



New South Wales

# **REVIEWING THE MINES INSPECTION ACT**

**A discussion paper on safety in quarries  
and metalliferous mines**

**August 2001**

## **A Message From The Minister**

The Carr Government recognises the economic importance of the NSW mining industry. This is why the Government has supported the industry with the seven-year \$30 million Exploration NSW initiative, as well as reduced rail, port and electricity charges.

In addition to providing direct employment, the mining industry provides a major stimulus to the economy in regional NSW. It is estimated that each direct job creates a further three jobs in support industries and services. This means the current mineral, industrial and construction mining operations generate a further 13,200 jobs in addition to the 4,400 people it directly employed.

A safe working environment must go hand in hand with the economic advantages which mining brings to this State. The community and the NSW Government expect family members will come home at the end of the shift and we are working with industry to ensure this happens.

The importance of safety in mining to the Carr Government is clearly demonstrated by:

- The extra \$14 million dollars over 5 years in funding it has provided to improve industry safety
- The undertaking of the Mine Safety Review
- The adoption of recommendations of the Gretley Inquiry and
- The establishment of an enforcement policy

The highest priority for this Government in the mining industry is to ensure NSW has the best occupational health and safety laws. That is why I have initiated a review of the Act. This will complement a similar review that is taking place for safety in coal mines.

As a community, we have an obligation to make sure legal

requirements are effective. I urge everyone involved in the mining industry to take an active part in this review and contribute to making New South Wales mines safer and more healthy places to work.

**The Hon Edward Obeid OAM, MLC  
Minister for Mineral Resources  
Minister for Fisheries**

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## **ABBREVIATIONS**

DG Act	Dangerous Goods Act 1975
DMR	Department of Mineral Resources
General Rule 2000	Mines Inspection General Rule
MI Act	Mines Inspection Act 1901
OHS Act 1983	Occupational Health and Safety Act 1983
OHS Act 2000	Occupational Health and Safety Act 2000
OHS Regulation 2000	Occupational Health and Safety Regulation 2000

## 1. OVERVIEW

The Mines Inspection Act 1901 (MI Act) establishes core requirements for the safe management and operation of mines in the metaliferous and extractive industries. The MI Act operates in conjunction with the *Occupational Health and Safety Act 2000* (OHS Act 2000).

The Minister for Mineral Resources, the Hon Eddie Obeid MLC has initiated a review of the MI Act to ensure that mines in New South Wales have the best health and safety legislation. The review is being conducted by the Department of Mineral Resources (DMR) in consultation with the Mine Safety Council of NSW. A similar review is being conducted of health and safety legislation for coal mines.

The review will consider ways of improving the MI Act and the overall legislative framework for health and safety including the relationship between mining legislation and the OHS Act 2000.

DMR is seeking written submissions on the review. This Discussion Paper has been prepared to provide people in the mining industry with information about the review and identify key issues for comment.

The first part of the Discussion Paper explains the purpose of the review and how it is being conducted. It also provides background information on the mining industry. This information is in Chapters Two and Three.

Chapter Four describes the overall legislative framework for health and safety as it applies to mines in the extractive and metaliferous industries. It explains the relationship between the MI Act, the OHS Act 2000 and legislation dealing with dangerous goods. Arrangements in other jurisdictions are briefly discussed and some broad options for reform are identified.

The OHS Act 2000 is the principal legislation dealing with health and safety for all workplaces in New South Wales, including mines. Chapter Five provides information about how the OHS Act 2000 applies to mines. It also provides further information about the application of Dangerous Goods Act 1975.

The MI Act is discussed in Chapter Six. This chapter

## Overview

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provides a summary of the main provisions of the MI Act and identifies key issues that will be considered in the review. The Chapter is broken into ten sections which discuss the following issues :

1. When and where the MI Act applies.
2. Who should have legal responsibilities for health and safety and what should be the responsibilities ?
3. Arrangements for certificates of competency, including what certificates are necessary and how they should be administered.
4. Requirements for controlling risks at mines, including risks that are specific to the mining industry.
5. Employee consultation about health and safety and broader requirements for employment conditions.
6. Arrangements for the inspection of mines, including the appointment and powers of government inspectors.
7. Notification of serious accidents and dangerous incidents.
8. Requirements for mine plans.
9. Tourist and educational activities at mines.
10. Provisions for taking legal proceedings.

Chapter Six also discusses arrangements the NSW Government is putting place for formal consultation with the industry about health and safety through the Mine safety Council.

The review of the MI Act will be most effective if people in the industry contribute to the review by making a written submission. Chapter seven explains how to have your say and gives instructions on preparing a submission.



## 2 The Review

### 2.1 History of legislation

People working in the mining industry must deal with hazards that most people never encounter. The first laws to protect the health and safety of mine workers in NSW were made in the 19<sup>th</sup> century. This pioneering legislation introduced some of the first occupational health and safety laws in Australia.

In a major initiative in 1901, Parliament repealed the 19<sup>th</sup> century legislation and passed the *Mines Inspection Act 1901* (MI Act). It applies to all mines and quarries apart from coal mines and oil shale mines.

The MI Act came into force on 1 February 1902 and established core requirements for the safe management and operation of mines. The MI Act has been amended on more than 20 occasions as it is updated to meet the changing needs of the mining industry.

In 1983 Parliament made the *Occupational Health and Safety Act 1983* (OHS Act) and applied it to all industries in New South Wales, including mining. Since that time, mines in New South Wales have had to comply with both sets of health and safety legislation.

Governments review legislation to ensure its objectives are still being met in the most effective way.

Accordingly, the Minister for Mineral Resources, the Hon Edward Obeid MLC has initiated a review of the MI Act - to make sure that mines in New South Wales have the best health and safety legislation. The Minister has also initiated a similar review of health and safety legislation dealing with coal mines.

The review of the MI Act is also timely because Parliament recently updated and replaced the 1983 OHS Act with the *Occupational Health and Safety Act 2000* (OHS Act 2000).

### 2.2 Scope of the review

The review will assess the operation of the MI Act and develop recommendations about possible improvements. This includes, if necessary, recommending that Parliament make changes to health and safety legislation applying to mines.

The review will consider the MI Act and the way it integrates into the broader legal framework for occupational health and safety in mines. In particular the review will consider :

- the objectives and content of the MI Act
- the relationship between the MI Act and the OHS Act 2000 and its Regulations
- any consequential effect on the *Mines Inspection General Rule 2000* (General Rule 2000)
- consistency with relevant ILO Conventions
- the application of supporting material such as codes of practice and guidance notes ; and
- the way that these elements are integrated into a framework for occupational health and safety that reflects community values.

## **2.3 How is the review being conducted ?**

The review will be conducted in stages. In the first stage, all people in the mining industry are encouraged to consider the existing legislation and identify areas where improvements could be made.

The Government is asking the public to comment on the MI Act and possible ways to improve its operation. In addition to seeking general comments on the Act, this Discussion Paper identifies specific issues for consideration. Public comment will be considered in the preparation of legislative changes.

The Discussion Paper has been prepared in consultation with the Mine Safety Council of NSW. The Council includes employee and employer representatives and advises the Minister on strategies for improving health and safety in the industry, including amendments to legislation.

Following the review of the public comments, by the Mine Safety Council, recommendations will be made to the Minister about changes to the legislation. Industry stakeholders will be consulted during the development of any draft legislation and before the NSW Government introduces any legislation into Parliament.

## **2.4 National Competition Policy**

In addition to the broad review of the MI Act, a parallel review is being conducted as part of a review of all legislation for the National Competition Policy (NCP). In April 1995 the Council of Australian Governments (COAG) agreed that all Australian governments would review legislation and remove restrictions on competition.

## The Review

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The NCP review of the MI Act is being conducted by the DMR. A discussion paper for the NCP review has been prepared by the DMR and is available on the DMR website. It can also be obtained from the contact for this broader review of the MI Act.

The NCP review aims to :

- clarify the objectives of the MI Act
- identify the nature of any restrictions on competition
- analyse the likely effects of any restrictions on competition on the economy
- assess the costs and benefits of any restrictions on competition
- consider alternative means of achieving the objectives, including non-legislative approaches.

Anyone interested in making a submission to the NCP can make a separate submission. The NCP discussion paper explains how to make a submission. The outcome of the NCP review will be considered as part of the this broader review of the MI Act and taken into account in any proposals to amend the legislation.

### **2.5 Contributing to the review**

This Discussion Paper describes the current legal framework and identifies some options for the future. The Paper also raises specific questions and seeks views on these options. All views expressed in response to this Discussion Paper will be considered.

The most effective way to contribute to the review is to prepare a written submission. Instructions for making a submission are set out in Chapter Eight – Having Your Say.

The review process will be aided if the following points are kept in mind:

- submissions should be in writing and set out reasons for the views expressed
- submissions are invited on any aspect of the MI Act
- submissions that respond to the questions raised in this paper are encouraged – this will assist in the comparison of different views
- it is preferred that submissions are supplied in an electronic form (i.e. disk, e-mail attachment in Microsoft Word 7 for Windows 95 or compatible format) or both a paper and electronic form
- the closing date for submissions is 9 November 2001.

Submissions should be sent to:

	The Co-ordinator
	MIA Review
Mail	PO Box 536
	St Leonards NSW 1590
e-mail	<a href="mailto:morrisr@minerals.nsw.gov.au">morrisr@minerals.nsw.gov.au</a>
Fax	02 9901 8584

Phone queries about the review process may be directed to 02 9901 8823

### 3 The Mining Industry

The mining industry in NSW is a major contributor to the economy, particularly in regional areas. The industry produces a wide range of products such as gold, silver, copper, lead, zinc, mineral sands, gemstones, construction materials and other industrial materials. This is in addition to an extensive coal mining industry.

#### 3.1 Mining and the NSW economy

Metallic mineral production currently provides direct employment for around 1,800 people and this may grow as proposed new developments are brought on line. The metal sector of the industry produced approximately 580,000 tonnes in 1998/99 at a value of more than \$1.1 billion dollars.

Industrial minerals and gems also made a significant contribution. In 1998/99 this sector employed close to 500 people who produced products valued at more than \$150 million.

Mining of construction materials such as sandstone, aggregate and gravel provided direct employment for about 2,000 people. This segment produced 42 million tonnes which was valued at more than \$445 million.

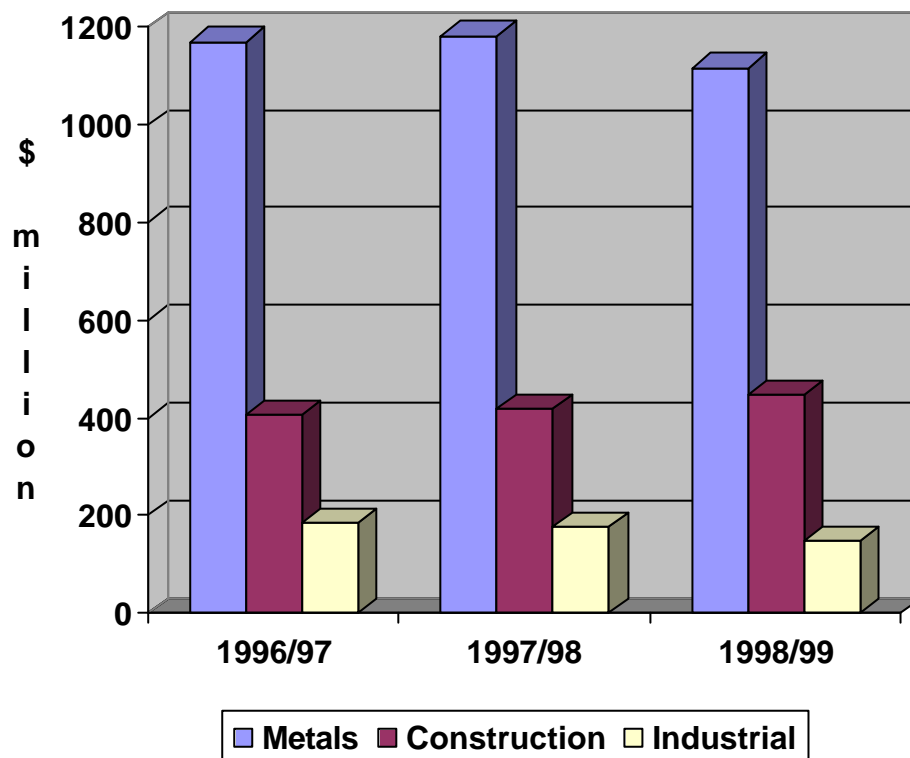
All together the metallic, industrial and construction segments of the mining industry contribute to the NSW economy by creating products valued at approximately \$1.7 billion and by providing direct employment for 4,400 people.

The mining industry has about 13 major metals mines, a similar number of significant industrial mineral operations plus a large number of smaller metallic and industrial

mineral mines. In addition there are numerous construction material operations - ranging from small to large quarries.

These mines are located throughout NSW with metallic mining operations concentrated in the areas around New England, Orange, Cobar and Broken Hill.

**Value of mining production  
1996 /97 –1998/99**



### 3.2 Health and safety in NSW mines

Mining in New South Wales has a safety record that is one of the best in the world. The NSW Government continues to work with mining companies and unions to build on the safety practices in mines.

In the last six years there have been 15 fatal accidents in the metal, industrial and construction segments of the

## The Mining Industry

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industry. These deaths are tragic and provide a strong incentive for everybody in the industry to stay focused on working safely.

In the last three years some 135 employees suffered injuries and diseases that resulted in permanent disabilities. There were also a further 45 employees who had temporary disabilities but their injuries prevented them from working for more than 6 months.

In that same period more than \$33 million dollars has been paid out in workers compensation costs in the industry. A further \$1.2 million was paid by the Dust Diseases Board for diseases which resulted from dust exposure in the industry in previous years.

For every injury or disease resulting in a workers compensation claim there are significant additional costs such as replacing equipment, lost production time, recruiting additional labour etc. The Commonwealth Industry Commission has estimated that in most industries these indirect costs are twice the cost of workers compensation claims. Some practitioners in the safety and health arena suggest that the true cost is more like 8 to 10 times the injury cost, particularly when costs to the community for long term health care are taken into account.

### Recent health and safety initiatives

The NSW Government is committed to improving health and safety standards in NSW mines.

In June 1996, the NSW Government commissioned a major review of mine safety. The Government accepted the recommendations of this review and established the tripartite Mine Safety Council of NSW to advise the Minister on strategic directions for the industry. The Council is



supported by three advisory committees that cover the coal, metals and extractive segments of the industry.

Along with the pursuit of legislative change, action has been taken in the following areas :

- control of major hazards by the identification of major risks and the implementation of programs to prevent their occurrence
- formalised approaches to emergency preparedness
- development of a database to monitor, analyse and provide reports on safety performance in the industry
- improved work prioritisation through introduction of a Risk Identification Management System
- use of work plans by inspectors to better target their work
- development of a communication strategy to educate mine workers on safety and health issues and to encourage the adoption of a pervasive safety culture
- conducting a small mines program to address incidents that occur in this sector of mining.

The NSW Government has also established a specialist investigation unit to investigate fatalities and serious accidents. This unit is making a significant impact in improving professional investigation processes and industry practices.

In a major initiative, the NSW Government, in consultation with mining companies and unions, developed a new General Rule for the MI Act. The General Rule commenced on

1<sup>st</sup> September 2000 and has introduced an integrated set of requirements for systematic risk management.

The General Rule requires that each mine have an occupational health and safety policy and safety management plan. The plan must address all significant aspects of implementing a modern proactive approach to safety management and ensure that risks from major hazards are assessed and controlled.

The General Rule sets out clear responsibilities for all people who can impact on safety and establishes standards for common hazards such as hazardous substances, structures, explosives, noise, ventilation, machinery and equipment as well as mine stability. A number of management processes are also required such as consultation and communication, safety inspections and checks, emergency response planning and accident and incident reporting.

The mining industry, both employers and employees have also made a strong commitment to making improvements and have made valuable contributions to developing a strategic approach. This review of the MI Act is part of that strategic response.

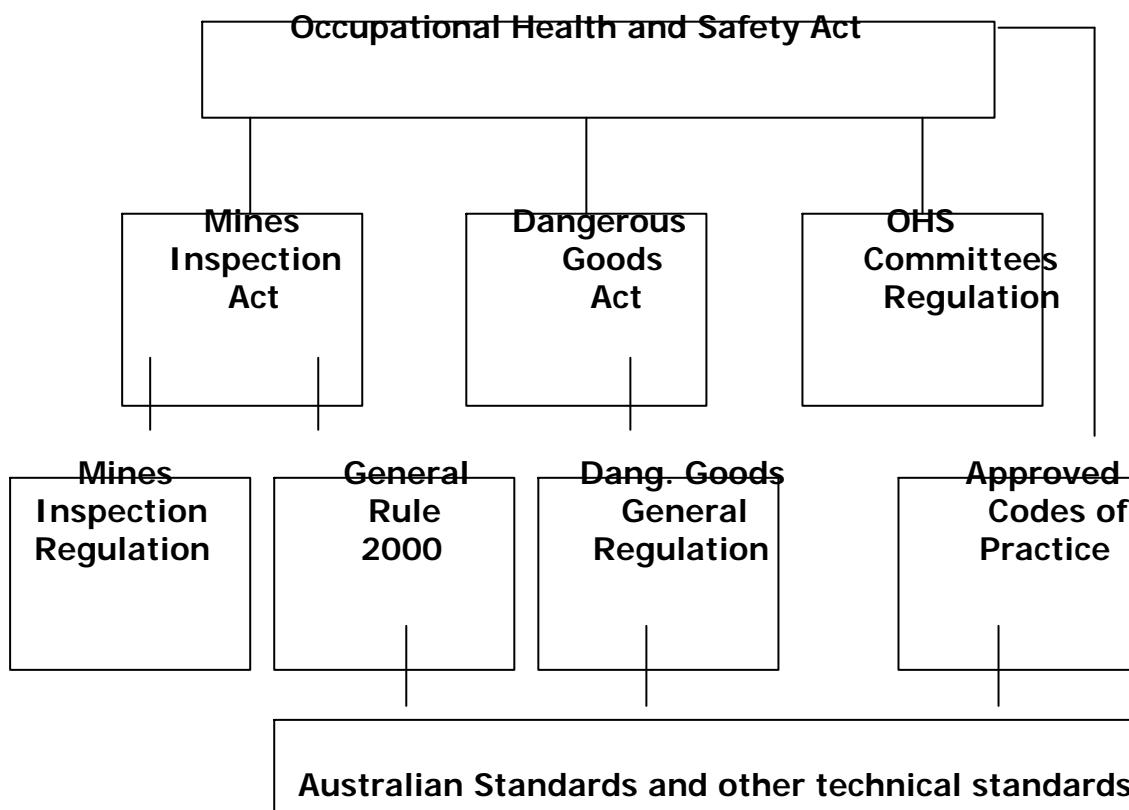
The review of the MI Act will build on these recent initiatives. The review will provide a mechanism for a more modern and effective legal framework for health and safety in mines.

## 4 The legislative framework

The mining industry must comply with the MI Act and OHS Act (the OHS Act 2000 will replace the OHS Act 1983 at some time in mid 2001). In addition the industry must comply with the *Dangerous Goods Act 1975* (DG Act). Each of these Acts also has accompanying Regulations, Rules and referenced Australian Standards.

Some codes of practice approved under the OHS Act are also relevant to the mining industry – such as those dealing with manual handling, noise, hazardous substances and recording information about injuries and diseases.

The legislative framework that applies to mines in NSW is shown in the diagram below.



## The Legislative Framework

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The OHS Act sets out general duties for people who can affect health and safety outcomes in the workplace, including employers and suppliers of plant and substances. The general duties in the OHS Act apply to the mining industry along with provisions dealing with legal proceedings for prosecutions. Some administrative provisions do not apply. These provisions relate to inspectors and their powers and to reporting accidents and dangerous incidents.

Regulations made under the OHS Act expand on the general duties. The Regulations have been written for general industry or specific industries such as construction. Regulations made under the OHS Act do not apply to mines, apart from those dealing with OHS committees. Proposed new regulatory provisions dealing with consultation and elected OHS representatives will also apply to mines when they commence in mid 2001.

The MI Act and General Rule 2000 work with the OHS Act. They set out detailed requirements for health and safety that assist the mining industry to implement the general duties in the OHS Act. The MI Act includes provisions for:

- mining inspectors
- reporting serious accidents and dangerous incidents
- the arrangements for legal proceedings for any prosecutions made under the MI Act.

The General Rule 2000 sets out detailed arrangements for mine safety management and the control of specific risks. The *Mines Inspection Regulation 1999* (MI Regulation) is a brief Regulation made under the MI Act that sets out requirements for dealing with investigations.

The DG Act and its Regulations require licenses for large quantities of dangerous goods such as flammable gases, corrosive substances and explosives. They also set out detailed requirements for the handling, storage and use of dangerous goods. These requirements apply to mines unless there are specific provisions addressing the matter in the MI Act or General Rule 2000.

The General Rule 2000, the DG Act and its Regulations refer to a number of technical health and safety standards, mostly published by Standards Australia. These standards also provide detail on how people in the mining industry should comply with their general duties in the OHS Act.

A comprehensive range of guidance material complements these legislative requirements. Some industry codes of practice approved under the OHS Act are relevant to the mining industry. The DMR has also prepared a wide range of guidance material for the industry.

### **4.1 Relationship between legislation**

All people in the industry have obligations under multiple sets of legislation. The different pieces of legislation also place obligations on different groups of people. For example a mine owner has certain responsibilities under the MI Act but may also have responsibilities as an employer under the OHS Act.

Mine managers have obligations as a manager under both pieces of legislation, but their responsibilities are stated differently. Some people, such as manufacturers of equipment, have general duties under the OHS Act that are backed up by specific provisions in OHS Regulations. However, these Regulations do not apply in mines, and different requirements apply to equipment and materials are found in the General Rule.

## The Legislative Framework

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The implementation of multiple sets of legislation can cause some administrative difficulties. Inspectors from the DMR apply the legislation in mines including the OHS Act 2000. However, the inspectors operate under the inspection powers in the MI Act and at the present time do not have access to some of enforcement powers that WorkCover inspectors have when administering the OHS Act.

The relationship between the legislation is formally addressed in the OHS Act which deems the MI Act, the DG Act and their Rules and Regulations as 'associated legislation'. A person must comply with the 'associated legislation' in addition to complying with the OHS Act. This means a person in the mining industry must comply with their general duty under the OHS Act and also comply with any specific requirements in the MI Act, the General Rule 2000, the DG Act and its Regulations.

There are, however, two important qualifications to this situation :

- the OHS Act prevails if a provision of the associated legislation is inconsistent with the obligations in the OHS Act.
- a person is not guilty of an offence against their general duties under the OHS Act for any act or omission that is expressly required or permitted to be done by or under the associated legislation.

These two qualifications have the following implications for mines.

First, a person who has obligations under the MI Act must fulfill these responsibilities. However, this does not necessarily mean that they have completely satisfied their

general duty of care under the OHS Act 2000. They may need to take additional actions.

Second, a person who is complying with specific provisions in either the MI Act or the General Rule may have a defence if they are prosecuted for contravening their general duty under the OHS Act.

### **4.2 Experience in other jurisdictions**

In considering the options for the future in New South Wales it may be useful to look at arrangements in other jurisdictions. The legislative framework in other jurisdictions can be broken into four categories.

Two jurisdictions, Tasmania and South Australia, do not have separate mining safety legislation. These jurisdictions regulate safety and health through their general occupational health and safety legislation. Tasmania has recently developed a code of practice for quarries and is adopting NSW guidelines for its other mines. South Australia has a chapter in its OHS Regulation which deals with specific mining hazards.

Victoria has dual legislation with health and safety obligations in the general OHS legislation and specific obligations in separate Acts dealing with mines and with quarries (similar to NSW).

Western Australia and the Northern Territory have mining safety Acts and Regulations that are similar in style to the MI Act in New South Wales. The legislation in these jurisdictions prescribes management arrangements, competencies, inspection powers and specific risk controls. However, these jurisdictions have no general duties in their legislation to control safety.

Queensland is in the process of implementing new mining specific legislation. The current legislation is similar to the approach in Western Australia and the Northern Territory, However, the Queensland Parliament passed the *Mining and Quarrying Safety and Health Act* in 1999. This new Act which establishes general duties similar to the OHS Act 2000. A summary of the new Act is in an appendix to this discussion paper. It should be noted that this new Act has not fully commenced and accompanying Regulations are still being prepared.

The DMR commissioned an issues paper by Professor Neil Gunningham from the Australian National University on the development of a New Regulatory Model for Occupational Health and Safety in the New South Wales coal industry. The Gunningham paper focuses on coal mining but includes an analysis commencing at page 33 of different types of health and safety legislation in the United States and United Kingdom and of the sought of regulation that is most effective that may be of interest.

The Gunningham paper can be downloaded from the safety page on the DMR web-site.

### 4.3 Options for reform

The Government has not determined a preferred legislative framework and wishes to consider the views of the mining industry before making any changes to the current legislation. However, there seem to be three main options, with variations that could be considered.

These options are :

1. Amend the MI Act and possibly the General Rule 2000 to improve the alignment with the OHS Act.



2. Repeal the MI Act and General Rule 2000 and develop mining specific Regulations under the OHS Act.
3. Amend the MI Act to include provisions based on the OHS Act such as the general duties, and then discontinue the OHS Act coverage of mines.

### Request for comment

The review of the MI Act is an opportunity to make sure that the mining industry has the best possible legislative framework for health and safety. Public comment submissions should address the following question.

1. *What is the best legislative framework for ensuring health and safety in NSW mines ?*

When answering this question please give reasons for your suggestions. You may want to consider factors such as :

- consistency with health and safety legislation for other jurisdictions or industries
- any special needs of the mining industry
- the defence available under the OHS Act for people complying with the MI Act and General Rule 2000
- making the legislation easy to understand.

## 5 General OHS legislation

The review of the MI Act is considering the relationship between the MI Act and general occupational health and safety legislation such as the OHS Act 2000. This chapter provides a brief overview of the OHS Act and the DG Act. The MI Act is discussed in the next chapter.

### 5.1 Occupational Health and Safety Act 2000

The original OHS Act 1983 has been updated and replaced by the OHS Act 2000. The new OHS Act essentially is redrafted in plain English and including new provisions for employee consultation and for sentencing.

The OHS Act 2000 is the overarching legislation dealing with health and safety at work in NSW. It applies to all workplaces including mines. The Minister for Industrial Relations administers the Act in all workplaces apart from mines. The Minister for Mineral Resources administers the Act in mines using enforcement powers set out in the MI Act.

The most important provisions for the mining industry are the general duties set out in Part 2, the arrangements for employee consultation, provisions enabling approved industry codes of practice, the entry and inspection powers of authorised employees' representatives and the arrangements for legal proceedings.

#### **General duties for an employer**

Under section 8 of the OHS Act 2000 an employer must ensure the health, safety and welfare of all of their employees wherever they work, including at a mine. An

employer must

also ensure that their operation does not expose other people at the workplace to any risks. This includes mine visitors and contractors doing work at a mine.

The general duty provides that every employer must be able to prove that they have taken all reasonably practical actions to ensure that the premises, the work environment and any work systems are safe and without risk. This includes providing employees with all necessary training, supervision and information as well as taking action to control risks from all reasonably foreseeable hazards.

The OHS Act 2000 does prescribe how an employer must manage these risks and comply with this general duty. For workplaces in NSW apart from mines, the draft OHS Regulation will provide some detail by setting requirements for a risk management process and establishing performance standards for common hazards. For mines, these details are found in the MI Act and General Rule 2000.

Directors and managers of corporations also have responsibilities under the OHS Act. Under section 26 these people can, in some circumstances, be deemed personally to have committed an offence if a corporation breaches the Act. For example, if a proprietary limited company commits an offence against the OHS Act, a director of that company may be deemed to have also committed an offence unless the director used all their due diligence to prevent the offence.

### **Employee consultation**

The OHS Act 2000 includes a provision requiring all employers to consult their employees about health and safety and for employees to be able to elect an OHS representative. This includes employers in the mining

industry. Sections 13 to 19 of the Act set out required processes for this consultation including setting up OHS committees and the election of OHS representatives.

### **General duties for a self employed person**

A self employed person has general duties set out in section 9 of the OHS Act 2000. They have a duty similar to an employer and must ensure that they do not expose other people at the workplace to risks. Any self-employed person providing contract services at a mine has obligations under this section.

### **General duties for a person who controls work premises, plant or substances**

A person who controls a workplace that is used by people that they do not employ has duties under section 10 of the OHS Act 2000. To the extent that the person has control over the workplace, this person must ensure that the workplace is safe and without risk.

A person who controls any plant or substance that is used for work by people they do not employ also has duties under section 10. The person who controls the plant or substance must ensure that it is safe when properly used.

### **General duties for designers, manufacturers and suppliers of plant and substances**

A person who designs, manufactures or supplies plant or substances for use at work has obligations under section 11 of the OHS Act 2000. These people must ensure that the plant or substance is safe and without risk when properly used. They must also arrange for information to be provided which ensures that the plant or substance can be used safely. Under this section manufacturing includes assembling, installing or erecting plant. These provisions apply to plant and substances used in mines.

Chapters 5 and 6 of the draft OHS Regulation include detailed requirements for designers, manufacturers and suppliers. The provisions set out detailed design standards, risk management processes and information requirements. However, these provisions do not apply to plant and substances supplied for use at a mine. Instead, General Rule 2000 imposes a risk management approach on plant and substances at mines.

### **Approved industry codes of practice**

The OHS Act 2000 enables the Minister to approve industry codes of practice. These codes are used to give guidance to employers and other people with general duties under the Act. Codes of practice are not Regulations and a person cannot be prosecuted for failing to comply with a code. However, failure to observe a code can be used as evidence in a prosecution.

At present there are 35 approved codes of practice. Some of these codes may be applicable to mines such as those dealing with manual handling, noise, hazardous substances and injury and disease recording. Most of the codes, however, have been drafted for general industry and refer extensively to OHS Regulations that do not apply to the mining industry. There is nothing to prevent mining specific codes of practice being approved under the OHS Act. There is a large volume of guidance material developed for mines by the DMR. This guidance material takes advantage of interstate and overseas incidents at mines.

### **Authorised employees' representatives**

Sections 76 to 85 of the OHS Act 2000 set out the entry and inspection powers of authorised employees' representatives. An authorised representative is an officer of a trade union registered under the *Industrial Relations Act 1996*. An authorised representative can enter a workplace where they have members (or people eligible to be members) to

investigate suspected breaches of OHS legislation. They can make searches and inspections. They can require the production of documents that directly affect or deal with the health and safety of people at the workplace and may take copies or extracts of the documents. The occupier of the workplace must provide reasonable assistance and facilities for an authorised representative.

### **Criminal and other proceedings**

Part 7 of the OHS Act 2000 sets out the procedures for prosecution and identifies actions that a court can take in addition to imposing fines or prison sentences – such as ordering an offender to publicise the offence or undertake projects for the general good of occupational health and safety. These provisions apply to the mining industry but are only relevant to prosecutions brought under the OHS Act 2000. Prosecutions can also be initiated under the MI Act, however, the DMR has a preference for prosecuting under the OHS Act.

## **5.2 Dangerous Goods Act 1975 and Dangerous Goods (General) Regulation 1999**

A further set of health and safety legislation applicable to mines is the *Dangerous Goods Act 1975* and the *Dangerous Goods (General) Regulation 1999*. These laws deal with the manufacture, storage, packaging and use of dangerous goods and explosives. Inspectors from the DMR are appointed as dangerous goods inspectors.

The Dangerous Goods legislation does not apply in a mine if there is a provision in the Mines Inspection Act 1901 dealing with the same matter. Consequently provisions dealing with explosives and the certification of shot firers in the Mines Inspection Act 1901 and the General Rule take

precedence over equivalent provisions in the Dangerous Goods legislation.

A new national standard for the handling storage and use of dangerous goods was declared in December 2000. This new standard implements a risk management approach similar to the General Rule 2000.

The dangerous goods legislation will be reviewed in 2001 and may be subject to significant change. Because of these circumstances, the dangerous goods legislation is not discussed in any great detail in this Discussion Paper.

# 6 Mines Inspection Act 1901

The mining industry has to control risks that are not commonly found in other workplaces – risks such as inrush and strata control, artificial ventilation in underground mines and the use of heavy mining equipment. The mining industry has historically had special legislation because of the nature and extent of these risks. In NSW this special legislation is the MI Act and the General Rule 2000.

The MI act and General Rule 2000 complement the general duties in the OHS Act by setting out specific obligations for people who can affect health and safety in mines. The MI Act also establishes powers for inspectors and the processes for any legal proceedings. Details of health and safety performance standards are set out in the General Rule 2000. Both the MI Act and the General Rule 2000 are supplemented by guidance material issued by the DMR.

This Chapter provides a summary of the main provisions in the MI Act and the General Rule 2000. Comment is being sought on all aspects of the Act and on possible changes or improvements. This chapter also identifies issues for consideration that you may want to consider when making comment.

## 6.1 Application of the MI Act

The starting point for the review of the MI Act is identifying when and where any mining specific legislation should apply. Currently the MI Act applies to all open cut or underground sites where any of the following activities take place :

- exploration for metals or minerals



- extraction of metals or minerals
- treatment of extracted metals or minerals at or near the extraction site.

This does not include coal or shale oil which are addressed by the *Coal Mines Regulation Act 1982*. The following locations and equipment are also covered by the MI Act :

- equipment, plant, buildings, tunnels, roads etc at a site where mining activities occur
- waste storage or treatment at or near a mine site
- ready mix concrete or bitumen hot mix plants adjoining a quarry and in joint ownership
- treatment and separation plants for zircon, rutile, ilmenite, monazite and associated minerals
- environmental rehabilitation of sites during or after mining activities
- abandoned mines and operations associated with the care security or maintenance of mines when mining is suspended, a mine site during restoration, decommissioning or abandonment.

### Request for comment

The review of the MI Act needs to confirm the types of locations or activities that should be covered by any mining specific legislation.

2. *Is there a need for mining specific health and safety legislation?*
3. *If there is a need for mining specific legislation, what locations and activities should be covered by the legislation ?*

You may want to consider the way the MI Act currently identifies locations and activities.

You may also want to consider alternative ways to define the coverage, such as linking the application to exploration, assessment and mining leases under the *Mining Act 1992*.

### **6.2 Health and safety responsibilities**

The MI Act builds on the general duties in the OHS Act. It sets out specific health and safety responsibilities for each person at a mine. These people must comply with their specific responsibilities in addition to complying with their general duties under the OHS Act. The specific responsibilities in the MI Act are designed to help people meet their general duty, but may not always address all aspects of a person's general duty.

The review of the MI Act will consider whether and how these specific responsibilities should be set out in mining specific legislation. It will also consider which categories of people should have responsibilities and how they should be stated.

This section of the Discussion Paper gives a summary of the responsibilities in the current MI Act, identifies some of the links with the OHS Act and asks for comment on the future directions.

#### **Responsibilities of a mine owner**

Part 2 of the MI Act requires a mine owner to appoint a general manager for the mine. The mine owner must also ensure that the operation of the mine complies with the MI Act and any rules made under the Act. In addition, a mine owner must be able to provide specified information and records to the DMR on request.

The mine owner, being an employer under the OHS Act, must comply with the employer's general duty to take all reasonably practical actions to ensure that all risks are eliminated or minimised as far as possible. This includes providing employees with all necessary supervision, training and information as well as taking action to control risks from all reasonably foreseeable hazards. A mine owner may

need to take additional action to comply with their broadly stated general duty under the OHS Act.

### **Responsibilities of a general manager of a mine**

Under section 46 of the MI Act, a general manager of a mine must ensure that any reasonably foreseeable risk that could cause significant harm is assessed and controlled. Control means eliminating or minimising the risk to the fullest extent that is reasonably practicable.

A general manager must also ensure that mining operations are supervised by a production manager who has specified competencies. The types of competencies differ depending upon the type and size of the mine. The general manager can appoint themselves as the production manager or can appoint another person. A production manager must have a certificate of competency issued by a Board of Examiners or a permit issued by an inspector. Arrangements for certifying competency are discussed in more detail later in this Discussion Paper.

Most of the detailed health and safety responsibilities for a general manager are set out in the General Rule 2000. The General Rule 2000 is considered to be part of the MI Act and failure to comply with the General rule 2000 is an offence against section 57 of the MI Act.

Under the General Rule 2000, a general manager must develop a mine safety management plan and an occupational health and safety policy by the 1<sup>st</sup> of September 2001, or within twelve months of the start of work at a new mine. Contractors must also prepare a safety management plan for any work carried out at a mine and must have this plan approved by the general manager. A general manager must also ensure that the mine is worked safely and must comply with a variety of specific requirements including :

- ensuring that operations are conducted in accordance with the MI Act and the General Rule 2000 and any relevant policies or directions;
- people working at the mine are appropriately supervised and their OHS needs are monitored;
- people working at the mine have the necessary skills and competence, are adequately and appropriately trained, understand their duties and are encouraged to be involved in OHS activities ;
- procedures are used to identify hazards, assess and control risks from major hazards;
- emergency response plans are developed and implemented; and
- specified injuries, illnesses and incidents are reported to the Department of Mineral Resources.

The responsibilities for a general manager are designed to make sure that the most senior manager at the mine implements a risk management system. They are also designed to assist the general manager to implement their responsibilities under the OHS Act. However it should be noted that similar to a mine owner, a general manager might need to take additional actions to comply with the broadly stated general duty under the OHS Act.

A general manager may delegate in writing any of their functions or responsibilities to a suitably qualified person. However supervision of production operations can only be delegated to a qualified production manager.

It should also be noted that under the OHS Act, a general manager who is employed by a corporation may be deemed guilty if the corporation commits an offence against the OHS Act.

### **Responsibilities of a production manager**

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Under the MI Act, production operations must be supervised by a qualified production manager. The qualifications depend upon the size and type of mine and are issued as a certificate by a Board of Examiners or as a permit by the chief inspector. The general manager of a mine, if suitably qualified can also be the production manager. The MI Act and the General Rule 2000 do not directly address the responsibilities of a production manager, however, a general manager can delegate their responsibility for the safety of operations to the production manager.

### **Responsibilities of a supervisor**

The MI Act and the OHS Act do not directly address the responsibilities of a supervisor. However, the General Rule 2000 sets out detailed responsibilities that clearly state the role of a supervisor. Under the General Rule 2000 a supervisor must ensure that :

- the workplace and work methods within their area are safe;
- hazards are detected and controlled;
- safety information is communicated to relevant people, particularly other supervisors at the change of a shift;
- safety matters that they cannot resolve are reported to the management.

### **Responsibilities of an employee**

An employee has responsibilities under the OHS Act to cooperate with their employer or anybody else who has responsibilities for health and safety. An employee must also ensure that their actions or omissions do not adversely affect the health and safety of other people at the mine.

The MI Act builds on the broad obligation in the OHS Act and requires an employee to comply with the General Rule 2000. In summary an employee must :

- work in accordance with the mine safety management plan and any applicable procedures
- participate in any OHS development plan for the mine
- periodically check that there is no danger and must suspend work until any danger is remedied
- take any actions within the scope of their responsibilities to prevent a danger ; and
- report any hazards that they cannot control to their supervisor.

### **Responsibilities of a contractor**

The MI Act is more specific about the responsibilities of a contractor. A contractor must comply with the General Rule 2000. This includes requirements that a contractor prepare a safety management plan for work at mine and have that plan approved by the general manager of the mine. The contractor must also comply with the broader safety management plan for the mine prepared by the general manager.

The OHS Act does not directly refer to contractors. However, depending upon their circumstances a contractor

may have general duties as an employer or a self employed person.

### **Responsibilities for designers, manufacturers and suppliers**

Ensuring the safety of plant and substances used in workplaces is a fundamental aspect of any risk management system. The OHS Act 2000 creates a duty of care for designers, manufacturers and suppliers and this is reinforced by detailed provisions in the Regulations made under that Act

The MI Act and General Rule do not address the responsibilities for these people in any great detail. This has the following implications :

- people providing plant to the mining industry must comply with their general duty under the OHS Act, however they may not need to comply with detailed requirements in OHS Regulations for matters such as provision of information, compliance with design standards and third party verification of design safety;
- employers in the mining industry, must ensure the safety of plant they purchase or lease, but do not have the same statutory standards that other employers can rely on for aspects such as design safety or safe maintenance and use.

#### Request for comment

The review of the MI Act is considering the best way to establish the various responsibilities for people who can influence health and safety at a mine. The OHS Act establishes general duties for some categories of people. The MI Act and General Rule 2000 set out responsibilities in

### **6.3 Certificates of competency**

The competency of managers, technical specialists, supervisors and employees can impact significantly on health and safety outcomes. Traditionally health and safety legislation in most industries has included arrangements for certifying the competency of individuals who deal with high risk processes, or who have significant health and safety responsibilities. The MI Act is no exception. It includes



arrangements for assessing the competency of production managers, engine drivers and shotfirers.

The traditional certification process has operated for many years and has been a condition of employment. This may need to be taken into account if any changes are made. Any changes may also need to take into account broader developments in training and competency assessment.

This section of the Discussion Paper outlines current reforms in industry training and summarises current legislative requirements.

### **Current developments in training and competency assessment**

The mining industry is an active participant in a national initiative to improve vocational education and training. Under this initiative, all major industries have set up tripartite industry training advisory boards (ITABS). The National Mining ITAB was established to promote improved training and to act as a national body for developing or endorsing vocational competency standards. A state based ITAB has also been set up for the mining industry in NSW.

National competency standards have been developed for the coal, metalliferous and extractive segments of the industry along with guidelines for competency assessment. These national standards address some safety and health competencies and sit along side the statutory requirements in the MI Act. Training providers must be registered with the Government through the Vocational Education and Training Accreditation Board (VETAB). Competency assessors must have specified qualifications and relevant industry experience.

The NSW Government recognises the benefits of aligning statutory requirements for safety and health competency with these broader training developments. Accordingly the

NSW Mine Safety Council has established a tripartite training sub-committee to provide advice on the strategic directions training and personnel development in the industry.

The NSW Mine Safety Council Training Sub-committee has been asked to provide advice to the Government on the role and function of statutory training and qualification recognition bodies such as Boards of Examiners under the MI Act and various equivalent bodies under legislation for health and safety in coal mines. The sub-committee is currently considering a proposal for a staged series of changes that may eventually lead to the phasing out of statutory requirements for certification in all mining legislation. It is intended that any proposals be considered as part of this review process and any comments on such matters are welcomed and will be considered.

The NSW Government is also participating in ongoing discussions with mining authorities in other jurisdictions about training reform, particularly with the objective of ensuring that there is consistency and mutual recognition of qualifications between the different states and territories.

### **Operator competency**

In recent years there has been considerable change in the arrangements for health and safety related certificates of competency in general industry. The most important change for other industries has been the implementation of the *National Standard For Certification of the Operators of Industrial Equipment*. This national standard was prepared by the National Occupational Health and Safety Commission (NOHSC) and has been implemented for general industry in all jurisdictions.

The National Certification Standard sets competencies for the operators of a wide range of industrial equipment ranging from cranes and pressure equipment through to load

shifting equipment such as forklifts. An individual is not permitted to use these types of equipment unless they have been assessed as competent by an accredited competency assessor and have been issued with a certificate of competency. The certificates can be issued by any of the occupational health and safety regulatory authorities, such as WorkCover NSW, and can be used anywhere in Australia. In NSW these requirements have been legislative requirements under OHS Regulations for general industry since 1996.

One option that could be considered is implementing the National Certification Standard in the mining industry. Certificates that are likely to be relevant to the mining industry include :

- personnel and material hoists
- operation and use of load shifting machines such as excavators, front-end loaders and forklifts
- erection of scaffolding and rigging
- use of cranes.

### **Certificates of competency in the MI Act**

The MI Act includes requirements for certificates of competency for production managers, some plant operators and shotfirers. The purpose of these provisions is to ensure that people with key safety and health responsibilities have appropriate skills and experience.

### Production Managers

Production managers must have a certificate of competency issued by a Board of Examiners or a permit issued by an inspector. The specific qualifications required depend upon the type and size of the mine and are set by the Board of Examiners according to rules made by the Minister.

These requirements are broadly consistent with arrangements in other jurisdictions that require certification and there are arrangements for recognising interstate certificates. These inter-jurisdictional arrangements need to be maintained if certification of production managers is continued.

### Plant operators

The MI Act requires a person to have a certificate of competency to use types of plant prescribed by the Minister. Currently certificates are required for people operating winding engines and hoists that raise or lower people. Certificates are issued by a Board of Examiners similar to the arrangements for production managers.

The Minister can extend the list of occupations requiring certification by administrative action. Consequently legislative change may not be necessary to include the types of equipment covered by the National Certification Standard.

### Shotfirers

The MI Act also includes requirements that people firing explosives have a shotfirers certificate. There are equivalent provisions under coal mining legislation and other provisions which may be related under the DG Act.

The multiple requirements for certification of shotfirers may be unnecessary and there may be opportunities to

rationalise the existing arrangements. The benefit of rationalisation would mainly be for people providing explosion services in various industries. At present a person providing contract explosion services to an open cut coal mine, a quarry and a civil construction project may require different certificates (or relevant exemptions) to undertake the similar processes in the different workplaces.

### Request for comment

The review of the MI Act needs to confirm whether current requirements for certificates of competency are still necessary.

7. *What is the most effective way to ensure that people with key health and safety responsibilities are and continue to be competent, and what role should Government have in certifying these competencies ?*
8. *Are there any management competencies or operator competencies that should be specified in legislation ? If yes, what are they ?*

In answering these questions you may want to consider the broader reforms to industry training and competency assessment. It may also be useful to consider the timing of any changes given the current review of training by the NSW Mine Safety Council.

### Suspension and cancellation of certificates

The MI Act gives the Minister direction to require an inquiry into whether an individual is incompetent or negligent, or has committed an offence against the MI Act. The inquiry is held in public by a warden of a Court and follows a legalistic process.

The inquiry process is designed to protect the rights a person has to a qualification they use to earn their income. However, the appropriateness of this approach needs to be confirmed for contemporary workplaces. The Minister may, for example, wish to take action other than in a Court as well as having access to Court proceedings.

An approach used under the OHS Act 2000 may be an option for consideration. Under the OHS Act, WorkCover NSW has the power to suspend or cancel a certificate if someone is no longer competent or cannot be relied upon to work safely. WorkCover must give the person written notice and must give them reasonable opportunities to state their case to WorkCover. In some cases WorkCover can immediately suspend a certificate for 10 days. A person who has their certificate suspended or cancelled can appeal to the Administrative Decisions Tribunal.

The approach used in the OHS Act 2000 enables direct action by a regulatory authority when an incompetent person is creating a risk, but still enables the person to have any decision independently reviewed.

### Request for comment

The review of the MI Act needs to confirm arrangements for cancellation and suspension of certificates of competency if they are maintained in legislation.

9. *What is the best process to ensure that people with certificates continue to be competent and what role should Government have in the process ?*

10. *What is the most effective appeal process if someone has a certificate suspended or cancelled ?*

In answering these questions you may want to consider the approach used for suspending or cancelling certificates of competency under the OHS Act.

## 6.4 Specific risk controls

The MI Act does not prescribe risk controls in any detail. Detailed control requirements are set out in the General Rule 2000. Under section 57 of the MI Act a person who contravenes the General Rule 2000 commits an offence against the MI Act.

The General Rule 2000 came into effect on 1 September 2000 after extensive consultation with the mining industry and introduced a number of major reforms to the way that risks are controlled in mines. The General Rule 2000 requires:

- a mine safety management plan
- a contractor safety management plan
- an occupational health and safety policy
- processes for assessing and controlling risks which could result in significant harm
- major hazard management procedures
- systems for emergency response
- specific control requirements for a broad range of hazards found in the mining industry.

The specific control requirements for hazards include detailed provisions for hazards such as :

- the stability and safety of the mine
- the safety of buildings and structures
- the use, storage transport and disposal of hazardous substances, including arrangements for health surveillance
- the management of waste materials
- the manufacture, storage and use of explosives

- the control of electrical hazards
- the use of compressed air, steam and hydraulic pressure equipment
- the maintenance, guarding, repair and use of machinery
- the construction, use and maintenance of shafts and associated winding equipment.

The General Rule 2000 implements best practice principles for safety and health management and has anticipated many of the provisions in currently proposed reforms to Regulations under the OHS Act 2000.

These reforms have only just been implemented, however the reform process may result in changes to the overall legislative framework which may affect the General Rule 2000.

Possible options for reform include making mining specific Regulations under the OHS Act either as separate Regulations or as part of the draft OHS Regulation 2001. Under both of these options there is need to consider any difference in approach between the General Rule 2000 and the final version of the draft OHS Regulation 2001.

The reform of Regulations under the OHS Act 2000 is not complete and the final content of proposed OHS Regulation 2001 will not be completed until sometime later in 2001. Because of this, any comments comparing the General Rule 2000 and the OHS Regulation 2001 can only be indicative of possible differences between the sets of legislation.

In broad terms the major areas of difference are :

- the draft OHS Regulation 2001 sets out processes for hazard identification and risk assessment in considerably



more detail than the General Rule 2000, although it must be acknowledged that a significant amount of guidance material is available to the mining industry. Safety campaigns are also run across the industry in support of the changes in the General Rule.

- the draft OHS Regulation 2001 includes specific risk control requirements for some hazards relevant to the mining industry that the General Rule 2000 does not address – for example manual handling, most aspects of plant safety, some aspects of fall protection and working in a confined space.
- the General Rule 2000 adopts *the National Standard for Noise* and *National Model Regulations For Control of Hazardous Substances* which are also adopted in the draft OHS Regulation. However, there are minor variations in the way that these national OHS standards have been implemented.
- the General Rule 2000 includes provisions for a range of mining specific hazards that are not addressed in the OHS Regulation 2001 – hazards such as shafts and windings, ventilation, mine stability and explosives.

### Request for comment

The review of the MI Act will consider what risks controls should be set in legislation and where any legislative requirements are best located.

*11. Are there any changes that would improve the requirements for safety management or specific risk controls in the recently introduced General Rule 2000 ?*

*12. Are there any new risk controls that should be set in legislation for mines ?*

*13. What is the best way to ensure consistency across industries when implementing national OHS standards ?*

In answering these questions you may want to consider :

- any potential impacts that may result from making changes to the General Rule 2000 so soon after it has been introduced.
- whether the mining industry needs specific risk controls set in legislation for hazards regulated in general industry.
- whether and how national OHS standards for plant and for dangerous goods should be adopted in the mining industry.

## 6.5 Employment and employee consultation

Part 3 of the MI Act sets out rules for employment including the hours that can be worked and the employment of young people. The requirements specify various records that must be kept. The General Rule 2000 also includes provisions enabling employees to elect safety representatives also known as check inspectors.

### Employee representatives

Under the General Rule 2000, employees at a mine can elect two representatives who have practical experience and

training in the mining industry. An employee representative (also known as a check inspector) has the right to inspect the mine and can be accompanied by another person who possesses relevant skills to assist them in the inspection. An employee representative holds office for two years.

An employee representative must report any perceived hazards to the general manager or the production manager. If a hazard is reported, the general manager or production manager must send a copy of the report to an inspector who must investigate the matter. The manager must also take measures to resolve the matter, including taking corrective action.

The provisions for employee representatives are in addition to provisions for employee consultation and representation under the OHS Act 2000.

Under section 17 of the OHS Act 2000 all employees have the right to request an election for an OHS representative. More than one representative may be elected if the employer agrees. Employees in workplaces with more than 20 employees may also request the election of representatives on an OHS committee.

Section 18 of the Act and clause 309 of the draft OHS Regulation 2001 give OHS representatives and employee representatives on OHS committees the following functions :

- reviewing health and safety measures at the work place and investigating risks
- attempting to resolve OHS matters or requesting an investigation by an inspector
- accompanying an inspector on an investigation and observing reports made by an inspector to an employer

- accompanying employees in discussions with an employer about OHS matters and observing in house investigations of accidents and incidents
- assisting in the development of record keeping arrangements and making recommendations about training for OHS representatives and OHS committees.

The functions and powers of employee representatives elected under the OHS Act will not be finalised until the draft OHS Regulation 2001 is completed. WorkCover NSW has also released a draft Code of Practice which provides advice on consultation, elected OHS representatives and OHS committees.

Based on the draft regulatory provisions and the draft code of practice it will be possible for representatives to be elected under both the MI Act and the OHS Act. The roles of the employee representatives under the two Acts are similar and there may be duplication between the two sets of legislation.

### Request for comment

The review of the MI Act will consider legislative arrangements for employee representation.

- 14. What provisions should be set in legislation enabling employees to elect people to represent them on OHS matters ?*
- 15. Are any changes to legislation dealing with the role and responsibility of employees warranted ?*
- 16. Are any legislative provisions necessary for the training of employee representatives ?*

In answering these questions you may want to consider the requirements for employee consultation, elected OHS representatives and OHS committees in the OHS Act 2000 and the draft OHS Regulation 2001.

The safety of young people is protected by prohibiting anyone under the age of 16 years from being employed at a mine, apart from probationers and apprentices who must be at least 15 years old. The MI Act also prohibits anybody under the age of 18 from being employed in caging operations and requires detailed records of the employment of anybody under the age of 18 in underground situations.

**Request for comment**

The review of the MI Act will consider requirements dealing with the employment of young people in mines. .

*17. Are the age restrictions and associated record keeping requirements in the MI Act the best way of protecting the health and safety of young people at mines ?*

**Restrictions on work hours**

The MI Act restricts the hours that an employee can work underground. Except in emergencies, a person cannot work underground for more than 8 consecutive hours. In each 7 day period a person must not work more than 48 hours in total and must have at least one period of 24 hours without working.

The limit of 8 hour shifts underground and 48 hours underground each week does not apply if the general manager of mine has consulted with employees and trade unions representing them and if 65% or more of the underground employees agree to extended hours.

The Act also prohibits any employees from working uncaged in a shaft or in close proximity to an unguarded shaft for more than 8 consecutive hours.

**Request for comment**

The review of the MI Act will consider restrictions on the hours of work.

*18. What provisions should be set in legislation regulating the hours of work in underground mines or regulating other aspects of the working environment such as extended work periods near*

### 6.6 Inspection of mines

The DMR provides considerable support and guidance to the mining industry to encourage improvements in health and safety. In some circumstances it is appropriate that the DMR formally exercise investigation powers under the MI Act. This is done through qualified mining inspectors, specialist investigators and mine safety officers. The review of the MI Act will consider these legislative arrangements.

#### **Powers and qualifications of inspectors and mine safety officers**

Under the MI Act a public servant can be appointed as a mining inspector or mine safety officer. A mining inspector must have a production manager's certificate and a mining engineering degree or its equivalent. Electrical and mechanical engineering inspectors must have different qualifications appropriate to their specialist roles. While, there are no essential qualifications set in legislation for mine safety officers, essential requirements are placed on such positions relating to the competence, experience and ability to effectively perform the tasks involved.

Specialist investigators can be appointed to investigate serious accidents and dangerous incidents. A specialist investigator does not need to be a public servant but has

the same powers as an inspector for the particular investigation.

Inspectors and mine safety officers have the power to :

- make inspections, examinations and inquiries necessary to investigate compliance with the MI Act and the General Rule
- enter a mine at any time for investigations
- enter private land or workplaces when performing inspection functions
- exercise other powers necessary for the Act
- require people to answer questions
- take samples of substances or articles at a mine
- take possession of machinery that caused or may have caused a danger
- require information to be entered on a mine plan
- require assistance and facilities to undertake their functions.

The Minister can authorise people with various technical competencies to accompany an inspector or mine safety officer on an investigation.

In addition to administering the MI Act and General Rule 2000, mining inspectors administer the OHS Act in mines. However, the inspectors use the powers in the MI Act when entering a mine.

Inspectors from the DMR can be appointed as inspectors under the OHS Act 2000. One option that may be considered is appointing inspectors under the OHS Act and enabling them to operate under the powers in the OHS Act rather than, or in conjunction with, the MI Act.

Division 2 of Part 5 of the OHS Act 2000 sets out the powers for an inspector appointed under the OHS Act. These powers are broadly equivalent to those under the MI Act. There are, however, some differences. The OHS Act does not specify any qualifications for inspectors – this is addressed by administrative policies. An inspector's powers under the OHS Act 2000 are stated in more detail than under the MI Act and include specific provisions dealing with procedural rights when seizing equipment etc.

### Request for comment

The review of the MI Act will consider legislative arrangements for appointing mining inspectors, mine safety officers and specialist investigators.

*19. Should qualification requirements for mining inspectors be stated in legislation. If yes, what qualifications should be specified ?*

*20. What powers should mining inspectors and mine safety officers have and how should these be authorised ?*

In answering these questions you may want to consider the provisions dealing with the appointment and powers of inspectors in the OHS Act as well as equivalent provisions in the MI Act.

If DMR inspectors continue to administer the OHS Act in mines, there may be benefits if DMR inspectors are appointed under the OHS Act.

### Inspector's notices

On some occasions an inspector may need to take action to ensure that a dangerous situation is rectified appropriately



and expeditiously. The MI Act sets out the process that an inspector must use in these circumstances.

Under the MI Act, an inspector must give the owner of a mine or the general manager a written notice if they find that the mine, some part of the mine or any matter connected with the mine is dangerous or defective and may cause an injury.

The written notice must state what the inspector considers to be dangerous or defective and may require the matter to be remedied within a specified timeframe.

If health or safety is seriously threatened, an inspector may give a written order to the owner or general manager requiring people to be immediately withdrawn from the mine or the affected part of a mine. In these circumstances people must not be employed in the mine or the affected area until the problem is corrected. That is, apart from people directly involved in resolving the problem.

An order to withdraw people from a mine or part of a mine can only be revoked by the inspector who issued it, the Chief Inspector or the Minister.

If a mine has more than 20 employees, any notices or orders issued by an inspector must be entered into a book along with a record of the remedial actions.

The review of the MI Act will consider the appropriateness of these requirements for inspector's notices.

The OHS Act enables an inspector to issue three types of notices. An investigation notice requiring the cessation of certain activities to enable an inspector to conduct an investigation; an improvement notice in response to activities that contravene a provision of the OHS Act or Regulations; and a prohibition notice can be issued if an

inspector believes that there is an immediate risk to health or safety.

### Request for comment

The review of the MI Act will consider legislative arrangements for inspector's notices.

*21. What provisions for inspector's notices should be set in legislation ?*

In answering this question you may want to consider the provisions for inspector's notices in the OHS Act as well as equivalent provisions in the MI Act.

## 6.7 Notification of serious accidents and dangerous incidents

To improve health and safety in the mining industry, the DMR needs to gather targeted information about health and safety standards and about problems which may need attention. In part this can be done by analysing workers compensation statistics and other health data. However, this information may not be available in a timely fashion and may not include sufficient detail. To ensure that the DMR obtains the information it needs, the MI Act requires notification of serious accidents and dangerous incidents. The review of the MI Act will consider the current arrangements for notification.

### Notification of serious accidents and incidents

Under the MI Act, a general manager of a mine must immediately inform an inspector if anybody is killed or specified types of serious accidents or dangerous incidents occur. Any oral notification must be confirmed within 24 hours in writing.

Certain diseases such as silicosis and pneumoconiosis must be reported when the general manager becomes aware of them. In addition a general manager must report any dangerous incident that had the potential to cause multiple fatalities at or near the mine.

### **Investigation of serious injuries and dangerous incidents**

Certain actions follow on from notification of a serious injury or dangerous incident.

The site of the accident or incident must not be disturbed for 3 days or until an inspector makes a visit. The general manager must also allow an employee representative to make an inspection in company with an inspector from the DMR.

The inspector must make a preliminary report to a nominee of the Director General of DMR. This nominee must inform the Director General of specified types of accidents and dangerous incidents. The Director-General can then direct that the inspector continue to investigate the matter or can direct that another inspector or an independent investigator continue the investigation.

The Minister may also direct that an investigation be undertaken and if appropriate can direct that a Board of Inquiry be established. A Board of Inquiry may summon witnesses and take formal evidence.

### **Health and safety performance reporting**

The requirements for notification of serious accidents and dangerous incidents in the MI Act focus on individual events. There may be benefit for health and safety if some form of longer term reporting on health and safety standards was developed. The MI Act does not currently require any formal reporting on health and safety performance but some possibilities could include annual or biennial reports on health and safety standards. These

reporting provisions could also include requirements for some form of audited compliance statement. This could enable the DMR to compile data on industry safety performance and undertake analysis and identify trends.

Reporting requirements under the MI Act may also overlap with record keep and reporting requirements in other legislation, for example workers compensation requirements under the *Workplace Injury Management and Workers Compensation Act 1998*. There may be opportunities to rationalize record keeping and reporting requirements and comment is sought on this issue.

### Request for comment

The review of the MI Act will consider legislative arrangements for reporting serious accidents and dangerous incidents as well as arrangements for investigation.

22. *What provisions for reporting serious injuries, diseases and dangerous incidents should be set in legislation ?*

23. *What provisions should be set in legislation relating to the investigation of serious accidents and dangerous incidents ?*

24. *Should there be a legislative requirement for annual or biennial reports on health and safety performance, including audited compliance statements ?*

## 6.8 Mine plans

The MI Act includes certain requirements for preparing and maintaining mine plans. These plans are essential for safety management and for ensuring the safety of other mining activity in the area.

The owner or general manager of a mine that employs more than 20 people, or any other mine if the directed by the chief inspector, must ensure that an accurate plan is

prepared. A qualified mining engineer, the production manager or an approved mining surveyor must prepare the plan before operations commence. The plan must be revised every 3 months to show any significant changes.

The plan must be available to inspectors to examine and copy. An inspector can require that the mine plan be updated. An inspector must report the fact if there is reason to believe that the plan is inaccurate and the chief inspector can require that a survey be undertaken. If the plan is inaccurate, the Government can recover the costs for the survey. An employee representative is also able to inspect the mine plan. Various records need to be noted on the mine plan. When a mine is abandoned, the mine plan must be forwarded to the Minister.

The owner of mine can also be required to provide the DMR with confidential statistics, returns and information on mining, prospecting or other operations.

### Request for comment

The review of the MI Act will consider legislative requirements for mine plans and other records.

*25. What legislative provisions should there be for preparing, updating and keeping mine plans ? What is the most appropriate legislation for any provisions ?*

In answering this question it may be appropriate to consider the purpose and use of mine plans and whether any provisions should be transferred to other legislation such as the *Mining Act 1992*.

## 6.9 Tourist and educational activities

Part 4A of the MI Act prohibits tourist and educational activities at a mine unless the Minister has issued a permit. These provisions will be considered as part of the review of the MI Act.

### Request for comment

The review of the MI Act will consider arrangements for tourist and educational activities at mines.

*26. Is there a need for the Minister to issue permits for tourist and educational activities at mines? If yes, what is the most appropriate legislation for any provisions?*

## 6.10 Legal proceedings

In some circumstances it is appropriate for the DMR to prosecute people for serious breaches of the MI Act or the OHS Act. The Government has published an enforcement policy that is available from the DMR web site. This policy discusses the various actions that DMR may take and explains that the DMR policy is to encourage compliance by the most effective means. Prosecution is one possible response to a breach of legislation, but prosecution will be considered in all instances where a significant breach of legislation is discovered.

The DMR considers a significant breach to include :

- a breach causing or likely to cause death, serious injury or ill health
- a breach that continues after other representations or interventions by the Department
- a breach that impedes or interferes with the proper

investigation of the causes and circumstances surrounding an event.

Prosecution is possible under either the MI Act or the OHS Act 2000 but not under both Acts.

The MI Act provides that for any offence against the Act or General Rule, prosecution action can be taken under the MI Act. However, a prosecution under the OHS Act may be the only option for people who have general duties under the OHS Act, but no equivalent duties under the MI Act – for example designers, manufacturers and suppliers of plant. Prosecution for breaches relating to OHS committees or elected OHS representatives must be taken under the OHS Act.

The review of the MI Act will consider provisions for legal proceedings under the MI Act in light of the Government enforcement policy.

### **Prosecutions**

Legal proceedings for an offence against the MI Act can be brought in a Local Court constituted by a Magistrate sitting alone or before the Supreme Court.

The MI Act does not limit the range of people who can take proceedings for an offence against the Act (or General Rule). However, it does impose some restrictions.

An inspector, or someone acting with the consent of the Minister, is the only person who can initiate a prosecution of a mine owner, general manager or production manager, unless the person being prosecuted is alleged to have personally committed the offence.

An inspector must not initiate a prosecution against anybody if the inspector is satisfied that the person took all reasonable means to prevent the offence.

If a mine owner or general manager prosecutes an employee, they must inform an inspector of the results of the action.

### Penalties

Penalties are specified in the various relevant sections of the Act. In general the maximum penalty is 100 penalty units which at present is a maximum fine of \$11,000.

If a penalty is not specified in the Act, the maximum penalty is \$1,100 for an owner or general manager and \$440 for an employee. These are also the penalties for contravening a provision of the General Rule 2000.

A person who willfully endangers the safety of a person or causes a serious accident by personal negligence or default may be liable for up to 3 months imprisonment.

The maximum penalty under the OHS Act for breach of a general duty by a corporation is \$550,000 for a first offence and up to \$825,000 for a subsequent offence.

For individuals the maximum penalty under the OHS Act is \$55,000 for a first offence and \$82,500 for a subsequent offence. The maximum penalty for contravening an OHS Regulation is \$27,500 although many regulatory provisions have lower penalties than this maximum level.

This raises questions as to the appropriateness of the level of penalties, and in particular whether the penalties under the MI Act should be increased having regard to the penalties under the OHS Act.

#### Request for comment

The review of the MI Act will consider the provisions for legal proceedings under the MI Act, taking into account the availability of prosecutions under the OHS Act and the DMR enforcement policy.



## 6.11 Industry consultation

The MI act does not include any provisions for government consultation with the mining industry. However, the NSW Government has established a consultative structure for the whole of the mining industry through the Mine Safety Council.

The Mine Safety Council is a tripartite consultative group of representatives from industry, unions and the government. It is chaired by Professor Dennis Else, a prominent occupational health and safety professional. The council reports to the Minister on strategic directions, legislation, regulation, standards and broad policy matters.

Three industry specific advisory committees report to the Mine Safety Council. These committees cover the coal, extractive and metaliferous industries. Further working

groups are established on an as needs basis to provide advice on specific issues such as this review of the MI Act.

The NSW Government will be introducing legislation to formalize these mining industry consultative arrangements. Comment is sought on how these industries consultative structures can be made most effective.

### Request for comment

Arrangements for consultation with the mining industry through the Mine safety Council and its industry specific advisory committees are being formalised in legislation.

*30. What is the best way to ensure that the mining industry is consulted on health and safety issues ?*

In responding to this question it may be appropriate to consider how the industry and government can ensure that the Mine Safety Council and its industry advisory committees can be made most effective.

## 7 Having your say

The review of the MI Act is an opportunity for all people in the industry to contribute to making improvements to mining health and safety legislation. The best way to contribute to the review is to prepare a written submission. Details of where to send a submission are set out on page 7.

The closing date for submissions is 9 November 2001.

Submissions should be divided into 3 sections.

Section One      General Comments

Set out your views on broad issues such as the most effective design for the legislative framework.

Section Two      Discussion Paper Questions

Set out any comments you have in response to the questions raised in this Discussion Paper. (A consolidated list of questions is set out below.)

Section Three      Additional Comments

Set out any comments you have on matters that have not been addressed in the Discussion paper, such as comments on specific provisions in the MI Act or issues that have not been considered.

### Consolidated list of Discussion Paper questions

#### Legislative framework

1. *What is the best legislative framework for ensuring health and safety in NSW mines?*

When answering this question please give reasons for your suggestions. You may want to consider factors such as :

- consistency with health and safety legislation for other jurisdictions or industries
- any special needs of the mining industry
- the defence available under the OHS Act for people complying with the MI Act and General Rule 2000
- making the legislation easy to understand.

#### Application of mining legislation

2. *Is there a need for mining specific health and safety legislation ?*
3. *If there is a need for mining specific legislation, what locations and activities should be covered by the legislation ?*

You may want to consider the way the MI Act currently identifies locations and activities. You may also want to consider alternative ways to define the coverage, such as linking the application to exploration, assessment and mining leases under the *Mining Act 1992*.

#### Health and safety responsibilities

4. *Which categories of persons should have health and safety responsibilities set out in legislation ?*
5. *What health and safety responsibilities should be stated for each category ?*
6. *What is the best way to align broadly stated general duties with specific statements of health and safety responsibilities ?*

When answering these questions you may want to consider :

- whether the MI Act and General Rule 2000 identify all the persons who can affect health and safety at a mine
- whether the MI Act and General Rule 2000 describe responsibilities for health and safety adequately
- whether the mining industry should use the general duties in the OHS Act
- whether any differences between the MI Act and the general duties in the OHS Act are significant
- whether detailed statements of responsibility should be set in legislation or are better stated in advisory guidance material.

### Certificates of competency

7. *What is the most effective way to ensure that people with key health and safety responsibilities are and continue to be competent, and what role should Government have in certifying these competencies?*

## Having your say

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8. *Are there any management competencies or operator competencies that should be specified in legislation ?  
If yes, what are they ?*

In answering these questions you may want to consider the broader reforms to industry training and competency assessment. It may also be useful to consider the timing of any changes given the current review of training by the NSW Mine Safety Council.

9. *What is the best process to ensure that people with certificates continue to be competent and what role should Government have in the process ?*
10. *What is the most effective appeal process if someone has a certificate suspended or cancelled ?*

In answering these questions you may want to consider the approach used for suspending or canceling certificates of competency under the OHS Act.

### Risk control

11. *Are there any changes that would improve the requirements for safety management or specific risk controls in the recently introduced General Rule 2000 ?*
12. *Are there any new risk controls that should be set in legislation for mines ?*
13. *What is the best way to ensure consistency across industries when implementing national OHS standards?*

In answering these questions you may want to consider :

- any potential impact that may result from making changes to the General Rule 2000 so soon after it has been introduced.
- whether the mining industry needs specific risk controls set in legislation for hazards regulated in general industry such as manual handling, confined spaces, falling from heights and the design, manufacture, supply or use of plant.
- whether and how national OHS standards for plant and for dangerous goods should be adopted in the mining industry.

### Employee representatives

14. *What provisions should be set in legislation enabling employees to elect persons to represent them on OHS matters ?*
15. *Are any changes to legislation dealing with the role and responsibility of employees warranted ?*
16. *Are any legislative provisions necessary for the training of employee representatives ?*

In answering these questions you may want to consider the requirements for employee consultation, elected OHS representatives and OHS committees in the OHS Act 2000 and the draft OHS Regulation 2001.

## Having your say

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### Employment

17. *Are the age restrictions and associated record keeping requirements in the MI Act the best way of protecting the health and safety of young people at mines ?*
18. *What provisions should be set in legislation regulating the hours of work in underground mines or regulating other aspects of the working environment such as extended work periods near unguarded shafts ?*

### Inspection

19. *Should qualification requirements for mining inspectors be stated in legislation. If yes, what qualifications should be specified?*
20. *What powers should mining inspectors and mine safety officers have and how should these be authorised?*

In answering these questions you may want to consider the provisions dealing with the appointment and powers of inspectors in the OHS Act as well as equivalent provisions in the MI Act.

21. *What provisions for inspector's notices should be set in legislation ?*

In answering this question you may want to consider the provisions for inspector's notices in the OHS Act as well as equivalent provisions in the MI Act.



Accidents and incident reporting

The review of the MI Act will consider legislative arrangements for reporting serious accidents and dangerous incidents as well as arrangements for investigation.

22. *What provisions for reporting serious injuries, diseases and dangerous incidents should be set in legislation ?*
23. *What provisions should be set in legislation relating to the investigation of serious accidents and dangerous incidents ?*
24. *Should there be a legislative requirement for annual or biennial reports on health and safety performance, including audited compliance statements ?*

Mine plans

25. *What legislative provisions should there be for preparing, updating and keeping mine plans? What is the most appropriate legislation for any provision?*

In answering this question it may be appropriate to consider the purpose and use of mine plans and what role, if any, other legislation such as the *Mining Act 1992* should play.

Tourist and educational activities

26. *Is there a need for the Minister to issue permits for tourist and educational activities at mines? If yes, what is the most appropriate legislation for any provisions?*

### Legal proceedings

27. *Who should be able to initiate prosecutions for breaches of health and safety legislative requirements in the mining industry?*
28. *What range of penalties should apply for breaches of health and safety legislative requirements in the mining industry?*
29. *Are there any penalty provisions apart from fines that would act as an effective deterrent to breaching health and safety legislation?*

In answering this question it may be appropriate to consider the penalties available under the OHS Act including new provisions in the OHS Act 2000 that enable a Court to order an offender to publicise the offence or to undertake projects for the general improvement of occupational health and safety.

### Industry consultation

30. *What is the best way to ensure that the mining industry is consulted on health and safety issues ?*

### **Summary of Queensland *Mining and Quarrying Safety and Health Act 1999***

The only provisions in this Act that have commenced are those dealing with the establishment of the tripartite Mining Safety And Health Advisory Council and enabling the Minister to establish Boards of Inquiry.

It is anticipated that the other provisions will not commence until accompanying regulations have been prepared.

#### Objects of Act

To protect people who may be affected by mining operations and to ensure that the risk of injury or illness is at an acceptable level.

#### Application of Act

The Act applies to mines and mining operations. A mine is defined to include a quarry. The Act does not enable prosecutions of the Queensland Government.

#### Acceptable level of risk

All mining operations must be carried out so that risks are at an acceptable level. This level is defined as within acceptable limits and low as is reasonably achievable. The likelihood and severity of an injury or illness must be considered when determining an acceptable level of risk.

#### People with obligations

The following people have obligations to take action to ensure that risks are at an acceptable level :

- a person who holds a prospecting or exploration permit, a mineral development license, a mining lease

or a mining claim under the *Minerals Resources Act 1989*

- a mine operator appointed by a holder
- the senior site executive at the mine
- contractors working at a mine
- designers, manufacturers, importers and suppliers of plant and substances
- people who provide services to a mine.

These obligations are equivalent to general duties under the OHS Act in NSW.

Employees and all other people must comply with the Act, any standard work instruction and procedures in a mine's safety and health management system and must take reasonable action to achieve an acceptable level of risk.

### Safety management

A senior site executive must be appointed for each mine. The executive must develop, implement and document a safety and health management system and management structure. An underground manager must be appointed for an underground mine.

The safety and health management system must be an auditable and documented system. It must include :

- a safety and health policy
- a plan for implementing the policy

- a strategy to develop any necessary safety and health capabilities
- operating procedures and standard work procedures
- a means of measuring, monitoring and evaluating the performance of the safety management system
- a plan for continuous improvement and review.

### Records and plans

The senior site executive must maintain mines plans and keep records of the management structure. Records must be maintained for inspections, audits, inspector's directions, serious accidents and incidents.

### Guidelines

The Minister can publish guidelines that detail the way to achieve an acceptable level of risk. These guidelines are admissible in evidence in any proceedings alleging that a person has failed to take action to achieve an acceptable level of risk.

### Industry consultation

A tripartite Mining Safety And Health Advisory Council is established to provide advice and recommendations to the Minister.

### Site safety and health representatives

Mine workers can elect 2 representatives at each mine. These representatives must, within 3 months of appointment, have competencies specified by the Mining Safety And Health Advisory Council. Elected representatives can

- inspect operations
- review risk control procedures and the circumstances of injuries, diseases and other incidents
- consult with management, inspectors and independent experts and District Workers Representatives
- investigate complaints and refer matters to the site safety and health committee.

Site representatives must report potential hazards to the site senior executive and in certain circumstances where there is an immediate danger may stop operations and evacuate people.

### Site safety and health committees

A site senior executive must establish a committee if requested by a site safety and health representative or the chief inspector. The workers at the mine must nominate at least half the members. The function of the committee is to :

- facilitate consultation and cooperation
- encourage interest in safety and health
- review the circumstances of injuries, diseases and serious incidents

- consider proposed changes that may affect safety and health
- undertake inspections and consider matters referred by a site safety and health representative.

#### District workers representatives

The Minister may appoint 4 District Worker's Representatives from suitably qualified people nominated by industrial organizations with members in the mining industry.

A District Worker's Representative has the power to enter a mine, make inquiries, examine documents relating safety and health and take copies of safety and health management system documents. A district representative can also direct that operations be suspended if there is an unacceptable level of risk.

#### Inspectors, inspection officers and directives

The Act enables the appointment of inspectors and inspection officers. Inspectors must tertiary engineering qualifications relevant to mining and adequate competencies and experience.

Inspectors and inspection officers enforce the Act, monitor safety and health performance at mines, conduct inspections investigations and audits, verify that safety and health management systems have been established, assist in emergencies, provide specialist advice and direct that remedial actions be taken where necessary. The Act sets out powers and procedures for entry and investigation.

An inspector can direct that a person must have specific competencies to undertake a task, that tests be undertaken and that specific actions be taken to reduce the level of a

risk. An inspector or inspection officer can direct that operations be suspended if there is an unacceptable level of risk.

An inspector can require a review of a safety and health management system and can suspend operations if there is an ineffective management system.

Directions issued by an inspector, inspection officer or District worker's representative can be reviewed by the chief inspector.

### Board of Examiners

The Act establishes a Board of Examiners which has the functions of :

- deciding competencies for the holders of certificates of competency
- assessing applicants
- granting certificates and ensuring that Queensland certificates are consistent with other states.

Underground managers must have certificates of competency.

The effectiveness and need for the Board of Examiners is to be reviewed within 3 years by the Mining Safety And Health Advisory Council.

### Accidents and incidents

The Act specifies the types of accidents and dangerous incidents that must be reported to the Government. It also sets out arrangements for preserving accident and incident sites until an inspection occurs.



### Boards of Inquiry

The Minister can establish a Board of Inquiry to inquire into accidents and dangerous incidents. A Board has wide powers of investigation and can summon witnesses, documents and things.

### Appeals

The Act sets out arrangements for appeals to courts against various decisions by the Minister, the Board of Examiners and the chief inspector.

### Legal proceedings and offences

The Act sets out the arrangements and procedures for legal proceedings where a person is being prosecuted for an alleged offence.

### Administration

The Act sets out various administrative provisions dealing with matters such disclosure of information delegation of powers, regulations making and transitional arrangements.