

# **Incorporating the amendments proposed by:**

- the Work Health and Safety Bill 2019
  Pt. 15 Div. 2 Subdiv. 1 (Bill No. 155-1);
  and
- the Safety Levies Amendment Bill 2019
  Pt. 2 (Bill No. 156-1).

### Legend:

**Red** and **Blue** amendments represent insertions/deletions made by the *Work Health and Safety Bill 2019* Pt. 15 Div. 2 Subdiv. 1.

**Green** amendments represent insertions by the *Safety Levies Amendment Bill 2019* Pt. 2

### Western Australia

# **Mines Safety and Inspection Act 1994**

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An Act to consolidate and amend the law relating to the safety of mines and mining operations and the inspection and regulation of mines, mining operations and plant and substances supplied to or used at mines; to promote and improve the safety and health of persons at mines and for connected purposes.

[Long title amended: No. 30 of 1995 s. 52.]

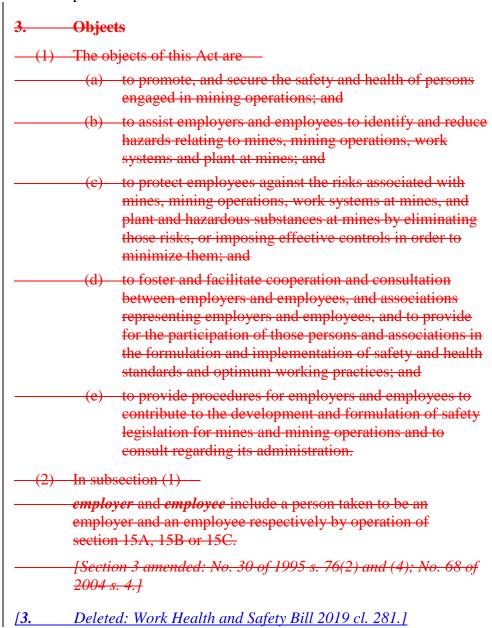
## Part 1 — Preliminary

### 1. Short title

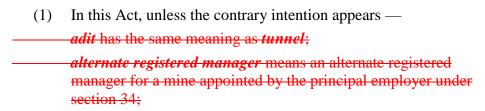
This Act may be cited as the *Mines Safety and Inspection Act 1994* <sup>1</sup>.

### 2. Commencement

This Act comes into operation on such day as is fixed by proclamation <sup>1</sup>.



#### 4. Terms used



apprentice means a person who is an apprentice under a training contract registered under the Vocational Education and Training Act 1996 Part 7 Division 2;



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

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

Board of Examiners means the Board of Examiners established under section 48;

certificate of competency means a certificate of competency issued by the Board of Examiners;

commute schedule means a schedule specifying the periods when registered managers and other managers and their alternates are to assume their duties at a mine and when they are to be absent from the mine:

competent person means a person who is appointed or designated by the employer to perform specified duties which the person is qualified to perform by knowledge, training and experience;

decline means a development opening driven down from the surface to any level or between any 2 levels in a mine at gradients permitting the use of trackless equipment;

*department* means the department of the Public Service of the State principally assisting the Minister in the administration of this Act:

deputy in relation to an underground coal mine, means a person who has the immediate supervision of employees and the direction of mining operations under the control of an underground manager, or other officer responsible to the manager;

### s. 4

*development* in relation to a mining operation, includes all work undertaken to open up a mine by driving development openings or pre-stripping an open cut body of ore;

development opening or development heading in relation to an underground mine, means any drive, cross cut, tunnel, adit, incline, decline, ramp, winze, rise, or shaft which is driven to provide access and services to underground operations, however excavated;

district inspector means a district inspector of mines appointed under section 17 in accordance with section 18:

*Electoral Commissioner* means the Electoral Commissioner appointed under the *Electoral Act 1907*;

### employee means —

- (a) a person by whom work is done at a mine under a contract of employment; and
- (b) an apprentice who works at a mine;

### employer means —

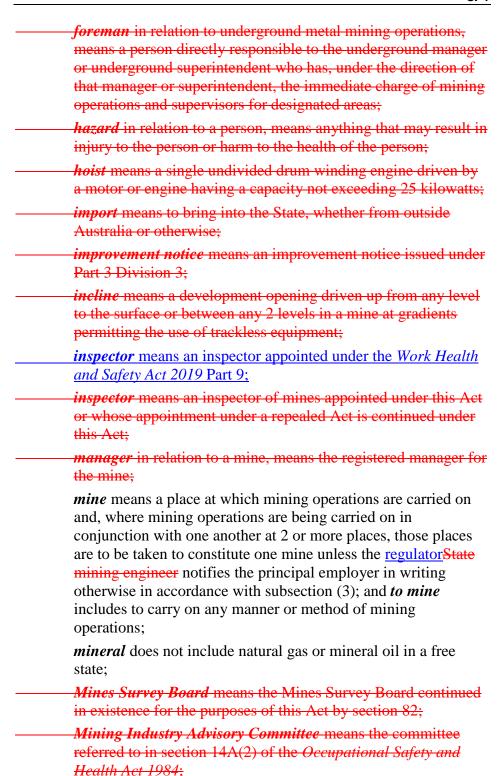
- (a) a person who employs an employee at a mine under a contract of employment; and
- (b) in relation to an apprentice, a person who employs the apprentice at a mine under a training contract registered under the *Vocational Education and Training Act 1996* Part 7 Division 2;

exploration manager, in relation to particular exploration operations, means a person who is appointed exploration manager for those operations under section 46A;

*exploration operations* means any exploration activity which is undertaken on a mining tenement, whether offshore or on land, but does not include —

- (a) any development work involving underground operations; or
- (b) the excavation of any trial pits beyond the extent permitted under the tenement conditions; or
- (c) remote sensing activity carried out using airborne or satellite mounted equipment (except for ground based activity in support of such remote sensing activity);

explosives means a substance or article used or manufactured with the purpose of producing a practical effect by explosion or a pyrotechnic effect;



*mining operations* means any method of working by which the earth or any rock structure, coal seam, stone, fluid, or mineral bearing substance is disturbed, removed, washed, sifted,

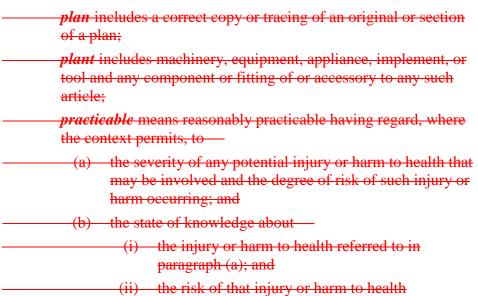
crushed, leached, roasted, floated, distilled, evaporated, smelted, refined, sintered, pelletized, or dealt with for the purpose of obtaining any mineral or rock from it for commercial purposes or for subsequent use in industry, whether it has been previously disturbed or not, and includes —

- (a) exploration operations; and
- (b) developmental and construction work associated with opening up or operating a mine; and
- (c) the removal and disposal of overburden or waste or residues by mechanical or other means and the stacking, depositing, storage, and treatment of any substance considered to contain any mineral; and
- (d) the operation of blast furnaces and direct reduction furnaces; and
- (e) the operation of privately owned railways to transport ore or other mining products, or to provide related services; and
- (ea) the transport of ore or other mining product that takes place on a road that is not a road as defined in the *Road Traffic (Administration) Act 2008* section 4; and
  - (f) the crushing, screening, sorting, stacking, and loading and handling of ore or other mining products at any rail or road terminal or any loading or transhipment points, including seaports; and
- (g) the operation of any support facilities on the minesite, including mine administration offices, workshops, and services buildings; and
- (h) borefields remote from the minesite but an integral part of the mining operation; and
- (i) operations by means of which salt or other evaporites are harvested; and
- (j) operations by means of which any mineral is recovered from the sea or sea bed or a natural water supply; and
- (k) operation of residential facilities and recreational facilities and the ground used for that purpose, where such facilities are located on a mining tenement and are used solely in connection with mining operations; and
- (l) the operation of any project which is for the time being declared by the Governor to be a mining operation under section 6; and

- operations undertaken for the environmental (m) rehabilitation of the minesite during production operations and after their completion; and
- operations for the care, security and maintenance of a (n) mine and plant at the mine undertaken during any period when production or development operations at the mine are suspended; and
- operations undertaken to leave a mine safe to be (o) abandoned,

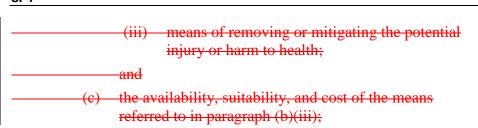
but does not include the operation of —

- steel making plants; or (p)
- (q) rolling mills; or
- (r) facilities for the manufacture of goods from mining products; or
- residential facilities or recreational facilities and the (s) ground used for the purpose where such facilities are not located on a mining tenement and directly associated with mining operations; or
- sand, gravel, limestone, or rock excavation carried on by or for any State agency or instrumentality or any local government for the use or disposition by any such agency, instrumentality or local government; or
- excavation activities on private land by and for the use of the owner of the land;



occurring; and





### principal employer —

- (a) in relation to a mine (other than a mine where only exploration operations are being carried out), means the employer who is the proprietor, lessee, or occupier of the mine and who has overall control and supervision of the mine and mining operations at the mine; and mining operations at the manager of the mine; and
- (b) in relation to a mine where only exploration operations are being carried out, means the employer who has overall control and supervision of the exploration operations at the <u>mine</u>; mine and the exploration manager appointed for those operations;

*prohibition notice* means a prohibition notice issued under Part 3 Division 3;

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

*quarry* or *open cut* or *open pit* means a surface mining operation in which mineral or rock is extracted from the earth by excavating into a natural surface gradient and includes—

- (a) harvesting evaporites; and
- (b) strip mining; and
- (c) extraction of sand, clay and gravel; and
- (d) hydraulic mining; and
- (e) solution mining through bore holes or existing openings within the earth, whether natural or resulting from previous mining;

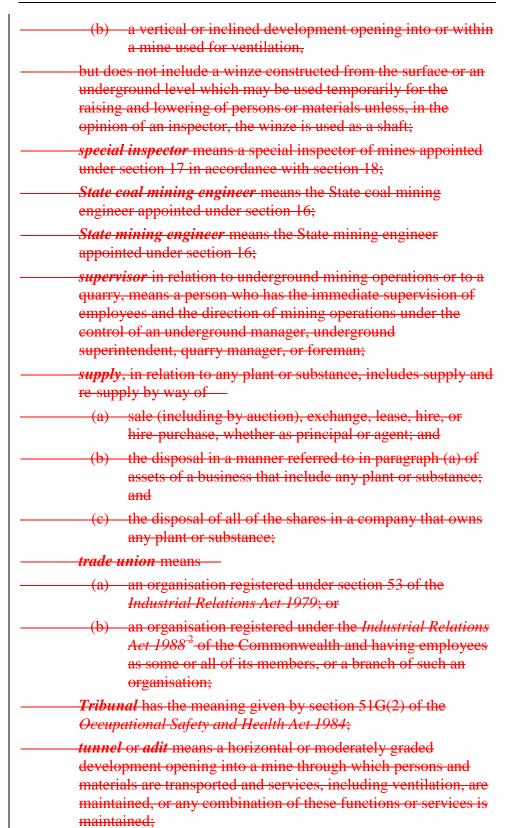
quarry manager means the person who has, under the general direction and control of the registered manager, the immediate direction and control of the quarry operations of a mine;

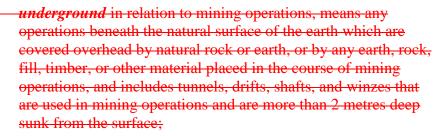
quarry operations include activities associated with the extraction of minerals or rock from the open pit but do not include administrative or engineering services or the operation of a treatment plant;



and lowered using winding engines and through which services including ventilation may be provided; and

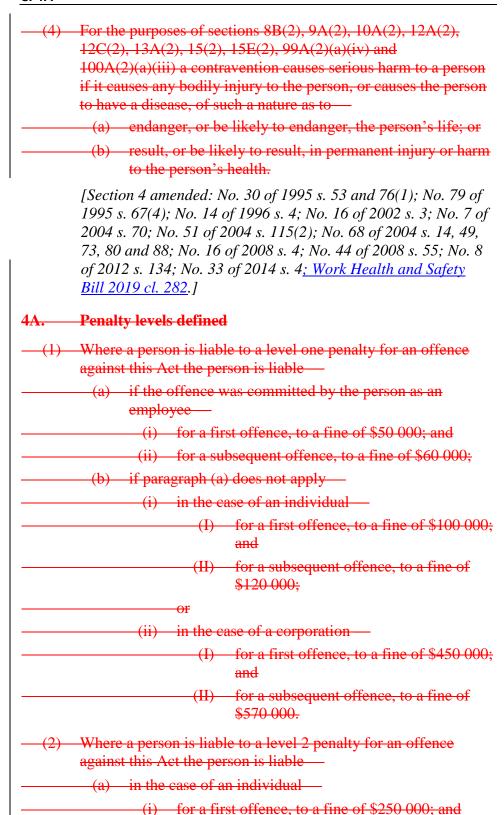
### s. 4

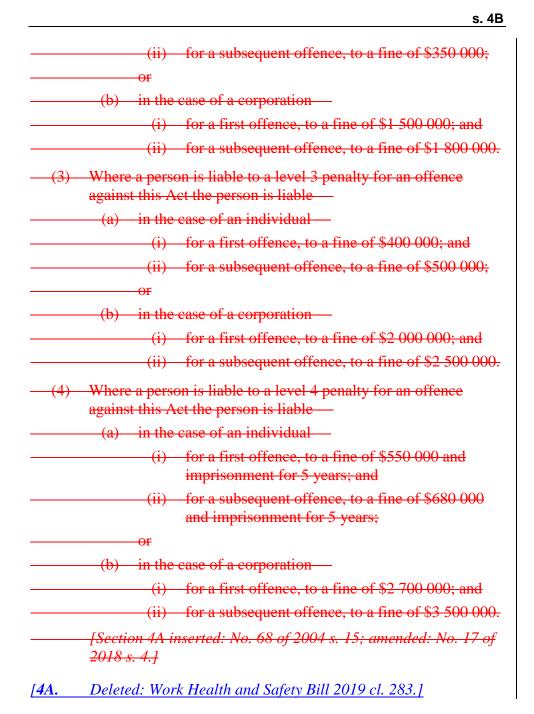




- underground manager means the person who has, under the general direction and control of the registered manager, the immediate direction and control of the underground operations of a mine:
- or assistant underground manager of a mine, or a section of a mine, to whom the underground foreman or underground supervisor is responsible;
- winding engine means any machinery used to raise or lower, by means of a rope or ropes, conveyances in a shaft or winze for the transport of persons, material, or rock but does not include any lifting machine, endless rope haulage or scraper winch installation;
- winze means a vertical or steeply inclined development opening sunk downward from any level in an underground mine, or from the surface into a mine:
- workmen's inspector means a workmen's inspector of mines appointed under a repealed Act;
- workplace in relation to a mine, means a place, whether or not in a vehicle, building, or other structure, where employees or self-employed persons work or are likely to be in the course of their work, but does not include catering, residential, or recreational facilities for employees or self-employed persons except in the case of persons who are employed to service and maintain those facilities.
  - (2) Unless the contrary intention appears, a reference in this Act to a mine is to be taken to include a reference to any part of the mine.
  - (3) Where mining operations are being carried on in conjunction with one another at 2 or more places, the <u>regulator State mining</u> engineer may notify the principal employer in writing that each of those places or such of those places as are specified in the notice are to be regarded as separate mines for the purposes of this Act.

### s. 4A





#### 4B. First offence and subsequent offence defined

In this section — (1)

> relevant day means the day on which section 15 of the Mines Safety and Inspection Amendment Act 2004 comes into operation <sup>1</sup>.

- (2) For the purposes of this Act
  - (a) an offence is a first offence committed by a person if, at the time when the offence is committed, the person has not previously been convicted of any offence against this Act committed on or after the relevant day; and
  - (b) an offence is a subsequent offence committed by a person if, at the time when the offence is committed, the person has previously been convicted of one or more offences against this Act committed on or after the relevant day.

[Section 4B inserted: No. 68 of 2004 s. 15.]

### 5. Crown bound

This Act binds the Crown.

### 6. Application to certain excavations, shafts, or tunnels

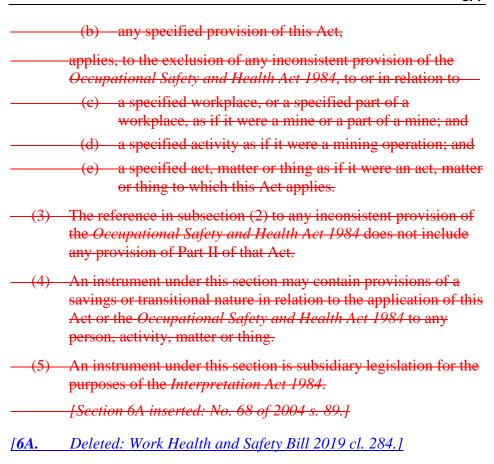
- (1) The Governor may, by order published in the *Gazette*, declare any surface or underground excavation, shaft, or tunnel constructed for purposes other than those set out in the definition of *mining operations* in section 4(1) to be deemed a mining operation for the purposes of this Act during any period of the construction of the excavation, shaft or tunnel.
- (2) In an order published under subsection (1), the Governor may exempt the excavation, shaft, or tunnel from such provisions of this Act as are specified in the order and may prescribe conditions under which the project is to be carried on.
- (3) This Act applies to an excavation, shaft, or tunnel referred to in an order under subsection (1) subject to the terms of that order.

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

(1) In this section

specified means specified in an instrument under this section; workplace has the meaning given by the *Occupational Safety* and *Health Act 1984*.

- (2) The Minister and the Minister for the time being administering the *Occupational Safety and Health Act 1984* may, by instrument in writing, jointly declare that for a specified period—
  - (a) this Act; or



### 7. Relationship with other Acts

- (1) If a provision of this Act is inconsistent with a provision of the *Radiation Safety Act 1975*, the latter provision prevails to the extent of the inconsistency.
  - (2) This Act does not apply to or in relation to a railway to which the *Rail Safety National Law (WA) Act 2015* applies or to the ownership or operation of such a railway.

[Section 7 amended: No. 32 of 1998 s. 64(2); No. 18 of 2010 s. 264; No. 21 of 2015 s. 50; Work Health and Safety Bill 2019 cl. 285.]

### 8. Power to exempt

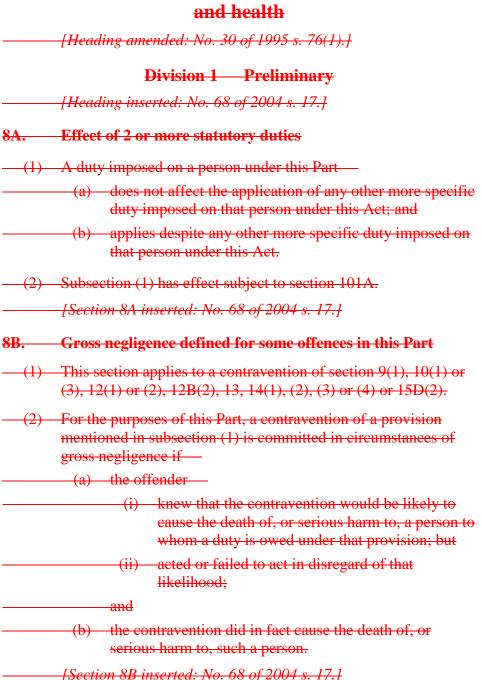
(1) The Governor may by order published in the *Gazette* exempt a mine or class of mine from all or any of the provisions of this Act for such period as is specified in the order and may by further order so published revoke or amend such an order.

### <u>s</u>. 8

- (2) The Governor may specify in the order any conditions to which the exemption is to be subject and if any of those conditions is not complied with, the order ceases to have effect.
- (3) Section 42 of the *Interpretation Act 1984* applies to an order made under this section as if that order were regulations within the meaning of that section of that Act, except that the reference in section 42(1) of that Act to 6 sitting days is for the purposes of this section to be construed as a reference to 9 sitting days.

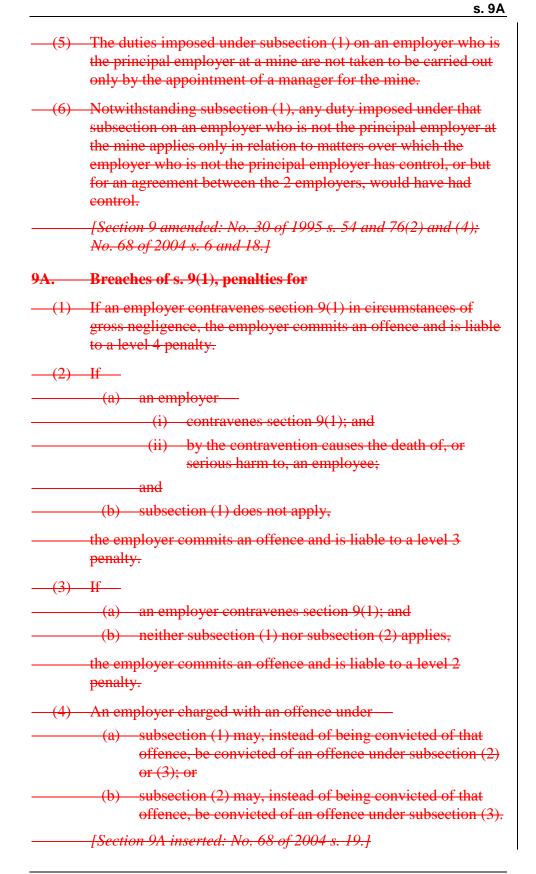
Division 1 s. 8A

Part 2 — General duties relating to occupational safety

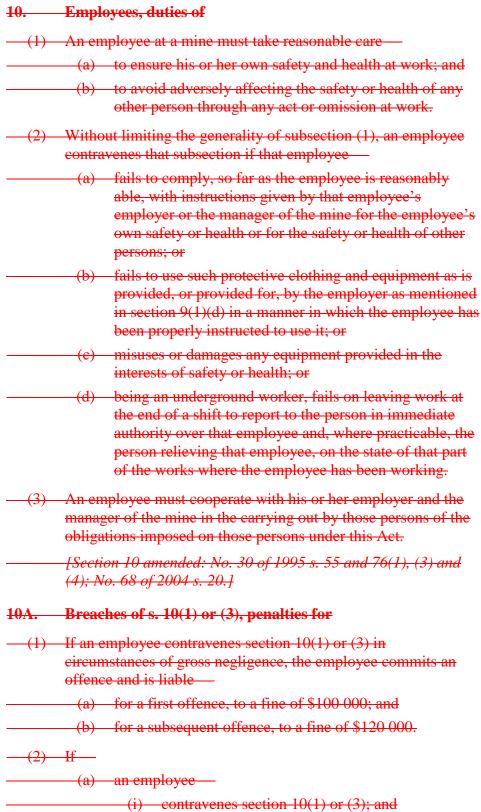


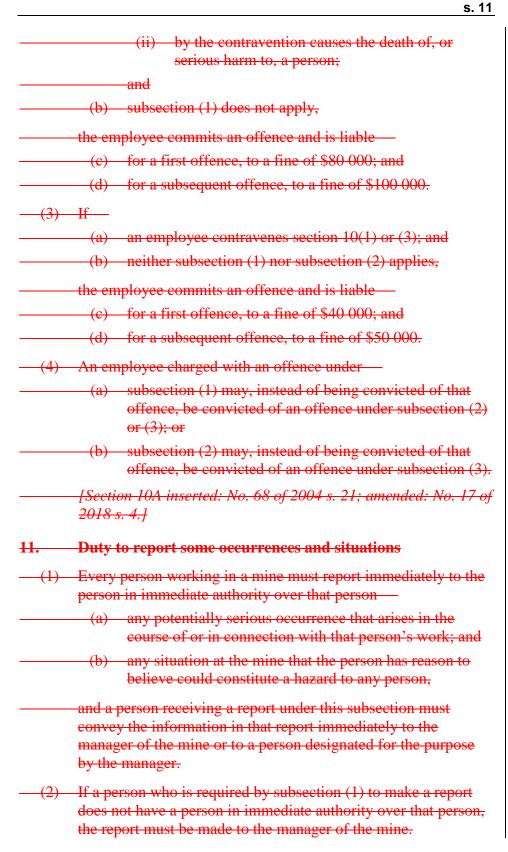
## s. 9 **Division 2**—General duties [Heading inserted: No. 68 of 2004 s. 5.] **Employers, duties of** An employer must, so far as is practicable, provide and maintain at a mine a working environment in which that employer's employees are not exposed to hazards and, in particular, but without limiting the generality of that general obligation, an employer must provide and maintain workplaces, plant, and systems of work of a kind that, so far as is practicable, the employer's employees are not exposed to hazards; and provide such information, instructions and training to and supervision of employees as is necessary to enable them to perform their work in such a manner that they are not exposed to hazards; and consult and cooperate with safety and health representatives, if any, and other employees at the mine where that employer's employees work, regarding occupational safety and health at the mine; and where it is not practicable to avoid the presence of hazards at the mine, provide employees with, or otherwise provide for the employees to have, such adequate personal protective clothing and equipment as is practicable to protect them against those hazards, without any cost to the employees; and make arrangements for ensuring, so far as is practicable, that \_\_\_ (i) the use, cleaning, maintenance, transportation, and disposal of plant; and the use, handling, processing, storage, transportation, and disposal of substances, at the mine is carried out in such a manner that that employer's employees are not exposed to hazards. In determining the training required to be provided in accordance with subsection (1)(b), regard must be had to the functions performed by employees and the capacities in which they are employed.

<del>[(3) (4) - deleted]</del>



Part 2 General duties relating to occupational safety and health
Division 2 General duties
s. 10





General duties

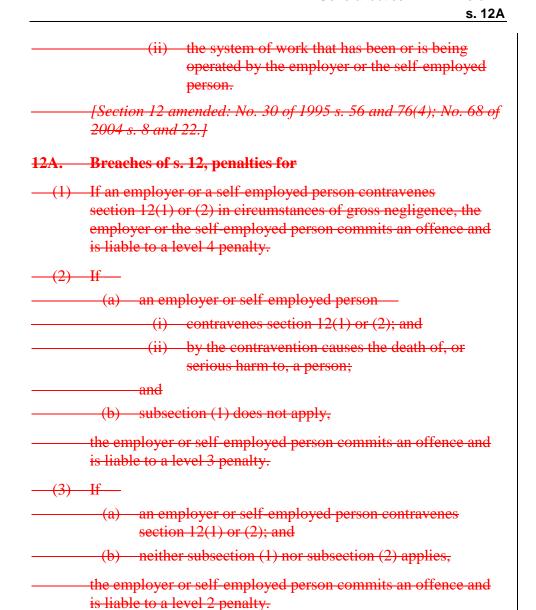
Part 2

**Division 2** 

s. 11A (3) Every person working at a mine must, unless a similar report has to his or her knowledge already been made, report immediately to the manager of the mine any injury or harm to health suffered by any other person in connection with work at the mine. A person who contravenes subsection (1), (2) or (3) commits an offence and is liable to a fine of \$40 000. [Section 11 amended: No. 17 of 2018 s. 4.] Mine manager's duties when s. 11 report received Where a report is made under section 11(1)(a) or (b) or (3) in relation to a mine, the manager of the mine must, within a reasonable time after the report is received by him or herinvestigate the occurrence, situation, injury or harm that was reported; and (b) determine the action, if any, that the manager intends to take in respect of the matter; and (c) notify the person who made the report of the determination so made. A manager who contravenes subsection (1) commits an offence. [Section 11A inserted: No. 68 of 2004 s. 7.] **Employers and self-employed persons, duties of** (1) A self-employed person working at a mine must take reasonable care to ensure his or her own safety and health at work. An employer or self-employed person at a mine must, so far as is practicable, ensure that the safety or health of a person, not being (in the case of an employer) an employee of the employer, is not adversely affected wholly or in part as a result of (a) work that has been or is being undertaken by (i) the employer or any employee of the employer; the self-employed person; (b) any hazard that arises from or is increased by

General duties relating to occupational safety and health

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



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

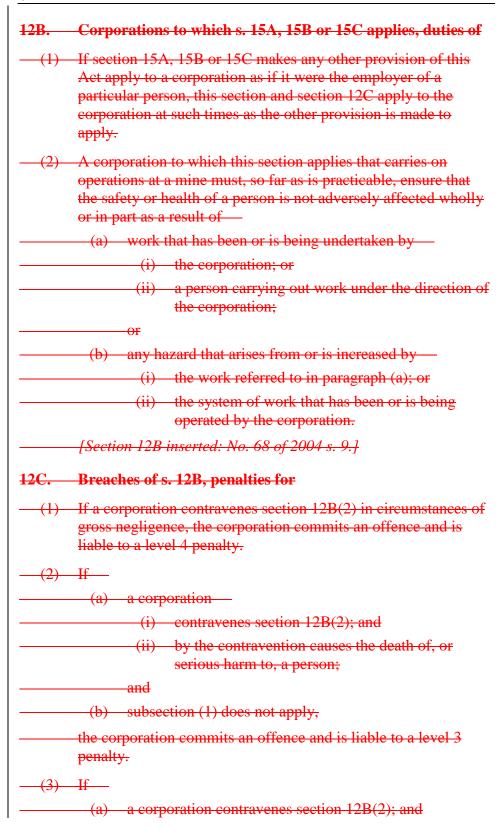
(a) subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or (3); or

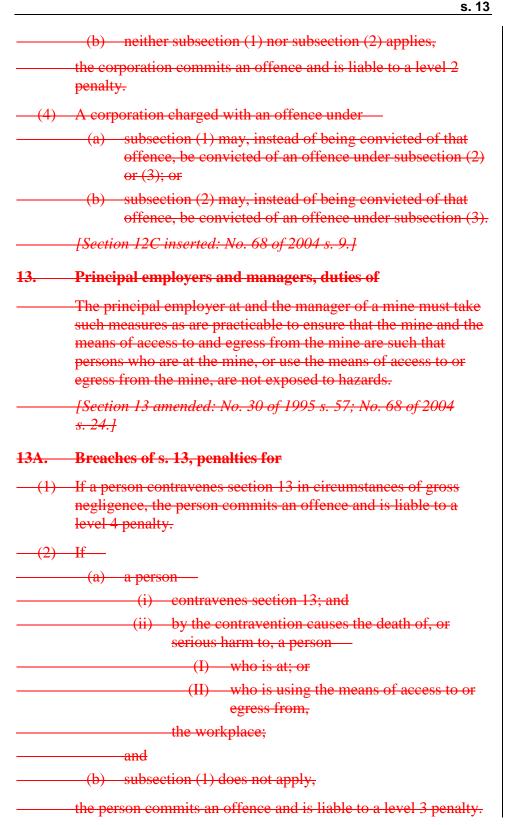
(b) subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3).

[Section 12A inserted: No. 68 of 2004 s. 23.]

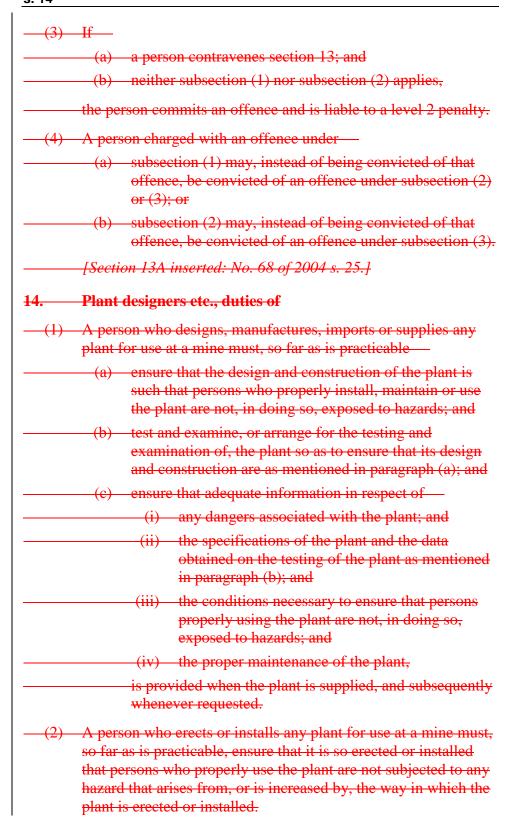
Part 2 General duties relating to occupational safety and health Division 2 General duties

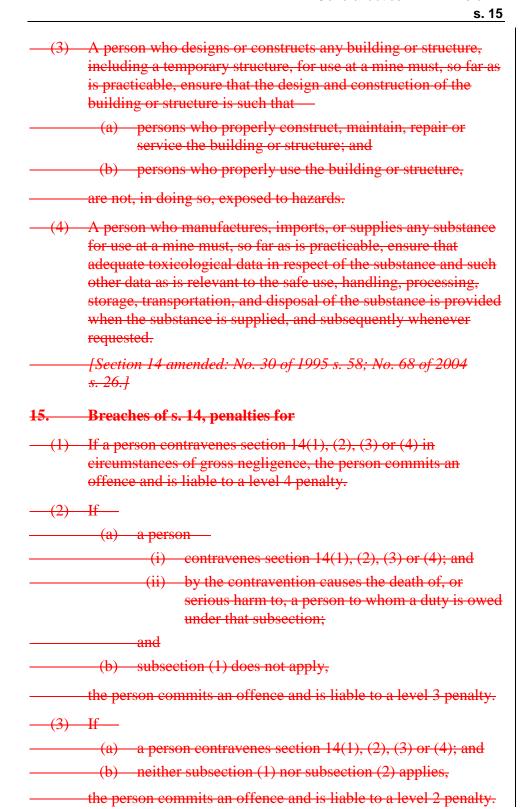
s. 12B





Part 2 General duties relating to occupational safety and health
Division 2 General duties
s. 14





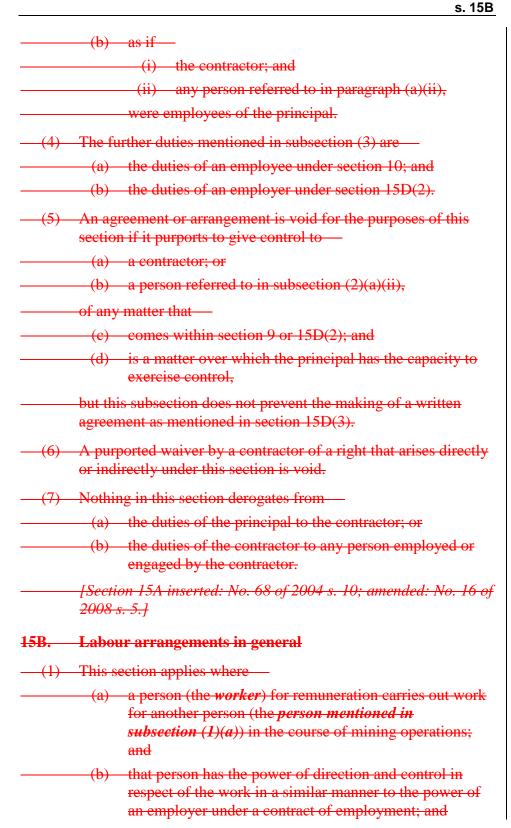
Part 2 General duties relating to occupational safety and health **Division 3** Certain workplace situations to be treated as employment s. 15A A person charged with an offence under subsection (1) may, instead of being convicted of that offence, be convicted of an offence under subsection (2) or(3); or subsection (2) may, instead of being convicted of that offence, be convicted of an offence under subsection (3). [Section 15 inserted: No. 68 of 2004 s. 27.] Division 3 — Certain workplace situations to be treated as **employment** [Heading inserted: No. 68 of 2004 s. 10.] **Contract work arrangements** This section applies where a person (the *principal*) in the course of mining operations engages a contractor (the contractor) to carry out work for the principal. Where this section applies, sections 9 and 9A have effect (a) as if the principal were the employer of the contractor; and any person employed or engaged by the contractor to carry out or assist in carrying out the work concerned, in relation to matters over which the principal has the capacity to exercise control; and (b) as if (i) the contractor; and (ii) any person referred to in paragraph (a)(ii), were employees of the principal in relation to matters over which the principal has the capacity to exercise control. Where this section applies, the further duties referred to in subsection (4) apply, and sections 10A and 15E have effect as if the principal were the employer of (i) the contractor; and

and

the work concerned:

(ii) any person employed or engaged by the

contractor to carry out or assist in carrying out



Part 2

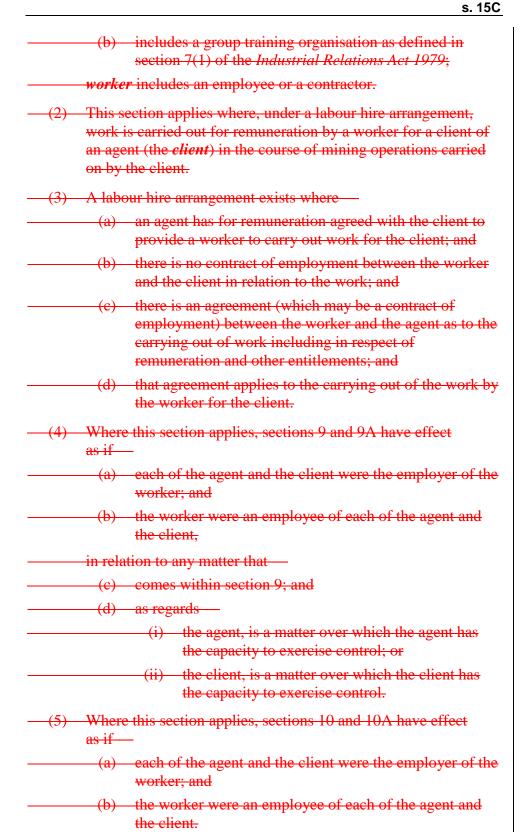
**Division 3** 

s. 15C there is no contract of employment between the worker and that person; and (d) neither section 15A nor section 15C applies. Where this section applies, sections 9 and 9A have effect as if <del>(a)</del> the person mentioned in subsection (1)(a) were the employer of the worker; and the worker were the employee of that person, in relation to any matter that (c) comes within section 9; and (d) is a matter over which that person has the capacity to exercise control. Where this section applies, sections 10 and 10A have effect as if (a) the person mentioned in subsection (1)(a) were the employer of the worker; and (b) the worker were the employee of that person. An agreement or arrangement is void for the purposes of this section to the extent that it purports to give control to the worker of any matter that (a) comes within section 9; and (b) is a matter over which the person mentioned in subsection (1)(a) has the capacity to exercise control. This section applies despite anything to the contrary in, or any inconsistent provision of, an agreement, whether made orally or in writing. A purported waiver by a worker of a right that arises directly or indirectly under this section is void. [Section 15B inserted: No. 68 of 2004 s. 10; amended: No. 16 of 2008 s. 6.1 **Labour hire arrangements** (1) In this section <del>agent - -</del> means a person who carries on a business of providing

General duties relating to occupational safety and health

Certain workplace situations to be treated as employment

workers to carry out work for clients of the person; and

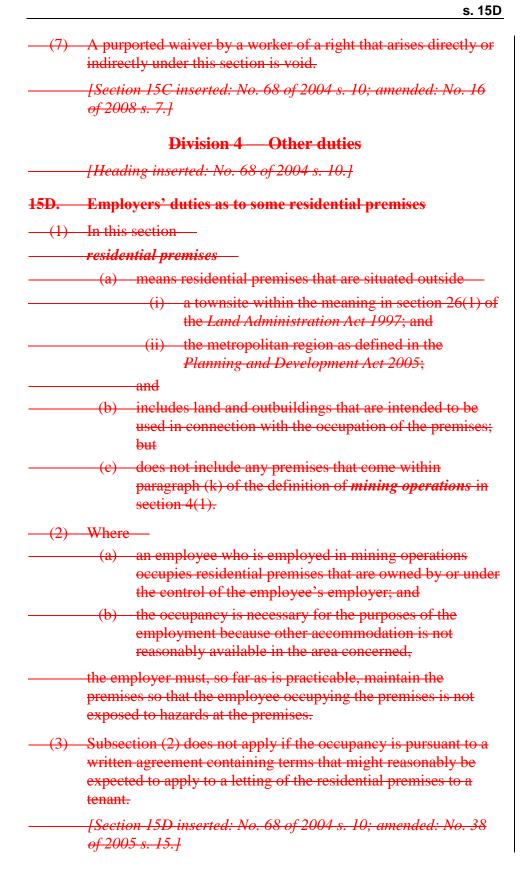


Part 2 General duties relating to occupational safety and health

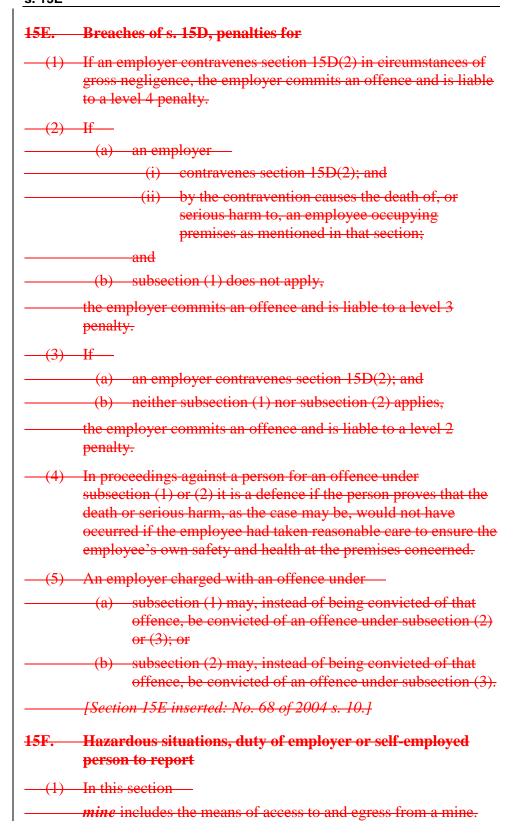
Division 3 Certain workplace situations to be treated as employment

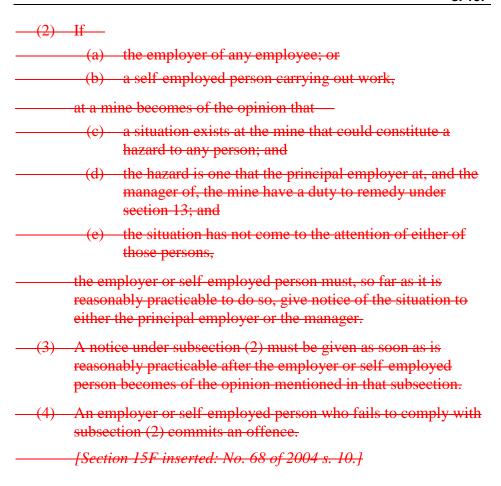
s. 15C

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



Part 2 General duties relating to occupational safety and health
Division 4 Other duties
s. 15E





s. 16

## Part 3 — Administration of Act

## **Division 1** Inspectors of mines

#### 16. State mining engineer and State coal mining engineer

- (1) A person shall be appointed under and subject to the *Public*Sector Management Act 1994 to be the State mining engineer.
- (2) A person shall be appointed under and subject to the *Public Sector Management Act 1994* to be the State coal mining engineer.
- (3) To be eligible for appointment as the State mining engineer or the State coal mining engineer, a person must hold a first class mine manager's certificate of competency.
- (4) The State mining engineer, the State coal mining engineer, and the deputy State mining engineer have the powers conferred on an inspector by Division 2.
- (5) The State mining engineer may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing delegate to any person any power or duty conferred or imposed on the State mining engineer under this Act other than this power of delegation.
- (6) Any act or thing done by a delegate under a delegation under this section has the same force and effect as if it had been done by the State mining engineer.
- (7) Subject to the control and direction of the State mining engineer, the State coal mining engineer is responsible for the administration of this Act and the regulations in relation to coal mines and has the control and direction of inspectors engaged in matters relating to coal mines.

#### 17. Inspectors of mines, general provisions

- (1) The Minister may appoint suitable persons to be inspectors of mines.
- (2) There are to be 2 categories of inspectors, namely, district inspectors and special inspectors.
- (3) Subject to section 16(7), inspectors are subject to the control and direction of the State mining engineer and are to act in such areas of the State as the State mining engineer directs.

[Section 17 amended: No. 33 of 2014 s. 5.]

s. 18



- (1) District and special inspectors, including district inspectors who are senior inspectors or hold administrative positions in the inspectorate structure of the department, are to be appointed under and subject to the *Public Sector Management Act 1994*.
- $-\frac{(2)}{deleted}$
- (3) Special inspectors may be appointed for the purpose of making inspections, inquiries, and investigations that require technical or scientific training or knowledge as directed by the State mining engineer.
- (4) Notwithstanding subsection (1), persons who are employed elsewhere in the Public Service or otherwise in the public sector may, with the approval of the Minister concerned, be appointed as special inspectors; and persons so appointed may continue to be employed on the terms appropriate to the agency or authority from which they are seconded.

[Section 18 amended: No. 33 of 2014 s. 6.]

[19, 20. Deleted: No. 33 of 2014 s. 7.]

## **Division 2** Inspections

#### 20A. Extended meaning of employer and employee

In this Division

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

Section 20A inserted: No. 68 of 2004 s. 11.1

#### 21. Powers of inspectors

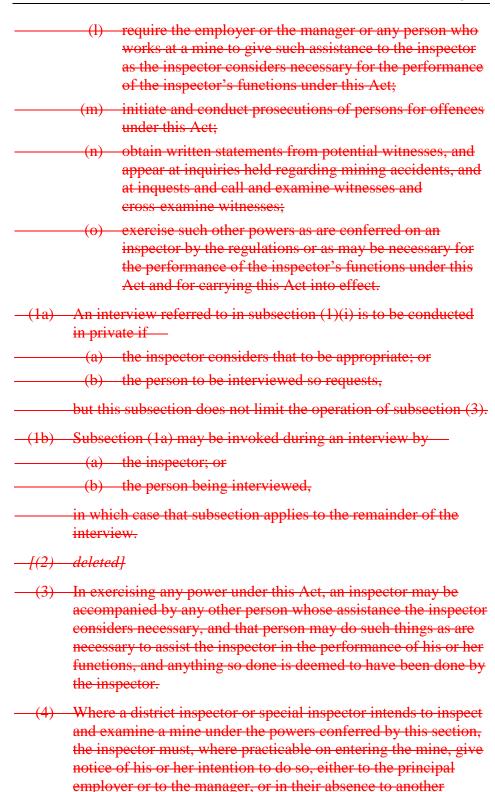
- (1) A district inspector or special inspector may, for the purposes of this Act—
- (a) at all times of the day or night, enter, inspect, and
  examine any mine and examine any plant, substance, or
  other thing whatsoever at the mine (but must do so in
  such a manner as not unnecessarily to impede or
  obstruct the working of the mine);
  - (b) when entering a mine, take with the inspector such equipment and materials as the inspector considers appropriate;

Division 2

Inspections

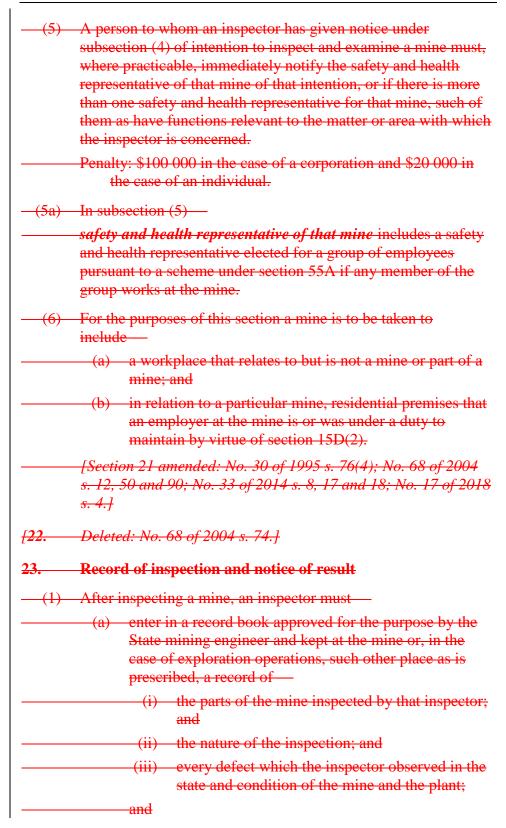
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	conduct such examination and inquiry as the inspector considers necessary to ascertain whether the provisions of this Act have been and are being complied with in respect of a mine or a mining operation;
<del>(ca)</del>	provide information to any person for the purpose of facilitating compliance with this Act;
(d)	take and remove samples of any substance or thing whatsoever at a mine without paying for them;
——————————————————————————————————————	take possession of any plant or thing for further examination or testing or for use as evidence;
(f)	take photographs and measurements, and make sketches and recordings;
——————————————————————————————————————	require the production of, examine, and take copies of or extracts from, any document;
(h)	require that the mine, or any part of it, be left undisturbed for as long as is specified in the requirement;
(i)	in accordance with subsections (1a) and (1b), interview any person who the district inspector or special inspector (the <i>inspector</i> ) has reasonable grounds to believe
	(i) is, or was at any time during the preceding 3 years—
	(I) an employee working at a mine; or
	(II) an employee occupying residential premises mentioned in section 15D(2),
	in relation to which the inspector is inquiring; or
	(ii) was at such a mine or such residential premises at a time that is relevant to a matter about which the inspector is inquiring; or
	(iii) may otherwise be able to provide information relevant to a matter about which the inspector is inquiring;
<del>(ia)</del>	require the attendance of any person for an interview under paragraph (i);
(j)	require any person whom the inspector interviews under paragraph (i) to answer any question put to that person and, if the inspector considers it appropriate, to verify any such answer by statutory declaration;
(k)	require any person to state his or her name and address;

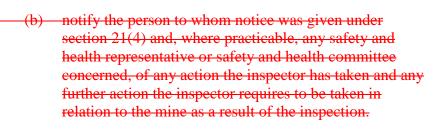


responsible person.

s. 23



s. 24



- (2) The record book referred to in subsection (1) is to be open at all reasonable times to the examination of
- (a) an inspector; and
  - (b) every person working at the mine; and
- (c) every other person authorised in writing by the State mining engineer.
- (3) Where it is not practicable for an inspector to notify any safety and health representative or safety and health committee concerned of the results of an inspection in accordance with subsection (1)(b), the person to whom notice was given under section 21(4) must bring the entry in the record book to the attention of the safety and health representative or safety and health committee concerned.
- Penalty: \$100 000 in the case of a corporation and \$20 000 in the case of an individual.
- [Section 23 amended: No. 30 of 1995 s. 76(4); No. 68 of 2004 s. 75; No. 33 of 2014 s. 17; No. 17 of 2018 s. 4.]

#### 24. Complaints to inspectors

- (1) A person working at a mine may complain to an inspector about anything which an inspector is under a duty to report on or remedy.
- (2) An inspector must inquire into any complaint made under subsection (1) and take such steps as the inspector considers necessary to investigate the matter, but the name of the person who complained is not to be disclosed.
- [25. Deleted: No. 33 of 2014 s. 9.]

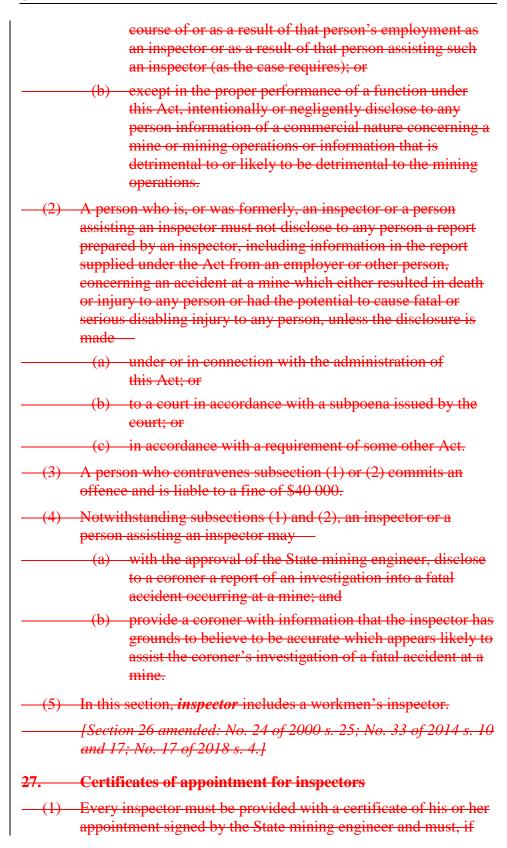
#### 26. Use and disclosure of information by inspectors etc.

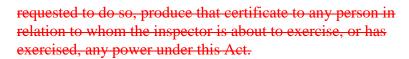
- (1) A person who is, or formerly was, an inspector or a person assisting an inspector must not—
- (a) use for the gain of any person confidential knowledge or confidential information obtained by that person in the

**Division 2** 

Inspections

s. 27





(2) A certificate purporting to have been provided under subsection (1) is, without proof of the signature of the person purporting to have signed it, or of that person's authority to have signed it, evidence in any court of the appointment to which the certificate purports to relate.

Section 27 amended: No. 33 of 2014 s. 17.]

## 28. Employers and managers to facilitate inspections

- (1) An employer at a mine and a manager of a mine must provide an inspector and any person accompanying the inspector under section 21(3) with the means of making an entry, inspection, examination or inquiry at the mine for the purposes of this Act.
- (2) An employer or a manager who contravenes subsection (1) commits an offence.

Section 28 amended: No. 33 of 2014 s. 17.]

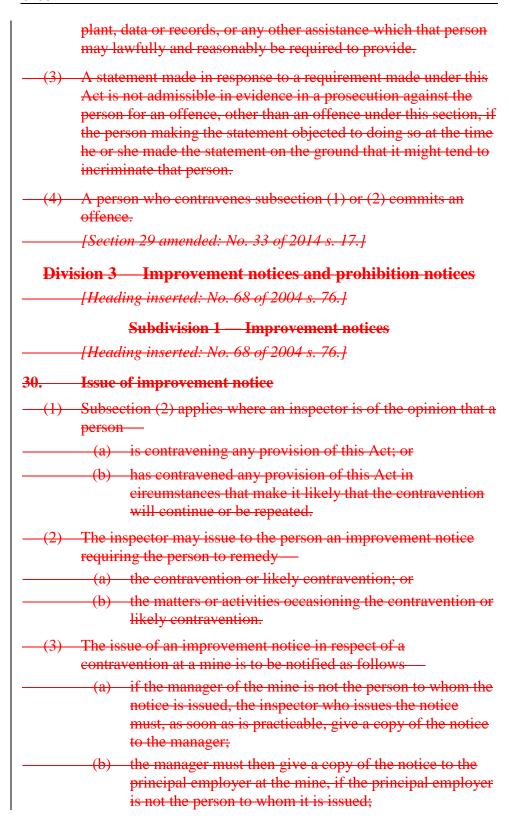
#### 29. Obstructing etc. inspectors

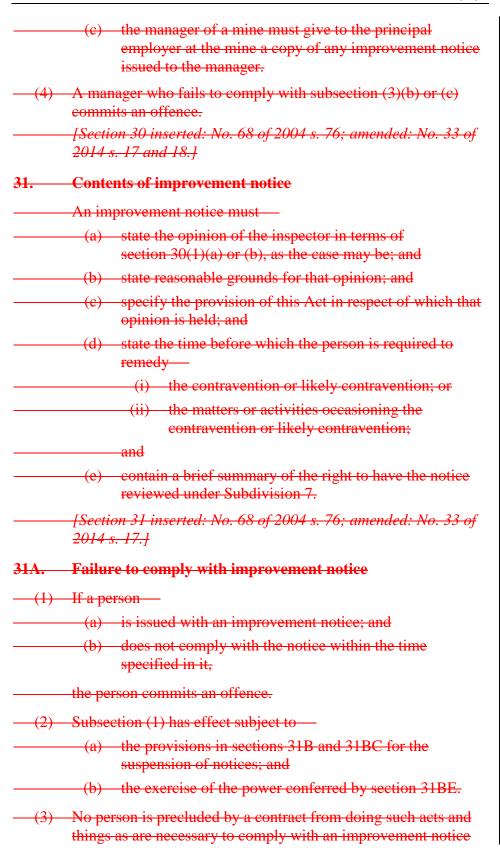
- (1) A person must not
- (a) obstruct, hinder, or interfere with an inspector lawfully acting in the execution or performance of a function conferred or imposed on an inspector under this Act; or
- (b) fail, without reasonable excuse, to answer any question put to that person for the purposes of this Act by an inspector or give a false or misleading answer to any such question, or refuse to make any statutory declaration that the person is required under this Act to make: or
- (c) use any threat or any abusive or insulting language to an inspector lawfully acting in the execution or performance of a function conferred or imposed on an inspector under this Act; or
- (d) fail, without reasonable excuse, to comply in any respect with a lawful request, requirement or direction made or given by an inspector.
- (2) A person must not, without reasonable excuse, fail to provide to an inspector acting in the execution or performance of a function under this Act access to a mine, building, structure,

Part 3 Administration of Act

**Division 3** Improvement notices and prohibition notices

s. 30

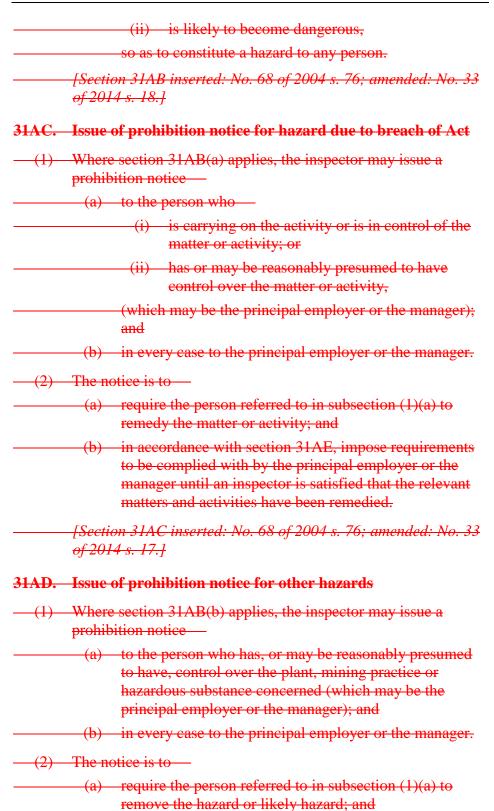




Part 3 Administration of Act

Division 3 Improvement notices and prohibition notices
s. 31AA

or is liable under any contract to any penalty for doing such acts and things. [Section 31A inserted: No. 68 of 2004 s. 76.] **31AA.** Notification of compliance (1) As soon as is practicable after the requirements of an improvement notice in relation to a mine have been complied with, the manager of the mine must give written notice of the compliance— (a) to the inspector who issued the notice; or (b) if that officer is not reasonably available at the relevant time, to the district inspector for the region in which the mine is situated. A manager who fails to comply with subsection (1) commits an offence. [Section 31AA inserted: No. 68 of 2004 s. 76; amended: No. 33 of 2014 s. 17.1 **Subdivision 2** — **Prohibition notices in respect of mines** [Heading inserted: No. 68 of 2004 s. 76.] 31AB. Grounds for prohibition notice This Subdivision applies where an inspector is of the opinion that \_\_\_ (a) a contravention of any provision of this Act (i) is occurring at a mine; or (ii) has occurred at a mine in circumstances that make it likely that the contravention will continue or be repeated, and any matter or activity occasioning the contravention constitutes or is likely to constitute a hazard to any person; or a mine, or any plant, mining practice or hazardous substance at or related to a mine (i) is dangerous; or



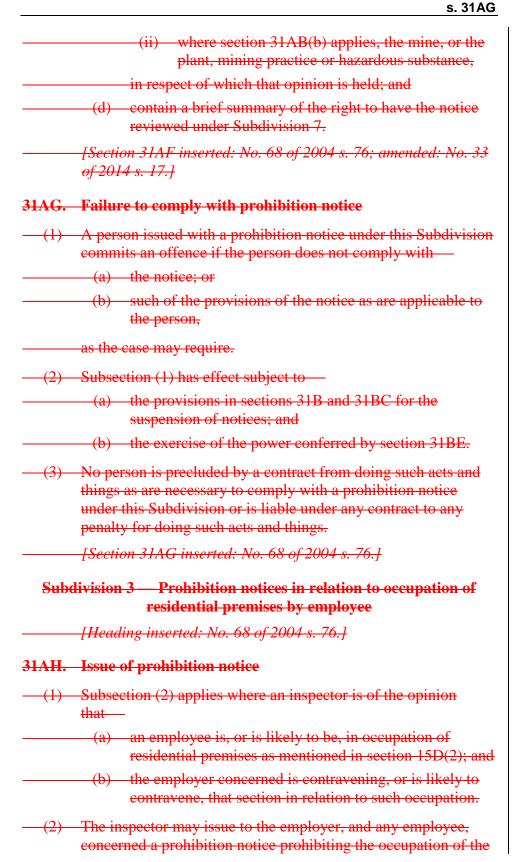
Administration of Act

Part 3

**Division 3** Improvement notices and prohibition notices s. 31AE (b) in accordance with section 31AE, impose requirements to be complied with by the principal employer or the manager until an inspector is satisfied that the hazard or likely hazard has been removed. [Section 31AD inserted: No. 68 of 2004 s. 76; amended: No. 33 of 2014 s. 17.1 31AE. Requirements to stop work etc. permitted in prohibition notices In exercise of the powers conferred by sections 31AC(2)(b) and 31AD(2)(b) an inspector may require the principal employer or the manager — (a) to stop work at the mine or any specified part of the mine; or to refrain from doing any specified thing at or in relation to the mine; or (c) to remove all persons from the mine or any specified part of the mine; or to take any combination of steps under paragraphs (a), (b) and (c), except to the extent that provision is made in the prohibition notice either with or without conditions or restrictions for any specified work, practice or activity to be carried out or any specified thing to be done at the mine; or (f) any person to be at the mine or the part concerned. [Section 31AE inserted: No. 68 of 2004 s. 76; amended: No. 33 of 2014 s. 17.1 31AF. Contents of prohibition notice A prohibition notice under this Subdivision must state the opinion of the inspector in terms of section 31AB(a) or (b), as the case may require; and state reasonable grounds for that opinion; and specify

this Act; or

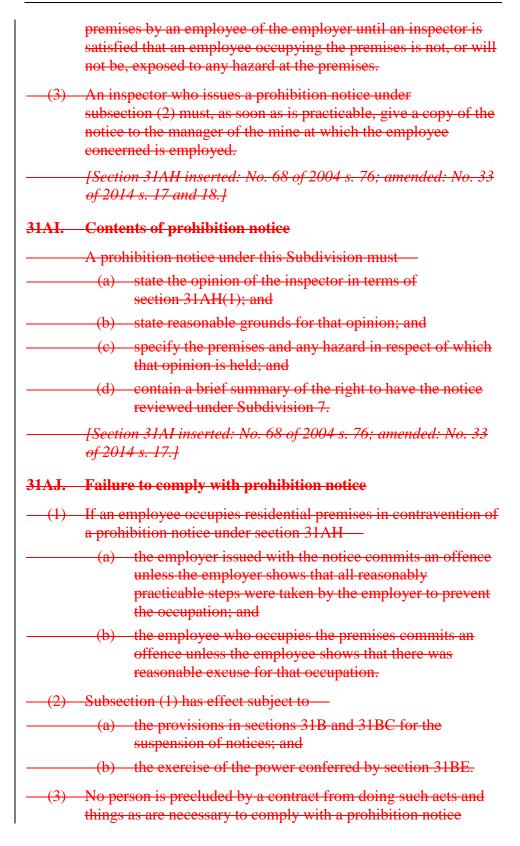
where section 31AB(a) applies, the provision of

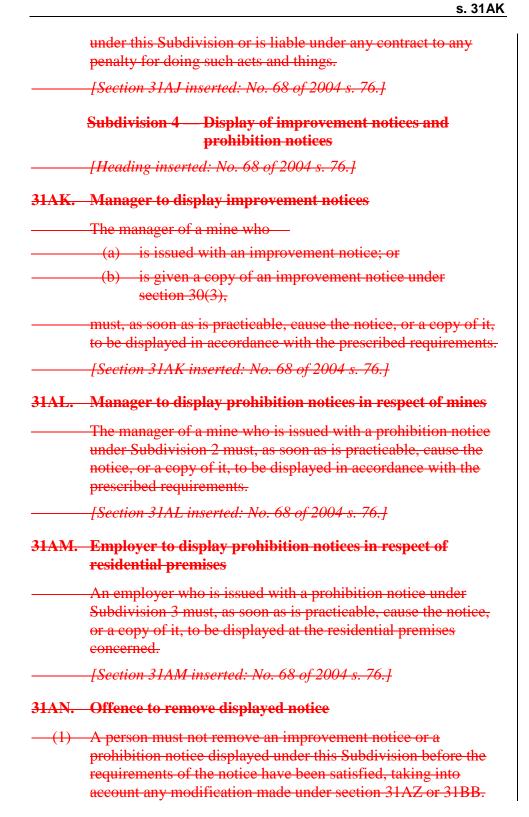


Part 3 Administration of Act

**Division 3** Improvement notices and prohibition notices

s. 31AI





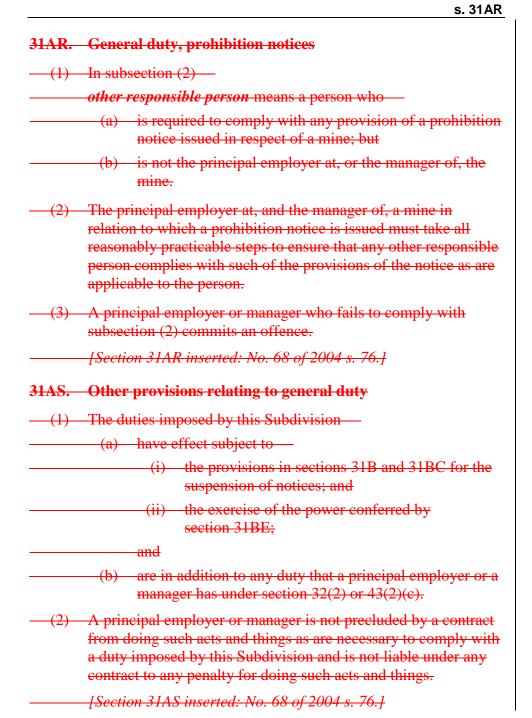
Administration of Act

Part 3

**Division 3** Improvement notices and prohibition notices s. 31AO (2) Subsection (1) does not apply in respect of a notice that (a) is suspended under section 31B or 31BC; or (b) has ceased to have effect. [Section 31AN inserted: No. 68 of 2004 s. 76.] 31AO. Modifications of notice to be displayed (1) This section applies where an improvement notice or a prohibition notice is modified under section 31AZ or 31BB. The manager of the mine concerned, or the employer concerned, must cause a copy of the decision of the State mining engineer or the Tribunal to be displayed with, and in the same manner as is required for, the improvement notice or prohibition notice. [Section 31AO inserted: No. 68 of 2004 s. 76.] 31AP. Failure to comply with provision of this Subdivision A person who fails to comply with a duty imposed on the person by this Subdivision commits an offence. [Section 31AP inserted: No. 68 of 2004 s. 76.] Subdivision 5 — General duty of principal employer and manager in respect of notices [Heading inserted: No. 68 of 2004 s. 76.] 31AQ. General duty, improvement notices Subsection (2) applies where an improvement notice is issued in relation to a mine; and (b) the person issued with the notice is not the principal employer at, or the manager of, the mine. The principal employer and the manager must take all reasonably practicable steps to ensure that the person issued with the notice complies with it. A principal employer or manager who fails to comply with subsection (2) commits an offence.

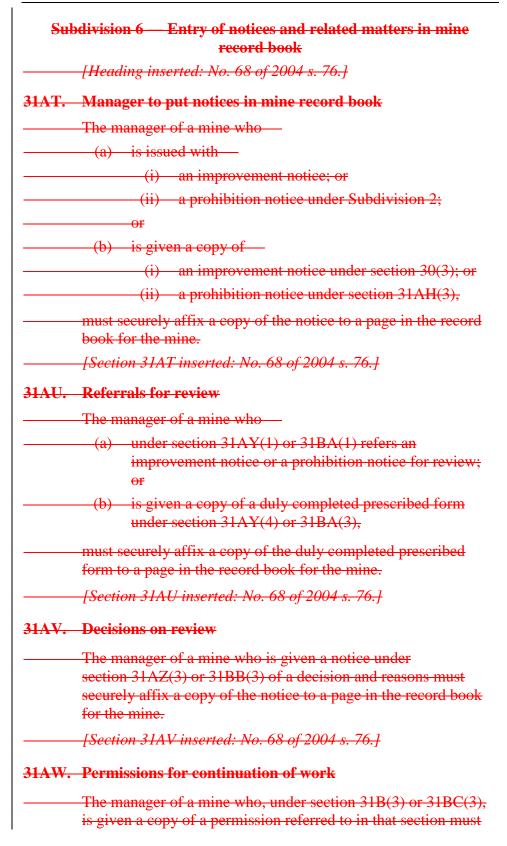
[Section 31AQ inserted: No. 68 of 2004 s. 76.]

Division 3

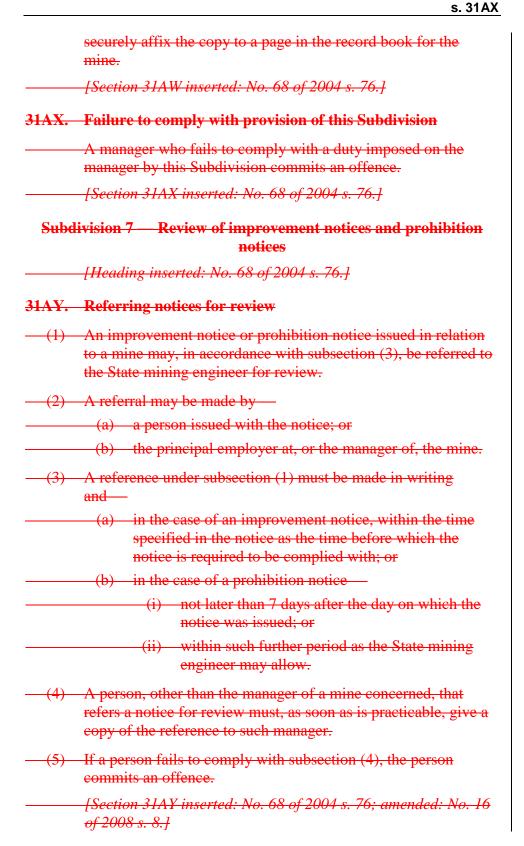


Improvement notices and prohibition notices

s. 31AT



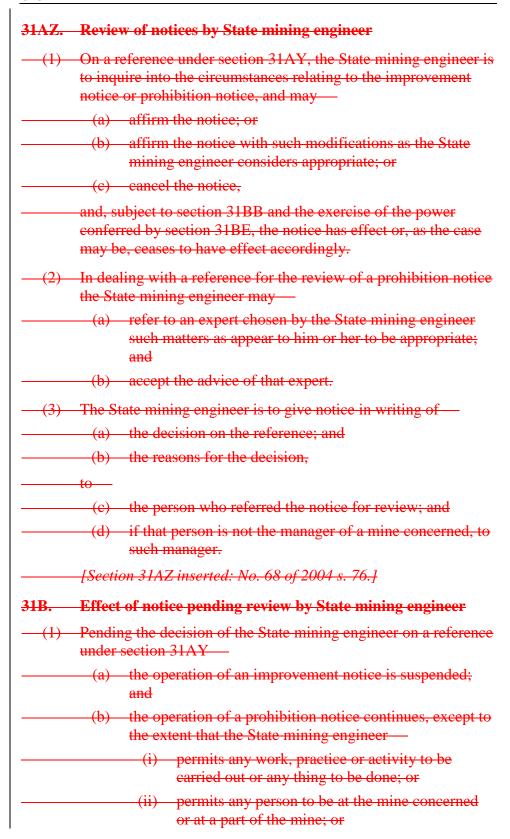
Division 3

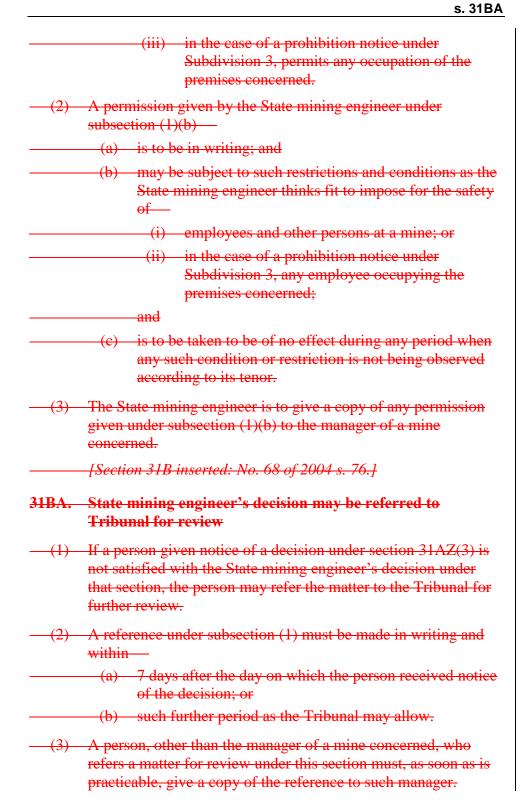


Part 3 Administration of Act

**Division 3** Improvement notices and prohibition notices

s. 31AZ



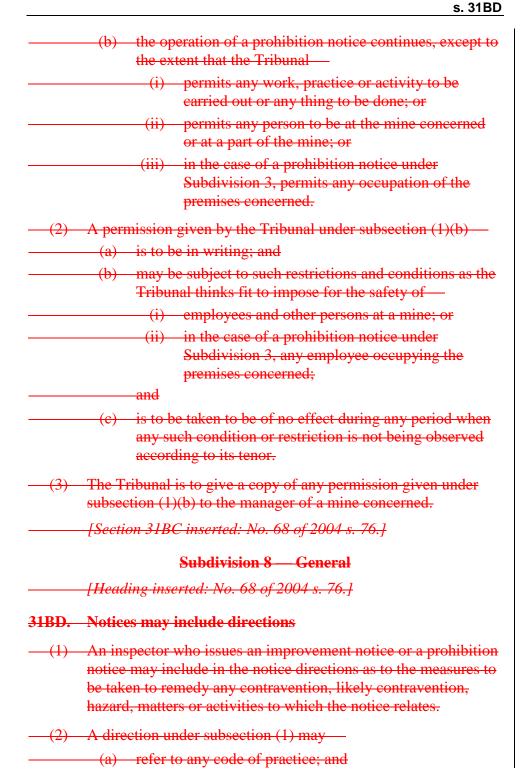


Part 3 Administration of Act **Division 3** Improvement notices and prohibition notices s. 31BB (4) If a person fails to comply with subsection (3), the person commits an offence. [Section 31BA inserted: No. 68 of 2004 s. 76; amended: No. 16 of 2008 s. 9.1 31BB. Review by Tribunal On a reference under section 31BA, the Tribunal is to inquire into the circumstances relating to the improvement notice or prohibition notice, and may— (a) affirm the decision of the State mining engineer; or (b) affirm the decision of the State mining engineer with such modifications as the Tribunal considers appropriate; or revoke the decision of the State mining engineer and make such other decision with respect to the notice as the Tribunal thinks fit, and the notice has effect or, as the case may be, ceases to have effect accordingly. A review under this section (a) is to be in the nature of a rehearing; and is to be completed by the Tribunal as quickly as is practicable. The Tribunal is to give notice in writing of (a) its decision on the reference; and (b) the reasons for the decision. (c) the person who referred the matter for review; and (d) if that person is not the manager of a mine concerned, to such manager. [Section 31BB inserted: No. 68 of 2004 s. 76.] 31BC. Effect of notice pending review by Tribunal Pending the decision on a reference under section 31BA, irrespective of the decision of the State mining engineer under

section 31AZ

and

the operation of an improvement notice is suspended;



# Mines Safety and Inspection Act 1994 Part 3 Administration of Act **Division 4** Issue of provisional improvement notices by safety and health representative s. 31BE (b) offer the person issued with the notice a choice of ways in which to remedy the contravention, likely contravention, hazard, matters or activities to which the notice relates. [Section 31BD inserted: No. 68 of 2004 s. 76; amended: No. 33 of 2014 s. 17.1 31BE. State mining engineer may cancel notice The State mining engineer may, on his or her own initiative, cancel an improvement notice or a prohibition notice in respect of a mine by giving notice in writing of (a) the cancellation; and (b) the reasons for the cancellation,

- (c) the person who was issued with the notice; and the principal employer at a mine if the principal employer is not the person referred to in paragraph (c); and
- the manager of the mine if the manager is not the person referred to in paragraph (c).
- The State mining engineer may, on his or her own initiative, cancel a prohibition notice issued under section 31AH by giving notice in writing of
- (a) the cancellation; and
  - (b) the reasons for the cancellation,

to the employer and the employee concerned.

- The power conferred by subsection (1) or (2) is not to be exercised in respect of a notice
  - (a) during a period when a referral of the notice is awaiting a determination of the State mining engineer under section 31AZ; or
  - after a decision in respect of the notice has been referred to the Tribunal under section 31BA,

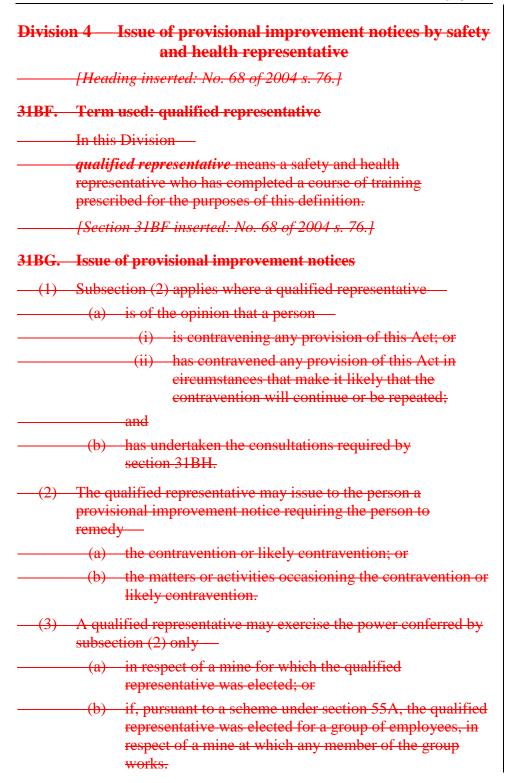
but otherwise may be exercised at any time and whether or not the notice concerned has been affirmed under section 31AZ(1).

[Section 31BE inserted: No. 68 of 2004 s. 76.]

Issue of provisional improvement notices by safety and health representative

**Division 4** 

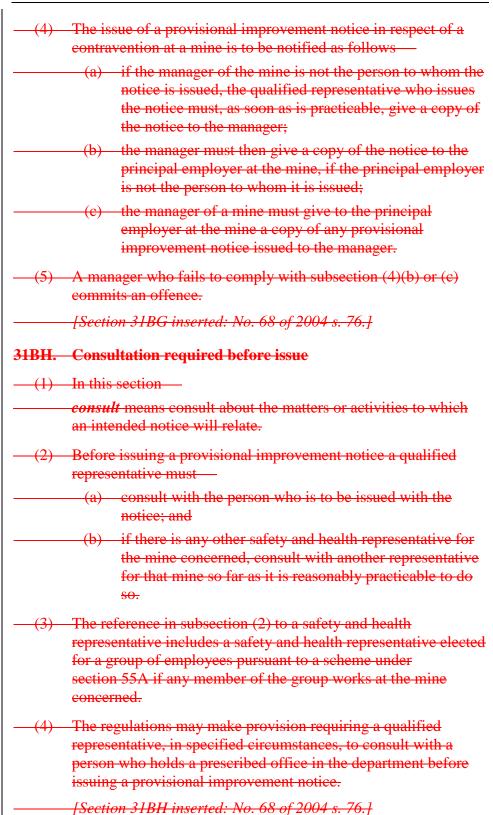
s. 31BF



Part 3 Administration of Act

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

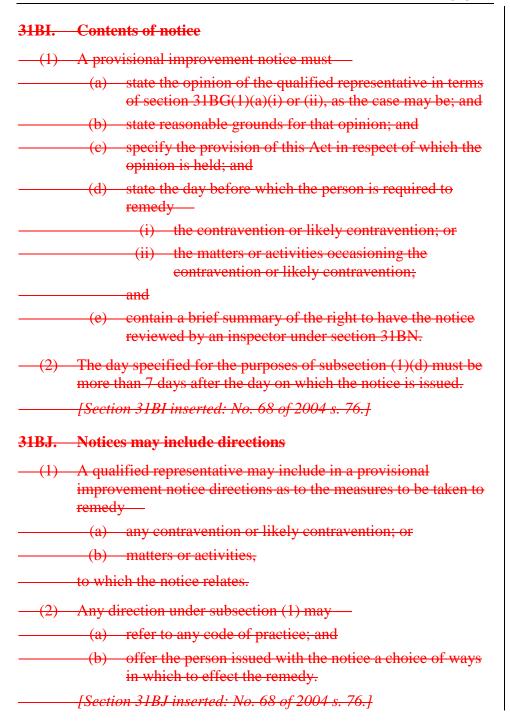
#### s. 31BH



Issue of provisional improvement notices by safety and health representative

**Division 4** 

s. 31BI

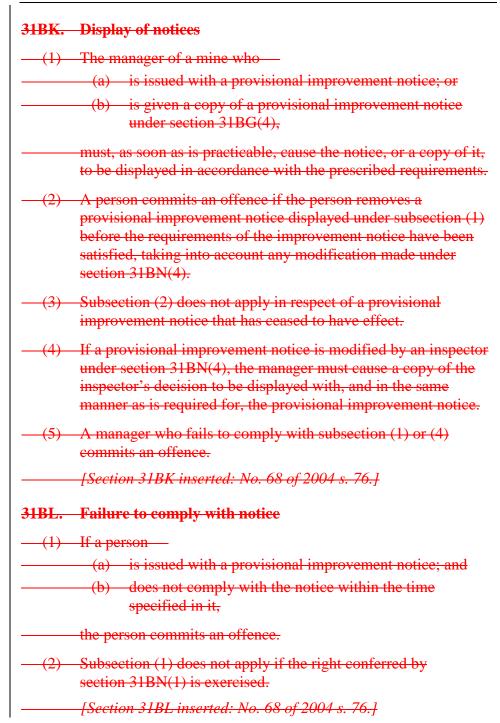


Part 3 Administration of Act

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

representative

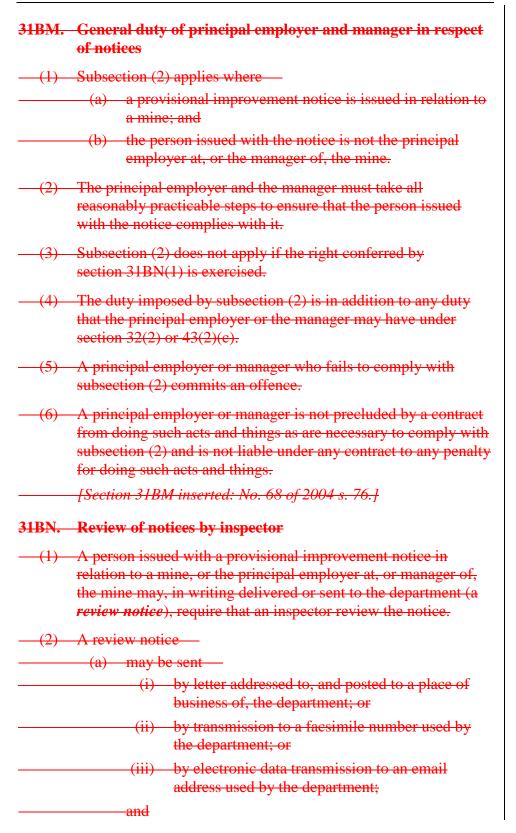
s. 31BK



Issue of provisional improvement notices by safety and health representative

**Division 4** 

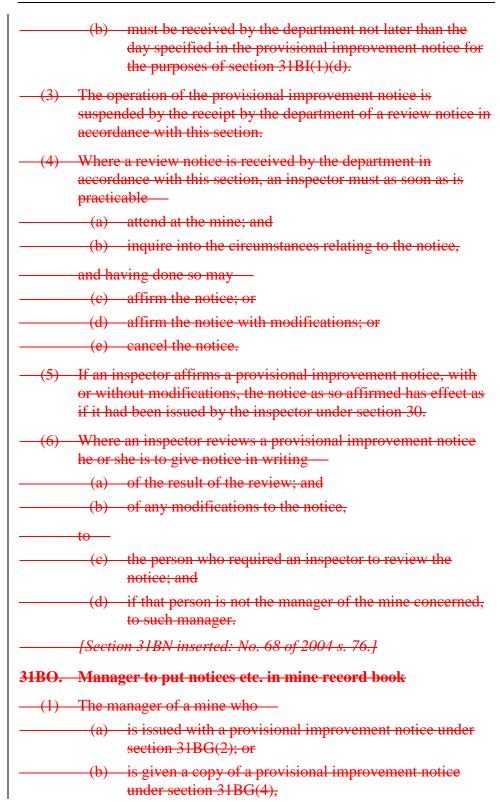
s. 31BM



Part 3 Administration of Act

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

#### s. 31BO



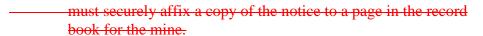
Administration of Act

Part 3

Issue of provisional improvement notices by safety and health representative

**Division 4** 

s. 31BO



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

[Section 31BO inserted: No. 68 of 2004 s. 76.]

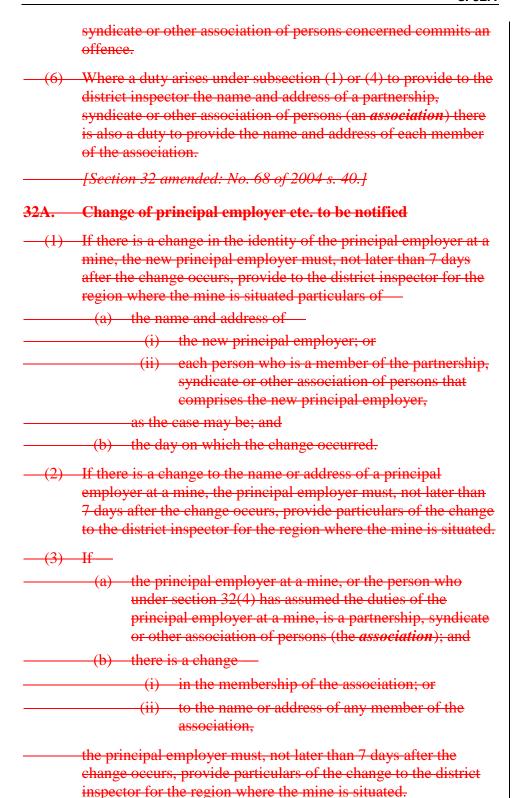
s. 32

## Part 4 — Management of mines

## **Division 1** Duties of employers and managers

## 32. Principal employer, duties of for new mines

- (1) Before mining operations begin at a mine, the name and address of the principal employer at the mine must be provided in writing to the district inspector for the region where the mine is situated.
- (1a) If mining operations begin at a mine and subsection (1) has not been complied with, an offence against subsection (1) is committed by the person who the State mining engineer determines to have been the principal employer at the mine when the mining operations began.
- (1b) In proceedings against a person under subsection (1a) it is a defence if the person proves that there were no reasonable grounds for the State mining engineer's determination that the person was the principal employer at the mine when the mining operations began.
- (2) The principal employer at a mine must make such financial and other provisions as are necessary to ensure, so far as is practicable, that the mine is planned, laid out, managed, and worked in accordance with relevant statutory provisions; and the imposition of a duty by this Act on some other person does not derogate from the duties imposed on principal employers by this section.
- (3) A principal employer may be an individual, a corporation, a partnership, or a syndicate or other association of persons.
- (4) If mining operations are to be carried out by a syndicate or other association of persons in such a way that no person is employed at the mine, the name and address of an entity, partnership, or person who is to assume the duties and responsibilities of principal employer in respect of those mining operations must be provided in writing, before mining operations begin, to the district inspector for the region in which the mine is situated; and that entity, partnership or person is deemed to be the principal employer for the purposes of this Act.
- (5) If mining operations begin at a mine and subsection (4) has not been complied with, each person who is a member of the



Part 4 Management of mines

**Division 1** Duties of employers and managers

s. 33



Section 32A inserted: No. 68 of 2004 s. 41.]

#### 33. Registered manager, appointment and functions of

- (1) Before mining operations begin at a mine, the principal employer must appoint a registered manager for the mine and subsequently must ensure that at all times a registered manager is appointed for the mine.
- (2) The principal employer must inform the district inspector for the region in which the mine is situated within 24 hours (by electronic document transmission confirmed by hard copy within 7 days) of every appointment of a registered manager for the mine and the name and address of the appointee.
- (3) The registered manager for a mine is responsible on a daily basis for the control and supervision of the mine and mining operations at the mine in accordance with this Act and, except for absences on a regular scheduled basis (referred to in this Act as a *commute schedule*), must reside at a location in relation to the mine which will allow the registered manager to control and supervise the mine effectively as required by this section.
- (4) A person who contravenes subsection (1), (2), or (3) commits an offence.
- (5) A person who is the registered manager for a mine is not eligible while holding that position to be the registered manager or deputy to the registered manager for another mine except with the approval in writing of the State mining engineer.
- (6) If mining operations are carried out by a syndicate or other association of persons in such a way that no person is employed at the mine, no registered manager is required and the members of that entity or partnership or those persons are jointly and severally responsible for the performance of those duties and responsibilities which are imposed on registered managers by this Act so far as those duties and responsibilities apply to an operation without employees.
- (7) Notwithstanding subsection (1), a registered manager need not be appointed for mining operations that consist only of exploration operations unless the State mining engineer, having regard to the scale and nature of the exploration operations, directs that such an appointment must be made.

s. 33A



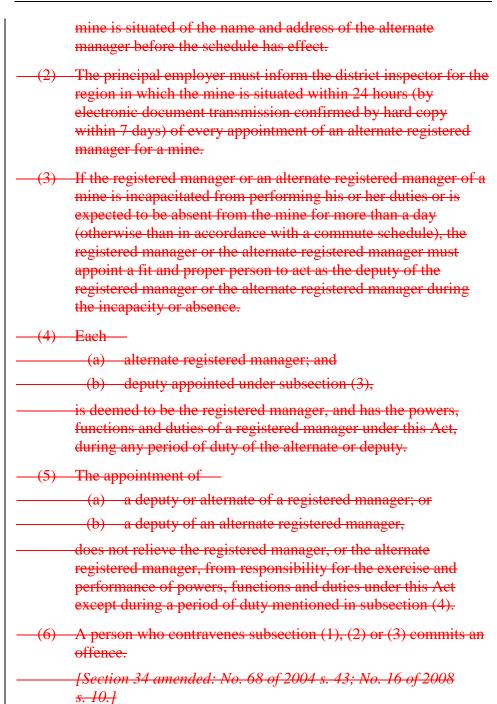
- (1) It is sufficient compliance with a provision of section 34(1) or (2), 35(1), 36(1) or (2), 37(1), 38(1), (2) or (3) or 39(2) (a relevant provision) that requires the principal employer in relation to a mine—
- (a) to make a particular managerial appointment for the mine: or
  - (b) to inform the district inspector for the region in which the mine is situated concerning the appointment,
- if the appointment is made, or the information is given, on behalf of the principal employer by the registered manager in accordance with authority given by the principal employer to do so.
- (2) It is open to the registered manager of a mine in exercising a power to appoint
- (a) an underground manager; or
- (b) a quarry manager,
  - for the mine under section 35 or 37, to appoint himself or herself to that position.
- (3) If the registered manager
- (a) makes an appointment; or
  - (b) gives information to a district inspector,
- for the purposes of a relevant provision the registered manager is conclusively presumed to do so under and in accordance with authority given by the principal employer.
- (4) Nothing in this section affects the obligation of the principal employer to comply with a relevant provision.
- [Section 33A inserted: No. 68 of 2004 s. 42.]

# 34. Alternate and deputy registered managers, appointment and functions of

(1) If the registered manager is to control and supervise the mine in accordance with a commute schedule, the principal employer must appoint an alternate registered manager to assume the duties of the registered manager during the absences of the registered manager in accordance with that commute schedule and must inform the district inspector for the region in which the

Part 4 Management of mines

**Division 1** Duties of employers and managers





- (1) The principal employer of every mine employing any person underground must appoint a person qualified for appointment in respect of that mine under subsection (2) or (3) to be the underground manager for the mine with responsibility to control and supervise the underground mining operations on a daily basis.
- (1a) A principal employer who contravenes subsection (1) commits an offence.
- (2) An underground manager for a mine employing 25 or more persons underground—
  - (a) may be the registered manager for the mine; and
  - (b) must be the holder of a first class mine manager's certificate of competency or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners.
- (3) An underground manager for a mine employing fewer than 25 persons underground
- (a) may be the registered manager for the mine; and
- (b) must be the holder of an underground supervisor's certificate of competency, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners; or
- (c) if the State mining engineer so directs, having determined that the scope and nature of the underground mining operations so requires, must be the holder of a first class mine manager's certificate of competency under this Act, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners.
- (4) Notwithstanding subsection (1), a district inspector may agree in writing that, in the case of the mining operations of a small syndicate consisting of self-employed persons, an appointment of an underground manager need not be made.
- Section 35 amended: No. 16 of 2008 s. 11.1
- 36. Alternate and deputy underground managers, appointment and functions of
- (1) If the underground manager is to control and supervise the underground mining operations in accordance with a commute

Part 4 Management of mines

**Division 1** Duties of employers and managers

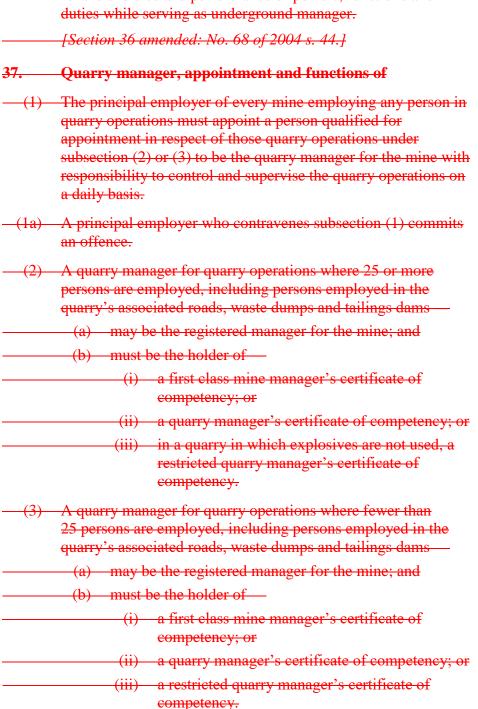
s. 36

schedule, the principal employer must appoint a person who is eligible to be appointed underground manager for those mining operations to be an alternate underground manager to assume the duties of the underground manager during the absences of the underground manager in accordance with that commute schedule and must inform the district inspector for the region in which the mine is situated of the name and address of the alternate manager before the schedule has effect.

- (2) The principal employer must inform the district inspector for the region in which the mine is situated within 24 hours (by electronic document transmission confirmed by hard copy within 7 days) of every appointment of an alternate underground manager for a mine.
- of a mine is incapacitated from performing his or her duties or is expected to be absent from the mine (otherwise than in accordance with a commute schedule) or unavailable to perform the duties of underground manager, the principal employer must appoint an eligible person to act as the deputy of the underground manager or alternate underground manager during the period of incapacity, absence or unavailability.
- $\frac{-[(4) deleted]}{}$
- (5) A person who contravenes subsection (1), (2) or (3) commits an offence.
- (6) A person is eligible to be appointed as a deputy underground manager if that person is eligible to be appointed underground manager for the mining operations or holds an underground supervisor's certificate of competency, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners, but a person who holds an underground supervisor's certificate of competency (or equivalent) is not eligible to be appointed or to hold office as deputy underground manager of a mine employing 25 or more persons underground for more than 4 weeks on any occasion without the approval of the State mining engineer.
- <del>- [(7) deleted]</del>
- (8) Each deputy underground manager and alternate underground manager appointed under this section is deemed to be the underground manager and has the powers, functions and duties of an underground manager under this Act for such periods of

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duty as the deputy or alternate has been appointed, but the appointment of a deputy or an alternate underground manager does not relieve the underground manager from responsibility for the exercise and performance of powers, functions and duties while serving as underground manager.



Part 4 Management of mines

**Division 1** Duties of employers and managers

s. 38



- (a) in the case of quarry operations in which fewer than 25 persons are employed and in which no explosives are used, the district inspector for the region in which the mine is situated may, upon the written application of the principal employer, agree that an appointment need not be made under this section of a quarry manager; and
- (b) in the case of small quarry operations where explosives are used, the State mining engineer may, upon the written application of the principal employer and if satisfied that the scale and nature of the quarry operation do not warrant control by a certificated quarry manager, agree that an appointment need not be made under this section of a quarry manager.
- (5) If the district inspector or the State mining engineer agrees under subsection (4) that a quarry manager need not be appointed in respect of quarry operations, the registered manager is responsible for the control and supervision of the quarry operations on a daily basis and for such duties as would otherwise have been performed by the quarry manager.
- (6) Notwithstanding subsection (1), a quarry manager need not be appointed for quarry operations that consist only of exploration operations unless the State mining engineer, having regard to the scale and nature of the exploration operations, directs that such an appointment must be made.

— [Section 37 amended: No. 16 of 2008 s. 12.]

# 38. Alternate and deputy quarry managers, appointment and functions of

- (1) If the quarry manager is to control and supervise the quarry operations in accordance with a commute schedule, the principal employer must appoint a person who is eligible to be appointed quarry manager for the quarry operations to be an alternate quarry manager to assume the duties of the quarry manager during the absences of the quarry manager in accordance with that commute schedule and must inform the district inspector for the region in which the mine is situated of the name and address of the alternate manager before the schedule begins.
  - (2) The principal employer must inform the district inspector for the region in which the mine is situate within 24 hours (by electronic document transmission confirmed by hard copy

- within 7 days) of every appointment of an alternate quarry manager for a mine.
- (3) If the quarry manager or alternate quarry manager of a mine is incapacitated from performing his or her duties or is expected to be absent from the mine (otherwise than in accordance with a commute schedule) or unavailable to perform the duties of quarry manager, the principal employer must appoint an eligible person to act as the deputy of the quarry manager or alternate quarry manager during the period of incapacity, absence or unavailability.
- [(4) deleted]
- (5) A person who contravenes subsection (1), (2) or (3) commits an offence.
- (6) A person is eligible to be appointed as a deputy quarry manager if that person is eligible to be appointed quarry manager for the quarry operations or holds a restricted quarry manager's certificate of competency, or a certificate that is accepted as equivalent to such a certificate by the Board of Examiners, but a person who holds a restricted quarry manager's certificate of competency (or equivalent) is not eligible to be appointed or to hold office as deputy quarry manager of a quarry operation employing 25 or more persons for more than 4 weeks on any occasion without the approval of the State mining engineer.
- $-\frac{(7)}{deleted}$
- (8) Each deputy quarry manager and alternate quarry manager appointed under this section is deemed to be the quarry manager and has the powers, functions and duties of a quarry manager under this Act for such periods of duty as the deputy or alternate has been appointed, but the appointment of a deputy or an alternate quarry manager does not relieve the quarry manager from responsibility for the exercise and performance of powers, functions and duties while serving as quarry manager.

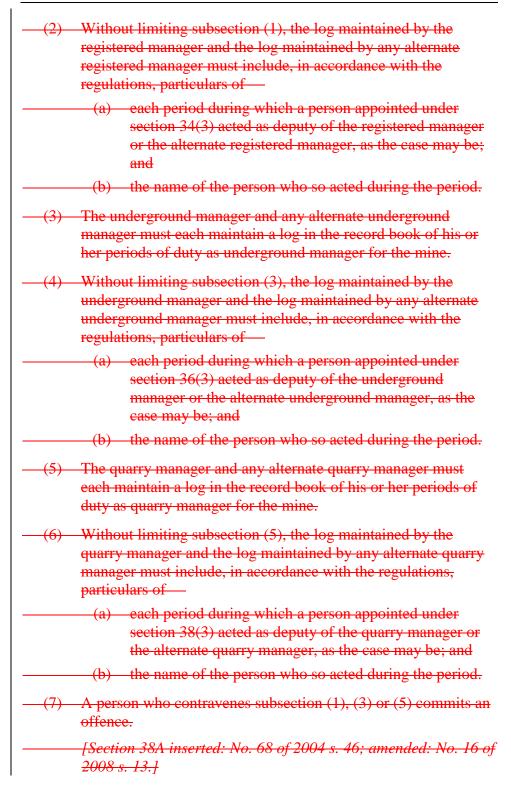
Section 38 amended: No. 68 of 2004 s. 45.]

#### 38A. Managers to record periods of duty in mine record book

(1) The registered manager for a mine and any alternate registered manager for a mine must each maintain a log in the record book of his or her periods of duty as registered manager for the mine.

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**Division 1** Duties of employers and managers

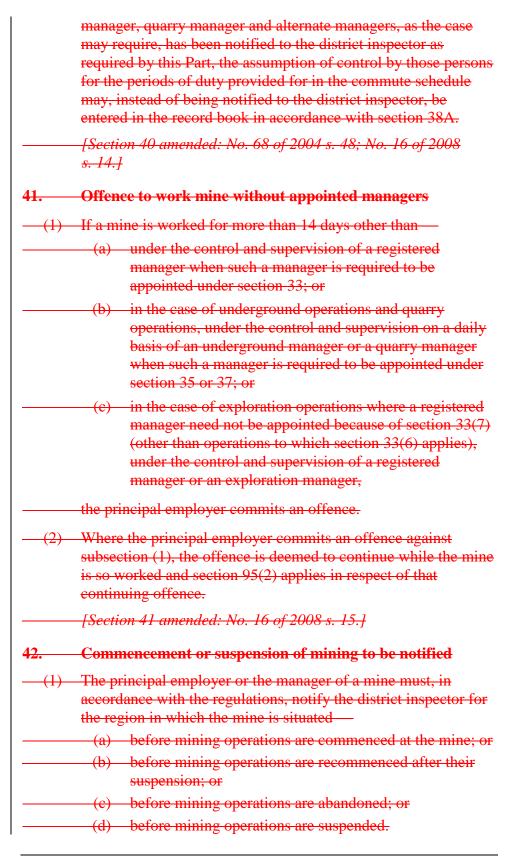


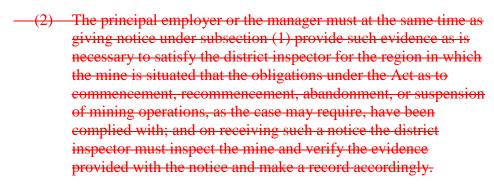
# 39. State mining engineer may require more than one manager at mine

- (1) If the State mining engineer is of the opinion that the mining operations of a mine, whether underground or quarry operations, extend over or are separated by such a distance that control and supervision on a daily basis by one underground manager or quarry manager is inadequate, the State mining engineer may, by written notice given to the principal employer of the mine, require the principal employer to appoint an underground manager or a quarry manager to control and supervise on a daily basis such of those operations as the State mining engineer may specify in the notice.
- (1a) A notice is sufficiently given to the principal employer at a mine for the purposes of subsection (1) if it is given to the registered manager of the mine.
- (2) A principal employer who fails to comply promptly with a requirement under subsection (1) commits an offence.
- [Section 39 amended: No. 68 of 2004 s. 47.]

#### 40. Managers to notify assumption of control

- (1) Every registered manager must, within 7 days of assuming the control and supervision of a mine as registered manager, notify the district inspector for the region in which the mine is situated accordingly and acknowledge, by signature in the notification, his or her appointment as registered manager.
- (2) Every underground manager and quarry manager must, within 7 days of assuming the control and supervision on a daily basis of underground operations or quarry operations as underground manager or quarry manager, as the case may be, notify the district inspector for the region in which the mine is situated accordingly and acknowledge, by signature in the notification, his or her appointment as underground manager or quarry manager.
- (2a) A person who contravenes subsection (1) or (2) commits an offence.
- (3) A district inspector must confirm in writing receipt of every notification that the inspector receives under this section.
- (4) Where a commute schedule is established and the assumption of control and supervision of the registered manager, underground





- (3) A principal employer or manager must procure the approval in writing of the State mining engineer before mining operations are commenced at a mine.
- (4) A principal employer or manager who contravenes subsection (1), (2) or (3) commits an offence.
- (5) In this section, *mining operations* do not include exploration operations.

### 43. Manager of mine, functions of

- (1) The manager of a mine has the management and control of the mine subject to any instructions given to the manager by or on behalf of the principal employer.
- (2) The manager of a mine must, so far as is practicable—
- (a) manage and control the operation of the mine in accordance with this Act; and
- (b) ensure that every person who is appointed to perform any duty under this Act understands the nature and scope of that duty; and
- (c) ensure that every person, other than the principal employer and persons acting on behalf of the principal employer, performs all duties imposed on that person under this Act.
- (3) A manager who contravenes subsection (2) commits an offence.

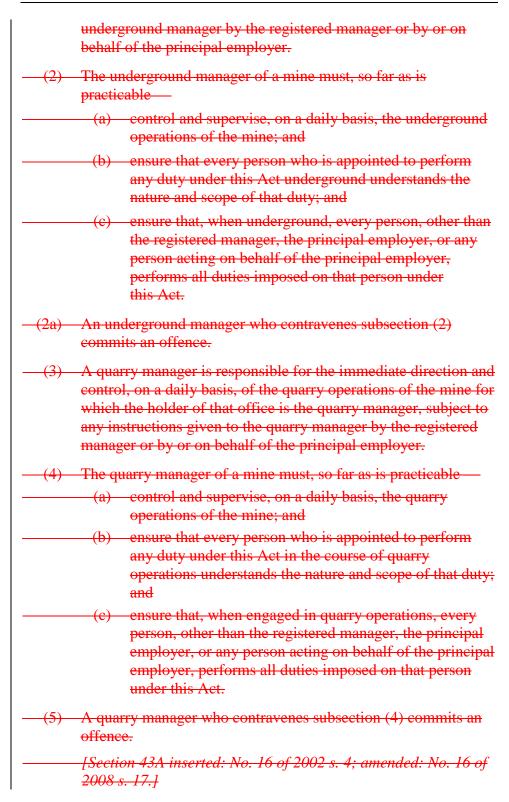
  [Section 43 amended: No. 16 of 2008 s. 16.]

# 43A. Underground manager or quarry manager, functions of

(1) An underground manager is responsible for the immediate direction and control, on a daily basis, of the underground operations of the mine for which the holder of that office is the underground manager, subject to any instructions given to the

Part 4 Management of mines

**Division 1** Duties of employers and managers





the purpose who appoints a person to perform duties or assist that person to perform duties imposed under this Act must make the appointment in writing and must provide the person appointed with a written summary of responsibilities and duties.

(2) A registered manager must appoint or ensure the appointment of such competent persons as are necessary to assist the registered manager to carry out his or her duties under this Act and, except where this Act or the regulations require the appointment to be notified in some other way, must record the facts and nature of each such appointment in the record book.

- (3) A person who is appointed as provided in subsection (1) or (2) must, within 7 days of the appointment, acknowledge his or her appointment by signing —
- (a) the record book next to the record of the appointment;
- (b) the instrument of appointment if there is such an instrument.
- (4) A person who contravenes subsection (1), (2) or (3) commits an offence.

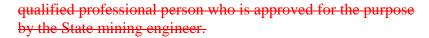
# 45. State mining engineer may require independent study at mine

- (1) If at any time the State mining engineer so requires by notice in writing, the principal employer or the manager of a mine must, without delay, procure and provide to the State mining engineer, at the principal employer's expense, an independent study
- (a) concerning safety and health at the mine, generally or in some particular respect specified by the State mining engineer, or safety of all or some specified part of the mine's plant, buildings, operations, or structures; or
- (b) with respect to an accident or a dangerous occurrence at the mine that an inspector is investigating.
- (2) The State mining engineer must state in any notice referred to in subsection (1) the reasons why the independent study is required.
- (3) An independent study required under this section must be prepared by a professionally qualified engineer or some other

Part 4 Management of mines

**Division 1** Duties of employers and managers

s. 46



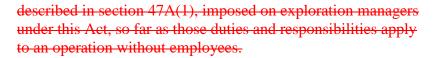
- (4) A principal employer or manager who contravenes subsection (1) commits an offence.
- ———— [Section 45 amended: No. 30 of 1995 s. 76(4).]

### 46. Principal employer's relationship to manager

- (1) If the manager of a mine so requests, the principal employer of the mine must confirm in writing an instruction given by or on behalf of the principal employer to the manager concerning the performance of any duty imposed on the manager under this Act.
- (2) The principal employer of a mine, or a person on behalf of the principal employer, must not instruct any person (other than the manager) at work at the mine concerning any duty imposed on the manager under this Act except with the consent of the manager or in an emergency.
- (3) If any instruction referred to in subsection (2) is given in an emergency, the principal employer must, if the manager of the mine so requests, confirm the instruction in writing.
- (4) The principal employer of a mine must not hinder or compromise the manager in the performance of a duty or responsibility imposed on the manager under this Act.
- (5) A principal employer who contravenes subsection (1), (2), (3), or (4) commits an offence.
- (6) A person purporting to act on behalf of a principal employer who contravenes subsection (2) commits an offence.

#### 46A. Exploration manager, appointment of

- (1) Before exploration operations begin at a mine, the principal employer must appoint an exploration manager for those operations and, while those operations continue, must ensure that an exploration manager is appointed for those operations.
- (2) If exploration operations are carried out by a syndicate or other association of persons in such a way that no person is employed in those operations, no exploration manager is required and the members of that entity or partnership or those persons are jointly and severally responsible for the performance of those duties and responsibilities which are, in the circumstances



- (3) Subsection (1) does not prevent the registered manager for the mine (if there is one) from being appointed as the exploration manager for those operations.
- (4) A principal employer who contravenes subsection (1) commits an offence.

[Section 46A inserted: No. 16 of 2008 s. 18.]

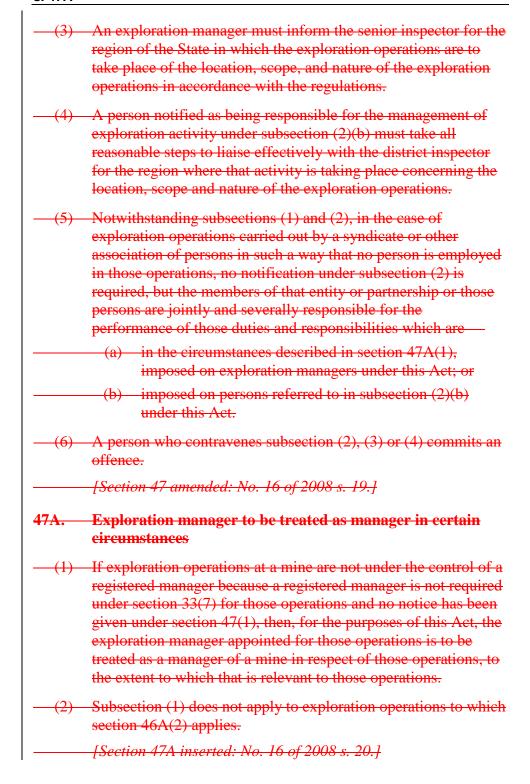
#### 47. Management of exploration operations

- (1) If exploration operations are carried out on a mining tenement which is held by a person who holds an adjoining mining tenement or mining tenements on one or more of which mining operations are being carried out, the registered manager of the mine at which those mining operations are being carried out may notify in writing the senior inspector responsible for the region of the State in which those exploration operations are being carried out that all such exploration operations are under the control of that registered manager.
- (2) If exploration operations at a mine are not under the control of a registered manager because a registered manager is not required under section 33(7) for those operations and, for a mine to which subsection (1) applies, no notice has been given under that subsection, the principal employer must
- (a) notify, without delay and in writing, the senior inspector responsible for the region of the State in which those exploration operations are being carried out of the name and address of the person who is the exploration manager for those operations; and
- (b) notify, without delay and in writing, that senior inspector of the name and address of the person who is responsible to the principal employer for the management of all activity in carrying out such exploration operations (and that person may, but need not, be the person notified under paragraph (a) as exploration manager); and
- (c) take all reasonable steps to ensure that the exploration operations are carried out in accordance with all applicable provisions under this Act.

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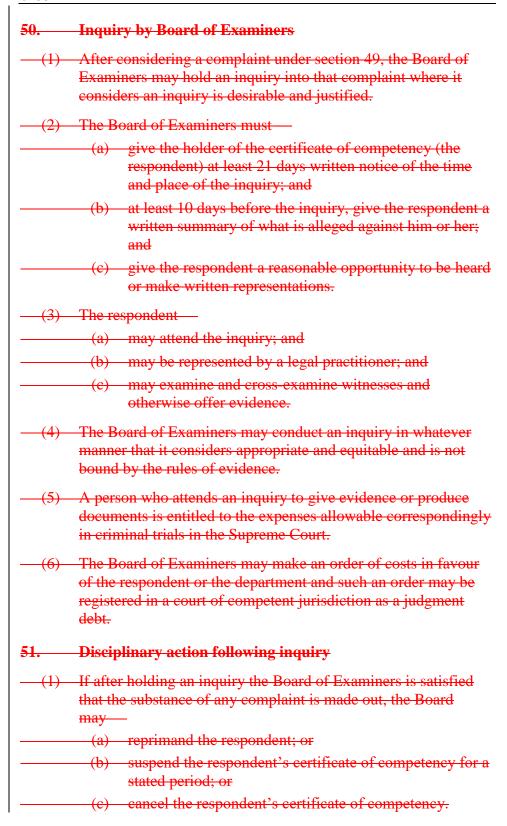


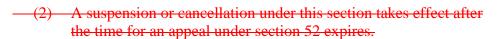
# **Division 2**—Certificates of competency

	Division 2 Certificates of competency
48.	Board of Examiners
<del>(1)</del>	There is established a Board of Examiners which is to be constituted in the manner provided in the regulations; and the regulations may provide for the Board to be constituted differently for different purposes.
<del>(2)</del>	The functions of the Board of Examiners are
	(a) to examine in accordance with the regulations the qualifications, experience and character of applicants for certificates of competency and issue such certificates where appropriate; and
	(b) to receive, consider and inquire into complaints concerning holders of certificates of competency and to suspend or cancel such certificates where appropriate; and
	(c) to perform such other functions as may be conferred in the regulations.
<del>(3)</del>	Members of the Board of Examiners are entitled to be paid such remuneration and travelling and other allowances as the Minister determines on the recommendation of the Public Sector Commissioner.
	[Section 48 amended: No. 39 of 2010 s. 89.]
49.	Complaint to Board of Examiners
<del>(1)</del>	An inspector or other interested person may lodge a written complaint with the Board of Examiners if the inspector or person has reason to believe that the holder of a certificate of competency
	(a) has acted in an incompetent, negligent, or improper manner in performing any duty under this Act; or
	(b) has been convicted of an offence under this Act; or
	(c) is incompetent or unfit to perform his or her duties.
<del>(2)</del>	A complaint under this section must specify the reasons for the belief on which the complaint is based.
<del>(3)</del>	On receiving a complaint, the Board of Examiners must meet promptly and decide whether to hold an inquiry.

Part 4 Management of mines

Division 2 Certificates of competency





- (3) When the Board of Examiners suspends or cancels a certificate of competency, the respondent must return the certificate to the Board within a period specified by the Board when suspending or cancelling the certificate.
- (4) A person who contravenes subsection (3) commits an offence.

  [Section 51 amended: No. 16 of 2008 s. 21.]

### 52. Appeal to Tribunal

- (1) A person whose certificate of competency is suspended or cancelled by the Board of Examiners may appeal in writing to the Tribunal within 30 days of receiving notice of the suspension or cancellation.
- (2) If an appeal is lodged, the suspension or cancellation does not take effect pending determination of the appeal unless the Tribunal orders otherwise.
- (3) The Tribunal may dismiss the appeal or may make any decision in relation to the matter of the appeal that the Board of Examiners might have made when inquiring into the complaint.
- [Section 52 amended: No. 68 of 2004 s. 85(1).]

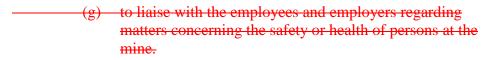
Part 5 Safety and health representatives and committees

**Division 1** Safety and health representatives

s. 53

# Part 5 — Safety and health representatives and committees [Heading amended: No. 30 of 1995 s. 76(1).] **Division 1** Safety and health representatives [Heading amended: No. 30 of 1995 s. 76(1).] Functions of representatives The functions of a safety and health representative are, in the interests of safety and health at the mine for which the representative was elected (a) to inspect the mine, or any part of the mine at such times as are agreed with the manager of the mine: or where the representative has not inspected the mine, or that part of the mine, in the preceding 30 days, at any time upon giving reasonable notice to the manager; and in the event of an accident, a dangerous occurrence, or a risk of imminent and serious injury to, or imminent and serious harm to the health of, any person, immediately to carry out an appropriate investigation in respect of the matter: and to keep informed as to the safety and health information provided by the manager of the mine or an employer in accordance with this Act and liaise as necessary with the department and other public sector and private bodies; and immediately to report to the employer concerned and to the manager of the mine any hazard or potential hazard to which any person is, or might be, exposed at the mine that comes to the representative's notice; and where there is a safety and health committee for the mine, to refer to that committee any matters that the representative thinks the safety and health committee should consider; and to consult and cooperate with the manager of the mine and employers on all matters relating to the safety or health of persons at the mine; and

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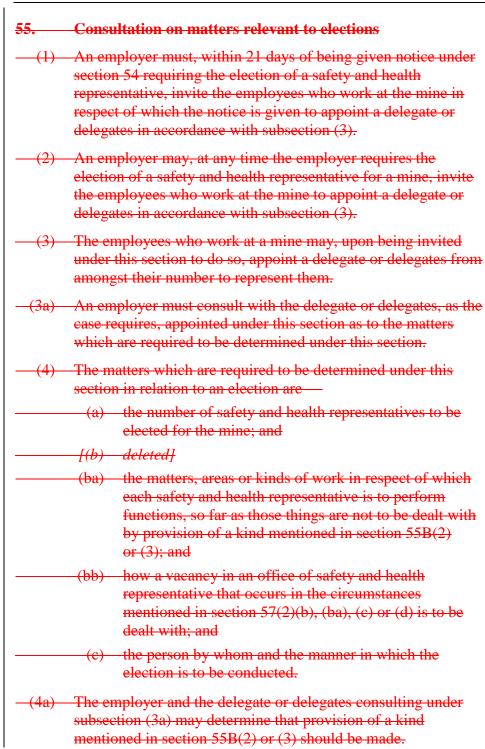
- (2) A safety and health representative for a mine has such powers as are necessary for the carrying out of the representative's functions under this Act and in particular, but without limiting the generality of the preceding statement, may, where requested to do so by an inspector, accompany an inspector while the inspector is carrying out, at the mine, any of the inspector's functions under this Act.
- A safety and health representative incurs no civil liability arising from the representative's performance of, or failure to perform, in good faith any function of a safety and health representative under this Act.
- If a scheme has been established under section 55A, the references in this section to the mine and a mine include
- (a) if the scheme applies to more than one mine, each mine to which the scheme applies; and
- (b) if under the scheme a safety and health representative is elected for a group of employees, each mine or part of a mine at which any member of the group works.
- [Section 53 amended: No. 30 of 1995 s. 61 and 76(2), (3) and (4); No. 68 of 2004 s. 52; No. 16 of 2008 s. 22; No. 33 of 2014 s. 11.1

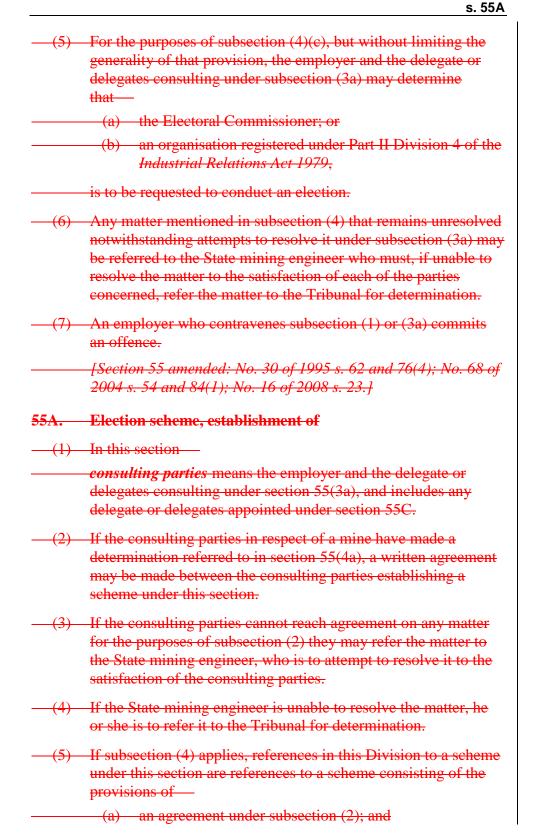
#### **Employee may require election of representatives**

- An employee who works at a mine may give notice to his or her employer at the mine requiring the election of a safety and health representative for the mine.
- The fact that a notice under subsection (1) requires an election for the mine at which the employee works does not prevent
- (a) the establishment of a scheme under section 55A that extends beyond that mine; or
- (b) the making of a determination under section 55(4a) for that purpose.
- [Section 54 amended: No. 30 of 1995 s. 76(4); No. 68 of 2004 s. 53.1

Part 5 Safety and health representatives and committees

**Division 1** Safety and health representatives





Part 5

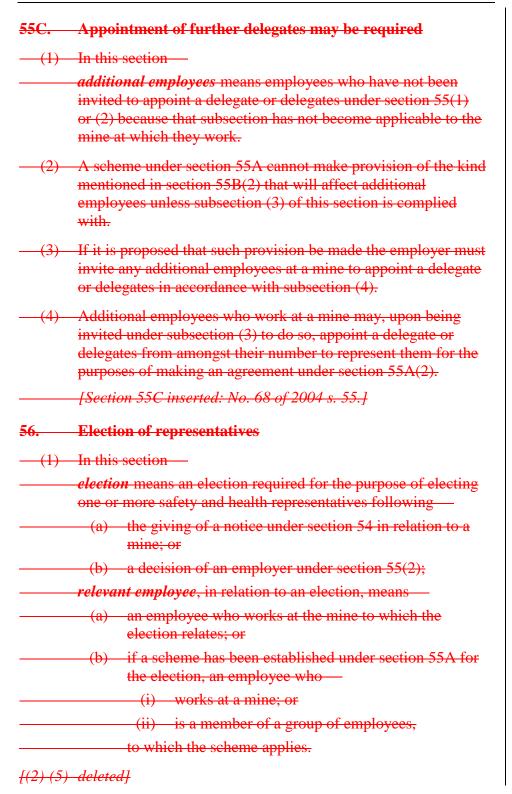
Division 1

s. 55B	·
	(b) the determination of the Tribunal under subsection (4).
	[Section 55A inserted: No. 68 of 2004 s. 55.]
55B.	What may be included in election scheme
<del>(1)</del>	In this section
	<i>contractor</i> and <i>principal</i> have the meanings given to those terms in section $15A(1)$ .
<del>(2)</del>	A scheme under section 55A (a <i>scheme</i> ) may include provision for the election of one or more safety and health representatives for—
	(a) one or more mines in addition to the mine referred to in section 55A(2); or
	(b) any group of employees of the employer concerned that constitutes a distinct unit of the employer's workforce,
	or may make provision for both of those matters, as the case may require.
<del>(3)</del>	A scheme may despite any provision of this Part
	(a) provide for
	(i) a contractor; and
	(ii) any person employed by a contractor,
	to be treated, for the purposes of this Part, as employees of the principal who engages the contractor; and
	(b) provide for the principal who engages a contractor to be treated, for the purposes of this Part, as the employer of
	(i) the contractor; and
	(ii) any person employed by the contractor.
<del>(4)</del>	A scheme may make provision for
	(a) the scheme to apply to any subsequent election of one or more safety and health representatives; and
	(b) the manner in which an amendment may be made to the scheme after it has been determined.

Safety and health representatives and committees

Safety and health representatives

[Section 55B inserted: No. 68 of 2004 s. 55.]

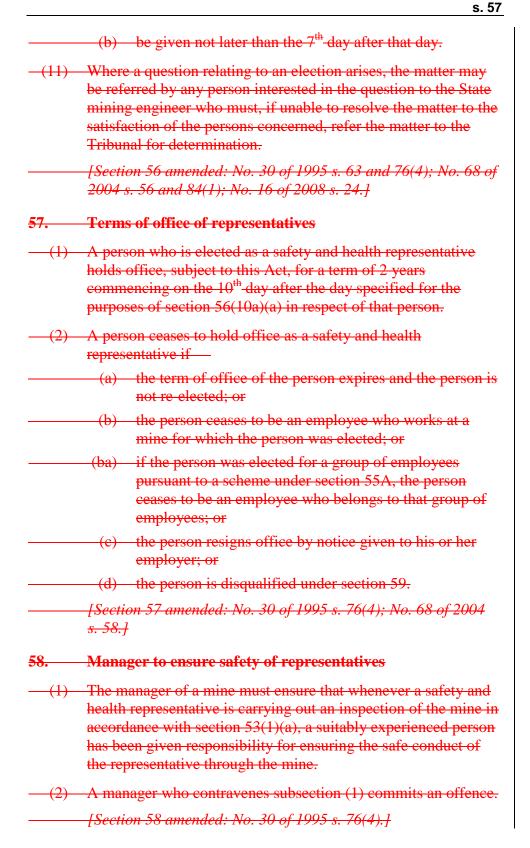


Part 5

Safety and health representatives and committees **Division 1** Safety and health representatives s. 56 Subject to this section, an election is to be conducted and safety and health representatives are to be elected in accordance with-(a) any determination under section 55; and if applicable, a scheme established under section 55A. If there is any inconsistency between a determination under section 55 and a scheme established under section 55A, the latter prevails. An election is to be by secret ballot. Every relevant employee is entitled to vote at an election. A person is not eligible to be elected as a safety and health representative for a mine unless the person (a) is a relevant employee; and (b) where the representative to be elected will be required to perform his or her functions in relation to underground mining operations, has had a total of at least 12 months' experience as a person engaged in underground mining operations. If, after the relevant steps provided for by or under this Division have been taken, only one eligible candidate is nominated for election to an office of safety and health representative, a ballot need not be held and that candidate is deemed to have been duly elected. The person conducting an election must (a) give notice of the result to a person elected as a safety and health representative; and (ii) the employer concerned; and give notice of the result to the State mining engineer in the form approved by the State mining engineer and provide such further particulars as are required by that form. A notice under subsection (10)(a) must be in writing and -(10a)

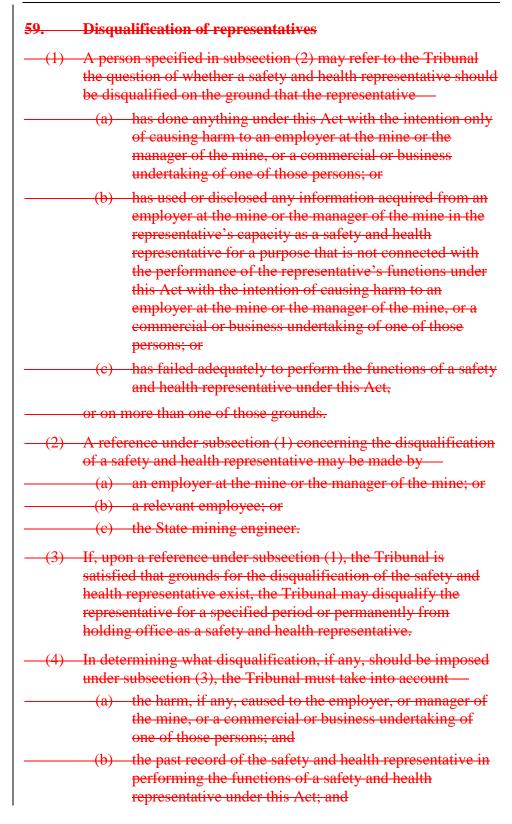
and

— specify the day on which the election was completed;

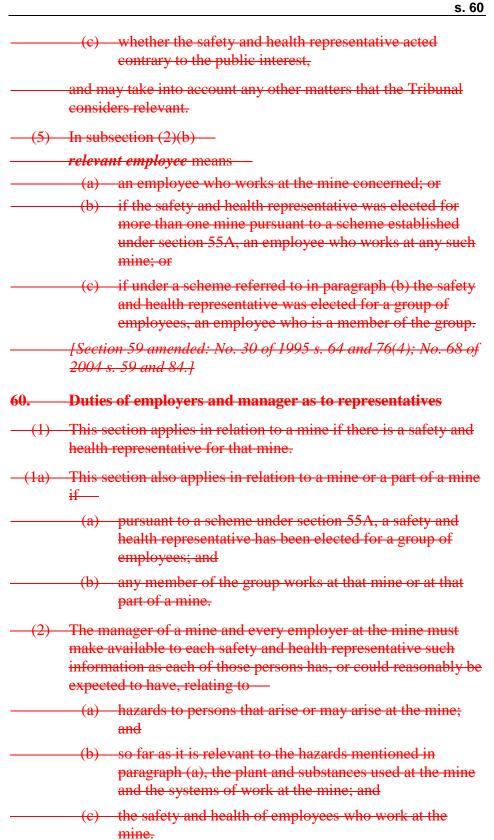


Part 5 Safety and health representatives and committees

**Division 1** Safety and health representatives

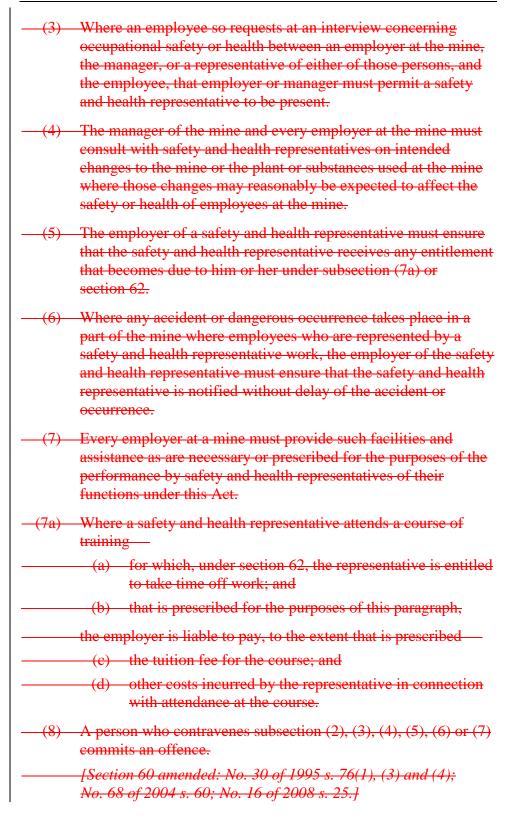


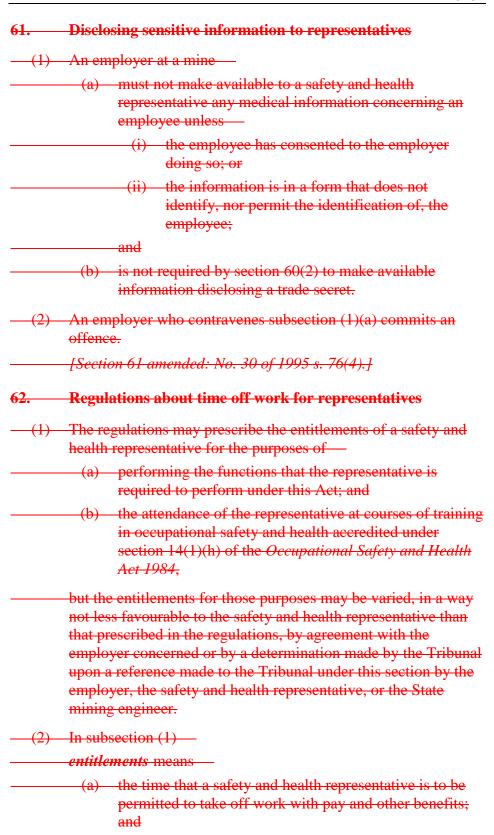
Part 5



Part 5 Safety and health representatives and committees

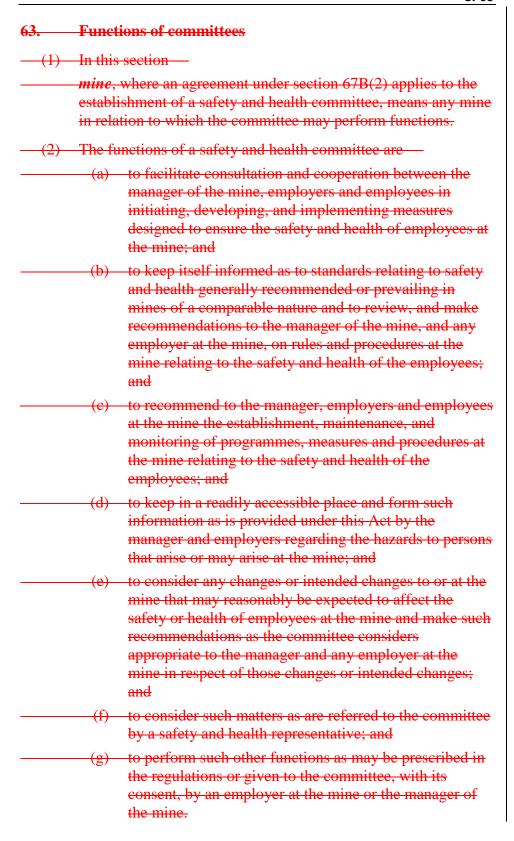
Division 1 Safety and health representatives





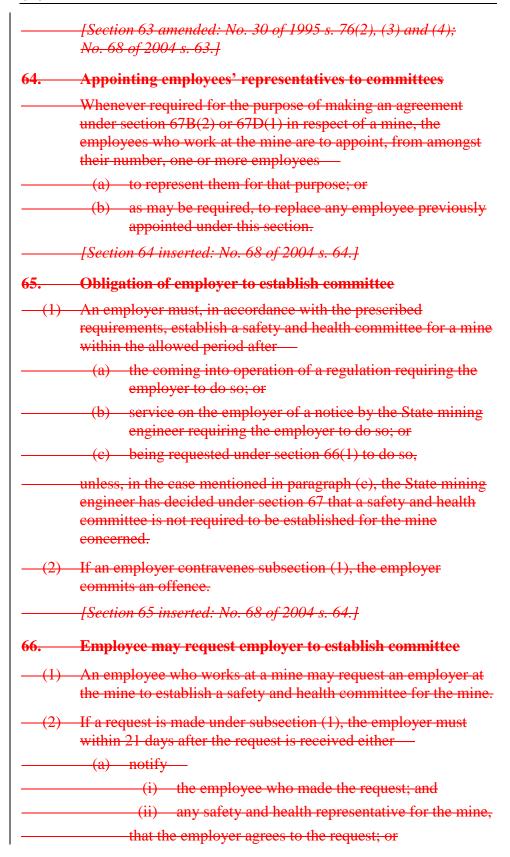
Part 5 Safety and health representatives and committees
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	(b) payments to which a safety and health representative is entitled for attendance at a course of training in his or her own time.
	[Section 62 amended: No. 30 of 1995 s. 65 and 76(1) and (4); No. 68 of 2004 s. 61 and 84.]
	Division 2 Safety and health committees
	[Heading amended: No. 57 of 1997 s. 88(1).]
62A.	Terms used
<del>(1)</del>	In this Division
	_allowed period means
	(a) 3 months; or
	(b) such longer period as the State mining engineer may allow on application by a consultation party;
	consultation party means a person who comes within section 67B(2)(a), (b) or (c);
	prescribed requirements means—
	(a) the provisions of
	(i) an agreement under section 67B(2); and
	(ii) section 67B(3);
	<del>and</del>
	(b) the terms of a determination of
	(i) the State mining engineer, under section 67C; or
	(ii) the Tribunal, under section 67F,
	in respect of the mine concerned or, if any agreement under section 67D applies, any mine concerned; and
	(c) any requirement of the regulations.
<del>(2)</del>	In this Division references to a safety and health representative
( )	for the mine or a safety and health representative for a mine
	include a safety and health representative elected for a group of
	employees pursuant to a scheme under section 55A if any member of the group works at the mine concerned.
	[Section 62A inserted: No. 68 of 2004 s. 62.]

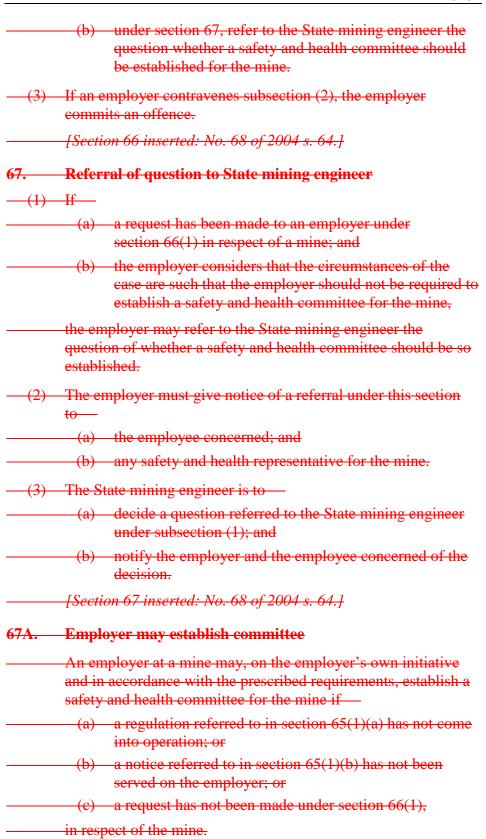


Part 5 Safety and health representatives and committees

**Division 2** Safety and health committees



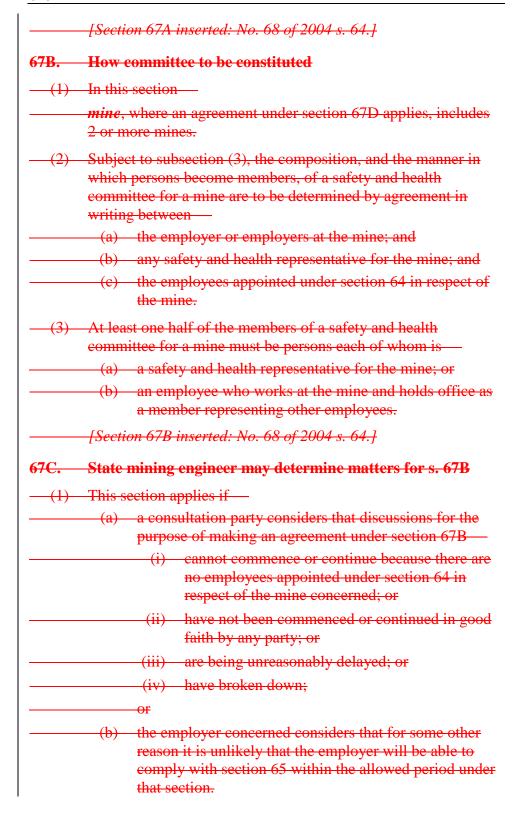
Safety and health committees



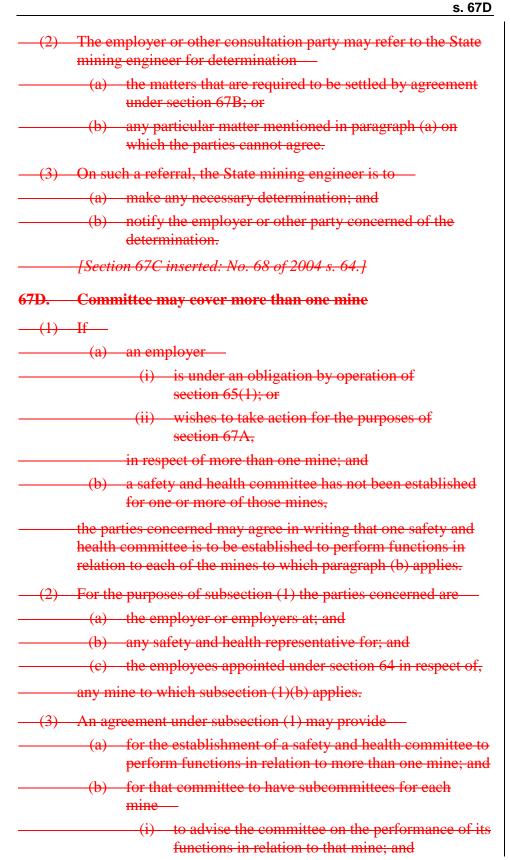
Part 5 Safety and health representatives and committees

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Safety and health committees



Part 5

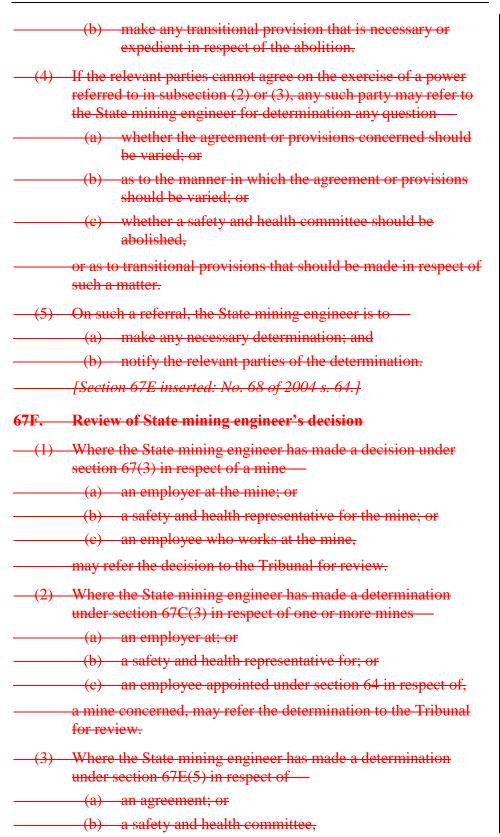
**Division 2** 

s. 67E (ii) to perform some or all of those functions as the delegate of the committee in accordance with the terms of a delegation to it. The composition of any subcommittee referred to in subsection (3) is to be determined by the parties referred to in subsection (2). [Section 67D inserted: No. 68 of 2004 s. 64.] Varying s. 67B agreement etc., abolition of committee (1) In this section relevant parties, in respect of a mine, means (a) the employer or employers at the mine; and (b) each member for the time being of the safety and health committee for the mine. (2) Where an agreement has been made under section 67B(2); or the matters referred to in section 67B(2) are governed by provisions consisting wholly of a determination made under section 67C, whether or not it has been varied or confirmed under section 67F; or partly of an agreement under section 67B(2) and partly of a determination made under section 67C, whether or not it has been varied or confirmed under section 67F. the relevant parties may by agreement in writing made between them-<del>(c) vary </del> (i) the agreement or provisions; or if applicable, the agreement or provisions as previously varied under this subsection; and make any transitional provision that is necessary or expedient in respect of the variation. Where a safety and health committee has been established for a mine, the relevant parties may by agreement in writing

Safety and health representatives and committees

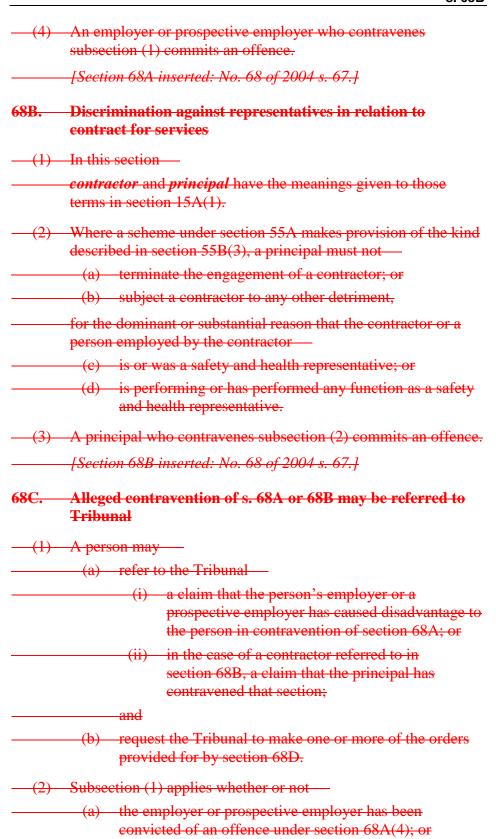
Safety and health committees

(a) abolish the committee: and



Part 5 Safety and health representatives and committees **Division 3** Discrimination s. 68 a relevant party, within the meaning in that section, in relation to the mine concerned may refer the determination to the Tribunal for review. The Tribunal may confirm, vary or revoke a decision or determination of the State mining engineer referred to it under this section. [Section 67F inserted: No. 68 of 2004 s. 64.] Procedure of committees <del>68.</del> Except as provided in the regulations, a safety and health committee may determine its own procedure. [Section 68 inserted: No. 68 of 2004 s. 66.] **Division 3** Discrimination Discrimination against representatives in relation to 68A. employment An employer or a prospective employer at a mine must not cause disadvantage to a person for the dominant or substantial reason that the person (a) is or was a safety and health representative; or (b) is performing or has performed any function as a safety and health representative.

- (2) For the purposes of subsection (1) an employer causes disadvantage to a person if the employer
  - (a) dismisses the person from employment; or
- (b) demotes the person or fails to give the person a promotion that the person could reasonably have expected; or
- (c) detrimentally alters the person's employment position; or
  - (d) detrimentally alters the person's pay or other terms and conditions of employment.
- (3) For the purposes of subsection (1) a prospective employer causes disadvantage to a person if the prospective employer refuses to employ the person.



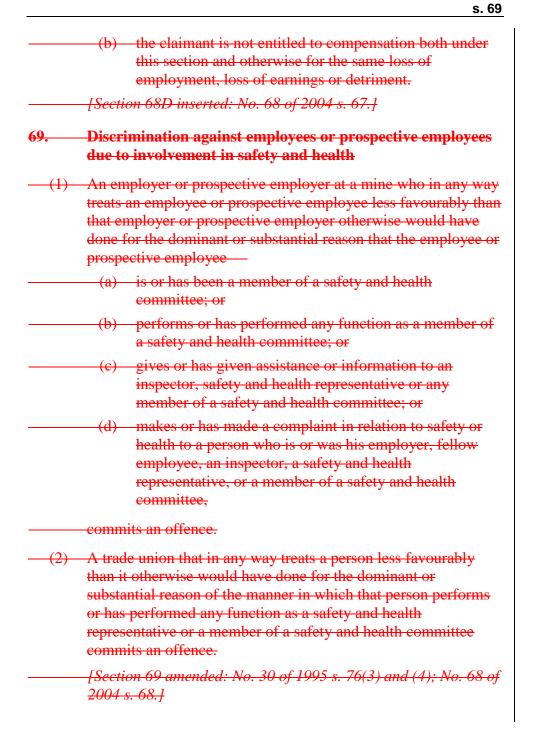
Part 5

**Division 3** Discrimination s. 68D the principal has been convicted of an offence under section 68B(3). A referral under subsection (1) may also be made on a person's behalf by an agent or legal practitioner referred to in section 31 of the Industrial Relations Act 1979. [Section 68C inserted: No. 68 of 2004 s. 67.] Remedies for contravention of s. 68A or 68B (1) If, on the hearing of a claim under section 68C(1)(a)(i), the Tribunal is satisfied that an employer or a prospective employer has contravened section 68A, the Tribunal may (a) in the case of an employer, order the employer to reinstate the claimant if the claimant was dismissed from employment; or to pay to the claimant such sum of money as the Tribunal considers adequate as compensation for loss of employment or loss of earnings; or (iii) both to reinstate the claimant and to pay the claimant the sum of money referred to in subparagraph (ii), as the Tribunal thinks fit; or in the case of a prospective employer, order that person to pay the claimant such sum of money as the Tribunal thinks fit. If, on the hearing of a claim under section 68C(1)(a)(ii), the Tribunal is satisfied that a principal has contravened section 68B, the Tribunal may order the principal to pay the claimant such sum of money as the Tribunal thinks fit. In determining a claim under section 68C(1)(a)(i) the Tribunal may make any order of the kind mentioned in section 23A(3), (4) and (5)(a) of the *Industrial Relations Act 1979* as if the claim were a claim to which section 23A of that Act applies. In the determination of the amount of compensation for any loss of employment, loss of earnings or detriment

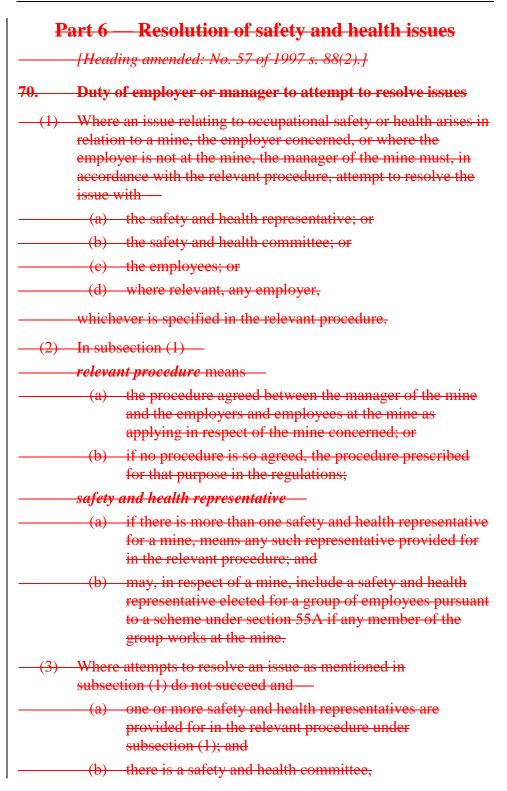
Safety and health representatives and committees

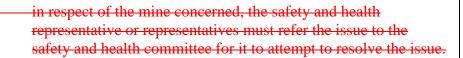
has obtained under another enactment; and

the Tribunal is to have regard to any redress the claimant



#### s. 70





- (4) A person who contravenes subsection (1) or (3) commits an offence.

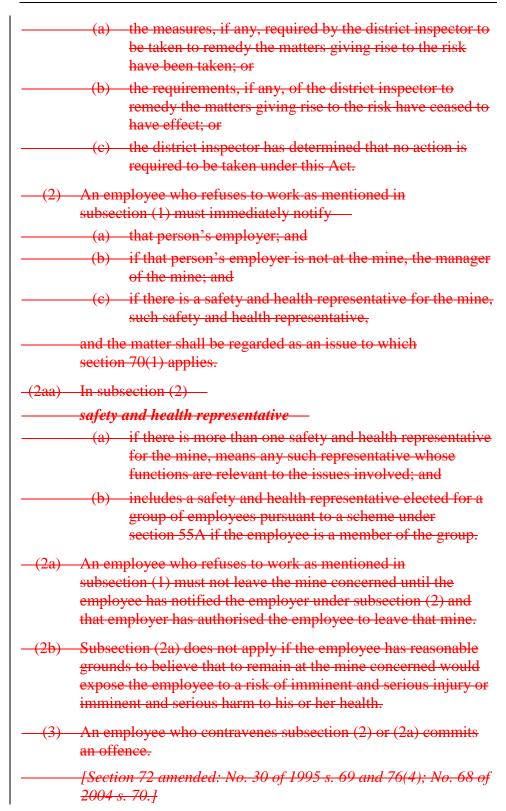
## 71. Inspector may be notified where issue unresolved

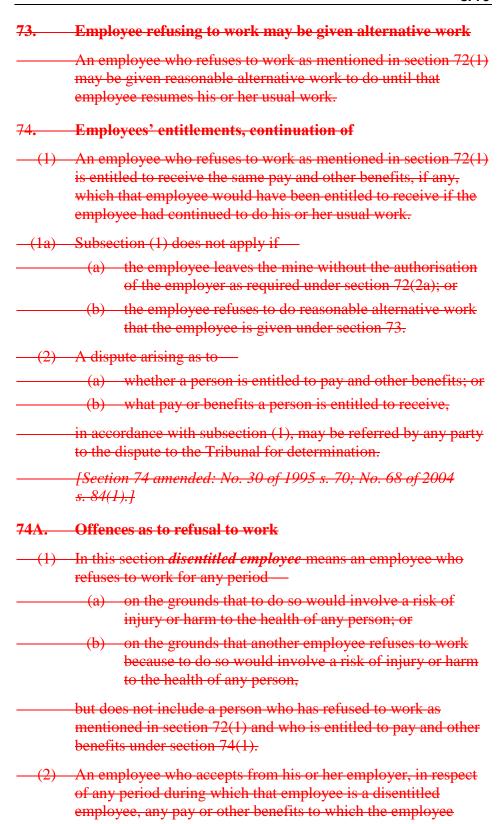
- (1) Where attempts to resolve an issue in accordance with section 70 are unsuccessful, and where there is a risk of imminent and serious injury to or imminent and serious harm to the health of any person, the manager of the mine, any employer or employee involved, or a safety and health representative may notify the district inspector for the region in which the mine is situated of the unresolved issue.
- (2) A district inspector, upon being notified of an unresolved issue under subsection (1), must attend without delay at the mine and either—
- (a) take such action under this Act, including action under Part 3 Division 3, as the inspector considers appropriate; or
- (b) determine that in the circumstances no action is required to be taken under this Act.

#### 72. Refusal by employee to work in certain cases

- (1) Nothing in section 71 prevents an employee from refusing to work where that employee has reasonable grounds to believe that to continue to work would expose that employee or any other person to a risk of imminent and serious injury or imminent and serious harm to the health of that employee or other person.
- (1a) In determining whether an employee has reasonable grounds for the belief referred to in subsection (1) it is relevant to consider whether a district inspector has attended the workplace upon being notified under section 71(1) of the risk and whether

#### s. 73





#### s. 74A



- (3) An employer who pays or provides to an employee, in respect of any period during which the employee is a disentitled employee, any pay or other benefits to which the employee would have been entitled if the employee had continued to work commits an offence.
- (4) In subsections (2) and (3) a reference to pay and other benefits does not include a reference to any payment or benefit prescribed for the purposes of this section.
- (5) This section has effect despite any provision of any other written law, including the *Industrial Relations Act 1979*, and any order, award or agreement made or registered under that Act.

[Section 74A inserted: No. 30 of 1995 s. 71.]



*Heading amended: No. 30 of 1995 s. 76(1).* 

### **Division 1** Health surveillance

## 75. Health surveillance of mine employees

- (1) The principal employer and every employer at a mine must establish and maintain a system for the surveillance of the health of their employees in accordance with the regulations.
- (2) The principal employer and every employer at a mine must provide information to the State mining engineer on the surveillance of the health of their employees in accordance with the regulations.
- (3) A principal employer or employer who contravenes subsection (1) or (2) commits an offence.
- (4) The regulations may provide that this section does not apply to any category of employees specified in the regulations.

#### Division 2 Accidents and occurrences

#### 76. Accidents involving disabling injury to be notified

- (1) Where a person suffers injury in an accident at a mine and is disabled by that accident from performing his or her duties of employment as they were being performed at the time the accident occurred, the manager must cause notice of the accident to be given
- (a) in accordance with the regulations, to the district inspector for the region in which the mine is situated; and
- (b) if the injured person so requests, to the secretary or local representative of a trade union of which that person is a member.
- (2) The notice required to be given under subsection (1) must—
- (a) if the injury appears to be serious, be given by the fastest practicable method of communication as soon as it is reasonably practicable to do so, and must subsequently be confirmed in writing; and

Accidents and occurrences

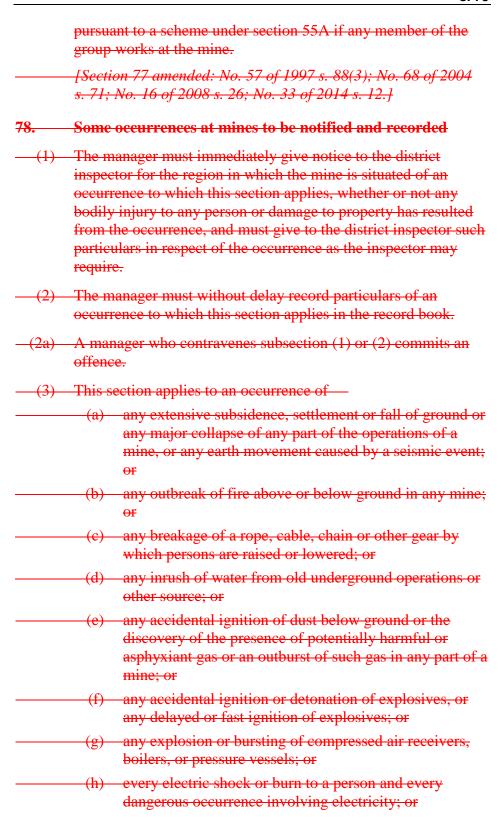
Part 7

**Division 2** 

s. 77 if the injury appears not to be serious, be given in writing at the end of the month. A manager who omits to give a notice required to be given by subsection (1); or fails without reasonable excuse to give a notice required to be given by subsection (1) in accordance with subsection (2). commits an offence, unless the required notice was given by the principal employer at the mine. An injury is a serious injury for the purposes of this section if the injury (a) results in the injured person being disabled from following his or her ordinary occupation for a period of 2 weeks or more; or involves unconsciousness arising from inhalation of fumes or poisonous gases or asphyxiation due to lack of oxygen or displacement of oxygen by an inert gas; or results from an accident, including fuming, arising out of the use of explosives. Section 76 amended: No. 7 of 2004 s. 70; No. 68 of 2004 s. 85A.1 Accident log book The manager must cause to be kept at the mine a book of a type approved by the State mining engineer and called the accident log book, and must after the occurrence of any accident cause a record of the accident to be entered without delay in the book. The manager must ensure that the accident log book is kept open at all reasonable times to the examination of an inspector, a safety and health representative for the mine, a representative of a trade union any member of which is employed at the mine, and of any other person authorised by the State mining engineer. A manager who contravenes subsection (1) or (2) commits an offence. In subsection (2) safety and health representative for the mine includes a safety

Specific duties relating to occupational safety and health

and health representative elected for a group of employees



Plans and records

Part 7

**Division 3** 

s. 79 (i) any incidence of a person being affected by poisoning or exposure to toxic gas or fumes; or any loss of control of heavy earth moving equipment, including failure of braking or steering. [Section 78 amended: No. 16 of 2008 s. 27.] Some potentially serious occurrences to be notified The manager must inform the district inspector for the region in which the mine is situated of any occurrence at the mine which in the manager's opinion had the potential to cause serious injury or harm to health (other than an occurrence referred to in section 78) although no injury or harm in fact happened. The manager must inform the district inspector as required by subsection (1) as soon as practicable after the manager has ascertained the facts and circumstances of the occurrence and, if required by the district inspector, must provide a written report on that occurrence. <del>80.</del> Union representative entitled to inspect place of accident involving union member Where an accident has occurred at a mine and any employee involved in that accident is a member of a trade union, a representative of that trade union is entitled to examine the place where the accident occurred. Place of accident not to be disturbed A person must not disturb a place at a mine where an accident causing death or serious injury has occurred except with a view to saving life or preventing injury to any person; <del>or</del> the permission of an inspector or, in the case of a fatal accident, the permission of a coroner. A person who contravenes subsection (1) commits an offence. [Section 81 amended: No. 10 of 1998 s. 51; No. 16 of 2008

Specific duties relating to occupational safety and health

s. 28.1

#### **Division 3**—Plans and records

## - Mines Survey Board The Mines Survey Board established and constituted under the Mines Regulation Act 1946 (repealed by this Act) is preserved and continues in existence for the purposes of this Act. The Mines Survey Board is to be constituted in the manner provided in the regulations. (3) The functions of the Mines Survey Board are (a) to advise the Minister on survey matters relating to mines and mining operations, including quarries and quarry operations; and (b) to examine the qualifications, experience and character of persons applying for authorised mine surveyor's certificates and issue such certificates where appropriate; and to deal with complaints concerning the holders of authorised mine surveyor's certificates and to suspend or cancel such certificates where appropriate. (4) Except as provided in the regulations, the Mines Survey Board may determine its own procedure. Members of the Mines Survey Board are entitled to be paid such remuneration and travelling and other allowances as the Minister determines on the recommendation of the Public Sector Commissioner. [Section 82 amended: No. 39 of 2010 s. 89.] 83. Complaint to Mines Survey Board (1) An inspector or other interested person may lodge a written complaint with the Mines Survey Board if the inspector or person has reason to believe that the holder of an authorised mine surveyor's certificate— (a) has acted in an incompetent, negligent, or improper manner in performing any duty under this Act; or (b) has been convicted of an offence under this Act; or is incompetent or unfit to perform his or her duties. (2) A complaint under this section must specify the reasons for the belief on which the complaint is based.

Part 7

**Division 3** Plans and records s. 84 On receiving a complaint, the Mines Survey Board must meet promptly and decide whether to hold an inquiry. **Inquiry by Mines Survey Board** After considering a complaint under section 83, the Mines Survey Board may hold an inquiry where it considers an inquiry is desirable and justified. The Mines Survey Board must give the holder of the authorised mine surveyor's certificate (the respondent) at least 21 days written notice of the time and place of the inquiry; and at least 10 days before the inquiry, give the respondent a written summary of what is alleged against him or her; give the respondent a reasonable opportunity to be heard or make written representations. The respondent (a) may attend the inquiry; and may be represented by a legal practitioner; and may examine and cross-examine witnesses and otherwise offer evidence. The Mines Survey Board may conduct an inquiry in whatever manner that it considers appropriate and equitable and is not bound by the rules of evidence. A person who attends an inquiry to give evidence or produce documents is entitled to the expenses allowable correspondingly in criminal trials in the Supreme Court. The Mines Survey Board may make an order of costs in favour of the respondent or the department and such an order may be registered in a court of competent jurisdiction as a judgment debt. Disciplinary action following inquiry If after holding an inquiry the Mines Survey Board is satisfied that the substance of any complaint is made out, the Board

Specific duties relating to occupational safety and health

(a) reprimand the respondent; or



(b) suspend the respondent's authorised mine surveyor's certificate for a stated period; or

(c) cancel the respondent's authorised mine surveyor's certificate.

(2) A suspension or cancellation under this section takes effect after the time for an appeal under section 86 expires.

(3) When the Mines Survey Board suspends or cancels an authorised mine surveyor's certificate, the respondent must return the certificate to the Board within a period specified by the Board when suspending or cancelling the certificate.

(4) A person who contravenes subsection (3) commits an offence.

| Section 85 amended: No. 16 of 2008 s. 29.1

## 86. Appeal to Tribunal

(1) A person whose authorised mine surveyor's certificate is suspended or cancelled by the Mines Survey Board may appeal in writing to the Tribunal within 30 days of receiving notice of the suspension or cancellation.

— (2) If an appeal is lodged, the suspension or cancellation does not take effect pending determination of the appeal unless the Tribunal orders otherwise.

(3) The Tribunal may dismiss the appeal or may make any decision in relation to the matter of the appeal that the Mines Survey Board might have made.

Section 86 amended: No. 68 of 2004 s. 86(1).1

#### 87. Plans of mines, keeping, producing etc.

— (1) The manager of a mine must procure and keep in the office of the mine accurate plans of the mine that

(a) in accordance with the regulations, are kept up to date; and

(b) are prepared on a scale that accords with good engineering practice; and

(c) contain the particulars required by the regulations.

(2) The manager of a mine must provide to the State mining engineer free of charge copies of the plans referred to in subsection (1) in accordance with the regulations.

Part 7 Specific duties relating to occupational safety and health

**Division 3** Plans and records

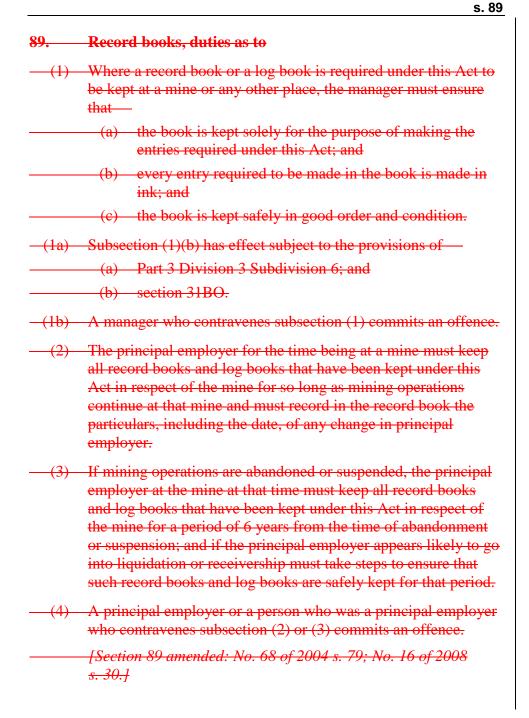
s. 88

- (3) If the State mining engineer has reason to believe that a plan provided under this section is inaccurate or incomplete, the State mining engineer may direct the principal employer to have a check survey conducted at the principal employer's own cost and the principal employer must comply with such a direction without delay.
- (4) The plans referred to in subsection (1) must be produced by the manager at the mine to an inspector or any other person authorised for the purpose in writing by the State mining engineer, and the manager must, if requested by that inspector or other person, mark on such plans the progress of the operations of the mine up to the time the plans are produced to the inspector or other person, and must allow that person to examine and take a copy of those plans.
- (5) A person who contravenes subsection (1), (2), (3), or (4) commits an offence.
- (6) A manager who knowingly causes or permits to be omitted from any plan prepared for the purposes of this section any part of the workings of a mine commits an offence.
- (7) This section does not apply to mines at which the mining operations consist only of exploration operations.

Section 87 amended: No. 33 of 2014 s. 13.]

#### 88. Plans of mine at its abandonment or suspension

- (1) Where mining operations are about to be abandoned or suspended, the principal employer, or if a receiver has been appointed in respect of a principal employer, that receiver, or the manager must cause to be prepared to the satisfaction of the district inspector for the region in which the mine is situated an accurate plan or plans of the mining operations to the time of abandonment or discontinuance and must furnish that plan or those plans to the State mining engineer in accordance with the regulations before the mining operations are abandoned or suspended.
- (2) A principal employer, receiver, or manager who contravenes subsection (1) commits an offence.



#### s. 91

## Part 8 — Ministerial safety and health powers

— [Heading amended: No. 30 of 1995 s. 76(1).]

[**90.** Deleted: No. 51 of 2004 s. 115(3).]

#### 91. Minister may publish inspector's report

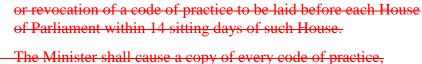
The Minister may cause a report prepared for the purposes of this Act by any inspector to be published at such time and in such manner as the Minister thinks appropriate.

#### 92. Delegation by Minister

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing delegate to any person any power or duty conferred or imposed on the Minister under this Act, other than this power of delegation.
- (2) Any act or thing done by a delegate under a delegation under this section has the same force and effect as if it had been done by the Minister.

## 93. Codes of practice

- (1) The Minister may approve a code of practice which has been considered by the Mining Industry Advisory Committee, for the purpose of providing practical guidance to employers, self-employed persons and employees and other persons on whom a duty of care is imposed under this Act.
- (2) A code of practice may consist of any code, standard, rule, specification or provision relating to occupational safety or health that is prepared by any appropriate body and may incorporate by reference any other such document either as it is in force at the time the code of practice is approved or as it may from time to time subsequently be amended.
- (3) The Minister may approve any revision of the whole or any part of a code of practice or revoke the approval of a code of practice.
- (4) The Minister shall cause to be published in the *Gazette* notice of every approval or revocation under this section and the approval or revocation comes into force on the day of such publication.
- (5) The Minister shall cause a copy of every code of practice, and any document incorporated in it by reference, and any revision



- (6) The Minister shall cause a copy of every code of practice, including any revision of the code and any document incorporated in it by reference, to be made available, without charge, for public inspection.
- (7) Where it is alleged in a proceeding under this Act that a person has contravened a provision of this Act or the regulations in relation to which a code of practice was in effect at the time of the alleged contravention
- (a) the code of practice is admissible in evidence in that proceeding; and
  - (b) demonstration that the person complied with the provision of the Act or regulations otherwise than observing that provision of the code of practice is a satisfactory defence.
- (8) A person is not liable to any civil or criminal proceeding only because the person has not complied with a provision of a code of practice.
- [Section 93 amended: No. 30 of 1995 s. 76(1) and (3); No. 51 of 2004 s. 115(4).]

[Parts 2-8 (s. 8A-93) deleted: Work Health and Safety Bill 2019 cl. 286.]

Part 9 Offences, penalties and legal proceedings

**Division 1** General provisions

s. 94

## Part 9 — Offences, penalties and legal proceedings

## **Division 1** — General provisions

[Heading inserted: No. 68 of 2004 s. 28.]

#### 94. General penalty

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

[Section 94 inserted: No. 68 of 2004 s. 29.]

#### 95. Continuing offences

- (1) Where an offence is committed by a person by reason of the contravention of a provision of this Act under which the person is required or directed to do any act or thing, or to refrain from doing any act or thing, that offence is deemed to continue so long as the act or thing so required or directed remains undone, or continues to be done, as the case may be.
- (2) Where an offence is deemed to continue, the person who committed the offence, whether by act or omission, commits an additional offence on each day during which the offence is deemed to continue and is liable to a fine not exceeding
  - (a) \$800, where the offence is committed by a person as an employee; and
    - (b) \$4 000, where the offence is committed by an individual and paragraph (a) does not apply; and
    - (c) \$8 000, where the offence is committed by a corporation,

for every day on which the offence is so continued.

[Section 95 amended: No. 30 of 1995 s. 72; No. 68 of 2004 s. 30; No. 17 of 2018 s. 4.]

[94, 95. Deleted: Work Health and Safety Bill 2019 cl. 287.]

### 96. Prosecutions, who may commence etc.

(1) Every proceeding for an offence under this Act may be instituted and conducted by an inspector or by some member of the Public Service authorised in writing for the purpose by the Minister.

(2) An inspector or officer is not to be personally responsible for any costs incurred by or awarded against the inspector or officer in connection with any proceeding for an offence under this Act.

## 96A. Prosecutions to be determined by health and safety magistrate

(1) In this section —

health and safety magistrate means a person holding office as a health and safety magistrate under the Work Health and Safety Act 2019 Schedule 2 Division 6.

- (2) Every proceeding for an offence under this Act is to be heard and determined by a health and safety magistrate.
- (3) When exercising jurisdiction under subsection (2) a health and safety magistrate constitutes a court of summary jurisdiction.

  [Section 96A inserted: Work Health and Safety Bill 2019]
  cl. 288.]

## 96A. Prosecutions to be determined by safety and health magistrate

- (1) Every proceeding for an offence under this Act is to be heard and determined by a safety and health magistrate.
- (2) When exercising jurisdiction under subsection (1) a safety and health magistrate constitutes a court of summary jurisdiction.

<u>[Section 96A inserted: No. 30 of 1995 s. 73; amended: No. 68 of 2004 s. 81.]</u>

## 97. Time limit for prosecutions

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

[Section 97 inserted: No. 68 of 2004 s. 31(1).]

## 98. Evidentiary provisions

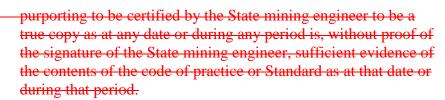
- (1) In a proceeding for an offence under this Act, an averment in the charge that at a particular time
  - (a) a particular place was a mine;
  - (b) a particular person was an employer at a particular mine or was the principal employer at a mine;
- (ba) a particular person was an employer of a particular person or particular persons at a mine;

Part 9 Offences, penalties and legal proceedings **Division 1** General provisions s. 98 (bb) a particular person was a principal or a contractor, within the meaning given by section 15A(1), at a mine; a particular person was, at a mine, a principal, within the meaning given by section 15A(1), in relation to a particular contractor or particular contractors within the meaning so given; a particular person was the registered manager of a mine or the underground manager or quarry manager for a mine or had been appointed to and held some other position at a mine: -a notice required under this Act to be given had been given or had not been given; a prescribed fee had not been paid; a particular person was an employee or an inspector, is deemed to have been proved in the absence of proof to the contrary. In a proceeding for an offence under this Act, proof is not required as to any of the following matters, unless evidence is given to the contrary (a) a delegation by the Minister to the State mining engineer or by the State mining engineer to any person for a particular purpose or to do a particular act; the authority of an inspector or a member of the Public Service to institute and conduct a proceeding for an offence under this Act. In any proceeding in which it is necessary or expedient to prove the service or content of any notice or other document required or authorised to be served under this Act, the notice or document and its proper service may be sufficiently proved by the production of a purported copy of the notice or document bearing a certificate signed by a member of the Public Service authorised by the State mining engineer that the copy is a true copy of the original and that the original was served in the manner set out in the certificate. In proceedings for an offence against this Act, production of a <del>copy of \_\_\_\_</del>

(c) an Australian/New Zealand Standard,

(a) a code of practice; or

(b) an Australian Standard; or



[Section 98 amended: No. 16 of 2002 s. 5; No. 68 of 2004 s. 32; No. 84 of 2004 s. 80; No. 33 of 2014 s. 17.]

#### 99. Liability of employers, managers etc. for offences by others

- (1) Where an offence under this Act, other than an offence to which section 99A applies, is committed by a person and an employer or manager is proved knowingly to have permitted or employed that person to commit the offence, or where the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an employer, manager or supervisor, or any person who was purporting to act in that capacity, he or she as well as the person who committed the offence commits the offence and each of them is severally liable to conviction.
- (2) In this section, *manager* includes underground manager, quarry manager, and their alternates and deputies, underground superintendent, foreman (in relation to an underground metal mine), and deputy (in relation to an underground coal mine).

<u> [Section 99 amended: No. 68 of 2004 s. 33.]</u>

## 99A. Liability of employers, managers etc. for offences by others involving gross negligence

- (1) In this section
  - manager has the meaning given by section 99(2);
  - superior officer, except as otherwise provided, means an employer, manager or supervisor or a person purporting to act in that capacity.
- (2) Where a person commits an offence under section 9A(1), 10A(1), 12A(1) or 15(1), the following provisions apply
- (a) a superior officer in relation to the person also commits that offence if it is proved that
  - (i) the superior officer, being an employer or manager or a person purporting to act in that capacity, knowingly permitted or employed the person to commit the offence; or

Part 9 Offences, penalties and legal proceedings

Division 1 General provisions

s. 100

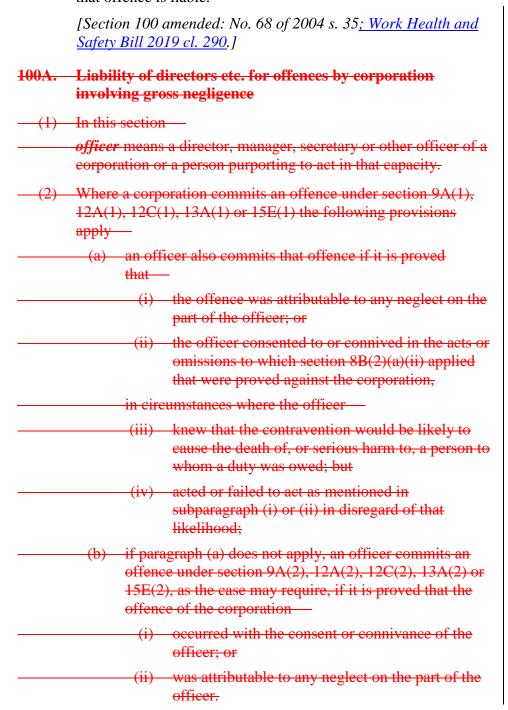
(ii)	the offence was attributable to any neglect on the
, ,	part of the superior officer; or
— (iii)	the superior officer consented to or connived in the acts or omissions to which section 8B(2)(a)(ii) applied that were proved against the person,
in circ	sumstances where the superior officer—
<del>(iv)</del>	knew that the contravention would be likely to cause the death of, or serious harm to, a person to whom a duty was owed; but
<del>(v)</del>	acted or failed to act as mentioned in subparagraph (i), (ii) or (iii) in disregard of that likelihood;
relatio sectio	ngraph (a) does not apply, a superior officer in on to the person commits an offence under in 9A(2), 10A(2), 12A(2) or 15(2), as the case may e, if it is proved that
——————————————————————————————————————	the superior officer, being an employer or manager or a person purporting to act in that capacity, knowingly permitted or employed the person to commit the offence; or
(ii)	the offence of the person
	(I) occurred with the consent or connivance of the superior officer; or
	(II) was attributable to any neglect on the part of the superior officer.
[Section 99A inserted: No. 68 of 2004 s. 34.]	
[98-99A. Deleted: Work Health and Safety Bill 2019 cl. 289.]	

#### 100. Liability of directors etc. for offences by corporation

- (1) Where a corporation commits an offence under this ActAct, other than an offence to which section 100A applies, and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other officer of the body, or any person who was purporting to act in any such capacity, that person, as well as the corporation, commits that offence.
- (2) Where the affairs of a corporation are managed by its members, subsection (1) <u>applies and section 100A apply</u> in relation to the acts and defaults of a member in connection with the member's

functions of management as if the member were a director of the corporation.

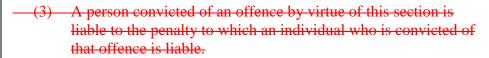
(3) A person convicted of an offence by virtue of this section is liable to the penalty to which an individual who is convicted of that offence is liable.



Part 9 Offences, penalties and legal proceedings

**Division 2** Undertaking by offender in lieu of payment of fine

s. 101



Section 100A inserted: No. 68 of 2004 s. 36.1

#### 101. False or misleading information

A person who knowingly or recklessly

- (a) in relation to an application for a certificate of competency or an authorised mine surveyor's certificate under this Act; or
- (b) in response to a requirement, direction, inquiry, or request made by an inspector for the purposes of this Act,

makes a statement, or furnishes or causes to be furnished any report, or makes an entry in a record or log book that is false or misleading because of the inclusion in the statement, report or book of false or misleading matter or of the omission from the statement, report or book of any matter that is required or may be material commits an offence.

| Section 101 amended: No. 33 of 2014 s. 17.1

[100A, 101. Deleted: Work Health and Safety Bill 2019 cl. 291.]

#### 101A. No double jeopardy

A person is not liable to be punished twice under this Act in respect of any act or omission.

[Section 101A inserted: No. 68 of 2004 s. 37.]

# Division 2 Undertaking by offender in lieu of payment of fine [Heading inserted: No. 68 of 2004 s. 38.]

#### 101B. Terms used

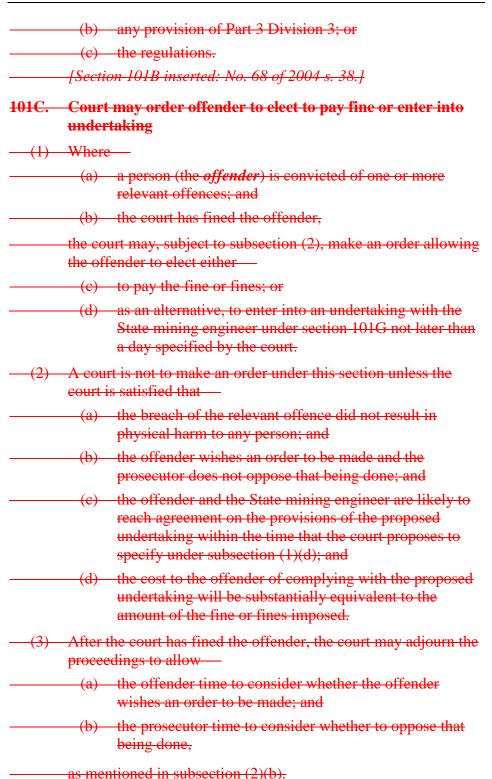
In this Division

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

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

relevant offence means an offence against

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



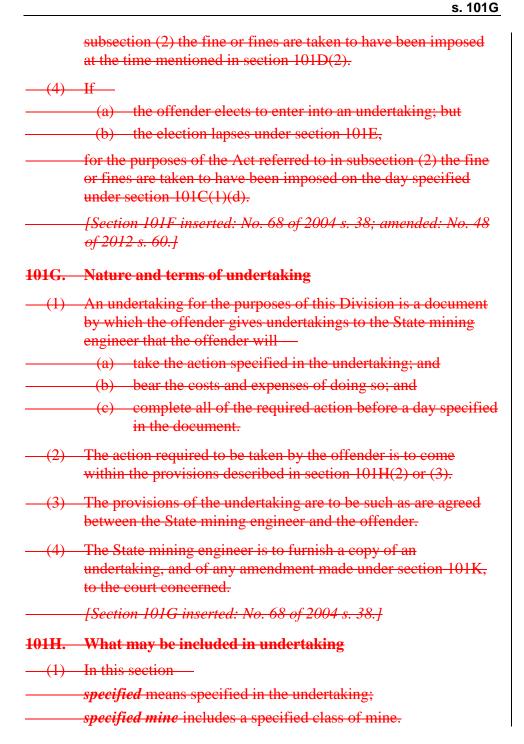
Part 9 Offences, penalties and legal proceedings **Division 2** Undertaking by offender in lieu of payment of fine s. 101D (4) Nothing in this Division limits the powers of a court under the Sentencing Act 1995. ISection 101C inserted: No. 68 of 2004 s. 38.1 101D. Making of election An election is made, pursuant to an order under section 101C(1), by the offender (a) lodging an election in writing with the court in which the order was made; and serving a copy of the election on the State mining engineer, not later than 28 days after the day on which the order was made. (2) If (a) an order is made under section 101C(1); but the offender fails to make an election in accordance with subsection (1). the offender is taken, at the expiry of the period mentioned in subsection (1), to have elected to pay the fine or fines. [Section 101D inserted: No. 68 of 2004 s. 38.] **Failure to enter into undertaking** An election under section 101D to enter into an undertaking lapses if the undertaking is for any reason not entered into before the time allowed under section 101C(1)(d). [Section 101E inserted: No. 68 of 2004 s. 38.] 101F. Time for payment of fines

- (1) The liability of the offender to pay the fine or fines in connection with which an order is made under section 101C(1) is suspended by the making of the order.
- (2) If the offender elects to pay the fine or fines, for the purposes of the Fines, Penalties and Infringement Notices Enforcement Act 1994 the fine or fines are taken to have been imposed on the day on which the election is made.
- (3) If the offender is taken by section 101D(2) to have elected to pay the fine or fines, for the purposes of the Act referred to in

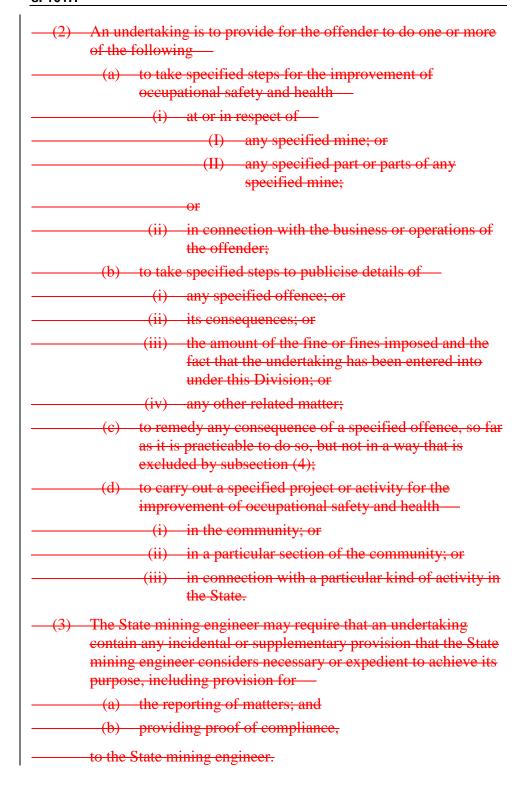
Offences, penalties and legal proceedings
Undertaking by offender in lieu of payment of fine

Division 2

Part 9



Part 9 Offences, penalties and legal proceedings
Division 2 Undertaking by offender in lieu of payment of fine
s. 101H



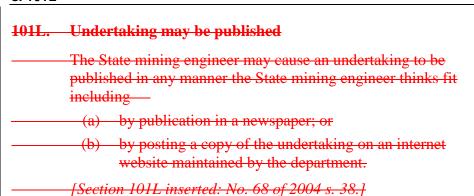
<del>(4)</del>	An undertaking cannot provide for the offender to take any action—
	(a) that the offender has a duty to take in order to comply with any provision of this Act; or
	(b) for the taking of which an improvement notice or a prohibition notice could be issued under Part 3 Division 3.
	[Section 101H inserted: No. 68 of 2004 s. 38.]
<del>1011.</del>	Effect of undertaking
	The liability of the offender to pay the fine or fines in connection with which the undertaking is given—
	(a) is suspended by the giving of the undertaking; and
	(b) is cancelled by the full discharge of the offender's obligations under the undertaking.
	-{Section 1011 inserted: No. 68 of 2004 s. 38.}
<del>101J.</del>	Failure to comply with undertaking
<del>(1)</del>	An offender commits an offence if the offender fails to fully discharge the obligations under an undertaking before the day specified in the undertaking in accordance with section 101G(1)(c).
<del>(2)</del>	A court that convicts an offender of an offence against subsection (1) must order that the fine or fines to which the undertaking relates be paid in addition to any penalty imposed for the offence against subsection (1).
<del>(3)</del>	For the purposes of the <i>Fines, Penalties and Infringement Notices Enforcement Act 1994</i> , the fine or fines to which an order under subsection (2) applies are taken to be imposed on the day on which that order is made.
	[Section 101J inserted: No. 68 of 2004 s. 38; amended: No. 48 of 2012 s. 61.]
<del>101K.</del>	Amendment of undertaking
	An undertaking may be amended by an instrument in writing signed by the offender and the State mining engineer.
	[Section 101K inserted: No. 68 of 2004 s. 38.]

#### Mines Safety and Inspection Act 1994

Part 9 Offences, penalties and legal proceedings

**Division 2** Undertaking by offender in lieu of payment of fine

s. 101L



# Division 3 Jurisdiction of Occupational Safety and Health Tribunal

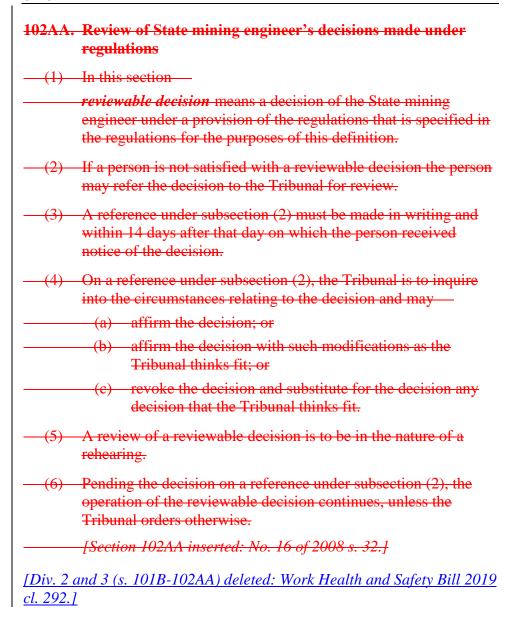
**Health Tribunal** Heading inserted: No. 68 of 2004 s. 82.1 102. Determination of certain matters etc. by Tribunal (1) This section applies where (a) under section 31BA, 55(6), 55A(4), 56(11), 59(1), 62(1), 67F(1), (2) or (3), 74(2) or 102AA(2) a matter is referred to the Tribunal; or (b) under section 68C a claim is referred to the Tribunal; or (c) under section 52 or 86 a person appeals to the Tribunal. (2) Where this section applies (a) the matter, claim or appeal may be heard and determined: and (b) a determination made by the Tribunal on the matter, claim or appeal has effect, and may be (i) appealed against; and (ii) enforced, as if it were (c) a matter in respect of which jurisdiction is conferred on the Tribunal by Part VIB of the Occupational Safety and Health Act 1984 (Part VIB); or (d) a determination made for the purposes of Part VIB. (3) The provisions of (a) Part VIB: and (b) the *Industrial Relations Act 1979* applied by that Part, have effect for the purposes of this section with all necessary changes. (4) In the operation of subsection (3), section 51J(1) of the Occupational Safety and Health Act 1984 has effect as if it were expressed to apply where a matter has been referred to the Tribunal for determination under section 55(6), 55A(4), 56(11), 62(1), 67F or 74(2) of this Act. [Section 102 inserted: No. 68 of 2004 s. 83(1); amended: No. 16 of 2008 s. 31.1

#### Mines Safety and Inspection Act 1994

Part 9 Offences, penalties and legal proceedings

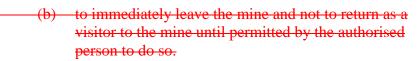
**Division 3** Jurisdiction of Occupational Safety and Health Tribunal

s. 102AA



## Part 10 — Final provisions

<del>102A.</del>	Visitors to mines to comply with directions
<del>(1)</del>	In this section
	authorised person, in relation to a mine, means
	(a) a managerial officer at the mine; and
	(b) an employer of any employee at the mine, including a person who is an employer by operation of section 15A, 15B or 15C; and
	(c) any self-employed person carrying out work at the mine;
	conduct includes a failure to do a particular act or thing;
	<i>employee</i> includes a person who is an employee by operation of section 15A, 15B or 15C;
	managerial officer, in relation to a mine, means—
	(a) the principal employer at the mine; and
	(b) the registered manager and any underground manager or quarry manager at the mine; and
	(c) a person appointed as an alternate or deputy of an officer referred to in paragraph (b).
<del>(2)</del>	Subsection (3) applies if
	(a) a person (a <i>visitor</i> ) is at a mine otherwise than in the capacity of
	(i) a managerial officer; or
	(ii) an employer; or
	<del>(iii) an employee; or</del>
	(iv) a self employed person;
	<del>and</del>
	(b) an authorised person believes on reasonable grounds that
-	(i) any conduct of the visitor at the mine; or
	(ii) the presence of the visitor at the mine or a particular part of the mine,
	constitutes a hazard to any person.
<del>(3)</del>	The authorised person may direct the visitor
	(a) to immediately cease engaging in the conduct concerned; or



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

[Section 102A inserted: No. 68 of 2004 s. 91.]

## 103. Exemption from personal liability

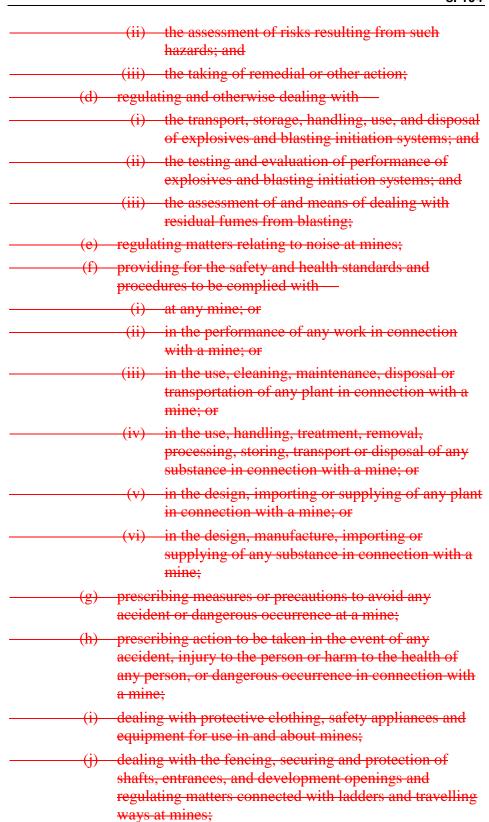
A person who is or was the State mining engineer, the deputy of the State mining engineer, the State coal mining engineer, an inspector, or a member of the Board of Examiners, the Mines Survey Board, or the Mining Industry Advisory Committee is not personally liable for any matter or thing done or omitted to be done in good faith in the intended performance of any duty or the intended exercise of any power under this Act.

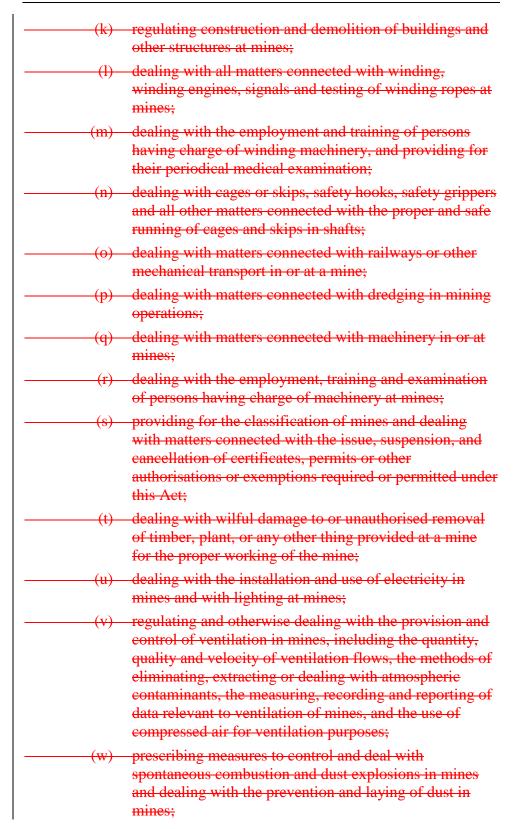
[Section 103 amended: No. 30 of 1995 s. 76(1); No. 51 of 2004 s. 115(5).]

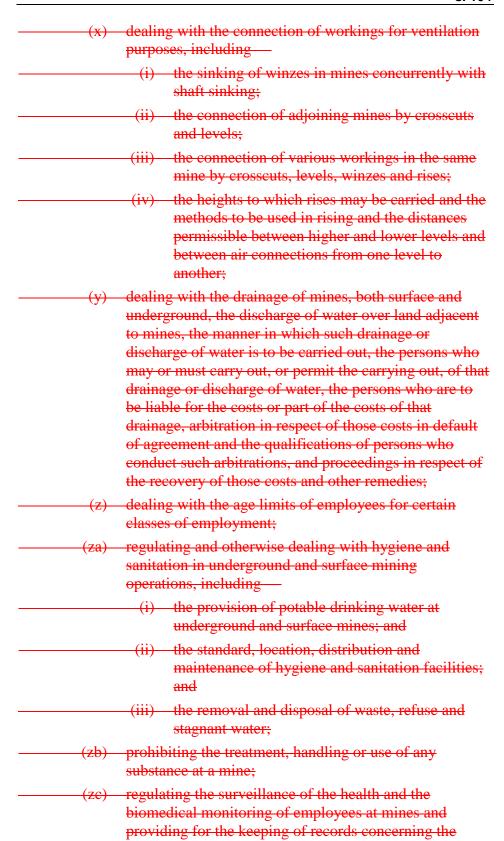
[102A, 103. Deleted: Work Health and Safety Bill 2019 cl. 293.]

### 104. Regulations

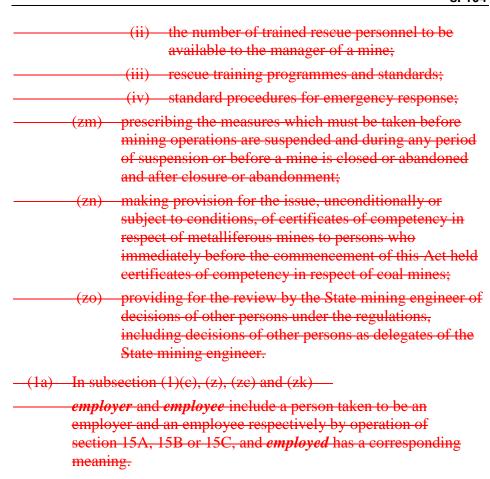
- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for achieving the objects and giving effect to the purposes of this Act. Act, and in particular
  - (a) regulating the appointment and functions of inspectors and defining the regions in which they are to carry out their duties;
  - (b) regulating methods of inspection of mines;
    - (ba) regulating the conduct of elections under this Act by secret ballot;
  - (bb) dealing with the establishment of safety and health committees by employers;
    - (c) dealing with and imposing duties on employers, managers, supervisors, superintendents, deputies, foremen and employees under this Act;
    - (ca) without limiting paragraph (c), imposing duties on persons in relation to
      - (i) the identification of hazards at mines; and







	health of employees and the provision of those records to the department and providing, where required by the State mining engineer, for the medical examination of persons employed or proposed to be employed at mines;
<del>(zd)</del>	dealing with the provision of shelter for surface workers;
<del>(ze)</del>	dealing with the notification and recording of accidents;
——————————————————————————————————————	dealing with the provision of ambulance rooms with such attendants and such first aid facilities for use in ease of accident as may be required by the State mining engineer;
<del>(zg)</del>	requiring and regulating the environmental rehabilitation of mine sites;
<del>(zh)</del>	dealing with the making of plans and surveys of mines;
——————————————————————————————————————	dealing with the number of hours that a person may operate a winding engine in or about a mine and dealing with the hours of work in a 24 hour period for an air leg miner working underground (but not so as to restrict the hours of a shift worked by a person who uses an air leg drill on an occasional basis during a shift);
——————————————————————————————————————	dealing with literacy and language requirements for persons working in or about mines, and in particular prescribing requirements of that kind for
	(i) persons employed to work in positions of responsibility in or about mines; and
	(ii) persons employed to work underground in mines;
<del>(zk)</del>	dealing with radiation safety in mines, including prescribing—
	(i) measures for the protection from radiation of employees, other persons at mines, and the members of the public; and
	(ii) requirements and procedures for the management of radioactive waste and the establishment of waste management systems; and
	(iii) subject to subsection (5), maximum levels of radiation to which employees, other persons at mines and members of the public may be exposed;
(zl)	<del>prescribing</del>
	(i) minimum standards governing rescue operations or emergency operations for adoption at mines;



- (2) Regulations may be made under this Act —
  - (a) so as to apply
    - generally, or in a particular class of case or in particular classes of cases or in relation to all mines, to specified mines or to mines of a particular class; or
    - (ii) at all times or at a specified time or at specified times: or
    - (iii) throughout the State or in a specified part or specified parts of the State; or
    - (iv) subject to specified exceptions; or
    - (v) in respect of a particular coal mine in order to enhance safety and health at that mine;

and

- (b) so as to require a matter affected by them to be
  - in accordance with a specified standard or specified requirement; or

(ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;

and

- (c) so as to confer on a specified person or body, or a specified class of person or body, a discretionary authority; and
- (d) so as to provide that, in specified cases or a specified class of case or specified classes of cases, whether on specified conditions or unconditionally, persons or things of a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.
- (3) In subsection (2), *specified* means specified in the regulations.
- (4) Regulations made under this Act may provide that contravention of a regulation constitutes an offence and provide for penalties not exceeding —
- (a) in the case of an offence committed by a person as an employee —

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

<del>-or</del>

- (b) in the case of an offence committed by an <u>individual</u> <u>individual</u> where paragraph (a) does not apply
  - (i) for a first offence, a fine of \$25 000; and
  - (ii) for a subsequent offence, a fine of \$31 250;

or

- (c) in the case of an offence committed by a corporation
  - (i) for a first offence, a fine of \$50 000; and
  - (ii) for a subsequent offence, a fine of \$62 500.\\$62 500,

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

- (d) \$200, in the case of an offence committed by a person as an employee; and
- (e) \$1 000, in the case of an offence committed by an individual where paragraph (d) does not apply; and

- (f) \$2 000, in the case of an offence committed by a corporation,
- for each day or part of a day during which the offence continues after notice of the offence has been given by or on behalf of an inspector to the offender.
- (4a) In subsection (4)(a) and (d)
  - *employee* includes a person who is taken to be an employee by operation of section 15A, 15B or 15C to the extent that a regulation applies to such a person.
- (5) Regulations under subsection (1)(zk) in relation to the prescription of maximum levels of radiation to which persons may be exposed are only to be made on the recommendation of the Radiological Council established under the *Radiation Safety Act 1975*.
  - (6) Regulations made under this Act may adopt either wholly or in part and either specifically or by reference, any of the standards, rules, codes or specifications of Standards Australia, and other Australian and international bodies of well established high repute.
    - [Section 104 amended: No. 30 of 1995 s. 75 and 76(2) and (4); No. 74 of 2003 s. 83; No. 7 of 2004 s. 70; No. 68 of 2004 s. 13, 39, 72 and 92; No. 16 of 2008 s. 33; No. 33 of 2014 s. 14; Work Health and Safety Bill 2019 cl. 294.]
- 105A. Regulations for levy for costs of administering Work Health and Safety Act 2019 in relation to mines and mining operations Regulations for levy for costs of administering Act
  - (1) Regulations may be made under section 104 to provide for a levy, which may be of the nature of a tax, to be payable to the State for the costs of administering this Act. the following
    - (a) the Work Health and Safety Act 2019 in relation to mines and mining operations;
    - (b) this Act.
- (2) To the extent that the regulations provide for a levy that is a tax, the regulations may impose the tax.
- (2A) To the extent that the regulations provide for a levy that is a tax, the regulations may impose the tax.

#### s. 105AB

- (3) The regulations may deal with
  - (a) the circumstances in which liability to pay the levy is imposed;
  - (b) how the amount of the liability is to be assessed;
  - (c) on whom liability is imposed to pay the amount assessed, when payment becomes due, and how payment is to be made:
  - (d) who is exempt or partially exempt from liability to pay the amount assessed and the conditions to which an exemption, or partial exemption, is subject;
  - (e) rights to object to an assessment and how the objection is to be dealt with;
  - (f) the consequences of failure to pay an amount in accordance with the regulations, which may include the imposition of an increase in the amount of an outstanding liability and may include interest;
  - (g) how an amount outstanding may be recovered.
- (4) The regulations may
  - (a) provide for the keeping of records and the provision of information to facilitate the administration of the provisions for the levy;
  - (b) provide for the authorisation of persons to perform functions for the purpose of investigating and enforcing compliance with the provisions for the levy and, for those purposes, give authorised persons functions, which may include functions of a kind comparable to a kind of functions that the Work Health and Safety Act 2019 this Act gives to an inspector.

[Section 105A inserted: No. 45 of 2009 s. 4; amended: Work Health and Safety Bill 2019 cl. 295; Safety Levies Amendment Bill 2019 cl. 4.]

## 105AB. Mines Safety Account

- (1) An agency special purpose account under the *Financial Management Act 2006* section 16 is to be established for the department and called the Mines Safety Account.
- (2) The Mines Safety Account is to be credited with any levy paid under regulations mentioned in section 105A(1) including any additional outstanding liability and interest as mentioned in section 105A(3)(f).

(a) the Mines Regulation Act 1946; and (b) the Coal Mines Regulation Act 1946.

[109. Omitted under the Reprints Act 1984 s. 7(4)(e).]

[108. Deleted: No. 33 of 2014 s. 15.]

#### 110. Review of Act

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act as soon as is practicable after

  1 December 2009 and every fifth anniversary of that day, and in the course of such a review the Minister shall consider and have regard to—
  - (a) the attainment of the objects of this Act; and
    - (b) the effectiveness of the operations of the department, the Board of Examiners, and the Mines Survey Board; and
    - (c) the need for the continuation of the functions of the Boards referred to in paragraph (b); and
      - (d) such other matters as appear to be relevant to the operation and effectiveness of this Act.
- (2) The Minister shall prepare a report based on such a review and shall, as soon as practicable after the report is prepared, cause it to be laid before each House of Parliament.

<u>[Section 110 amended: No. 30 of 1995 s. 76(1); No. 51 of 2004 s. 115(6); No. 68 of 2004 s. 93.1</u>

[105-110. Deleted: Work Health and Safety Bill 2019 cl. 297.]

[Schedule 1 deleted: No. 33 of 2014 s. 16.]

[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]

#### **Notes**

This is a compilation of the *Mines Safety and Inspection Act 1994* and includes the amendments made by the other written laws referred to in the following table <sup>3, 4</sup>. The table also contains information about any reprint.

## **Compilation table**

Short title	Number and year	Assent	Commencement
Mines Safety and Inspection Act 1994	62 of 1994	7 Nov 1994	s. 1 and 2: 7 Nov 1994; Act other than s. 1 and 2: 9 Dec 1995 (see s. 2 and Gazette 8 Dec 1995 p. 5935)
Occupational Safety and Health Legislation Amendment Act 1995 Pt. 3	30 of 1995	11 Sep 1995	20 Jan 1996 (see s. 2 and <i>Gazette</i> 19 Jan 1996 p. 201)
Industrial Relations Legislation Amendment and Repeal Act 1995 s. 67(4)	79 of 1995	16 Jan 1996	16 Jan 1996 (see s. 3(1))
Reprint of the <i>Mines Safety</i> amendments listed above)	and Inspection	on Act 1994 as a	t 6 Feb 1996 (includes
Local Government (Consequential Amendments) Act 1996 s. 4	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
Statutes (Repeals and Minor Amendments) Act 1997 s. 88	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 51	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Rail Safety Act 1998</i> s. 64(2)	32 of 1998	6 Jul 1998	3 Feb 1999 (see s. 2 and <i>Gazette</i> 2 Feb 1999 p. 351)
Reprint of the <i>Mines Safety</i> amendments listed above)	and Inspection	on Act 1994 as a	<b>t 17 Mar 2000</b> (includes
Statutes (Repeals and Minor Amendments) Act 2000 s. 25	24 of 2000	4 Jul 2000	4 Jul 2000 (see s. 2)
Mines Safety and Inspection Amendment Act 2002	16 of 2002	8 Jul 2002	5 Aug 2002
Statutes (Repeals and Minor Amendments) Act 2003 s. 83 and 87(7)	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
Dangerous Goods Safety Act 2004 s. 70	7 of 2004	10 Jun 2004	1 Mar 2008 (see s. 2 and <i>Gazette</i> 29 Feb 2008 p. 669)
Occupational Safety and Health Legislation Amendment and Repeal Act 2004 s. 115 <sup>5</sup>	51 of 2004	12 Nov 2004	4 Apr 2005 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999-6000)

Short title	Number and year	Assent	Commencement
Mines Safety and Inspection Amendment Act 2004 <sup>6-10</sup>		8 Dec 2004	s. 1 and 2: 8 Dec 2004; Act other than s. 1 and 2: 4 Apr 2005 (see s. 2 and Gazette 14 Dec 2004 p. 5999-6000 and Gazette 11 Feb 2005 p. 695)
Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7125 (correction by <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 3: The <i>Mines Safet</i> amendments listed above exc			
Planning and Development (Consequential and Transitional Provisions) Act 2005 s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 107)
Mines Safety and Inspection Amendment Act 2008	16 of 2008	16 Apr 2008	s. 1 and 2: 16 Apr 2008 (see s. 2(a)); Act other than s. 1 and 2: 17 Apr 2008 (see s. 2(b))
Reprint 4: The <i>Mines Safet</i> amendments listed above)	y and Inspect	ion Act 1994 as	at 16 May 2008 (includes
Training Legislation Amendment and Repeal Act 2008 s. 55	44 of 2008	10 Dec 2008	10 Jun 2009 (see s. 2(2))
Mines Safety and Inspection Amendment Act 2009	45 of 2009	3 Dec 2009	s. 1 and 2: 3 Dec 2009 (see s. 2(a)); Act other than s. 1 and 2: 4 Dec 2009 (see s. 2(b))
Rail Safety Act 2010 Pt. 11 Div. 2	18 of 2010	28 Jun 2010	1 Feb 2011 (see s. 2(b) and <i>Gazette</i> 28 Jan 2011 p. 241)
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 434)
Public Sector Reform Act 2010 s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563
Reprint 5: The <i>Mines Safet</i> amendments listed above)	y and Inspect	ion Act 1994 as	at 4 Feb 2011 (includes
Road Traffic Legislation Amendment Act 2012 Pt. 4 Div. 33	8 of 2012	21 May 2012	27 Apr 2015 (see s. 2(d) and <i>Gazette</i> 17 Apr 2015 p. 137
Fines, Penalties and Infringement Notices Enforcement Amendment Act 2012 Pt. 4 Div. 3	48 of 2012	29 Nov 2012	21 Aug 2013 (see s. 2(b) and <i>Gazette</i> 20 Aug 2013 p. 3815)
Mines Safety and Inspection Amendment Act 2014 Pt. 2	33 of 2014	3 Dec 2014	6 Jun 2015 (see s. 2(b) and <i>Gazette</i> 5 Jun 2015 p. 1971)
Rail Safety National Law	21 of 2015	17 Sep 2015	2 Nov 2015 (see s. 2(b) and

Short title	Number and year	Assent	Commencement
(WA) Act 2015 Pt. 5			Gazette 16 Oct 2015 p. 4149)
Reprint 6: The <i>Mines Safet</i> amendments listed above)	ty and Inspect	ion Act 1994 as	at 22 Jan 2016 (includes
Mines Safety and Inspection Amendment Act 2018	17 of 2018	7 Sep 2018	s. 1 and 2: 7 Sep 2018 (see s. 2(a)); Act other than s. 1 and 2: 3 Oct 2018 (see s. 2(b) and Gazette 2 Oct 2018 p. 3780)
Work Health and Safety Bill 2019 Pt. 15 Div. 2 Subdiv. 1	Current Bill No. 155-1		
<u>Safety Levies Amendment</u> <u>Bill 2019 Pt. 2</u>	Current Bill No. 156-1		

- The Industrial Relations Act 1988 (Commonwealth) was renamed the Workplace Relations Act 1996 by the Workplace and Other Legislation Amendment Act 1996 Sch. 19. The Workplace Relations Act 1996 was then repealed by the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.
- The amendment in the *Coroners Act 1996* Sch. 1 it. 11 is not included because of an error in the reference to the provision to be amended. The amendment intended was made in the *Statutes (Repeals and Minor Amendments) Act (No. 2) 1998* s. 51.
- The Courts Legislation Amendment and Repeal Act 2004 Sch. 1 cl. 100 was deleted by the Criminal Law and Evidence Amendment Act 2008 s. 77(10).
- The Occupational Safety and Health Legislation Amendment and Repeal Act 2004 s. 115(7) reads as follows:

# 115. *Mines Safety and Inspection Act 1994* amended and saving provision

- (7) The amendment made by subsection (5) does not affect the operation of section 103 of the *Mines Safety and Inspection Act 1994*, before the commencement of that subsection, in relation to members of the Mines Occupational Safety and Health Advisory Board established under the section repealed by subsection (3).
- The Mines Safety and Inspection Amendment Act 2004 s. 31(2) reads as follows:
  - (2) Section 97 of the *Mines Safety and Inspection Act 1994* as in force immediately before the commencement of subsection (1) applies to an offence against that Act committed before that commencement as if subsection (1) had not been enacted.

The *Mines Safety and Inspection Amendment Act 2004* s. 57, 65 and 77 read as follows:

### 57. Saving provision for existing safety and health representatives

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

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

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

the duty of the employer under section 65 of the MSI Act to establish a safety and health committee for the mine lapses on that commencement.

# 77. Transitional provision for directions given before commencement

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

- The *Mines Safety and Inspection Amendment Act 2004* s. 83(2) and (3) read as follows:
  - (2) A matter referred to a safety and health magistrate under the *Mines Safety and Inspection Act 1994* and not finally determined before the commencement of subsection (1)
    - (a) may continue to be dealt with; and
    - (b) any order made in such a proceeding may be appealed against and enforced,

as if subsection (1) had not been enacted.

- (3) A determination or decision of a safety and health magistrate made before the commencement of subsection (1) may be the subject of
  - (a) an application for leave to appeal; and
  - (b) an appeal for which leave is granted,

under section 54B(2) of the *Occupational Safety and Health Act 1984*, as applied by the section repealed by subsection (1), as if subsection (1) had not been enacted.

- The Mines Safety and Inspection Amendment Act 2004 s. 85(2) reads as follows:
  - (2) An appeal brought under section 52 of the *Mines Safety and Inspection Act 1994* but not finally determined before the commencement of subsection (1), may be dealt with and determined under that section as if subsection (1) had not been enacted.
- The Mines Safety and Inspection Amendment Act 2004 s. 86(2) reads as follows:
  - (2) An appeal brought under section 86 of the *Mines Safety and Inspection Act 1994* but not finally determined before the commencement of subsection (1), may be dealt with and determined under that section as if subsection (1) had not been enacted.