

Coal Mine Health and Safety Act 2002 No 129

Status Information

Currency of version

This is the latest version of this legislation.

Legislation on this site is usually updated within 3 working days after a change to the legislation.

This version was last updated on 1 July 2008.

This version relates to the period commencing on 1 July 2008 to date.

Assent date

16 December 2002

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

See [Historical notes](#)

Future operation of legislation

See [Related information](#) (if any) for additional information on Bills, uncommenced legislation, repeals, resolutions and other matters that may affect the future operation of this legislation.

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Historical notes

Related information

Does not include amendments by:

[Mine Health and Safety Act 2004 No 74, Sch 3 \[29\] \[45\] \[53\] \[65\] and \[70\]](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act 2006 No 58](#)) (not commenced — to commence on 1.9.2008)

[Mining Amendment Act 2008 No 19](#) (not commenced)

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New South Wales

An Act to secure the health, safety and welfare of persons in connection with coal operations; to repeal the *Coal Mines Regulation Act 1982*; to amend certain Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act is the *Coal Mine Health and Safety Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

abandoned coal operation includes a discontinued coal operation, a closed coal operation (other than a suspended coal operation) and a former coal operation.

Board means the Coal Competence Board constituted by section 130.

Board of Inquiry means a Board of Inquiry constituted under section 113.

certificate of competence means a certificate granted under section 136 that is in force.

check inspector means a site check inspector, an electrical check inspector or an industry check inspector.

Chief Inspector means the person appointed as Chief Inspector under section 145.

coal includes oil shale and kerosene shale, but does not include peat.

coal exploration site means:

- (a) a place where drilling from the surface is undertaken for the purpose of discovering or proving the existence of coal, or
- (b) a place where drilling from the surface is undertaken for a mining purpose in connection with the mining of coal, or

- (c) a place where bulk sampling is done under an exploration licence or assessment lease granted under the *Mining Act 1992*, or
- (d) a place being prepared for a use referred to in paragraph (a)–(c), or
- (e) a place formerly used for a purpose referred to in paragraph (a)–(c) and that is presently being restored.

coal mining industry code of practice means a coal mining industry code of practice under Part 11.

coal operation means a place at which coal is mined that is a place of work to which this Act applies and includes the places that are taken to be part of a coal operation under section 4.

Note. This Act applies to all places of work that are within a colliery holding, a coal exploration site or the subject of a licence to mine coal under the *Offshore Minerals Act 1999*.

coal preparation plant means land, buildings and works that are, or may be, used for or in connection with:

- (a) the treatment of coal to improve it as a marketable product, and
- (b) the dispatch of the coal after it has been so treated.

colliery holder means a person who has the right to mine for coal or to carry out coal mining purposes on any colliery holding.

colliery holding means a colliery holding registered in accordance with section 163 of the *Mining Act 1992*.

competent means having appropriate experience, knowledge, skills and capabilities.

contractor, in relation to a coal operation, means a person who is not an employee employed to work at a coal operation, who undertakes work at the coal operation, but does not include the operator of the coal operation.

contractor management plan for a coal operation means a contractor management plan prepared for the coal operation under section 39.

Department means the Department of Mineral Resources.

direction includes any instruction, order or requirement authorised by this Act to be given or made by the Minister or an inspector.

Director-General means the Director-General of the Department.

drift means a roadway driven in stone or alluvial matter, but does not include a shaft.

electrical check inspector for a coal operation means a person elected under section 172 as an electrical check inspector for the coal operation.

emergency management system for a coal operation means an emergency management system prepared for the coal operation under section 45.

employee means an individual who works under a contract of employment or apprenticeship.

employer means a person who employs persons under contracts of employment or apprenticeship.

evidence of competence means a certificate of competence or other evidence of competence acceptable to the Minister.

exercise a function includes perform a duty.

exploration holder means a person registered as the holder of:

- (a) an authority granted under the *Mining Act 1992*, or
- (b) a licence granted under the *Offshore Minerals Act 1999*.

flammable gas means methane, carbon monoxide or hydrogen.

function includes power, duty and authority.

government official means a person appointed under section 145.

health and safety management system for a coal operation means a health and safety management system prepared for the coal operation under section 20.

industry check inspector means a person appointed under section 173.

inspector means a person appointed as an inspector under section 145.

investigator means a person appointed as an investigator under section 145 or 147.

involved union means a Federal or State industrial organisation of employees of which a person employed to engage in work at a coal operation is a member, where that person is qualified to be such a member by virtue of the work that the person performs in his or her employment at the coal operation.

major hazard management plan for a coal operation means a major hazard management plan prepared for the coal operation under section 35.

management structure for a coal operation means the management structure prepared for the coal operation under section 37.

manager of electrical engineering for a coal operation means the person nominated as the manager of electrical engineering for the coal operation in the management structure for the coal operation.

manager of mechanical engineering for a coal operation means the person nominated as the manager of mechanical engineering for the coal operation in the management structure for the coal operation.

manager of mining engineering for a coal operation means the person nominated as the manager of mining engineering for the coal operation in the management structure for the coal operation.

methane includes ethane, propane and similar hydrocarbon gases.

mine:

- (a) when used as a noun, means any coal operation within which coal is disturbed in its natural place of formation, and
- (b) when used as a verb, means disturb, remove, cart, carry, crush or otherwise deal with coal or stone for the purpose of obtaining coal for profit or improving coal or carry out such other activities as may be prescribed by the regulations, but does not include:
 - (i) to explore for coal by drilling from the surface, or
 - (ii) to blend coal where this is done elsewhere than within a colliery holding.

mine safety officer means a person appointed as a mine safety officer under section 145.

open cut mine means a mine in which persons are not employed underground when the mine is being worked.

operator:

- (a) in relation to a coal operation that is a place within a colliery holding, means:
 - (i) the colliery holder, if the colliery holder nominated himself, herself or itself as the operator of the coal operation under section 17 and that nomination was not rejected, or
 - (ii) the person nominated by the colliery holder as the operator of the coal operation, and not rejected by the Chief Inspector, under section 17, or
 - (iii) (Repealed)
- (b) in relation to any other coal operation, means the person with the day to day management of the coal operation.

outlet, in relation to a mine, means a means of access to or exit from the mine for persons, materials, coal or stone.

place of work means premises where people work.

plant includes any machinery, equipment (including scaffolding), appliance, implement or tool and any component or fitting of, or accessory to, any machinery, equipment, appliance, implement or tool.

premises includes any place, and in particular includes:

- (a) any land, building or part of any building, and
- (b) any vehicle, vessel or aircraft, and
- (c) any installation on land, on the bed of any waters or floating on any waters, and
- (d) any tent or moveable structure.

previous offender, in relation to the maximum penalty for an offence, means a person who has, at any time before being sentenced for that offence, been convicted of any other offence of any kind against:

- (a) this Act, or
- (b) the *Coal Mines Regulation Act 1982*, or
- (c) the *Occupational Health and Safety Act 2000*, or
- (d) the *Occupational Health and Safety Act 1983*, or
- (e) the *Mines Inspection Act 1901*, or
- (f) the *Mine Health and Safety Act 2004*.

risks—see section 6.

roadway means any passageway in a mine formed by the removal of coal or stone and through which is passed or is proposed to be passed coal, stone, persons, materials or ventilation.

safe work method statement for a coal operation means a safe work method statement prepared under section 73.

shaft includes a staple shaft.

site check inspector, in relation to a coal operation, means a person elected under section 157 as a site check inspector for the coal operation.

stone includes rock, clay, shale, soil and sand, but does not include coal.

stop work order means an order under section 118.

subcontractor means a contractor who has been contracted by a person other than the coal operator.

supervisor means a person nominated as a supervisor in the management structure for a coal operation.

underground mine means a mine in which persons are employed underground when the mine is being worked.

vehicle includes any mechanically driven machine capable of moving under its own power.

4 Certain things are part of a coal operation

For the purposes of this Act, any building, structure, pit, shaft, drive, level, drift, excavation or work within a colliery holding:

- (a) that is in the course of construction and that is intended to be part of a coal operation, or
- (b) that is a part of a coal operation and that is in the course of being abandoned, or

- (c) that is a part of a coal operation the operations at or in which are in the course of being discontinued,

is taken to be part of a coal operation.

5 When a person is at work

For the purposes of this Act, a person is at work at a coal operation throughout the time when the person is at the coal operation, but not otherwise.

6 Risks arising from activities at work

For the purposes of this Act, *risks* arising out of the activities of people at work include risks attributable to:

- (a) the manner of conducting an undertaking, or
- (b) the plant or substances used for the purposes of an undertaking, or
- (c) the condition of premises (or any part of premises) used for the purposes of an undertaking.

7 Notes

Notes included in this Act do not form part of this Act.

Part 2 Application of Act

8 Application of Act

- (1) This Act applies to all places of work that are:
 - (a) within a colliery holding, or
 - (b) a coal exploration site, or
 - (c) the subject of a licence to mine coal under the *Offshore Minerals Act 1999*.
- (2) This Act also applies to abandoned coal operations and emplacement areas.
- (3) This Act does not apply to:
 - (a) any place that is of a class prescribed by the regulations or in circumstances or during time periods prescribed by the regulations, or
 - (b) any place specified by the Minister in a notice published in the Gazette.
- (4) The Minister is to notify any other Minister administering the *Occupational Health and Safety Act 2000* if any notice under subsection (3) (b) is published in the Gazette. However, failure to notify that other Minister does not affect the validity of the notice published in the Gazette.

9 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Part 3 Objects of Act

10 Objects of Act

The objects of this Act are:

- (a) to assist in securing the objects of the *Occupational Health and Safety Act 2000* in relation to coal operations (including the object of securing and promoting the health, safety and welfare of people at work at coal operations or related places), and
- (b) to put in place special provisions necessary for the control of particular risks arising from the mining of or exploration for coal, and
- (c) to ensure that effective provisions for emergencies are developed and maintained at coal operations and related places.

Part 4 Application of Occupational Health and Safety Act 2000

Note. The *Occupational Health and Safety Act 2000* is the main Act that deals with the health, safety and welfare of people at work, including people at work at a coal operation. This Part explains how this Act fits in with the *Occupational Health and Safety Act 2000*. Basically, this Act creates additional protections, rights and obligations necessary because of the special risks associated with coal operations. This Part makes it clear that this Act provides for an increase in the standard of protection of people at work at coal operations and never results in lesser protection than the *Occupational Health and Safety Act 2000* would otherwise provide.

11 Act to be read in conjunction with OH&S Act

This Act is to be read in conjunction with the *Occupational Health and Safety Act 2000*.

12 Act adds to protection provided by OH&S Act

- (1) If a provision of the *Occupational Health and Safety Act 2000* or the regulations made under that Act applies to coal operations, that provision continues to apply, and must be observed, in addition to this Act or the regulations made under this Act.

Note. For example, Part 2 of the *Occupational Health and Safety Act 2000* imposes duties relating to health, safety and welfare at coal operations. So does Part 5 of this Act. The provisions of this Act apply in addition to those of the OH&S Act and do not remove any OH&S protections, rights or obligations.

- (2) Without limiting subsection (1) or any other provision of this Act, the failure by an operator to comply with a provision of this Act or the regulations does not affect any liability of an employer or other person under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations under that Act.

13 OH&S Act prevails

- (1) The provisions of the *Occupational Health and Safety Act 2000* and the regulations under that Act prevail, to the extent of any inconsistency, over the provisions of both this Act and the regulations under this Act.

Note. For example, if a provision of this Act deals with a certain matter and a provision of the *Occupational Health and Safety Act 2000* deals with the same matter and it is

impossible to comply with both provisions, then a person must comply with the Occupational Health and Safety Act 2000 and not with this Act. If provisions of both Acts deal with the same matter but it is possible to comply with both provisions, then a person must comply with both Acts.

(2) This section is subject to section 122.

14 Compliance with this Act is no defence to prosecution under OH&S Act

Compliance with this Act or the regulations made under this Act, or with any requirement imposed under this Act or the regulations, is not in itself a defence in any proceedings for an offence against the Occupational Health and Safety Act 2000 or the regulations made under that Act.

Note. For example, a person may be guilty of an offence under the Occupational Health and Safety Act 2000 in respect of any act or omission that is expressly required or permitted to be done or omitted by or under this Act or the regulations made under this Act.

15 Relationship between duties under this Act and OH&S Act

Evidence of a relevant contravention of this Act or the regulations made under this Act is admissible in any proceedings for an offence against the Occupational Health and Safety Act 2000 or the regulations made under that Act.

16 No double jeopardy

Where an act or omission constitutes an offence:

- (a) under this Act or the regulations made under this Act, and
- (b) under the Occupational Health and Safety Act 2000 or the regulations made under that Act,

the offender is not liable to be punished twice in respect of the offence.

16A Documents

To avoid doubt, any documents or plans that by virtue of this Act or the regulations are required to be kept at a coal operation are taken to be documents that directly affect the occupational health and safety of employees within the meaning of section 81 of the Occupational Health and Safety Act 2000.

Part 5 Duties relating to health, safety and welfare at coal operations

Note. Part 2 of the Occupational Health and Safety Act 2000 imposes duties relating to health, safety and welfare at work on employers and others. Those duties apply to work at coal operations.

This Part imposes extra duties.

Division 1 Duties of colliery holders

Note. Section 8 of the Occupational Health and Safety Act 2000 imposes duties on employers. If a colliery holder nominates himself, herself or itself as the operator of the coal operation, the colliery holder has the duties in that section as the employer of its employees and has duties in relation to other people who work at the coal operation.

Section 10 of the Occupational Health and Safety Act 2000 imposes duties on a person who has control of premises used by people as a place of work. If a colliery holder nominates a

person other than himself, herself or itself as the operator of the coal operation, the colliery holder is, for the purpose of that Act, a person who has control of the premises constituted by the coal operation and so has duties under that section.

This Division imposes some extra duties on colliery holders.

17 Duty to nominate the operator of a coal operation

- (1) A colliery holder must not undertake any mining, or allow any other person to undertake any mining, at a coal operation within the colliery holding unless the colliery holder has nominated one person who is the employer with the day to day control of the coal operation as the operator of the coal operation.

Note. Because of the definition of *mine* (as a verb), this obligation applies to coal mines and preparation plants but not coal exploration sites.

- (2) A nomination must be made in writing to the Chief Inspector.
- (3) A colliery holder may nominate himself, herself or itself as the operator of a coal operation in the colliery holding.
- (4) If there is more than one separate and distinct coal operation within a colliery holding, the colliery holder may nominate the person who is the employer with the day to day control of each coal operation within the colliery holding.
- (5) A nomination under this section must be in the form prescribed by the regulations.
- (5A) The Chief Inspector may require a colliery holder to provide further information concerning a nomination.
- (6) The Chief Inspector must tell the colliery holder who made the nomination if the nomination has been rejected. This must be done within 28 days of receiving the nomination or within any further time specified by the Chief Inspector when the Chief Inspector requests further information under subsection (5A).
- (7) The Chief Inspector may reject a nomination under this section:
 - (a) if the Chief Inspector believes that the nominated operator is not the employer with the day to day control of the coal operation, or
 - (b) if more than one nominated operator is nominated and the Chief Inspector believes:
 - (i) that allowing the number of persons nominated to be operators would be detrimental to the safety of one or more coal operations, or
 - (ii) that the different parts of the colliery holding nominated under subsection (4) are not sufficiently distinct to warrant the appointment of separate operators, or
 - (c) in circumstances prescribed by the regulations.
- (8) If a nomination is rejected it is taken, on and from the time the rejection is notified to the operator, not to have been made.
- (9) If an operator whose nomination has not been rejected under this section ceases to be the employer with the day to day control of the coal operation, the colliery

holder must not undertake any mining, or allow any other person to undertake any mining, at the coal operation unless the colliery holder has nominated another operator of the coal operation. This section applies to a further nomination in the same way as it applies to an initial nomination.

- (10) This section does not require a colliery holder to nominate an operator if a previous colliery holder of the colliery holding nominated an operator other than himself, herself or itself and that nomination was accepted.
- (11) The regulations may provide for when a person is taken to cease to be the employer with the day to day control of a mine for the purposes of this section.
- (12) Subject to the regulations, the fact that an operator was not, when nominated as the operator under this section, the employer with the day to day control of the mine concerned does not affect the operator's obligations under this Act.
- (13) Subject to the regulations, the fact that an operator has ceased to be the employer with the day to day control of the mine does not affect the operator's obligations under this Act.

18 Colliery holder must give operator health and safety information

- (1) If a colliery holder nominates a person other than himself, herself or itself as the operator of a coal operation, the colliery holder must provide the person nominated with all information available to the colliery holder that may reasonably be relevant to the development and implementation of a health and safety management system for the coal operation (including any major hazard management plans that form part of that system).
- (2) The regulations may prescribe the information that must be provided under this section.

19 Penalty for offence against this Division

A colliery holder who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty: 250 penalty units.

Division 2 Duties of operators of coal operations

Note. Section 8 (1) of the *Occupational Health and Safety Act 2000* imposes duties on employers in relation to their employees. The operator of a coal operation has those duties in relation to its employees. This Division imposes some extra duties on operators, including in relation to other people who work at the coal operation.

Subdivision 1 Health and safety management systems

20 Duty of operator to prepare health and safety management system

- (1) The operator of a coal operation at which mining is carried out must prepare a statement in accordance with this Act and the regulations, stating how the health and safety of the people who work at the coal operation, or who are directly affected by the coal operation, will be protected. This is a ***health and safety management system***.

- (2) For the purposes of this section, a person may be directly affected by a coal operation even if the person is not inside the coal operation.
- (3) The regulations may specify which people are directly affected by a coal operation for the purposes of this Subdivision.
- (4) This section does not require an operator to prepare a mine safety management plan for a mine if:
 - (a) a previous operator of the mine prepared a plan that complies with this Act and the regulations, and
 - (b) the plan is adopted by the subsequent operator.

21 No mining without health and safety management system

The operator of a coal operation must ensure that mining is not carried out by any person at the coal operation unless a health and safety management system that complies with this Act and the regulations is implemented for the coal operation.

Note. Because of the definition of *mine* (as a verb), this Subdivision applies to coal mines and preparation plants but not coal exploration sites.

22 Duty of operator to ensure compliance with health and safety management system

The operator of a coal operation must ensure that mining at the coal operation is carried out in compliance with the health and safety management system for the coal operation. This includes activities undertaken by contractors who undertake work at the coal operation.

23 Contents of health and safety management system

- (1) The purpose of a health and safety management system must be to provide the primary means by which an operator ensures the health, safety and welfare of employees and others at a coal operation and of people directly affected by a coal operation, including people who are not at the coal operation.
- (2) A health and safety management system for a coal operation must provide:
 - (a) the basis for the identification of hazards, and of the assessment of risks arising from those hazards, by the operator of the coal operation, and
 - (b) for the development of controls for those risks, and
 - (c) for the reliable implementation of those controls.
- (3) A health and safety management system must include:
 - (a) system elements (which must include, but are not limited to, health and safety policy, risk management, training and competence, information control and system evaluation), and
 - (b) any major hazard management plans required for the coal operation under Subdivision 2, and

- (c) the management structure of the coal operation required under Subdivision 3, and
 - (d) any contractor management plan required for the coal operation under Subdivision 4, and
 - (e) any other matter prescribed by the regulations.
- (4) The regulations may require a health and safety management system to be consistent with any management system standard specified in the regulations.
- (5) The regulations may specify matters that do not need to be included in a health and safety management system.

24 Consultation

The people who work at the coal operation must be consulted, in the manner required by the regulations, during the preparation of the health and safety management system and before its amendment.

25 Information to be supplied to Chief Inspector and industry check inspector

- (1) Information relating to the health and safety management system for a coal operation must be supplied by the operator of the coal operation to the Chief Inspector and an industry check inspector.
- (2) The regulations may specify:
- (a) the form and content of information to be supplied, which may include, but is not limited to, the elements of the health and safety management system to be supplied, and
 - (b) whether any summary of the health and safety management system is to be supplied and, if so, what summary.

26 Chief Inspector may object

- (1) The Chief Inspector may object to a health and safety management system if he or she forms the view:
- (a) that the health and safety management system does not comply with the requirements of this Act or the regulations, or
 - (b) that there was insufficient or inadequate consultation in the preparation of the health and safety management system, or
 - (c) that the health and safety management system is insufficient to protect the health and safety of those who work at the coal operation or those affected by the coal operation.
- (2) If the Chief Inspector has an objection to a health and safety management system for a coal operation, the Chief Inspector must notify the operator of the coal operation in writing of the objection. The health and safety management system must not be implemented until the objection has been resolved.

- (3) If the Chief Inspector notifies an operator of an objection, the operator must revise the health and safety management system, taking into account any matters raised in the objection, and submit it to the Chief Inspector within the time prescribed by the regulations.
- (4) If the Chief Inspector has not notified the operator of an objection within 21 days after receiving information concerning the system, or within any other period prescribed by the regulations, the operator may implement a health and safety management system. The system may not be implemented before that period ends.

27 Industry check inspector may object

- (1) An industry check inspector may raise objections with the Chief Inspector regarding the content of a health and safety management system.
- (2) The Chief Inspector must have regard to any objection raised under this section.
- (3) Nothing in this section prevents an industry check inspector from raising matters concerning the content of a health and safety management system for a coal operation directly with the operator of the coal operation.

28 Health and safety management system must be reviewed

- (1) The operator of a coal operation at which mining is carried out must regularly review the health and safety management system for the coal operation, including any major hazard management plans, the management structure and any contractor management plan. That review must occur at least once every 3 years.
- (2) In addition to that regular review, an operator must immediately review the health and safety management system:
 - (a) as at 12 months after the commencement of mining at the coal operation, or
 - (b) if there is a fatality at or arising directly from the coal operation, or
 - (c) if there is a dangerous incident at the coal operation that could reasonably have been expected to result in a fatality, or
 - (d) if there is a significant change in operations that may affect health and safety, or
 - (e) if required to do so by the Chief Inspector in writing, or
 - (f) if required to do so by the regulations.
- (3) A review under subsection (2) is required to consider only the relevant parts of the health and safety management system.
- (4) The people who work at the coal operation must be consulted, in the manner prescribed by the regulations, as part of the review.
- (5) A review must be completed within 6 months after it is required by this section.

29 Amendment of health and safety management system

- (1) If a health and safety management system for a coal operation is amended after it is in operation, information concerning the amended system must, if the regulations

require it, be sent by the operator of the coal operation to the Chief Inspector and an industry check inspector before the proposed commencement of the amendment.

(2) Sections 23, 24 and 25 apply to an amendment to a health and safety management system in the same way as they apply to a health and safety management system.

(3) If the Chief Inspector is of the view:

(a) that the amended health and safety management system does not comply with the requirements of this Act or the regulations, or

(b) that there was insufficient or inadequate consultation concerning the amendment of the health and safety management system, or

(c) that the amended health and safety management system is insufficient to protect the health and safety of those at the coal operation or those affected by the coal operation,

the Chief Inspector may object to the amended health and safety management system.

(4) If the Chief Inspector notifies an operator of an objection, the operator must either withdraw or revise the amendment to the health and safety management system, taking into account any matters raised in the objection, and submit it to the Chief Inspector within the time prescribed by the regulations.

(5) The operator may implement the amended health and safety management system immediately after informing the Chief Inspector of the amendment, unless the amendment is of a kind that the regulations provide cannot be implemented during a prescribed period after informing the Chief Inspector.

30 Access to health and safety management system

(1) An up-to-date copy of the health and safety management system for a coal operation must be kept at the on-site office of the coal operation by the operator of the coal operation and must be made available for inspection by:

(a) a government official, or

(b) a check inspector who is entitled to exercise functions in relation to the coal operation, or

(c) any person who works at the coal operation.

(2) The operator of a coal operation must immediately supply the Chief Inspector with an up-to-date copy of the health and safety management system for the coal operation if the Chief Inspector requests a copy.

31 Former operator must return information

If a person ceases to be the operator of a coal operation, that person must return to the colliery holder any information provided to the person under section 18 or otherwise obtained by the person in the course of exercising the functions of an operator prescribed by the regulations, whether or not updated by the operator. That information must be returned as soon as practicable after the person ceases to be the operator.

Subdivision 2 Major hazard management plans

32 Regulations may prescribe “major hazard”

The regulations may prescribe a hazard to people (whether or not they are at work) as a *major hazard* to which this Subdivision applies.

33 Minister may require other major hazards to be identified

- (1) The Minister may declare by notice published in the Gazette that the operator of a coal operation, or the operators of a class of coal operations, must undertake a specified process or processes to identify any major hazard that affects the coal operation.
- (2) A major hazard so identified is a major hazard to which this Subdivision applies.
- (3) An operator of a coal operation must not fail to comply with a requirement imposed by a declaration under this section.

34 Minister may declare operation is subject to risk of major hazard

The Minister may declare by notice in the Gazette that a coal operation, or a class of coal operations, is subject to a risk from mining from a major hazard to which this Subdivision applies.

35 Duty to prepare one or more major hazard management plans

- (1) If a risk from mining at a coal operation arises from a major hazard to which this Subdivision applies, the operator must establish and maintain a major hazard management plan for each such major hazard as a part of the health and safety management system for the coal operation.
- (2) In addition, an operator must establish a major hazard management plan for each major hazard identified by the operator in the operator’s assessment of risks arising from the coal operation carried out in the preparation or implementation of the health and safety management system for the coal operation.
- (3) A separate major hazard management plan must be prepared for each major hazard.

36 Contents of major hazard management plans

- (1) A major hazard management plan must state how the health and safety of the people who work at or are affected by the coal operation will be protected from the major hazard.
- (2) A major hazard management plan must also make provision for the matters prescribed by the regulations.
- (3) A major hazard management plan may refer to or incorporate, with or without modification, a document prepared or published by a body specified in the plan, as in force at a particular time or from time to time.

Subdivision 3 Management structure

37 Operator must prepare management structure

- (1) As part of the health and safety management system for a coal operation, the operator of the coal operation must prepare a document that sets out the management structure of the coal operation.
- (2) The management structure must nominate people within the structure by position and must outline their areas of responsibility and accountability.
- (3) The management structure for a coal operation that is a mine must include a competent person to perform the functions of the manager of mining engineering.
- (4) The management structure must include competent people with appropriate mining, electrical and mechanical engineering competence.
- (5) The management structure for an underground mine must include competent people to perform the functions of the manager of electrical engineering and the manager of mechanical engineering.
- (6) The management structure for a coal operation must include competent people to perform the functions of supervisors of the operation.
- (7) An operator must take all reasonable steps to maintain the management structure. This includes having others acting in, and the timely filling of, vacant positions in the structure.
- (8) During an emergency, the management structure of a coal operation may be suspended and a different management structure may be put into place for the duration of the emergency.

38 Register of persons occupying positions

- (1) The operator of a coal operation must keep a register at the on-site office of the coal operation containing the names of people occupying positions in the management structure for the operation.
- (2) The register must cover both current occupants of positions and occupants for the previous 5 years (including any period before the commencement of this section).
- (3) The register is to be made available for inspection on request by a government official, an industry check inspector, a site check inspector or by any person who works at the coal operation.

Subdivision 4 Duties regarding contractors

39 Operator to prepare contractor management plan

As part of the health and safety management system for a coal operation, the operator of a coal operation at which contractors are proposed to be used must prepare a contractor management plan, stating how the risks arising from the use of contractors at the coal operation will be managed.

40 Content of contractor management plan

A contractor management plan for a coal operation must make provision for the matters prescribed by the regulations.

41 Operator to ensure contractor's familiarity with systems

The operator of a coal operation at which any contractor proposes to work must ensure, before that work commences, that consultation occurs with the contractor so that:

- (a) the contractor is familiar with the relevant parts of the health and safety management system and the contractor management plan for the coal operation, and
- (b) the contractor's arrangements for health and safety management are consistent with the health and safety management system for the coal operation.

42 Duties of operator regarding contractors

(1) The operator of a coal operation must ensure that each contractor who proposes to work at the coal operation provides the operator, or a person designated by the operator, with:

- (a) a written safe work method statement for the work to be carried out by the contractor, and
- (b) if section 75 applies to the contractor, a site-specific occupational health and safety management plan.

These must be provided before the contractor commences work at the coal operation.

(2) A safe work method statement must:

- (a) describe how work is to be carried out, and
- (b) identify the work activities assessed as having safety and health risks, and
- (c) identify the safety and health risks, and
- (d) describe the control measures that will be applied to the work activities, and
- (e) make provision for the matters required by the regulations.

(3) An operator must ensure:

- (a) that a contractor is directed to comply with:
 - (i) the safe work method statement that the contractor has provided, and
 - (ii) the requirements of this Act and the regulations, of the *Occupational Health and Safety Act 2000* and of the regulations made under that Act, and
- (b) that the activities of a contractor are monitored to the extent necessary to determine whether or not the contractor is complying with:
 - (i) the safe work method statement that the contractor has provided, and
 - (ii) the requirements of this Act and the regulations, of the *Occupational Health and Safety Act 2000* and of the regulations made under that Act, and
- (c) if the contractor is not so complying, that the contractor is directed to take action immediately to comply with the safe work method statement or the

requirements of this Act and the regulations, of the *Occupational Health and Safety Act 2000* and of the regulations made under that Act, and

(d) that if a risk to the health or safety of a person arises because of the non-compliance, the contractor is directed to stop work immediately and not to resume work until the safe work method statement or those requirements, or both, are complied with, unless an immediate cessation of work is likely to increase the risk to health or safety, in which event the contractor must be directed to stop work as soon as it is safe to do so.

(4) A failure by an operator to give a direction, or to ensure that a direction is given, under this section does not affect any liability of the contractor under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations made under that Act.

43 Contractor must be given copy of health and safety management system

The operator of a coal operation must ensure that a contractor does not commence work at the coal operation unless the contractor has been provided with a copy of the parts of the operator's health and safety management system for the place of work that are relevant to the contractor.

Subdivision 5 Emergency management systems

44 Meaning of "emergency"

For the purposes of this Subdivision, an *emergency* exists at a coal operation when a situation is not controlled by a health and safety management system for the coal operation and there is a threat to the life or physical well-being of people at or outside the coal operation.

45 Operator must prepare emergency management system

The operator of a coal operation must ensure that an emergency management system that complies with this Subdivision is prepared for the coal operation.

46 No mining without emergency management system

The operator of a coal operation must ensure that mining is not carried out at the coal operation unless an emergency management system that complies with this Subdivision is implemented for the coal operation.

Note. Because of the definition of *mine* (as a verb), this Subdivision applies to coal mines and preparation plants but not coal exploration sites.

47 Contents of emergency management system

- (1) An emergency management system must contain an up-to-date plan of the coal operation and any other plan required by the regulations.
- (2) An emergency management system must adequately address, but is not limited to addressing, the following matters:
 - (a) the identification of the nature of risks at a coal operation that could result in an emergency if control measures fail,

- (b) the description of the measures to be taken to prevent or limit the harmful consequences of incidents associated with each of the identified risks, including measures to identify the location of people who may be at risk,
- (c) the identification of the equipment, facilities and communication systems necessary to control or limit the consequences of those incidents and the arrangements for ensuring that they are readily available,
- (d) the description of the procedures necessary to control or limit these incidents and the competence required by people to undertake the procedures in an emergency setting,
- (e) the identification of the control structure that is to apply in the event of an emergency and the means by which that structure is to be communicated throughout the operation,
- (f) the identification of key personnel and resources (both internal and external) available to be called on in the case of an emergency,
- (g) the identification of the procedures for testing the effectiveness of the system and ensuring that all necessary equipment, facilities, systems, procedures and training are maintained,
- (h) any other matter prescribed by the regulations.

48 Consultation

The people who work at the coal operation must be consulted, in the manner prescribed by the regulations, during the preparation of the emergency management system and before its amendment.

49 Information to be supplied to Chief Inspector and industry check inspector

- (1) Information relating to the emergency management system for a coal operation must be supplied by the operator of the coal operation to the Chief Inspector and an industry check inspector before the emergency management system is implemented.
- (2) The regulations may specify:
 - (a) the form and content of information to be supplied, which may include, but is not limited to, the elements of the emergency management system to be supplied, and
 - (b) whether any summary of the emergency management system is to be supplied and, if so, what summary.
- (3) If an emergency management system for a coal operation is amended after it is in operation, information concerning the amended system must, if the regulations require it, be sent by the operator of the coal operation to the Chief Inspector and an industry check inspector. That information must be sent before the amendment to the emergency management system is implemented.

50 Copy to be made available

- (1) An up-to-date copy of the emergency management system for a coal operation must be kept at the on-site office of the coal operation by the operator of the coal operation and must be made available for inspection by:
 - (a) a government official, or
 - (b) a check inspector who is entitled to exercise functions in relation to the coal operation, or
 - (c) any person who works at the coal operation.
- (2) The operator of a coal operation must immediately supply the Chief Inspector with an up-to-date copy of the emergency management system for the coal operation if the Chief Inspector requests a copy.

51 Competence and training of personnel

The operator of a coal operation must ensure that the people required to perform duties as part of the emergency management system for the coal operation are competent to carry out those duties and are given appropriate training.

52 Review

- (1) The operator of a coal operation must ensure that the emergency management system for the coal operation is reviewed:
 - (a) as soon as practicable after any emergency has occurred at the coal operation, and
 - (b) whenever the health and safety management system for the coal operation is reviewed.
- (2) The people who work at the coal operation must be consulted, in the manner prescribed by the regulations, during the review.
- (3) A review under this section is required only to consider the relevant parts of the emergency management system.

Subdivision 6 High risk activities

53 Meaning of “high risk activity”

- (1) The regulations may prescribe an activity as a *high risk activity* to which this Subdivision applies.
- (2) The regulations may provide that an activity being carried out at the time that it is prescribed as a high risk activity can continue without being subject to this Subdivision.

54 Requirement to notify high risk activities

- (1) The operator of a coal operation must ensure that a high risk activity to which this Subdivision applies is not carried out at or in relation to the coal operation unless, before the activity is commenced:
 - (a) the operator has given notice of the activity to the Chief Inspector, an industry

check inspector and the site check inspector for the coal operation, and

(b) such waiting period as may be prescribed by the regulations in relation to the activity has elapsed.

(1A) The waiting period in relation to a particular high risk activity may be varied by the Chief Inspector so long as the industry check inspector who has been notified of the activity is consulted by the Chief Inspector in relation to the variation.

(2) Notice under this section must be given in the form prescribed by the regulations and must be accompanied by any information required by the regulations.

(3) Notice is taken to have been given when it is received by both the Chief Inspector and an industry check inspector.

Subdivision 7 Keeping of records and reporting

55 Keeping of records by operators

The operator of a coal operation must keep the records concerning health and safety that are required by the regulations, in the manner required by the regulations and for at least the time required by the regulations.

56 Reporting by operators

The operator of a coal operation must make the reports concerning health and safety that are required by the regulations, in the manner required by the regulations.

Subdivision 8 Penalties

57 Penalty for offence against this Division

An operator or former operator of a coal operation who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

(a) in the case of a corporation (being a previous offender)—7,500 penalty units, or

(b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or

(c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or

(d) in the case of an individual (not being a previous offender)—500 penalty units.

Subdivision 9 Saving of certain notices and directions

58 Saving of certain notices and directions

(1) If a notice or direction is given under this Act to a person as the operator of a coal operation and that person is replaced as operator by another person, any notice or direction is taken to have been given to the new operator.

(2) Nothing in this section affects any liability for an offence committed by a person

when the person was an operator of a coal operation.

Division 3 Duties and rights of employees

Note. Sections 20 and 25 of the *Occupational Health and Safety Act 2000* impose duties on employees. This Division imposes some extra duties and confers a right on employees.

59 Duties of employees

- (1) An employee who works at any coal operation must:
 - (a) comply with the health and safety management system for the coal operation, and
 - (b) follow the operator's procedures for emergencies as set out in the emergency management system for the coal operation.
- (2) An employee who works at a coal operation must inform the operator of any circumstances that the employee considers may lead to a loss of control of a major hazard.
- (3) An employee who works at a coal operation must immediately report to his or her immediate supervisor any situation that the employee believes could present a risk to health and safety and that is not within the employee's competence to control. If the employee's supervisor is not immediately available, the employee must instead immediately report to another senior person at the coal operation.

Maximum penalty:

- (a) in the case of a previous offender—45 penalty units, or
- (b) in any other case—30 penalty units.

60 Rights of employees

An employee who works at a coal operation has the right to remove himself or herself from any location at the coal operation when circumstances arise that appear to the employee, with reasonable justification, to pose a serious danger to his or her own health, safety or welfare.

61 Unlawful dismissal or other victimisation of employee

- (1) An employer of any person who works at a coal operation must not dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because:
 - (a) the employee participates in a consultation process required by this Act or the regulations,
 - (b) the employee exercises rights under this Act or the regulations,
 - (c) the employee performs functions or complies with duties under this Act or the regulations or assists a government official,
 - (d) the employee is a check inspector.

- (2) In proceedings for an offence against this section, if all the facts constituting the offence other than the reason for the defendant's action are proved, the onus of proving that the dismissal, injury or alteration was not actuated by the reason alleged in the charge lies on the defendant.
- (3) If a person is found guilty by a court of contravening this section, the court may order the person:
 - (a) to pay the employee a specified sum by way of reimbursement for the salary or wages lost by the employee, and
 - (b) to reinstate the employee to his or her usual position or a similar position.
- (4) Such a person must give effect to an order of the court under subsection (3).

Maximum penalty (subsections (1) and (4)):

- (a) in the case of a corporation (being a previous offender)—375 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—250 penalty units, or
- (c) in the case of an individual (being a previous offender)—225 penalty units, or both, or
- (d) in the case of an individual (not being a previous offender)—150 penalty units.

Note. An employer of any person who works at a coal operation has a duty under section 23 of the *Occupational Health and Safety Act 2000* not to unlawfully dismiss or victimise employees. This section imposes an additional duty.

62 Division applies to employees of contractor

This Division applies to an employee of a contractor who works at a coal operation, to the extent that it applies to work done by the employee, in the same way as it applies to an employee of an operator.

Division 4 Duties of those in management positions

Note. Section 26 of the *Occupational Health and Safety Act 2000* imposes duties on those in management positions because it provides that where a corporation contravenes a provision of the Act or the regulations, then each director and each person concerned in the management of the corporation is taken to have contravened the same provision unless they can establish a defence. This Division imposes additional duties on those in management positions.

63 Duties of manager of mining engineering

- (1) The manager of mining engineering for a coal operation must advise the operator of health and safety standards and practices in the manager's discipline.
- (2) The manager of mining engineering for a coal operation must bring any significant deviation from those standards and practices, and any risks to health and safety that he or she becomes aware of, to the attention of the operator.
- (3) A failure by the manager of mining engineering to bring such a deviation to the operator's attention does not affect any liability of the operator under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations

made under that Act.

64 Duties of manager of electrical engineering

- (1) The manager of electrical engineering for a coal operation must advise the operator of health and safety standards and practices in the manager's discipline.
- (2) The manager of electrical engineering for a coal operation must bring any significant deviation from those standards and practices, and any risks to health and safety that he or she becomes aware of, to the attention of the operator.
- (3) A failure by the manager of electrical engineering to bring such a deviation to the operator's attention does not affect any liability of the operator under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations made under that Act.

65 Duties of manager of mechanical engineering

- (1) The manager of mechanical engineering for a coal operation must advise the operator of health and safety standards and practices in the manager's discipline.
- (2) The manager of mechanical engineering for a coal operation must bring any significant deviation from those standards and practices, and any risks to health and safety that he or she becomes aware of, to the attention of the operator.
- (3) A failure by the manager of mechanical engineering to bring such a deviation to the operator's attention does not affect any liability of the operator under this Act or the regulations or under the *Occupational Health and Safety Act 2000* or the regulations made under that Act.

66 Those in management positions must comply with health and safety management system

A person who holds a management position at a coal operation must comply with the health and safety management system for the coal operation.

67 Those in management positions must inform operator of non-compliance

- (1) A person who holds a management position at a coal operation must inform the operator of the coal operation if he or she is aware that the conduct of the coal operation does not conform with the *Occupational Health and Safety Act 2000* or the regulations made under that Act or with this Act or the regulations made under this Act.
- (2) A failure by a person to inform the operator under this section does not affect any liability of the operator under the *Occupational Health and Safety Act 2000* or the regulations made under that Act or under this Act or the regulations made under this Act.

68 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a previous offender—75 penalty units, or
- (b) in any other case—50 penalty units.

Division 5 Duties of supervisors

69 Supervisor must comply with health and safety management system

A supervisor at a coal operation must comply with the health and safety management system for the coal operation.

70 Supervisor must inform operator of non-compliance

- (1) A supervisor at a coal operation must inform the operator of the coal operation if he or she is aware that the conduct of the coal operation does not conform with the *Occupational Health and Safety Act 2000* or this Act or the regulations under either Act.
- (2) A failure by a supervisor to inform the operator under this section does not affect any liability of the operator under the *Occupational Health and Safety Act 2000* or this Act or the regulations under either Act.

71 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a previous offender—75 penalty units, or
- (b) in any other case—50 penalty units.

Division 6 Duties of contractors

Note. A contractor who works at a coal operation will have obligations as an employer under section 8 of the *Occupational Health and Safety Act 2000* or as a self-employed person under section 9 of that Act. This Division imposes extra duties on contractors in relation to coal operations.

72 Contractor must comply with operator's health and safety management system

A contractor who works at a coal operation must comply with the health and safety management system of the operator for the coal operation to the extent that it applies to work done by the contractor.

73 Duties of contractors regarding safe work method statement

- (1) A contractor must not commence work at a coal operation unless the contractor:
 - (a) has undertaken an assessment of the risks associated with the work to be carried out by the contractor, and

- (b) has prepared a written safe work method statement that includes a copy of the assessment of risks, and
 - (c) has provided a copy of that statement to a person designated by the operator of the coal operation.
- (2) A contractor:
- (a) must maintain and keep up-to-date the contractor's safe work method statement for a place of work, and
 - (b) must provide a person designated by the operator with any changes made to the safe work method statement.

Note. The requirements for a safe work method statement are set out in section 42.

74 Contractor to ensure work carried out in accordance with safe work method statement

- (1) A contractor must ensure that all work carried out by the contractor, or by an employee of the contractor, at a coal operation is carried out in accordance with the safe work method statement prepared by the contractor in relation to that coal operation.
- (2) If a risk to the health or safety of a person arises because of non-compliance with the statement, a contractor must ensure that work is stopped immediately and does not resume until the statement is complied with.
- (3) However, if the immediate cessation of work is likely to increase the risk to health or safety, the contractor is not required to stop the work immediately but must stop the work as soon as it is safe to do so.
- (4) If there is a conflict between the health and safety management system for a coal operation and the safe work method statement of a contractor, the health and safety management system prevails.

75 Contractor must prepare and implement OH&S management plan

- (1) This section applies to contractors of a class prescribed by the regulations.
- (2) A contractor must ensure that, before commencing work at a coal operation, a site-specific occupational health and safety management plan is prepared for that coal operation.
- (3) A contractor must ensure that the occupational health and safety management plan includes:
 - (a) a statement of responsibilities, listing the names, positions and responsibilities of all people who will have specified responsibilities at the coal operation for occupational health and safety in relation to the contractor's work, and
 - (b) details of the arrangements for managing occupational health and safety incidents, including the means of informing the coal operator in a timely fashion, and

- (c) any work specific safety rules and details of the arrangements for ensuring that all persons involved in the work are informed of the rules, and
 - (d) safe work method statements for all work activities assessed as having safety or health risks, and
 - (e) any other matters required by the regulations.
- (4) A contractor must supply a copy of the occupational health and safety management plan to the operator of the coal operation prior to work commencing at the coal operation.
- (5) If requested, a contractor must supply a copy of the occupational health and safety management plan to a government official or a check inspector as soon as practicable after the request. Such a request may be made before or after work commences.
- (6) A contractor must ensure that a copy of the occupational health and safety management plan is available for inspection during the course of work:
- (a) by any person working at the place of work concerned and by any person about to commence work at that place, and
 - (b) by a representative of the coal operator, a government official or a check inspector.
- (7) A contractor must ensure that work carried out by the contractor at the coal operation is carried out in compliance with the occupational health and safety management plan for the coal operation.
- (8) If there is a conflict between the health and safety management system for a coal operation and the occupational health and safety management plan of a contractor, the health and safety management system prevails.

76 Contractor's duties regarding subcontractors

- (1) A contractor who works at a coal operation must ensure that any subcontractor of the contractor provides the operator of the coal operation, or a person nominated by the operator, with:
- (a) a written safe work method statement for the work to be carried out by the subcontractor, and
 - (b) if section 75 applies to the subcontractor, a site-specific occupational health and safety management plan.

These must be provided before the subcontractor commences work at the coal operation.

- (2) A contractor who works at a coal operation must ensure that any subcontractor of the contractor complies with the health and safety management system of the operator of the coal operation.
- (3) A contractor to whom section 75 applies must ensure that a copy of any parts of the contractor's occupational health and safety management plan that are relevant to a

subcontractor contracted by the contractor or employee employed by the contractor are provided to the subcontractor or employee before the subcontractor or employee commences work at the place of work concerned.

- (4) A contractor to whom section 75 applies must ensure that, if any change is made to the occupational health and safety management plan during the course of work, a copy of any part of the plan that has been changed and that is relevant to a subcontractor or employee of the contractor is provided to the subcontractor or employee as soon as practicable after the change is made.
- (5) A contractor must ensure that, if any change is made to the safe work method statement during the course of work, a copy of any part of the statement that has been changed and that is relevant to a subcontractor or employee of the contractor is provided to the subcontractor or employee as soon as practicable after the change is made.

77 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—7,500 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—5,000 penalty units, or
- (c) in the case of an individual (being a previous offender)—750 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—500 penalty units.

Division 7 Duties of exploration holders and others to give notice

78 Duty to give notice of drilling operations

- (1) An exploration holder must not commence drilling operations unless the exploration holder has given the Chief Inspector at least 7 days' written notice of the operations.
 - (1A) If notice has been given of drilling operations on particular land, no further notice is required if other related drilling operations are later commenced on that land.
- (2) That notice must contain the details required by the regulations.
- (3) In this section:

drilling operation means any drilling operation carried out from the surface in the course of searching for coal or the mining of coal and includes:

- (a) drilling carried out under the authority of section 81 of the *Mining Act 1992*, and
- (b) drilling done for mining purposes in connection with the mining of coal, and

- (c) the preparation of a drill site, and
- (d) the restoration of a drill site.

79 Other duties to give notice

- (1) The regulations may require a person, or a person of a specified class, to give notice to the Chief Inspector of the commencement or discontinuation of operations or activities at a coal operation that are prescribed by the regulations.
- (2) The regulations may prescribe the amount of notice to be given and the details that are required to be contained in the notice.
- (3) A person who is required to give notice must comply with the regulations made under this section.

80 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units or imprisonment for 2 years, or both, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Division 8 General

81 Person may have more than one duty

A person on whom a duty is imposed under this Part may be subject to more than one duty under this Part.

82 Relationship between duties under this Part and regulations

- (1) Compliance with the regulations is not in itself a defence in any proceedings for an offence against this Part.
- (2) However, a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against this Part.
- (3) This section is subject to any regulations under section 197 or 198.

Note. See Part 11 for provisions relating to the use of approved coal mining industry codes of practice in proceedings for offences against this Part.

83 (Repealed)

84 Multiple contraventions of general duties under this Part

- (1) More than one contravention of a provision of this Part by a person that arise out of the same factual circumstances may be charged as a single offence or as separate offences.
- (2) This section does not authorise contraventions of 2 or more of those provisions to be charged as a single offence.
- (3) A single penalty only may be imposed in respect of more than one contravention of any such provision that is charged as a single offence.

85 Civil liability not affected by this Part

- (1) Nothing in this Part is to be construed:
 - (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of any provision of this Part, or
 - (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.
- (2) Subsection (1) does not affect the extent (if any) to which a breach of duty imposed by the regulations is actionable (including any regulation that adapts a provision of this Part).

Part 6 Safety of coal operations

Division 1 Methods or systems of working mines

86 Barriers and protective pillars

- (1) The operator of a coal operation that is a mine must not mine or cause to be mined any seam of coal in the mine without leaving a barrier of the specified width:
 - (a) against the external boundaries of the colliery holding in which the mine is situated, and
 - (b) against any outcrop of the seam, and
 - (c) between any underground workings and any open cut working situated within the colliery holding in which the mine is situated.
- (2) For the purposes of subsection (1), the specified width is 20 metres or any other distance that the Minister may specify in a direction given to the operator of the coal operation.
- (3) In giving a direction under subsection (2), the Minister:
 - (a) may fix the width of a barrier in respect of any seam or portion of a seam within a mine and specified in the direction or in respect of all the seams within a mine or all seams within a mine other than those so specified, and
 - (b) must so fix the width of a barrier in respect of any seam so that a barrier of not less than 40 metres must be maintained between workings of adjacent mines.
- (4) A person must not fail to comply with a direction under this section.

87 Minister may give directions regarding barriers and pillars

- (1) The Minister may direct the operator of a coal operation:
 - (a) to leave in any mine that forms part of the coal operation a barrier of the width that is specified in the direction against the mean high water mark of tidal waters, and
 - (b) to leave in the mine that forms part of the coal operation a protective pillar of the dimensions that are specified in the direction against surface improvements or features, whether natural or artificial, including mine workings, whether discontinued or otherwise.
- (2) In giving a direction under subsection (1), the Minister:
 - (a) may fix the width of a barrier in respect of any seam or portion of a seam within a mine and specified in the direction or in respect of all the seams within a mine or all seams within a mine other than those so specified, and
 - (b) must so fix the width of a barrier in respect of any seam so that a barrier of not less than 40 metres must be maintained between workings of any mine adjoining the mine.
- (3) An operator must not fail to comply with a direction given to the operator under this section.

88 Minister may direct carrying out of works

- (1) If any workings in a mine encroach on any barrier or protective pillar required to be provided pursuant to:
 - (a) this Division, or
 - (b) any conditions contained in any lease granted under the *Mining Act 1992* or any licence granted under the *Offshore Minerals Act 1999*,the Minister may, if of the opinion that it is necessary to do so in order to ensure the safety of people working in the mine or in any mine adjoining the mine, direct the operator to carry out any works that the Minister thinks fit within the time specified in the direction.
- (2) An operator must not fail to comply with a direction given to the operator under this section.
- (3) This section applies whether the lease or licence is granted before or after the commencement of this section.

89 Minister may grant approval to mine barrier or pillar

- (1) The Minister may grant approval, subject to any conditions that the Minister considers necessary, to the operator of a coal operation to mine any barrier or protective pillar provided pursuant to this Division.
- (2) An operator must not fail to comply with a condition of an approval given to the operator under this section.

90 Penalty for offence against this Division

An operator of a coal operation who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—3,750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—2,500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Division 2 Closing of shafts and outlets in abandoned mines

91 Application of this Division

If there is no operator for a coal operation within a colliery holding, the obligations imposed on an operator by this Division are imposed on the colliery holder or the person on whose application the relevant land was last registered as, or recorded as part of, a colliery holding.

92 Closing of shafts and outlets

- (1) The operator of a mine must:
 - (a) cause every shaft or outlet at a mine, when it ceases to be used, to be securely fenced off as soon as practicable and to be fully sealed or filled in a manner approved by the Chief Inspector, or provided with an enclosure, barrier, plug or seal approved by the Chief Inspector, within 30 days after the mine ceases to be used, and
 - (b) cause the seal, fill, enclosure, barrier or plug to be properly maintained, and
 - (c) before abandoning the mine, cause every shaft or outlet at the mine to be fully sealed or filled in a manner approved by the Chief Inspector, or provided with an enclosure, barrier, plug or seal approved by the Chief Inspector.
- (2) If the operator of a mine is not the occupier of the land on which work is required to be carried out under subsection (1), the operator of the mine must give reasonable notice to the occupier of the land before causing the work to be carried out.

93 Chief Inspector may require further work

- (1) The Chief Inspector may, by notice in writing, require an operator or former operator of a mine that has ceased to be used before or after it is abandoned, to carry out work to ensure that:
 - (a) a shaft or outlet at that mine is fully sealed or filled, or
 - (b) a shaft or outlet at that mine is provided with an enclosure, barrier, plug or seal approved by the Chief Inspector, or

- (c) any existing seal, fill, enclosure, barrier or plug at that mine remains effective.
- (2) A person to whom a notice has been given under this section must comply with the notice within the time specified by the notice.
- (3) If the former operator of a mine is not the occupier of the land on which work is required to be carried out under subsection (1), the former operator of the mine must give reasonable notice to the occupier of the land before causing the work to be carried out.

94 Obstruction of operator of mine

An occupier of land or other person must not wilfully obstruct the operator of a mine or any other person in doing any act required to be done by or under section 92 (1) or 93 (1).

95 Certain unenclosed shafts or outlets to be public nuisances

Any shaft or outlet of a mine that is not fully sealed or filled in a manner approved by the Chief Inspector, or provided with an approved enclosure, barrier, plug or seal, as required by section 92 (1) or 93 (1) and that:

- (a) is within 50 metres of any highway, road, footpath or place of public resort, or
- (b) is in open or unenclosed land,

is taken to be a public nuisance for the purposes of section 125 of the *Local Government Act 1993*.

96 Owners of land on which abandoned mines are situated may be required to close shafts and outlets

- (1) The Minister may cause to be served on the owner of land on which is situated any shaft or outlet of an abandoned mine that is not fully sealed or filled in a manner approved by the Chief Inspector, or provided with an approved enclosure, barrier, plug or seal, a direction requiring the owner:
 - (a) to fully seal or fill the shaft or outlet in a manner approved by the Chief Inspector, or
 - (b) to provide the shaft or outlet with an enclosure, barrier, plug or seal approved by the Chief Inspector,within the period specified in the direction.
- (2) A person to whom a direction is given under subsection (1) must comply with the direction.
- (3) If a person to whom a direction is given under subsection (1) does not comply with the direction within the period specified in the direction, the Minister may cause the work specified in the direction to be carried out.
- (4) Any costs or expenses incurred by or on behalf of the Minister under subsection (3) in carrying out any work specified in a direction given under subsection (1) is a debt due to the Crown by the person to whom the direction was given.

- (5) In any proceedings instituted for the recovery from a person of a debt due by that person to the Crown under subsection (4), a certificate of the Minister that a specified amount is the amount of the debt so due is evidence of that fact.
- (6) A debt due by any person to the Crown under subsection (4) is recoverable despite the fact that that person is convicted of an offence under subsection (2).
- (7) A person to whom a direction is given under subsection (1), or any person authorised by the Minister for the purposes of subsection (3), may, upon giving reasonable notice to the occupier of the land, enter on or remain on any land for the purpose of complying with the direction or with subsection (3), as the case may require.
- (8) This section does not apply to the owner of land on which is situated:
 - (a) a mine abandoned before 26 March 1984, or
 - (b) a mine the subject of a mining lease granted under the *Mining Act 1992* in respect of coal.

97 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—3,750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—2,500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Division 3 Control of emplacement areas

98 Definitions

- (1) In this Division:

emplacement area means:

- (a) any pile, heap, hole, excavation or place in which or on which reject (whether in a solid state or in a solution or suspension) is piled, heaped, dumped, accumulated, deposited or placed, and
- (b) any wall or other structure that retains or confines reject, whether or not that wall or structure is itself composed of reject,

but does not include an accumulation or deposit of reject situated underground.

occupier of an emplacement area means the occupier of any land on which the emplacement area is situated, whether the emplacement area is in use or not.

reject means any carbonaceous material, whether it is mixed with or attached to stone or not, that is left after the treatment of coal in a coal preparation plant or that is not dealt with as coal by the occupier of a mine.

- (2) For the purposes of this Division, an emplacement area:
 - (a) is taken to be in use if its use has not been discontinued, and
 - (b) is taken to be kept secure if:
 - (i) it is not unstable, and
 - (ii) it is not on fire, and
 - (iii) no noxious water is escaping from it.

99 Minister may direct occupier of land to make emplacement area safe

- (1) The Minister may direct an occupier of land on which there is an emplacement area or, where there is no occupier, the land owner, to make the emplacement area safe.
- (2) An occupier or land owner must comply with a direction under this section.

100 Establishment of emplacement areas

- (1) A person must not establish any emplacement area except with the approval of the Minister and in the manner and subject to any conditions that the Minister may determine.
- (2) The Minister's approval under subsection (1) may be granted without limit as to time or may be for a specified period.
- (3) A person applying for the Minister's approval under this section must furnish any information, documents and plans relevant to the approval that the Minister may require.

101 Discontinuance of use of emplacement areas

- (1) A person who has established an emplacement area pursuant to an approval granted under section 100 must not discontinue use of that emplacement area without the Minister's approval.
- (2) Despite subsection (1), the Chief Inspector may grant approval to discontinue use of an emplacement area established pursuant to an approval granted under section 100 for a period not exceeding 6 months subject to any conditions that the Chief Inspector may determine.
- (3) A person must not recommence using an emplacement area that the person has ceased using by virtue of an approval granted under subsection (2) without the consent of the Chief Inspector.

102 Construction and use of emplacement areas

- (1) This section applies to emplacement areas whether established before or after 26 March 1984.

- (2) An occupier must ensure that an emplacement area:
 - (a) is constructed, or the construction of the emplacement area is continued, as the case may be, in accordance with sound engineering practice, and
 - (b) is compatible with the environment, and
 - (c) is kept secure.
- (3) The occupier of an emplacement area must take any steps that may be necessary to ensure that the occupier is at all times in possession of all information relevant to the performance of the occupier's duties under this section.
- (4) The Chief Inspector may, by notice served on the occupier of an emplacement area, require the occupier, whether the emplacement area is in use or not, to carry out any tests relating to the safety and security of the emplacement area that the Chief Inspector may specify in the notice.
- (5) The occupier of an emplacement area must furnish to the Chief Inspector the results of any tests carried out in compliance with subsection (4).
- (6) The Chief Inspector may, by notice served on the occupier of an emplacement area that is in use, require the occupier to furnish plans of the emplacement area and plans of future dumping operations.

103 Date of effect of decisions and notices

If there is a right of appeal or objection against a decision or notice under this Division, the decision or notice takes effect:

- (a) where no appeal or objection is lodged within the period prescribed by the regulations—from the expiration of that period, or
- (b) where an appeal or objection is lodged and the decision or notice is not revoked—from the date of the final decision made on that appeal or objection,

and, if varied or amended on appeal or objection, takes effect as varied or amended.

104 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—3,750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—2,500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Division 4 Tourist and educational activities

105 Definitions

In this Part:

former mine includes an abandoned mine.

occupier, in relation to an abandoned mine, means the occupier of the land on which the abandoned mine is situated.

permit means a permit that has been issued under section 107 and that has not been revoked under section 108.

106 Tourist activities in former mines or use of former mines for educational purposes not allowed without a permit

The occupier of a former mine (not subject to a mining lease) must not allow tourist activities to be conducted in or about the mine or allow the mine to be used principally for educational purposes unless:

- (a) the tourist activities are, or the use of the mine principally for educational purposes is, authorised by a permit issued to that or any previous occupier of the mine, and
- (b) the occupier complies with the conditions (if any) to which the permit is subject.

107 Issue of tourist and educational permits

- (1) The Minister may, on application being made to the Minister in writing, issue a permit to the occupier of a former mine that:
 - (a) authorises tourist activities to be conducted in or about the former mine, or
 - (b) authorises the former mine to be used principally for educational purposes, subject to any conditions that the Minister may specify in the permit.
- (2) An application for a permit is to be accompanied by the fee determined by the Minister under section 219.
- (3) A permit must not be issued under this section in respect of a former mine unless the Minister is satisfied that all necessary precautions will be taken to protect the health or safety of persons entering the former mine.

108 Revocation or variation of permits

- (1) The Minister may:
 - (a) revoke a permit where a condition to which the permit is subject is breached or where the Minister is satisfied that persons cannot enter the former mine to which the permit relates without risk to their safety or health, or
 - (b) from time to time attach conditions or additional conditions to a permit or vary the conditions to which a permit is subject.
- (2) A revocation of a permit, a variation of conditions to which a permit is subject or the attachment of conditions or additional conditions to a permit does not take effect until notice of the revocation, variation or attachment is served on the occupier of

the former mine to which the permit relates.

- (3) A variation may be made under subsection (1) (b) by way of addition, amendment or deletion of conditions.

109 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Part 7 Notification of incidents

Division 1 Notification of certain incidents

110 Notification of certain incidents and other matters

- (1) The operator of a coal operation must give the Chief Inspector and an industry check inspector notice in accordance with this section of any of the following incidents (*notifiable incidents*):
- (a) any incident at the coal operation that has resulted in a person being killed,
 - (b) any other incident at the coal operation of a kind prescribed by the regulations for the purposes of this paragraph,
 - (c) any incident or other matter occurring at or in relation to the coal operation that the regulations declare to be an incident or matter that is required to be notified.
- (2) An exploration holder must give the Chief Inspector and an industry check inspector notice in accordance with this section of any of the following incidents (*notifiable incidents*):
- (a) any incident at the exploration site that has resulted in a person being killed,
 - (b) any other incident at the exploration site of a kind prescribed by the regulations for the purposes of this paragraph,
 - (c) any incident or other matter occurring at or in relation to the exploration site that the regulations declare to be an incident or matter that is required to be notified.
- (3) Any notice under this section must be given:
- (a) as soon as practicable (but not later than 7 days) after the operator becomes aware of the notifiable incident, and
 - (b) in writing and, if a form has been prescribed by the regulations, in that form.

- (4) Any notice must, in the case of a notifiable incident referred to in subsection (1) (a) or (b) or (2) (a) or (b), also be given:
- (a) immediately the operator or exploration holder becomes aware of the incident, and
 - (b) by the quickest available means.

This subsection does not apply if the operator or exploration holder is aware that another person has given the required notice of the incident.

- (5) The regulations may vary the obligations under this section with respect to the person required to give notice and the time and manner in which the notice is to be given.

111 Non-disturbance of plant involved in notifiable incidents (and of surrounding area)

- (1) This section applies if a notifiable incident referred to in section 110 (1) (a) or (b) or (2) (a) or (b) has occurred at a coal operation or exploration site.
- (2) The operator of a coal operation and an exploration holder must take measures to ensure that:
- (a) plant at that coal operation or exploration site is not used, moved or interfered with after it has been involved in a notifiable incident, and
 - (b) the area and environment at that coal operation or exploration site that is connected with the notifiable incident is not disturbed.
- (3) If the regulations prescribe measures that satisfy the requirements of this section, the operator or exploration holder is taken to have satisfied those requirements if the operator has taken the measures so prescribed.
- (4) This section does not prevent any action:
- (a) to help or remove a trapped or injured person or to remove a body, or
 - (b) to avoid injury to a person or damage to property, or
 - (c) for the purposes of any police investigation, or
 - (d) in accordance with a direction of an inspector or with the permission of both an inspector and an industry check inspector, or
 - (e) in any other circumstances that may be prescribed by the regulations.
- (5) The requirements of this section in relation to any particular occurrence apply only for the period ending 24 hours after notification of the incident in accordance with section 110 or only in any other period prescribed by the regulations.

112 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Division 2 Inquiries

113 Boards of Inquiry

- (1) This section applies if it appears to the Minister that an investigation of any of the following is necessary:
 - (a) any event or dangerous occurrence causing death or serious injury at a coal operation and its causes and circumstances,
 - (b) any dangerous occurrence at a coal operation and its causes and circumstances,
 - (c) any practice at a coal operation that, in the opinion of the Minister, adversely affects or is likely to adversely affect the safety or health of persons employed at the coal operation,
 - (d) any matter relating to the safety, health, conduct or discipline of persons at or in relation to a coal operation.
- (2) If this section applies, the Minister may constitute a person as a Board of Inquiry to conduct a special inquiry into the event, occurrence, practice or matter.
- (3) A Board of Inquiry may, at a special inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, the person constituting the Board:
 - (a) may require a person appearing at the inquiry to give evidence, to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to, or take an affirmation from, a person appearing at the inquiry.
- (4) In conducting a special inquiry, a Board of Inquiry:
 - (a) is not bound to act in a formal manner, and
 - (b) is not bound by the rules of evidence and may inform itself on any matter in any way that it considers appropriate.
- (5) If the Board of Inquiry agrees, an agent (including a legal practitioner) may represent a person or body at the special inquiry.
- (6) A Board of Inquiry, when conducting, and making a determination in respect of, a special inquiry is to sit with an assessor or 2 or more assessors appointed by the Minister for the purposes of the inquiry.
- (7) An assessor sitting with a Board of Inquiry has the power to advise the Board of

Inquiry but not to adjudicate on any matter before the Board of Inquiry.

- (8) A Board of Inquiry has the right to consult, either collectively or individually, and either in public or in private, with assessors sitting with it.
- (9) A Board of Inquiry conducting a special inquiry may be assisted by a legal practitioner appointed by the Minister for the purposes of the inquiry.
- (10) A Board of Inquiry is to determine its own procedure, except as provided by this Act.

114 Witnesses and evidence at special inquiries

- (1) A Board of Inquiry may summon a person to appear at a special inquiry conducted by the Board to give evidence and to produce any documents that are specified in the summons.
- (2) A Board of Inquiry may require a person appearing at a special inquiry to produce a document.
- (3) A person served with a summons to appear at a special inquiry and to give evidence must not, without reasonable excuse, fail to attend as required by the summons.
- (4) A person appearing at a special inquiry to give evidence must not, without reasonable excuse:
 - (a) when required to be sworn or affirmed—fail to comply with the requirement, or
 - (b) fail to produce a document that the person is required to produce under this section.
- (5) A person attending as a witness before a Board of Inquiry is to be paid expenses of the amount or at the rate approved by the Minister for the purposes of this section.
- (6) A Board of Inquiry may require a person appearing at a special inquiry to answer questions.
- (7) A person appearing at a special inquiry must answer any such questions.
- (8) A person is not excused from a requirement under this section to answer a question on the ground that the answer might incriminate the person or make the person liable to a penalty.
- (9) However any answer given by a natural person in compliance with a requirement under this section is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under this section) if the person objected at the time to answering the question on the ground that it might incriminate the person or the person was not warned on that occasion that the person may object to answering the question on the ground that it might incriminate the person.
- (10) Further information obtained as a result of an answer given under this section is not inadmissible on the ground that the answer had to be given or that the answer might incriminate the person.

115 Report by Board of Inquiry

- (1) A Board of Inquiry must, within the period required by the Minister, prepare a report as to:
 - (a) the causes of the event or dangerous occurrence, if the special inquiry concerns an event or dangerous occurrence, or
 - (b) its findings in relation to the practice or matter, if the inquiry concerns a practice at a coal operation or a matter relating to the safety, health, conduct or discipline of persons in a coal operation.
- (2) The Minister may, if the Minister thinks fit, publish the report at the time and in the manner determined by the Minister.

116 No appeal against exercise of functions by Boards of Inquiry

No appeal lies from any decision or determination of a Board of Inquiry on a special inquiry.

117 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Part 8 Stop work orders

118 Minister to make stop work orders

- (1) If the Minister is of the opinion that any action is being, or is about to be, carried out at a place of work to which this Act applies that involves, or is likely to result in, a serious breach of a provision of:
 - (a) the *Occupational Health and Safety Act 2000* or the regulations made under that Act, or
 - (b) this Act or the regulations made under this Act,

the Minister may order that the person who is carrying out or about to carry out the action is to cease or not to carry out the action and that no action, other than any action that may be specified in the order, is to be carried out in or in the vicinity of the place, or a specified part of the place, within a period not exceeding 28 days after the day of the order.

- (2) An order takes effect on and from the time at which:

- (a) if the order relates to a colliery holding—a copy is provided to the colliery holder by the Minister, or
 - (b) if the order relates to a coal operation—a copy is provided to the operator of the coal operation by the Minister, or
 - (c) if the order relates to coal mine workings the subject of a licence to mine coal under the *Offshore Minerals Act 1999*—a copy is provided to the licensee by the Minister, or
 - (d) if the order relates to a coal exploration site—a copy is provided to the most senior person at the coal exploration site by the Minister, or
 - (e) (Repealed)
 - (f) the person carrying out or about to carry out the action the subject of the order is notified by the Minister that the order has been made,
- whichever is the sooner.

- (3) In this Part, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Minister may make an order, in accordance with this Part, that any such action is to be carried out.
- (4) The regulations may modify this Part in relation to its application to a stop work order that specifies actions that must be carried out.
- (5) Without limiting the Minister's delegation powers under section 212, the Minister may, by instrument in writing, delegate to any or all government officials the functions of giving notice or affixing copies of an order under this section.

119 Prior notification of making of stop work order not required

The Minister is not required, before making a stop work order, to notify any person who may be affected by the order.

120 Extension of stop work order

- (1) The Minister may extend a stop work order for any further period or periods of no more than 28 days each that the Minister thinks fit.
- (2) An order extending a stop work order takes effect in the same way as the original order, that is, on and from the time referred to in section 118 (2).

121 Consultation about modification of proposed detrimental action

After the Minister makes a stop work order, the Director-General must immediately consult with the person carrying out or proposing to carry out the action the subject of the order to determine whether any modification of the action may be sufficient to avoid a serious breach of a provision of any Act or regulation referred to in section 118.

122 Stop work order prevails over other instruments

- (1) An investigation notice, improvement notice or prohibition notice issued under the

Occupational Health and Safety Act 2000 that requires or permits work or an activity the subject of a stop work order in force under this Part to be significantly affected is inoperative to the extent of any inconsistency with the stop work order.

- (2) An approval, notice, order or other instrument made or issued by or under any other Act that requires or permits work the subject of a stop work order in force under this Part to be significantly affected is inoperative to the extent of any inconsistency with the stop work order.
- (3) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the stop work order.

123 Costs of enforcing stop work order

- (1) If a person on whom a stop work order is imposed does not comply with the order within the period specified in the order, the Minister may cause work to be carried out for the purpose of stopping the work specified in the order.
- (2) Any costs or expenses incurred by or on behalf of the Minister under this section are a debt due to the Crown by the person who was carrying out or proposing to carry out the action to which the order relates.
- (3) In any proceedings instituted for the recovery from a person of a debt due by that person to the Crown under this section, a certificate of the Minister that a specified amount is the amount of the debt so due is evidence of that fact.
- (4) A debt due by any person to the Crown under this section is recoverable whether or not the person is convicted of an offence under section 124.
- (5) A person on whom a stop work order is imposed, or any person directed by the Minister to take action for the purposes of subsection (1), may, upon giving reasonable notice to the occupier of the land, enter on or remain on any land for the purpose of complying with the direction of the Minister or with the stop work order, as the case may require.
- (6) A court that convicts a person of an offence under section 124 may, on the application of the prosecutor, order the person to pay to the Crown the amount that the court is satisfied the Crown is entitled to recover from the person under this section in respect of the failure to which the offence relates. Any amount paid by a person under such an order is taken to have been recovered from the person under subsection (2) and is to be dealt with accordingly.
- (7) For the purposes of subsection (6), a court that makes a finding that a person is guilty of an offence under section 124 without proceeding to a conviction is taken to have convicted the person of the offence.
- (8) For the purposes of this section, a stop work order is taken to have been imposed on the person or persons carrying out the action, or proposing to carry out the action, to which the order relates.

124 Offence: failure to comply with a stop work order

A person who, without reasonable excuse, fails to comply with a requirement imposed by a stop work order is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—1,500 penalty units and in the case of a continuing offence, a further penalty not exceeding 750 penalty units for each day the offence continues, or
- (b) in the case of a corporation (not being a previous offender)—1,000 penalty units and in the case of a continuing offence, a further penalty not exceeding 500 penalty units for each day the offence continues, or
- (c) in the case of an individual not acting in the capacity of an employee (being a previous offender)—750 penalty units and in the case of a continuing offence, a further penalty not exceeding 375 penalty units for each day the offence continues, or
- (d) in the case of an individual not acting in the capacity of an employee (not being a previous offender)—500 penalty units and in the case of a continuing offence, a further penalty not exceeding 250 penalty units for each day the offence continues, or
- (e) in the case of an individual acting in the capacity of an employee (being a previous offender)—45 penalty units and in the case of a continuing offence, a further penalty not exceeding 20 penalty units for each day the offence continues, or
- (f) in the case of an individual acting in the capacity of an employee (not being a previous offender)—30 penalty units and in the case of a continuing offence, a further penalty not exceeding 15 penalty units for each day the offence continues.

Part 9 Competence standards

Division 1 Key obligations

125 Regulations may specify functions to which this Part applies

- (1) The regulations may specify a function as one to which this Part applies (a *specified function*).
- (2) The regulations may specify, or authorise the Minister to determine, what will be sufficient evidence of competence to perform a function to which this Part applies (*specified evidence of competence*).

126 Operator to ensure only competent people employed to perform specified functions

- (1) The operator of a coal operation must not employ a person at the coal operation to perform a specified function unless the person holds specified evidence of competence to perform that function.
- (2) The operator of a coal operation must ensure that no other person at the coal operation performs a specified function unless the person holds specified evidence of competence to perform that function.

127 Contractor to ensure only competent people employed to perform specified functions

A contractor must not employ a person at a coal operation to perform a specified function unless the person holds specified evidence of competence to perform that function.

128 Only competent people to perform specified functions

A person at a coal operation must not perform a specified function unless the person holds specified evidence of competence to perform that function.

129 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation—250 penalty units, or
- (b) in the case of an individual—25 penalty units.

Division 2 Coal Competence Board

130 Constitution of Coal Competence Board

- (1) There is constituted by this Act a body corporate with the corporate name of the Coal Competence Board.
- (2) The Coal Competence Board represents the Crown.

131 Ministerial control of Board

The Board is subject to the control and direction of the Minister.

132 Membership of Board

- (1) The Board is made up of the following people appointed by the Minister:
 - (a) the Chairperson of the Board (who is not to be an officer of the Department), and
 - (b) 2 employer representatives selected from a panel of 4 submitted to the Minister by a body or bodies representing employers, and
 - (c) 2 employee representatives selected from a panel of 4 submitted to the Minister by a body or bodies representing employees, and
 - (d) between 2 and 4 persons who have expertise in the development and assessment of competence or people performing functions at coal operations, and
 - (e) 2 officers of the Department.
- (2) The regulations may make provision for or with respect to the submission of representatives under this section and the appointment of members of the Board.

133 Procedure of Board

- (1) The regulations may make provision for or with respect to the procedure of the Board.
- (2) The Board may make rules about the procedure of the Board that are not inconsistent with this Act or the regulations. Those rules are subject to any direction of the Minister.

Division 3 Functions of Board

134 Functions of Board

- (1) The Board has the functions conferred or imposed on it by or under this Act.
- (2) Without limiting subsection (1), the functions of the Board include the following:
 - (a) to oversee the development of competence standards for people performing functions at coal operations that may impact on health and safety,
 - (b) to undertake initial and ongoing assessments of the competence of people performing functions at coal operations,
 - (c) to advise the Minister on matters related to the competence required of people to perform functions at coal operations,
 - (d) any other functions that the Minister may confer on the Board from time to time.
- (3) Without limiting subsection (2), the Board may do any or all of the following for the purpose of carrying out its functions:
 - (a) engage consultants,
 - (b) develop competence standards or cause competence standards to be developed,
 - (c) assess a person's competence, cause a person's competence to be assessed or accept an assessment of a person's competence.

135 Annual report

The Board must, at any time or within any period that the Minister may direct, make an annual report of its proceedings during the preceding year to the Minister.

Division 4 Certificates of competence

136 Certificates of competence may be granted

The Minister may, in accordance with the regulations and any orders made under section 138, grant a certificate of competence to perform a specified function. That certificate may be granted unconditionally or subject to conditions.

137 Regulations concerning competence standards

The regulations may make provision for or with respect to any or all of the following:

- (a) the development of competence standards,
- (b) the assessment of the competence standards of people, including the conduct of

examinations,

- (c) the granting and replacement of certificates of competence,
- (d) the maintenance of competence by those to whom a certificate of competence has been granted,
- (e) the suspension or cancellation of certificates of competence, including suspension or cancellation by reason of incompetence or negligence,
- (f) the imposition of conditions on certificates of competence,
- (g) the restoration of certificates of competence that have been suspended or cancelled,
- (h) the circumstances in which a certificate of competence granted by an authority outside New South Wales will be accepted as being sufficient qualification for the grant of a certificate of competence under this Act and the circumstances in which it will not be accepted,
- (i) the range of specified functions that the holder of specified evidence of competence is allowed to perform without breaching this Part,
- (j) the keeping of a register of certificates of competence,
- (k) the appointment and functions of examiners,
- (l) the charging of fees for any service provided by the Minister, the Board or any other person in relation to this Part.

138 Ministerial orders

- (1) The Minister may make orders, not inconsistent with this Act or the regulations, for or with respect to any or all of the following:
 - (a) the qualifications to be held by a person in order for the grant to the person of a certificate of competence to be recommended,
 - (b) the experience that a person applying for a certificate of competence must have in order for the grant to the person of a certificate of competence to be recommended,
 - (c) the age that a person must have attained before the person may be granted a certificate of competence,
 - (d) the course of instruction to be undertaken by an applicant for a certificate of competence,
 - (e) the nature and type of examinations to be undertaken by an applicant for a certificate of competence and the manner of their conduct,
 - (f) the circumstances in which the Board may grant to an applicant for a certificate of competence an exemption from complying with the rules in respect of the undertaking of examinations, the holding of qualifications, the possession of experience and the attendance of courses of instruction,
 - (g) the matters to be included in an application for a certificate of competence,

- (h) the declaration by the Minister that a person's competence is not recognised,
 - (i) any other matters that may be prescribed by the regulations.
- (2) The Board may make recommendations to the Minister concerning the making, amendment or revocation of orders under this section.
- (3) An order must be published in the Gazette. An order takes effect on the date on which it is published in the Gazette or on any later date specified in the order.
- (4) Sections 42–45 of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to statutory rules within the meaning of that Act.

Division 5 Offences

139 Offences: certificates of competence

A person must not, with intent to deceive:

- (a) use a certificate of competence granted under this Act, or
- (b) lend to another person a certificate of competence granted under this Act, or
- (c) allow to be used by another person a certificate of competence granted under this Act.

140 Offence of forging or having forged document

A person must not:

- (a) make a document so closely resembling a certificate of competence granted under this Act as to be calculated to deceive, or
- (b) have in the person's possession a document so closely resembling a certificate of competence granted under this Act as to be calculated to deceive.

141 False or misleading statements

A person must not make a statement that the person knows to be false or misleading in a material particular or recklessly make a statement that is false or misleading in a material particular, or produce, furnish, send or otherwise make use of a document that is false or misleading in a material particular for the purposes of obtaining for himself, herself or another person:

- (a) the grant of any certificate of competence or the issue of a duplicate certificate of competence or the restoration of any such certificate, or
- (b) employment at a coal operation to perform functions for which a certificate of competence is required.

142 Offences if a person's competence is declared as not recognised

- (1) A person whose competence has been declared by the Minister, in accordance with the regulations, as not recognised is guilty of an offence if the person continues to perform functions for which that competence was required.

- (2) An operator who requires or permits functions to be performed by a person whose competence is declared as not recognised is guilty of an offence.

143 Penalty for offence against this Division

A person who contravenes, whether by act or omission, a provision of this Division is guilty of an offence against that provision.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—375 penalty units, or
- (d) in the case of an individual (not being a previous offender)—250 penalty units.

Part 10 Oversight of coal operations

Division 1 Outline of this Part

144 Outline of this Part

- (1) This Part provides for the appointment, functions and powers of the following people, who are called *government officials* in this Act:
 - (a) the Chief Inspector,
 - (b) inspectors,
 - (c) mine safety officers,
 - (d) investigators.
- (2) This Part also provides for the election or appointment of the following people, who are called *check inspectors* in this Act, to carry out inspections as representatives of the workforce at coal operations:
 - (a) site check inspectors,
 - (b) electrical check inspectors,
 - (c) industry check inspectors.

Division 2 Inspections by government officials

Subdivision 1 Appointment of government officials

145 Appointment of government officials

- (1) The Minister may appoint a person employed under Chapter 2 of the *Public Sector Employment and Management Act 2002* as:
 - (a) the Chief Inspector, or
 - (b) an inspector, or

- (c) a mine safety officer, or
 - (d) an investigator.
- (2) An instrument appointing a person under this section may limit the functions that the person has.
- (3) A person appointed under this section is to be issued with an identification card under section 48 of the *Occupational Health and Safety Act 2000*.

146 Qualifications of inspectors

A person may be appointed as an inspector only if the Minister considers that the person has:

- (a) a professional engineering qualification relevant to coal mining operations from an Australian university or any equivalent qualification, and
- (b) appropriate competencies, and adequate experience, in coal mining operations, to effectively perform the functions of an inspector.

147 Appointment of consultants as investigators

- (1) The Minister may appoint a consultant:
- (a) as an investigator for the purposes of carrying out investigations under this Act, or
 - (b) to assist an investigator in carrying out such investigations.
- (2) A consultant appointed under this section has, while exercising the functions for which the consultant was appointed, the same functions as an investigator has under this Act and the regulations and the provisions of this Act and the regulations apply in respect of the consultant in the same way as they apply in respect of an inspector and anything done by an inspector.

148 Absence of Chief Inspector

If the Chief Inspector is absent from duty, or on duty but outside the State, the Minister may appoint an inspector to exercise the functions of the Chief Inspector.

Subdivision 2 Functions of government officials

149 Functions of Chief Inspector

- (1) The functions of the Chief Inspector are:
- (a) the control and direction of inspectors and mine safety officers, and
 - (b) reviewing appeals from notices issued by inspectors and mine safety officers, and
 - (c) the other functions that are conferred on the Chief Inspector by this Act or the regulations, and
 - (d) any other function conferred by the Minister from time to time.

- (2) For the purposes of this Act, the Chief Inspector is an inspector.

150 Bringing concerns regarding health, safety or welfare to the attention of operators

- (1) This section applies if:
 - (a) a government official exercises any of the powers conferred on him or her at or in connection with a coal operation or other workplace to which this Act applies, and
 - (b) as a result of the exercise of those powers, he or she obtains any information or becomes aware of any practice at a coal operation that may, in his or her opinion, be relevant to the continued safe operation of a coal operation or the health, safety or welfare at work of the people who work at a coal operation.
- (2) In that case, the government official must, as soon as possible, so advise the most senior person in the management structure of the coal operation who is at work.

151 Consideration and investigation of complaints

- (1) A government official must consider any complaint made to the government official by an industry check inspector or by a site check inspector for a coal operation, being a complaint concerning the health, safety or welfare at work of the people who work at the coal operation.
- (2) A government official may investigate any such complaint if he or she considers it appropriate to do so.
- (3) A government official must report to the industry check inspector or site check inspector who made a complaint to the government official concerning the results of the official's consideration or investigation of the complaint.
- (4) Nothing in this section prevents an industry check inspector or site check inspector from raising matters directly with the operator of a coal operation.

152 Audit and review of health and safety management systems

- (1) A government official may at any time audit and review the health and safety management system for a coal operation.
- (2) Such an audit and review may occur periodically, after the occurrence of an event prescribed by the regulations or at any other time that the government official thinks is appropriate.

153 Additional functions

A government official has the following additional functions:

- (a) in the case of a government official other than the Chief Inspector, to provide advice to the Chief Inspector on matters relating to the health, safety and welfare of people at work at coal operations,
- (b) to make reports on incidents or other matters at coal operations and to make recommendations for further action based on those reports.

Subdivision 3 Powers of government officials

Note. Section 47B of the *Occupational Health and Safety Act 2000* provides that a person appointed as a government official under this Act is taken to have been appointed as an inspector for the purposes of the OH&S Act and has the powers of an inspector under that Act in relation to coal workplaces.

154 Inspection powers

- (1) A government official has those powers that an inspector has under Part 5 of the *Occupational Health and Safety Act 2000* so as to make any examination and inquiry that may be necessary:
 - (a) to ascertain whether this Act and the regulations, or the *Occupational Health and Safety Act 2000* and the regulations under it, have been complied with, or
 - (b) to ascertain whether there is at a coal operation any matter or thing that affects or is likely to affect the health or safety of people who work at the coal operation, or
 - (c) to ascertain the causes and circumstances of any event or other occurrence at a coal operation, or
 - (d) to investigate any complaint made to the government official by an industry check inspector or a site check inspector.
- (2) For the purposes of the application of Part 5 of the *Occupational Health and Safety Act 2000* to powers under this Act, a reference in that Part to an inspector is taken to be a reference to a government official.

155 Powers of entry at any time

Despite Part 5 of the *Occupational Health and Safety Act 2000*, a government official may enter any place to which this Act applies at any time.

156 Power to require plan

- (1) A government official may require the operator of a coal operation to provide the government official with a plan of the coal operation marked with information that the government official considers necessary for an investigation or inquiry that the government official is making.
- (2) An operator must not fail to comply with a requirement made under this section.

Maximum penalty: 100 penalty units.

Division 3 Inspections on behalf of work force

Subdivision 1 Site check inspectors

157 Site check inspectors

- (1) For the purpose of enabling inspections to be carried out at a coal operation on behalf of the people at work at the coal operation, an individual may be elected as a site check inspector for the coal operation.

- (2) More than one person may be elected as a site check inspector if the operator agrees or the Chief Inspector directs.

158 Trigger for election

An election of a site check inspector for a coal operation must be held if one or more positions are vacant and:

- (a) a person employed in or about the coal operation requests in writing that an election be held, or
- (b) the Chief Inspector directs that an election be held.

159 Conduct of election of site check inspectors

- (1) An election for a site check inspector for a coal operation may be conducted:
 - (a) if there is only one involved union in relation to the coal operation—by that involved union, or
 - (b) if there is more than one involved union and all the involved unions are in agreement that a specified one of those unions should conduct the election—by that specified union, or
 - (c) if there is no involved union in relation to the coal operation or agreement under paragraph (b) cannot be reached—by a person authorised by the Chief Inspector to conduct elections under this section.
- (2) A person employed in or about the coal operation may be a candidate in the election if and only if:
 - (a) the person is not disqualified under section 161, and
 - (b) the person is employed at the coal operation and has at least 3 years' experience working at the coal operation or at a coal operation of the same type or has the other practical experience required by the regulations.
- (3) However, a person with less than 3 years' experience may be a candidate for election if the Chief Inspector determines that the 3-year requirement is impractical in a particular case.
- (4) Subject to the regulations, all individuals employed in or about the coal operation are entitled to vote in the election.
- (5) Where there is only one candidate for the election, that person is taken to have been elected.
- (6) Where a person is elected as the site check inspector for a coal operation, the involved union or other person authorised under subsection (1) to conduct the election must, as soon as practicable after the person has been so elected, inform the Chief Inspector, the industry check inspector and the operator of the coal operation.
- (7) As soon as practicable after being so informed, the operator of the coal operation must cause a notice that the person so elected is the site check inspector for the coal operation to be displayed in a prominent place at the coal operation, that will allow

all of the persons working in or about the coal operation to be notified of the election.

Maximum penalty: 10 penalty units.

160 Term of office

Subject to sections 161 and 162, a site check inspector for a coal operation holds office for 2 years after the date on which he or she was elected but is eligible to be elected for further terms of office.

161 Disqualification of site check inspectors

- (1) An application for the disqualification of a site check inspector for a coal operation may be made to the Chief Inspector by the operator of a coal operation, by all the individuals employed in or about a coal operation or by an involved union in relation to the coal operation, on one or both of the following grounds:
 - (a) that action taken by the site check inspector in the exercise or purported exercise of a power under this Act was taken:
 - (i) with the intention of causing harm to the operator of the coal operation or to an undertaking of the operator, or
 - (ii) unreasonably, capriciously or otherwise than for the purpose for which the power was conferred on the site check inspector,
 - (b) that the site check inspector has intentionally used, or disclosed to another person, for a purpose that is not connected with the exercise of a power of a site check inspector, information acquired from the operator of a coal operation.
- (2) If, after receiving an application under subsection (1), the Chief Inspector is satisfied that the site check inspector has acted in a manner referred to in subsection (1) (a) or (b), the Chief Inspector may, after having regard to:
 - (a) the harm (if any) that was caused to the operator of the coal operation or to an undertaking of the operator as a result of the action of the site check inspector, and
 - (b) the past record of the site check inspector in exercising the powers of a site check inspector, and
 - (c) the effect (if any) on the public interest of the action of the Chief Inspector, and
 - (c1) the views of the site check inspector, and any involved union that represents the site check inspector, concerning the disqualification, and
 - (d) any other matters that the Chief Inspector thinks relevant to his or her investigation,disqualify the site check inspector, for a specified period not exceeding 5 years, from being a site check inspector for any coal operation.

162 Vacation of office of site check inspector

- (1) A person ceases to be the site check inspector for a coal operation if:

- (a) the person resigns as the site check inspector, or
 - (b) the person ceases to be employed in or about the coal operation, or
 - (c) the person's term of office expires without the person having been elected to be the site check inspector for the coal operation for a further term, or
 - (d) the person is disqualified under section 161.
- (2) A person may resign as the site check inspector for a coal operation:
- (a) if the person was last elected as the site check inspector in an election conducted by an involved union in relation to the coal operation—by notice in writing delivered to the involved union that nominated the person as a candidate in the election, or
 - (b) in any case—by notice in writing delivered to the operator of the coal operation.
- (3) If a person has resigned as the site check inspector for a coal operation:
- (a) if subsection (2) (a) applies—the involved union to which the notice of resignation was delivered, or
 - (b) in any other case—the operator of the coal operation,
- must notify the persons employed at or about the coal operation, and, in a case to which subsection (2) (a) applies, the operator of the coal operation, of the resignation.
- (4) If a person has ceased to be the site check inspector for a coal operation because of subsection (1) (b), the person must notify the following persons in writing that the person has ceased to be the site check inspector for that coal operation:
- (a) the persons employed at or about the coal operation,
 - (b) the operator of the coal operation,
 - (c) if the person was last elected as the site check inspector in an election conducted by an involved union in relation to the coal operation—the involved union, in relation to the coal operation, that nominated the person as a candidate in the election.

163 Notification of election

A person elected as a site check inspector for a coal operation must:

- (a) notify the operator of the coal operation of the person's election, and
- (b) give to the operator the person's address and telephone number (including any mobile telephone number).

Maximum penalty: 5 penalty units.

164 Functions of site check inspectors

The functions of a site check inspector for a coal operation are as follows:

- (a) to keep under review the measures taken to ensure the health, safety and welfare of people at the coal operation, including procedures to control risks,
- (b) to investigate any matter that may be a risk to health and safety at the coal operation,
- (c) to request an investigation by an inspector if a health, safety or welfare matter is not resolved after attempts to do so,
- (d) to inspect a coal operation to assess the level of risk to which employees are exposed,
- (e) to inspect documents and plans relating to health, safety and welfare that are required to be kept at the coal operation by this Act or the regulations or by the *Occupational Health and Safety Act 2000* or the regulations made under that Act,
- (f) any other functions prescribed by the regulations.

165 Training of site check inspectors

- (1) A site check inspector for a coal operation must undertake a course of training relating to occupational health and safety that is accredited by the Minister for the purposes of this section.
- (2) The operator of a coal operation must permit the site check inspector for the coal operation to take any time off work, without loss of remuneration or other entitlements, that is necessary to undertake the training.

166 Rights of site check inspectors

- (1) A site check inspector:
 - (a) has the right to be present when an inspector makes a formal report to the operator concerning a health, safety or welfare matter at the coal operation, and
 - (b) has the right to accompany an employee, at the request of the employee, during any interview with the operator or a contractor about a health, safety or welfare matter at the coal operation, and
 - (c) has the right to observe any formal in-house investigation of an event or other occurrence at the coal operation that must be notified to the Chief Inspector, and
 - (d) has the right to require assistance and access to facilities that are reasonably necessary for the exercise of his or her functions.
- (2) A person must not obstruct a site check inspector in the exercise of any right conferred on the inspector by this Act.

Maximum penalty: 100 penalty units.

167 Duties of operators in relation to site check inspectors

The operator of a coal operation must:

- (a) on being requested to do so by a site check inspector for the coal operation, consult with the site check inspector on the implementation of changes at the coal operation, being changes that may affect the health or safety of persons at work at the coal operation, and
- (b) permit the site check inspector to make any inspection of the coal operation that the site check inspector is entitled to make under this Act, and to accompany an investigator during any investigation at the coal operation by the investigator, and
- (c) if there is no OHS committee (established under the *Occupational Health and Safety Act 2000*) in respect of the operator's employees at the coal operation—on being requested to do so by the site check inspector, consult with the site check inspector concerning the development, implementation and review of measures to ensure the health or safety of persons at work at the coal operation, and
- (d) permit the site check inspector to be present at any interview at which the site check inspector is entitled to be present under this Act, and
- (e) provide the site check inspector with access to any information to which the site check inspector is entitled to obtain access in accordance with this Act and to which access has been requested, and
- (f) provide the site check inspector with reasonable time, during normal working hours, to exercise the functions of the site check inspector without loss of remuneration or other entitlements, and
- (g) provide the site check inspector with access to any facilities that are:
 - (i) prescribed for the purposes of this paragraph, or
 - (ii) necessary for the purposes of exercising the powers of a site check inspector.

Maximum penalty: 100 penalty units.

168 Duties of contractors in relation to site check inspectors

A contractor carrying out work at a coal operation must:

- (a) on being requested to do so by a site check inspector for the coal operation, consult with the site check inspector on the implementation of changes at any coal operation at which employees of the contractor perform work for the contractor, being changes that may affect the health or safety at work of the employees, and
- (b) permit the site check inspector to make any inspection of the coal operation that the site check inspector is entitled to make under this Act, and to accompany an investigator during any investigation at the coal operation by the investigator, and
- (c) if there is no OHS committee (established under the *Occupational Health and Safety Act 2000*) in respect of the contractor's employees at the coal operation—upon being requested to do so by the site check inspector, consult with the site check inspector concerning the development, implementation and review of measures to ensure the health or safety at work of those employees, and
- (d) permit the site check inspector to be present at any interview at which the site

check inspector is entitled to be present under this Act, and

- (e) provide the site check inspector with access to any information to which the site check inspector is entitled to obtain access in accordance with this Act and to which access has been requested, and
- (f) if the site check inspector is an employee of the contractor, provide the site check inspector with reasonable time, during normal working hours, to exercise the functions of the site check inspector, without loss of remuneration or other entitlements.

Maximum penalty: 100 penalty units.

169 Assistance to site check inspectors

The operator of a coal operation and all other people at the coal operation must afford every facility and assistance to a site check inspector for the purposes of an inspection of the coal operation by the site check inspector.

Maximum penalty: 100 penalty units.

170 Reports by site check inspectors

- (1) A site check inspector for a coal operation must, within 7 days after making an inspection of the coal operation or of any part of the coal operation, send to the operator of the coal operation a report of the results of the inspection.

Maximum penalty: 5 penalty units.

- (2) A report under subsection (1) in respect of a coal operation or a part of a coal operation must be kept at the coal operation by the operator of the coal operation for at least 12 months after it is made.

Maximum penalty: 100 penalty units.

171 Reporting of dangers

- (1) A report of the finding, during any inspection by a site check inspector for a coal operation, of:
 - (a) noxious or flammable gas, or
 - (b) the existence of self-heating by coal or other material, or
 - (c) any other condition from which danger to the coal operation or to the safety or health of persons employed at the coal operation may be apprehended,

must be recorded by the site check inspector in a book or other form of records (to be kept at the coal operation by the operator for that purpose) on the day of the inspection and before the site check inspector leaves the coal operation following the inspection.

- (2) If any report recorded under subsection (1) in respect of a coal operation states the

existence, or suspected existence, of any danger, the operator must immediately inform the Chief Inspector of the contents of the report and cause a copy of the report to be sent to the Chief Inspector.

- (3) The regulations may prescribe how the Chief Inspector is required to be informed under this section and what must be reported to the Chief Inspector.

Subdivision 2 Electrical check inspectors

172 Electrical check inspectors

- (1) For the purpose of enabling inspections to be carried out on electrical equipment at a coal operation on behalf of the people at the coal operation, a person may be elected as the electrical check inspector for the coal operation.
- (2) One electrical check inspector may be elected for each coal operation.
- (3) A person elected under this section must be:
 - (a) the holder of the evidence of competence prescribed by the regulations, or
 - (b) an electrical tradesperson with at least 5 years' experience in coal mines in New South Wales.
- (4) Subdivision 1 applies to the election of electrical check inspectors in the same way as it applies to site check inspectors. However, an electrical check inspector need not work at the coal operation for which he or she is elected and the same person may be elected as an electrical check inspector for 2 or more coal operations.
- (5) Subdivision 1 applies to the functions of electrical check inspectors in the same way as it applies to site check inspectors, except that the functions of electrical check inspectors are limited to electrical equipment and issues and risks arising from its use.

Subdivision 3 Industry check inspectors

Note. A person cannot be appointed as an industry check inspector unless the person is also an authorised representative under the *Occupational Health and Safety Act 2000* (see section 173 of this Act). Division 3 of Part 5 of the OH&S Act sets out the powers of entry and the other inspection powers of authorised representatives. This Division gives industry check inspectors additional powers.

173 Appointment of industry check inspectors

- (1) The Minister must appoint a person as an industry check inspector if the person:
 - (a) is nominated by the Construction, Forestry, Mining and Energy Union (Mining and Energy Division), and
 - (b) is an authorised representative within the meaning of section 76 of the *Occupational Health and Safety Act 2000*, and
 - (c) has the qualifications prescribed by the regulations.
- (2) However, the Minister is not required to appoint a person if there are already 4 people appointed as industry check inspectors.

- (3) If a person ceases to comply with subsection (1), that person's appointment as industry check inspector is revoked.
- (4) An appointment under this section must be made in writing.

174 Functions of industry check inspectors

The functions of an industry check inspector are:

- (a) to review the content and functioning of the health and safety management system required under this Act or the regulations, and
- (b) to investigate any complaint from an employee at a coal operation regarding health or safety, and
- (c) to participate in investigations of events, occurrences or notifiable incidents, and
- (d) to assist in the training of site check inspectors, and
- (e) any other functions prescribed by the regulations.

175 Powers of industry check inspectors to suspend operations

- (1) This section applies if an industry check inspector is of the opinion that:
 - (a) there has been a failure to comply with a provision of the *Occupational Health and Safety Act 2000*, this Act, the regulations under either of those Acts or any applicable health and safety management system, and
 - (b) because of that failure there is a danger to the safety or health of persons at work at a place at the coal operation.
- (2) If this section applies, the industry check inspector may serve on the operator of the coal operation a notice:
 - (a) stating that the industry check inspector is of the opinion referred to in subsection (1), and
 - (b) giving particulars of the industry check inspector's reasons for being of that opinion, and
 - (c) giving particulars of the action which, in the industry check inspector's opinion, should be taken to remove the danger.
- (3) That notice may direct that any operations being carried on at the place be suspended.
- (4) The notice must, if a form has been prescribed by the regulations for the purposes of this section, be in that form.
- (5) An operator who is given a direction must immediately:
 - (a) comply with the direction, and
 - (b) advise an inspector of the giving of the direction.
- (6) A direction ceases to have effect:

- (a) on attendance by an inspector and an assessment of matters to which the direction relates, or
 - (b) on withdrawal, by instrument in writing, of the direction by the industry check inspector by whom it was given.
- (7) An operator who fails to comply with a direction given to the person is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
 - (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
 - (c) in the case of an individual (being a previous offender)—375 penalty units, or
 - (d) in the case of an individual (not being a previous offender)—250 penalty units.
- (8) Despite a direction being given to an operator, the operator may cause work to be carried out in the place to which the direction relates for the purpose of preventing or mitigating danger.

176 Industry check inspector may delegate functions to site check inspector

- (1) An industry check inspector may delegate his or her functions under section 175 to a site check inspector.
- (2) A delegation must be in writing and must be sent to the site check inspector, the operator of the relevant coal operation and the Chief Inspector.
- (3) A site check inspector may only exercise delegated power under this section if:
 - (a) the site check inspector has received any required training prescribed by the regulations, and
 - (b) the industry check inspector is not available or it is not practicable for him or her to attend at short notice.

177 Care to be taken

In the exercise of a function under this Division, an industry check inspector must do as little damage as possible.

178 Identification of industry check inspectors

- (1) Every industry check inspector is to be issued with an identification card by the Minister.
- (2) The identification card must:
 - (a) state that it is issued under this Act, and
 - (b) give the name of the person to whom it is issued, and

- (c) state the date (if any) on which it expires, and
- (d) bear the signature of the Minister or an officer approved by the Minister for the purposes of this paragraph.

Subdivision 4 Inspections on behalf of work force

179 Inspections by check inspectors

A check inspector for a coal operation may:

- (a) at any time go into and inspect the shafts, roadways, working places, old workings and machinery and equipment at the coal operation, and
- (b) inspect any documents or plans that by virtue of the *Occupational Health and Safety Act 2000* or the regulations made under that Act, or by virtue of this Act or the regulations made under this Act, are required to be kept at the office of the coal operation, and
- (c) when there is at the coal operation an event or other occurrence (being an event or occurrence for which notice is required by or under this Act to be given), inspect the place where the event or other occurrence happened and, so far as is necessary for the purpose of ascertaining its cause:
 - (i) inspect any other part of the coal operation and any machinery, apparatus or other thing at the coal operation, or
 - (ii) test the atmosphere at the place where the event or other occurrence happened.

180 Check inspector may be accompanied by operator's representative

For the purposes of an inspection of a coal operation under section 179, a check inspector may be accompanied by the operator or a representative of the operator, if the operator thinks fit.

181 Check inspector must not leave work without prior notice

A check inspector employed at a coal operation must not leave his or her place of work for the purpose of exercising functions as a check inspector under this Subdivision unless the check inspector gives reasonable notice to the operator of the coal operation of his or her intention to do so. For this purpose, notice given to a supervisor is taken to have been given to the operator.

Maximum penalty: 20 penalty units.

Division 4 Offences

182 Offence of failing to comply with requirement of government official

A person must not, without reasonable excuse, refuse or fail to comply with a requirement made by a government official in accordance with this Act.

Maximum penalty:

- (a) in the case of a previous offender—150 penalty units, or

(b) in any other case—100 penalty units.

183 Offence of interfering with check inspector or government official

A person must not, without reasonable excuse, wilfully interfere with a check inspector or a government official in exercising his or her functions under this Act.

Maximum penalty:

- (a) in the case of a corporation (being a previous offender)—750 penalty units, or
- (b) in the case of a corporation (not being a previous offender)—500 penalty units, or
- (c) in the case of an individual (being a previous offender)—225 penalty units, or
- (d) in the case of an individual (not being a previous offender)—150 penalty units.

184 Offence of impersonating a check inspector or government official

A person must not impersonate, or falsely represent that the person is, a check inspector or a government official.

Maximum penalty: 100 penalty units.

Part 11 Coal mining industry codes of practice

185 Purpose of industry codes of practice

The purpose of a coal mining industry code of practice is to provide practical guidance to operators, employers and others who have duties under Part 5 of this Act or Part 2 of the *Occupational Health and Safety Act 2000* with respect to occupational health, safety and welfare at coal operations.

186 Minister may prepare draft codes

- (1) The Minister may prepare, or cause to be prepared, draft coal mining industry codes of practice.
- (2) A draft coal mining industry code of practice may refer to or incorporate, with or without modification, a document prepared or published by a body specified in the code, as in force at a particular time or from time to time.

187 Consultation on draft codes

The Minister is to arrange for any organisations or people that the Minister may think appropriate to be consulted about a draft coal mining industry code of practice.

188 Approval of codes by Minister

The Minister may approve a coal mining industry code of practice.

189 Publication, commencement and availability of codes

- (1) An approved coal mining industry code of practice:

- (a) is to be published in the Gazette, and
 - (b) takes effect on the day on which it is so published or, if a later day is specified in the code for that purpose, on the later day so specified.
- (2) The following are to be made available for public inspection without charge at an office of the Department designated by the Director-General during normal office hours:
- (a) a copy of each approved coal mining industry code of practice,
 - (b) if an approved coal mining industry code of practice has been amended, a copy of the code as so amended,
 - (c) if an approved coal mining industry code of practice refers to or incorporates any other document prepared or published by a specified body, a copy of each such document.

190 Amendment or revocation of codes

An approved coal mining industry code of practice may be amended or revoked by an instrument prepared, approved and published in accordance with the relevant procedures of this Part with respect to industry codes of practice.

191 Use of codes

- (1) In any proceedings for an offence against this Act or the regulations or against the *Occupational Health and Safety Act 2000* or the regulations made under that Act:
- (a) an approved coal mining industry code of practice that is relevant to any matter that it is necessary for the prosecution to prove to establish the commission of the offence by a person is admissible in evidence in those proceedings, and
 - (b) the person's failure at any material time to observe the code is evidence of the matter to be established in those proceedings.
- (2) A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe an approved coal mining industry code of practice.

Part 12 Regulations

192 Regulations: general power

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the objects of this Act.
- (2) Any specific power to make regulations under this Act does not limit the generality of subsection (1).

193 Regulations: specific miscellaneous powers

Regulations may be made for or with respect to any of the following matters:

- (a) the safety, health, welfare, convenience and conduct of people at coal operations,

- (b) critical controls for major hazards at coal operations,
- (c) controls for risks of lesser consequence at coal operations,
- (d) the records that must be kept and the reports that must be made by an operator of a coal operation to the Chief Inspector concerning the health and safety performance of the coal operation,
- (e) the matters in a health and safety management system,
- (f) the matters in a major hazard management plan,
- (g) the matters in an emergency management system,
- (h) the matters in a safe work method statement,
- (i) the equipment, facilities and communication systems that must be provided in relation to an emergency management system,
- (j) the training that must be provided in relation to an emergency management system,
- (k) regulating or prohibiting:
 - (i) the design, manufacture, supply or use of any plant at or in relation to a coal operation, and
 - (ii) the design, manufacture, supply, storage, transport or use of any substance at or in relation to a coal operation, and
 - (iii) the carrying on of any process or the carrying out of any activity at or in relation to a coal operation,
- (l) requiring people to identify hazards to the health and safety of people, and to assess risks, arising from work at or in relation to a coal operation (including risks arising from the place of work or from any plant or substance for use at work),
- (m) designating the people (whether employers, self-employed people, contractors or other people) who are to be responsible for compliance with the obligations imposed by the regulations,
- (n) the register of persons occupying positions,
- (o) prohibiting, absolutely or conditionally, the carrying out of specified activities or classes of activities at or in relation to a coal operation,
- (p) requiring a person, before commencing to carry out work of a particular kind at a place of work at or in relation to a coal operation, to give the Minister or other people notice of the proposed work in accordance with the regulations,
- (q) requiring people at a coal operation, in any circumstances involving a risk to their health, to undergo a biological, hearing or other test,
- (r) requiring people at a coal operation to not eat, drink or smoke in any circumstances involving an increased risk to their health,
- (s) measures for detecting and investigating cases in which the health of people has

- been affected, including medical examinations, the making of biological, hearing or other tests and the notification of absences from work,
- (t) prohibiting, absolutely or conditionally, the use of specified materials or classes or types of material at or in relation to a coal operation,
 - (u) prohibiting, absolutely or conditionally, the use of specified equipment or classes or types of equipment at or in relation to coal operations,
 - (v) the design, construction, installation, maintenance, use, testing, repair, adjustment, alteration and examination of plant used at or in relation to coal operations,
 - (w) the design, use, construction and maintenance of buildings and structures at coal operations,
 - (x) the design, use, construction and maintenance of equipment used in connection with shafts and roadways in coal operations,
 - (y) prohibiting the installation at a coal operation of plant not constructed so as to comply with the regulations,
 - (z) the construction, design, material and strength of foundations to which any machinery or apparatus at a coal operation is or is to be anchored,
 - (aa) the provision of security measures at a coal operation to prevent access to shafts, drifts and surface buildings when unattended,
 - (ab) the provision of blast doors or other devices capable of assisting in the sealing off of coal operations,
 - (ac) inspections or monitoring for the presence of noxious or flammable gas, spontaneous combustion or heating or for the absence of oxygen, including provisions for or with respect to the installation in coal operations or the supply to people employed in coal operations of devices, systems or equipment for the detection, monitoring or testing of flammable or noxious gases or for detecting or monitoring the absence of oxygen,
 - (ad) the support of the roof and sides of working places and roadways in coal operations and the withdrawal of that support,
 - (ae) the maintenance and inspection of shafts and roadways at coal operations,
 - (af) working practices employed at a coal operation,
 - (ag) the circumstances in which consultation must be undertaken by an operator of a coal operation or by a contractor,
 - (ah) the mode of consultation by the operator of a coal operator or by a contractor,
 - (ai) prohibiting the working of a coal operation affected by dust or prescribing the conditions under which any such coal operations must be worked,
 - (aj) requiring the use in a coal operation of prescribed apparatus in relation to dust,
 - (ak) requiring steps to be taken and working practices to be adopted to minimise dust in a coal operation,

- (al) preventing the accumulation in a coal operation of potentially explosive dust,
- (am) the prevention, detection and combating of fires at, and spontaneous heatings occurring in, a coal operation including provisions for or with respect to:
 - (i) the establishment and maintenance at a coal operation of any arrangement that may be necessary for the prevention, detection and combating of fires and spontaneous heatings and the training of any person within that arrangement, and
 - (ii) the provision and maintenance at a coal operation of suitable and sufficient apparatus for the prevention, detection and combating of fires and spontaneous heatings,
- (an) the design, installation, operation and maintenance of methane drainage systems in a coal operation and the treatment, storage and disposal of methane,
- (ao) the requirements to be observed and the precautions to be taken in mining any location, including:
 - (i) under the ocean, a river, a lake, an estuary, a reservoir or an aquifer, and
 - (ii) near any place or strata that is likely to contain a dangerous accumulation of gas or water or material that flows when wet,
- (ap) the control of the supply, storage and use of blasting materials, blasting devices and flammable materials at a coal operation,
- (aq) requiring the surveying, and the preparation of plans, of barriers and protective pillars in a coal operation and prescribing the time in which any such surveys or plans must be made or prepared,
- (ar) the waiver, remission or refund of fees charged under the Act or the regulations and the interest payable for late payment of such fees,
- (as) the registration of any plant, material or thing before it may be used in, installed in or taken into a coal operation or connected to, or used with, any other plant, material or thing used or installed in a coal operation,
- (at) the generation, storage, transformation, transmission and use of electricity at a coal operation,
- (au) the circumstances in which the supply of electricity into the underground parts of a coal operation or part of a coal operation or any apparatus in a coal operation must be cut off and the type, nature and design of apparatus to be used to cut off the supply of electricity,
- (av) requiring the installation in coal operations of any electrical apparatus that may be prescribed and the type, nature and design of any such apparatus,
- (aw) the circumstances in which the supply of electricity must not be connected to the underground parts of a coal operation or part of a coal operation and the type, nature and design of any apparatus to be used to prevent the supply of electricity being connected,

- (ax) requiring communication systems to be provided in a coal operation,
- (ay) the supply and maintenance of first aid equipment, facilities and locations at a coal operation,
- (az) the employment at a coal operation of people trained to administer first aid to people injured,
- (ba) the conveyance of people injured within a coal operation from the coal operation to their homes or hospital,
- (bb) the provision, location, care and maintenance of sanitary conveniences at a coal operation,
- (bc) the control of rats, mice, other vermin and insects in or about coal operations,
- (bd) the provision, design, location, care and maintenance of bath and change houses at a coal operation,
- (be) the supply of drinking water at a coal operation,
- (bf) the provision of facilities for the taking of meals both on the surface and underground at a coal operation,
- (bg) the supply and maintenance of safety equipment for the use of people employed at a coal operation,
- (bh) the transport of people and materials in a coal operation,
- (bi) requiring people employed in a coal operation who carry out prescribed functions that may affect the safety or health of other people to hold any evidence of competence that may be prescribed,
- (bj) the ventilation of coal operations,
- (bk) the environmental working conditions in a coal operation,
- (bl) the control of the temperature and humidity in a coal operation,
- (bm) lighting in or about coal operations,
- (bn) prohibiting the taking into coal operations of items that may affect the safety of people at coal operations,
- (bo) searching people, before entry into coal operations, for items referred to in paragraph (bn) and the confiscation and disposal of any such items found,
- (bp) the fencing, enclosing or sealing of abandoned coal operations or parts of coal operations,
- (bq) requiring the provision of information, and the means of information provision, at a coal operation and prescribing:
 - (i) the number, design, construction, size and location of those means of information provision,

- (ii) the matters that must be displayed or provided, and
 - (iii) the class or classes of persons to whom information is to be provided,
- (br) prescribing the type, size, content and location of signs and notices to be displayed at a coal operation,
- (bs) the preparation, maintenance, keeping and preservation of plans, sections and drawings of coal operations (including abandoned coal operations) and of workings in or about coal operations and of related documents, including provisions for or with respect to the preparation of those plans, sections and drawings by the Director-General and the recovery of the cost of their preparation, maintenance, keeping and preservation,
- (bt) surveys of coal operations (including abandoned coal operations),
- (bu) the furnishing or production of copies of plans, sections and drawings of coal operations (including abandoned coal operations) and the furnishing of information relevant to the preparation of those plans, sections or drawings to the Director-General, to inspectors and to other people,
- (bv) the supply of, or the furnishing of information from, copies of plans, sections or drawings filed with the Director-General to people,
- (bw) prescribing, in respect of emplacement areas, engineering, environmental and safety standards and practices to be adopted in constructing and using emplacement areas and steps to be taken to keep emplacement areas secure,
- (bx) the provision, retention, maintenance and inspection of records at a coal operation,
- (by) the obligations of land owners and land occupiers at or in the vicinity of coal operations or abandoned coal operations,
- (bz) regulating the number and class of people who may be employed at a coal operation or part of a coal operation,
- (ca) the functions of the Chief Inspector,
- (cb) the functions of inspectors, investigators or mine safety officers, including provisions for or with respect to the production of identification cards by inspectors, investigators or mine safety officers and the warnings to be administered to people in the course of an inspection,
- (cc) the functions of industry check inspectors, site check inspectors and electrical check inspectors, including provisions for or with respect to the production of identification cards by such people,
- (cd) the regulation of coal preparation plants,
- (ce) the analysis of any substance,
- (cf) the fees chargeable or payable for doing any act or providing any service in connection with this Act or the regulations,

- (cg) forms for the purposes of this Act or the regulations,
- (ch) the manner of serving notices under this Act or the regulations,
- (ci) the review of actions and determinations of an inspector or other person,
- (cj) any information to be provided to any person by an inspector or other person exercising functions under this Act,
- (ck) the people, or class of people, entitled to vote at an election under this Act,
- (cl) the manner in which an election under this Act must be held,
- (cm) the fitness for work of those who work at coal operations,
- (cn) working time arrangements of those who work at coal operations,
- (co) the consumption of alcohol or other drugs by those who work at coal operations,
- (cp) the content and operation of a management structure for a coal operation,
- (cq) supervision of those who work at coal operations,
- (cr) disclosure of financial interests by government officials,
- (cs) the dimensions of roadways and pillars in coal operations that are underground mines,
- (ct) regulating or preventing the provision of any financial benefit or financial incentive to a person for the purpose of discouraging that person from reporting a health or safety matter,
- (cu) regulating tourist activities and the use of coal operations for educational purposes,
- (cv) the lodgment of applications under this Act,
- (cw) the transfer of any permit within the meaning of section 105,
- (cx) the duration of any such permit, which may be indefinite or of specified length,
- (cy) modifying the requirements of Part 5 so that they apply, with the prescribed modifications, to and in respect of persons who conduct tourist activities in or about a mine, or use a mine for educational purposes, under the authority of a permit issued under Part 6.

194 Regulations regarding classification of underground mines

Regulations may provide for the classification of underground mines by reference to the quantity of flammable gas found in the coal operations.

195 Regulations may require verification by statutory declaration

A regulation may require an application under this Act to be verified by a statutory declaration.

196 Regulations may prescribe decisions that are to be reviewable by

Administrative Decisions Tribunal

- (1) The regulations may authorise a person to apply to the Administrative Decisions Tribunal for a review of a decision of a class prescribed by the regulations that is made under this Act or the regulations.
- (2) The regulations may require any person who applies to the Administrative Decisions Tribunal for a review of a decision under this Act to notify any person of that application.
- (3) Despite section 60 of the *Administrative Decisions Tribunal Act 1997*, the regulations may make provision for the operation and implementation of a decision under review, or pending review, by the Administrative Decisions Tribunal.
- (4) Any such regulation cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

197 Regulations: adapting duties under Part 5

The regulations may adapt the provisions of Part 5 to meet the circumstances of any specified class of case.

198 Regulations concerning application of Part 5 to contractors

- (1) The regulations may specify contractors or classes of contractors:
 - (a) in relation to whom some or all of Subdivision 4 of Division 2 of Part 5 does not create any duties or creates duties subject to conditions, or
 - (b) to whom some or all of Division 6 of Part 5 does not apply or applies subject to conditions.
- (2) Any regulation made under this section applies only to contractors who do not undertake mining activities as part of the work that they undertake in connection with a coal operation.

199 Regulations may adopt other publications

The regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time.

200 Regulations may create criminal offences

The regulations may create offences punishable by a penalty not exceeding 250 penalty units.

201 Exemptions

The regulations may exempt, or provide for the exemption of, persons, or persons of a prescribed class, or any act, matter or thing, or any prescribed class of act, matter or thing, either absolutely or subject to conditions, from any provision of the regulations.

202 Regulations relating to consultation

- (1) If a provision of this Act requires consultation to be carried out with people who work at a coal operation, in the manner required by the regulations, the regulations

may specify the circumstances where it is sufficient for the OHS committee for the coal operation (established under the *Occupational Health and Safety Act 2000*) or the site check inspector for the coal operation to be consulted about the matter rather than the people who work at the coal operation.

- (2) This section does not limit the mode of consultation that may be required by the regulations, or the circumstances where consultation may be required.

Part 13 Miscellaneous

Division 1 Enforcement

Note. Section 104A of the *Occupational Health and Safety Act 2000* provides for offences under this Act and the regulations to be prosecuted under that Act.

203 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision unless the director or person satisfies the court that:
- (a) he or she was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (b) he or she, being in such a position, used all due diligence to prevent the contravention by the corporation.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.
- (4) In the case of a corporation that is a local council, a member of the council (in his or her capacity as such a director) is not to be regarded as a director or person concerned in the management of the council for the purposes of this section.

204 Aiding and abetting etc

- (1) A person:
- (a) who aids, abets, counsels or procures, or
 - (b) who, by act or omission, is in any way directly or indirectly knowingly concerned in or a party to,
- the commission of an offence against this Act or the regulations is taken to have committed that offence and is punishable accordingly.
- (2) Subsection (1) does not apply to a person who is acting in the ordinary course of his or her duties as an officer of a Federal or State industrial organisation of employees or employers.

205 Defence

It is a defence to any proceedings against a person for an offence against a provision of this Act or the regulations if the person proves that:

- (a) it was not reasonably practicable for the person to comply with the provision, or
- (b) the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

206 Defences to criminal proceedings not affected by this Act

It is not a defence to an action in any criminal proceedings that a given course of action was not objected to by the Chief Inspector or the Department, even if this Act gives the Chief Inspector or the Department an opportunity to object to that course of action.

Division 2 Information

207 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act (or any other Act), or
- (c) for the purposes of any legal proceedings arising out of this Act (or any other Act) or of any report of any such proceedings, or
- (d) in accordance with the *Freedom of Information Act 1989*, or
- (e) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (f) with the consent of the Minister, or
- (g) with other lawful excuse.

Maximum penalty: 20 penalty units.

208 False or misleading statements

A person must not, in giving any answer required of the person by a person under this Act, or in complying with a requirement to make a report under this Act, to furnish any returns, statistics or other information or to inform a person of the substance of any instructions, make a statement that the person knows to be false or misleading in a material particular or recklessly make a statement that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a previous offender—150 penalty units, or
- (b) in any other case—100 penalty units.

209 Defence

A person does not commit an offence against this Division by giving any answer, information or a document if the person, when giving the answer, the information or the document:

- (a) tells the other person, to the best of his or her ability, how it is false or misleading, and
- (b) gives the correct information, in circumstances where the person has, or can reasonably obtain, the correct information.

Division 3 Exercise and delegation of functions

210 Chief Inspector subject to Ministerial control

The Chief Inspector is, in the exercise of his or her functions, subject to Ministerial control and direction.

211 (Repealed)

212 Delegation of functions by the Minister

- (1) The Minister may, by instrument in writing, delegate to the Director-General any of the functions conferred or imposed on the Minister by or under this Act (other than this power of delegation).
- (2) The Minister may, by instrument in writing, delegate to the Board any of the functions conferred or imposed on the Minister under Part 9.

213 Delegation of functions by Chief Inspector

The Chief Inspector may, by instrument in writing, delegate to any inspector any of the functions conferred or imposed on the Chief Inspector by or under this Act (other than this power of delegation).

214 Delegation of functions by Director-General

- (1) The Director-General may, by instrument in writing, delegate to an authorised person any function conferred or imposed on the Director-General by or under this Act, including this power of delegation.
- (2) The Director-General may subdelegate to any authorised person any function delegated to the Director-General by the Minister if the Director-General is authorised to do so by the Minister.
- (3) In this section:
authorised person means:
 - (a) an officer of the Department, or
 - (b) any other person prescribed by the regulations.

Division 4 Service of documents

215 Service of documents

- (1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:
 - (a) in the case of a natural person:
 - (i) delivering it to the person personally, or
 - (ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
 - (iii) sending it by facsimile transmission to the facsimile number of the person, or
 - (b) in the case of a body corporate:
 - (i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or
 - (ii) sending it by facsimile transmission to the facsimile number of the body corporate.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

216 Supply of documents to an operator

If this Act or the regulations requires something to be sent or given to the operator of a coal operation it is enough that it is sent or given to the most senior person identified in the operator's management structure who is at work or given to a person at the on-site office of the coal operation or at the premises at which the relevant part of the work of the coal operation is carried out.

217 Supply of documents to Chief Inspector

If this Act or the regulations requires something to be sent or given to the Chief Inspector, it is enough that it is sent or given to a person, or left at a place, specified by the Chief Inspector by order published in the Gazette.

218 Supply of documents to an industry check inspector

If this Act or the regulations requires something to be sent or given to an industry check inspector, it is enough that it is sent or given to a district office, or the national office, of the Construction, Forestry, Mining and Energy Union (Mining and Energy Division).

Division 5 Fees

219 Fees

- (1) The Minister may determine the fees and charges payable:

- (a) by an applicant for a certificate of competence, and
- (b) by a candidate for an examination conducted by the Board, and
- (c) for any service provided by the Board, and
- (d) for the testing of plant or material for registration for the purpose of this Act or the regulations, and
- (e) for the issue of any tourist or educational permit, and
- (f) for any other purpose in connection with this Act authorised by the regulations.

(2) Any determination made under this section is subject to the regulations.

Division 6 General

220 Protection from liability

- (1) A matter or thing done or omitted to be done by a protected person does not, if the matter or thing was done or omitted in good faith for the purpose of executing any provision of this Act or the *Occupational Health and Safety Act 2000*, subject such person personally to any action, liability, claim or demand.
- (2) In this section, *protected person* means the following:
 - (a) the Minister,
 - (b) the Director-General,
 - (c) the Chief Inspector,
 - (d) a member of the Board,
 - (e) a site check inspector,
 - (f) an electrical check inspector,
 - (g) an industry check inspector,
 - (h) an inspector,
 - (i) a mine safety officer,
 - (j) an investigator,
 - (k) a person who constitutes a Board of Inquiry,
 - (l) an assessor sitting with a Board of Inquiry,
 - (m) a member of staff of the Department.

221 No obligation to exercise power

Nothing in this Act, other than a provision creating an offence, imposes an obligation on a person to exercise any power because the person is a site check inspector, electrical check inspector or industry check inspector.

Part 14 Repeals and amendments

222 Repeals

The following are repealed:

- (a) the *Coal Mines Regulation Act 1982*,
- (b) the *Coal Mines (General) Regulation 1999*,
- (c) the *Coal Mines (Investigation) Regulation 1999*,
- (d) the *Coal Mines (Open Cut) Regulation 1999*,
- (e) the *Coal Mines (Underground) Regulation 1999*,
- (f) the *Courts of Coal Mines Regulation Rules 1991*.

223, 224 (Repealed)

225 Savings, transitional and other provisions

Schedule 3 has effect.

226 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedules 1, 2 (Repealed)

Schedule 3 Savings, transitional and other provisions

(Section 225)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an

authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on the enactment of this Act

Division 1 Interpretation

2 Definitions

In this Part:

former Act means the *Coal Mines Regulation Act 1982*.

former Board means the Coal Mining Qualifications Board established by the former Act.

Division 2 Dissolution of Courts of Coal Mines Regulation

3 Dissolution of Courts of Coal Mines Regulation

Any Court of Coal Mines Regulation is dissolved.

4 Court may continue hearing part heard matter

Despite clause 3, if a Court of Coal Mines Regulation constituted under the former Act was, immediately before the repeal of the former Act, hearing a matter that had not been finally determined, the Court is to continue to be constituted and to hear the matter as if the former Act had not been repealed until that matter is finally determined.

Division 3 Dissolution of former Board

5 Dissolution of former Board

The former Board is dissolved.

6 Members of former Board

- (1) A person who, immediately before the repeal of the former Act, held office as a member of the former Board:
- (a) ceases to hold office as such on that repeal, and
 - (b) is eligible (if otherwise qualified) to be appointed as a member of the Board constituted under this Act.
- (2) A person who ceases to hold office as a member of the former Board because of the operation of this Act is not entitled to be paid any remuneration or compensation because of ceasing to hold that office.

Division 4 Phasing-in of plans and systems

7 Phasing-in of plans and systems

Without limiting clause 1, the regulations may make provision for plans, systems or other arrangements developed under the former Act and in force or effect immediately before the repeal of the former Act to be acceptable as fulfilling any requirement imposed by or under this Act for the duration of any phasing-in period prescribed by the regulations.

Division 5 Certificates, directions, approvals and instruments under former Act

8 Certificates of competency saved

On and from the repeal of the former Act, a certificate of competency granted under section 19 of the former Act in relation to a position is taken to have been granted under section 136 of this Act in relation to the functions ordinarily required to be exercised by the holder of that position.

9 Saving of prohibitions, restrictions, requirements or directions under section 63 or 63A of former Act

A prohibition, restriction, requirement or direction in force or in effect under section 63 or 63A of the former Act immediately before the repeal of the former Act, or a court order requiring a person to comply with such a prohibition, restriction, requirement or direction, continues to have effect as if section 63 or 63A had not been repealed but ceases to have effect if revoked by the Chief Inspector.

10 Saving of approvals under section 126 of former Act

An approval under section 126 of the former Act that was in force immediately before the repeal of the former Act is taken to be an approval under section 100 of this Act.

11 Saving of approvals under section 138 of former Act

Subject to the regulations, an approval under section 138 of the former Act that was in force immediately before the repeal of the former Act continues in force as if section 138 and the regulations made under that section had not been repealed. A failure to comply with the conditions of an approval is an offence against Division 2 of Part 6 of this Act.

12 Saving of directions under section 139 of former Act

Subject to the regulations, a direction made under section 139 (2) or (3) of the former Act that was in force immediately before the repeal of the former Act is taken to be a direction under section 86 or 87 of this Act, respectively.

13 Saving of approvals under section 139 of former Act

Subject to the regulations, an approval under section 139 (6) of the former Act that was in force immediately before the repeal of the former Act is taken to be an approval under section 89 of this Act.

14 Saving of notifications under section 143 of former Act

A notification given under section 143 of the former Act in relation to a drilling operation is taken to be notice given under section 78 of this Act.

15 Saving of tourist and educational permits

A permit issued under section 148 of the former Act that was in force immediately before the repeal of the former Act is taken to be a permit under section 107 of this Act.

16 Saving of instruments creating exemptions

An instrument made under section 174 (5) of the former Act and in force immediately before the repeal of the former Act that disapplied any provision of the regulations made under the former Act is taken to be a regulation made under section 201 of this Act creating an exemption from the corresponding provisions of the regulations made under this Act but ceases to have effect if revoked by the Chief Inspector.

Division 6 Holders of positions in management structure

17 Holders of positions in management structure

Without limiting clause 1, the regulations may make provision for a person who held a position in the management of a mine immediately before the repeal of the former Act to be taken to hold a prescribed position in the management structure of a coal operation under this Act.

Division 7 References

18 References to former Act

On and from the commencement of this clause, a reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the former Act is to be read as a reference to this Act.

19 References to Chief Inspector of coal mines

On and from the commencement of this clause, a reference in any other Act, in any instrument made under another Act, or in any document of any kind, to the Chief Inspector of coal mines appointed under the former Act is to be read as a reference to the Chief Inspector within the meaning of this Act.

Division 8 Notification of events

20 Place of accident or occurrence not to be disturbed

Section 90 of the former Act continues to apply for 3 days after the repeal of the former Act as if it had not been repealed.

21 Notification of certain events and other matters

Part 7 extends to an event that occurred in the 2 days before the commencement of the Part.

Division 9 Boards of Inquiry

22 Boards of Inquiry continue

A Board of Inquiry constituted under the former Act and active immediately before the

repeal of the former Act continues under this Act as if it were constituted under this Act and may continue any special inquiry under that Act as if the Act had not been repealed. In particular, section 94B of the former Act continues to apply to such a special inquiry as if it had not been repealed.

Division 10 Office holders

23 District check inspectors

A person who held office under the former Act as a district check inspector immediately before the repeal of the former Act is taken to have been appointed as an industry check inspector under this Act.

24 Local check inspectors

A person who held office under the former Act as a check inspector for a mine immediately before the repeal of the former Act is taken to have been appointed as a site check inspector under this Act for the coal operation that includes that mine. His or her term of office is taken to have commenced when he or she was elected.

25 Electrical check inspectors

A person who held office under the former Act as an electrical check inspector for a mine immediately before the repeal of the former Act is taken to have been appointed as an electrical check inspector under this Act for the coal operation that includes the mine. His or her term of office is taken to have commenced when he or she was elected.

Division 11 Miscellaneous

26 Operation of Part

The operation of this Part is subject to the regulations.

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments

Coal Mine Health and Safety Act 2002 No 129. Second reading speech made: Legislative Assembly, 13.11.2002; Legislative Council, 5.12.2002. Assented to 16.12.2002. Date of commencement (Div 4 of Part 6, Sch 2.7, 2.8, 2.9, 2.10 [1] and 2.15 and cl 15 of Sch 3 excepted), 23.12.2006, sec 2 and GG No 189 of 22.12.2006, p 11542; date of commencement of Div 4 of Part 6 and cl 15 of Sch 3: not in force; Sch 2.7, 2.8, 2.10 [1] and 2.15 was not commenced and was repealed by the Statute Law (Miscellaneous Provisions) Act 2008 No 62; date of commencement of Sch 2.9, 13.6.2003, sec 2 and GG No 97 of 13.6.2003, p 5623. This

Act has been amended as follows:

- 2003** No 40 Statute Law (Miscellaneous Provisions) Act 2003. Assented to 22.7.2003.
Date of commencement of Sch 2.5, assent, sec 2 (2).
- 2004** No 74 Mine Health and Safety Act 2004. Assented to 28.9.2004.
Date of commencement of Sch 3 [1]–[28] [30]–[44] [46]–[52] [54]–[64] and [66]–[69], 22.12.2006, sec 2 and GG No 189 of 22.12.2006, p 11544; date of commencement of Sch 3 [29] [45] [53] [65] and [70]: not in force.
- 2005** No 98 Statute Law (Miscellaneous Provisions) Act (No 2) 2005. Assented to 24.11.2005.
Date of commencement of Sch 2.11, assent, sec 2 (2).
- 2006** No 58 Statute Law (Miscellaneous Provisions) Act 2006. Assented to 20.6.2006.
Date of commencement of Sch 1.3 [1]–[3] and [5], assent, sec 2 (2); date of commencement of Sch 1.3 [4], 22.12.2006, Sch 1.3 and GG No 189 of 22.12.2006, p 11544.
- 2007** No 27 Statute Law (Miscellaneous Provisions) Act 2007. Assented to 4.7.2007.
Date of commencement of Sch 2, assent, sec 2 (2).
- 2008** No 62 Statute Law (Miscellaneous Provisions) Act 2008. Assented to 1.7.2008.
Date of commencement of Sch 4, assent, sec 2 (1).

Table of amendments

Sec 3	Am 2004 No 74, Sch 3 [1]–[7]; 2007 No 27, Sch 2.10 [1].
Sec 5	Am 2004 No 74, Sch 3 [8] [9].
Sec 8	Am 2004 No 74, Sch 3 [10].
Part 4, note	Am 2004 No 74, Sch 3 [11].
Sec 11	Subst 2004 No 74, Sch 3 [12].
Sec 12	Am 2004 No 74, Sch 3 [13].
Sec 13	Am 2004 No 74, Sch 3 [14].
Sec 16A	Ins 2004 No 74, Sch 3 [15].
Sec 17	Am 2004 No 74, Sch 3 [16]–[20].
Sec 20	Am 2004 No 74, Sch 3 [21].
Sec 44	Am 2004 No 74, Sch 3 [22].
Sec 54	Am 2004 No 74, Sch 3 [23] [24].
Sec 61	Am 2004 No 74, Sch 3 [25].
Sec 78	Am 2003 No 40, Sch 2.5 [1]; 2004 No 74, Sch 3 [26] [27].
Sec 83	Rep 2004 No 74, Sch 3 [28].
Sec 118	Am 2004 No 74, Sch 3 [30]–[38].
Sec 120	Am 2004 No 74, Sch 3 [39].
Sec 121	Am 2004 No 74, Sch 3 [40].
Sec 123	Am 2004 No 74, Sch 3 [41] [42].
Sec 145	Am 2003 No 40, Sch 2.5 [2].
Sec 149	Am 2006 No 58, Sch 1.3 [1].
Sec 150	Am 2004 No 74, Sch 3 [43].
Part 10, Div 2, Subdiv 3, note	Ins 2004 No 74, Sch 3 [44].
Sec 155	Am 2004 No 74, Sch 3 [46].
Sec 161	Am 2004 No 74, Sch 3 [47]–[49].
Secs 167, 168	Am 2004 No 74, Sch 3 [50].
Sec 171	Am 2007 No 27, Sch 2.10 [2].
Sec 185	Am 2003 No 40, Sch 2.5 [3].
Sec 193	Am 2004 No 74, Sch 3 [51] [52] [54]; 2006 No 58, Sch 1.3 [2]; 2007 No 27, Sch 2.10 [2].

Sec 194	Am 2007 No 27, Sch 2.10 [2].
Sec 201	Am 2006 No 58, Sch 1.3 [3].
Sec 202	Am 2004 No 74, Sch 3 [50].
Sec 203	Am 2004 No 74, Sch 3 [55].
Sec 204	Am 2004 No 74, Sch 3 [56].
Sec 211	Rep 2004 No 74, Sch 3 [57].
Sec 220	Am 2004 No 74, Sch 3 [58]; 2006 No 58, Sch 1.3 [4] [5].
Secs 223, 224	Rep 2008 No 62, Sch 4.
Sch 1	Am 2004 No 74, Sch 3 [59]–[63]. Rep 2008 No 62, Sch 4.
Sch 2	Am 2004 No 74, Sch 3 [66] [67]; 2005 No 98, Sch 2.11; 2007 No 27, Sch 2.10 [3] [4]. Rep 2008 No 62, Sch 4.
Sch 3	Am 2004 No 74, Sch 3 [68] [69].