as mined material, waste material, treated and semi-treated material.

proposed action, for part 10A, see section 187(1).

proposed action notice, for part 10A, see section 187(2).

proposed penalty notice, for part 14B, see section 246G(2).

prospecting permit has the meaning given in the *Mineral Resources Act 1989*.

region means an administrative region established by the chief executive for the administration of this Act.

relevant corporation, for part 14B, see section 246E.

reprisal see section 254A.

residual risk means the remaining level of risk after measures to control risk have been taken under this Act.

review decision see section 174(1).

risk see section 19.

risk management see section 27.

safety and health see section 12.

safety and health management system, for a mine, means a single safety and health management system that complies with section 55.

safety and health obligations see section 30.

separate part of a mine see section 21(4).

serious accident see section 17.

service provider see section 44(1).

site safety and health representative see section 25.

site senior executive, for a mine, see section 22.

site senior executive notices see section 180(e).

standard work instruction see section 15.

substitute member see section 74A(1).

supervisor see section 23.

supplier, of plant, equipment, substances or other goods, means a person who contracts to supply the plant, equipment, substances or other goods to an operator, contractor or service provider.

treatment means any process that takes place on land the subject of a prospecting permit, exploration permit, mineral development licence, mining lease or mining claim that is

carried out with the objective of preparing material won in operations for its end purpose.

unacceptable level of risk means risk that is not at an acceptable level.

underground gasification activity means an activity relating to—

- (a) the exploration for, and testing of, oil shale to be used for the production of mineral (f); or
- (b) the production, processing, refining, storage or transportation of mineral (f).

underground mine means a mine where workers normally work beneath the surface of the earth, and includes structures, apparatus and equipment that extend continuously from the surface into an underground mine, but does not include the surface operations of the mine.

worker is an individual who carries out work at a mine and includes—

- (a) an employee of the operator; and
- (b) a contractor or employee of a contractor; and
- (c) *a service provider or employee of a service provider.*

workplace means a workplace to which the Work Health and Safety Act 2011 applies.