
MINING (SAFETY) ACT 2006

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PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Mining (Safety) Act 2006*.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation.

3. Compliance with Constitutional requirements, etc.

- (1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*Qualified rights*) of the *Constitution*, namely:
- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
 - (b) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
 - (c) the right to privacy conferred by Section 49 of the *Constitution*; and
 - (d) the right to freedom of information conferred by Section 51 of the *Constitution*; and
 - (e) the right to freedom of movement conferred by Section 52 of the *Constitution*,
- is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.
- (2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.
- (3) For the purposes of Section 53(1) (*Protection from unjust deprivation of property*) of the *Constitution*, the purpose and reason for which this Act permits possession to be compulsorily taken of any property and permits any interest in or right over property to be compulsorily acquired are declared and described to be that:
- (a) such property is required for a public purpose and further for a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind; and
 - (b) the discovery, appraisal, development and exploitation of minerals in Papua New Guinea is in the national interest and the regulation of exploration for minerals and mining in Papua New Guinea is in the national interest.

4. Objects

The objects of this Act are:

- (a) to promote, and secure, the health and safety of persons engaged in mining operations; and
- (b) to assist employers and employees to identify and reduce hazards relating to mines, mining operations, work systems and plant at mines; and

- (c) to protect employees against the risks associated with mines, mining operations, work systems at mines, and plant and hazardous substances at mines by eliminating those risks or imposing effective controls in order to minimise them; and
- (d) to foster and facilitate co-operation and consultation between employers and employees, and to provide for the participation of those persons in the formulation and implementation of health and safety standards and optimum working practices; and
- (e) to provide procedures for employers and employees to contribute to the development and formulation of safety legislation for mines and mining operations and to consult regarding its administration.

5. Interpretation

- (1) In this Act, unless a contrary intention appears:

“**agent**” means any person acting on behalf of another person;

“**alluvial**” means all unconsolidated rock materials, transported and deposited by stream action or gravitational action, which are capable of being freely excavated without prior ripping or blasting;

“**alluvial mine**” means a mine at which mining operations in respect of alluvial minerals are undertaken by an alluvial miner;

“**alluvial miner**” means:

- (a) the holder of an alluvial mining lease granted under the *Mining Act* 1992; and
- (b) a natural person carrying out non-mechanized mining of alluvial minerals;

“**Board of Examiners**” means the Board of Examiners established under Section 21;

“**certificate of competency**” means a certificate of competency issued by the Board of Examiners in accordance with the regulations;

“**Chief Inspector**” means the person from time to time appointed as Chief Inspector under Section 35;

“**competent person**” means a person who is appointed or designated by an employer to perform specified duties relating to mine safety which duties the person is adequately qualified to perform by reason of the knowledge, training and experience of the person;

“**dam**” means:

- (a) any natural or artificial depository of water; and
- (b) any dam for the retention of tailings and waste products of mining operations,

which dam is connected to or used in conjunction with or for purposes connected with any mine or mining operation but does not include a sump or any other matter excluded by the regulations from the definition of dam;

“**department**” means the department or agency responsible for the administration of the *Mining Act* 1992 from time to time;

“**deputy registered manager**” means, for a mine, a person who is appointed a deputy registered manager of that mine under Section 16(3);

“**employee**” means a person by whom work is done at a mine under a contract of employment or apprenticeship;

“**employer**” means, for a mine, a person who employs a person at that mine under a contract of employment or apprenticeship;

“**exploration operations**” means any exploration activity which is undertaken within the area of a tenement, whether offshore or on land;

“**hazard**” in relation to a person, means anything that may result in injury to the person or harm to the health of the person;

“**inspector**” means an inspector of mines appointed under this Act or whose appointment under a repealed Act is continued under this Act (and to avoid doubt includes the Chief Inspector);

“**land**” has the meaning given to that term in the *Mining Act* 1992;

“**licensed underground miner**” means a person who is licensed by means of a certificate of competency in accordance with the regulations as a licensed underground miner;

“**manager**” in relation to a mine, means:

- (a) the registered manager for that mine; and
- (b) each deputy registered manager for that mine; and
- (c) any person who is appointed by the registered manager or deputy registered manager to have the immediate charge and direction of the mine; and
- (d) a deputy manager appointed by a person referred to in paragraph (c);

“**mine**” means a place at which mining operations are carried on; and “**to mine**” includes to carry on any manner or method of mining operations;

“**minerals**” means all valuable non-living substances excluding petroleum obtained or obtainable from land;

“**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
- (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 transshipment points, including seaports; and
- (g) the operation of any support facilities on the minesite, including mine administration offices, workshops and service 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) operations undertaken for the environmental rehabilitation of a minesite during production operations and after their completion; and
- (l) operations for the care, security and maintenance of a mine and plant at the mine undertaken during any period when production or development operations at the mine are suspended; and
- (m) operations undertaken to leave a mine safe to be closed; and
- (n) closure of a mine in accordance with a mine closure plan; and
- (o) quarrying,

but does not include:

- (p) activities (other than operations at an alluvial mine) which are not carried out by the authority of a tenement granted under the *Mining Act 1992*; or
- (q) the operation of steel making plants; or
- (r) the operation of rolling mills; or
- (s) the operation of facilities for the manufacture of goods from mining products; or
- (t) sand, gravel, limestone or rock excavation carried on by or for any State agency or instrumentality or any local or provincial government for the use of, or disposition by, any such agency, instrumentality, provincial or local government; or

- (u) excavation activities on private land undertaken by the owner of the land for the sole purpose of extracting minerals for the sole use of the owner of that land;

“**mining union**” means an organisation or an association of employees a principal purpose of which is the protection and promotion of the employees’ interests in matters concerning their employment;

“**owner**” means, for a mine:

- (a) the holder of the mining tenement within the area of which that mine is located; or
- (b) where a person works a tenement pursuant to a tribute agreement, that person; or
- (c) in the case of an alluvial mine in respect of which no tenement has been granted, the owner of the land in respect of which that alluvial mining is undertaken;

“**penalty unit**” means:

- (a) 100 Kina; or
- (b) such other value for a penalty unit as is prescribed from time to time by the regulations;

“**petroleum**” means:

- (a) any naturally occurring hydrocarbons, whether in a gaseous, liquid or solid state; or
- (b) any naturally occurring mixture of hydrocarbons, whether in a gaseous, liquid or solid state; or
- (c) any naturally occurring mixture of one or more hydrocarbons (whether in a gaseous, liquid or solid state) and any other substance,

and includes any petroleum as defined in paragraph (a), (b) or (c) that has been returned to a natural reservoir, but does not include coal, shale or any substance that may be extracted from coal, shale or other rock;

“**plant**” includes machinery, equipment, an appliance, implement or tool and any component or fitting of or accessory to any such article;

“**practicable**” means reasonably practicable having regard, where the context permits, to:

- (a) the severity of any potential injury or harm to health that may be involved and the degree of risk of such injury or harm occurring; and
- (b) the state of knowledge about:
 - (i) the injury or harm to health referred to in paragraph (a); and
 - (ii) the risk of that injury or harm to health occurring; and

- (iii) means of removing or mitigating the potential injury or harm to health; and
- (c) the availability, suitability and cost of the means referred to in paragraph (b)(iii);

“**prescribed manager’s certificate**” means a prescribed manager’s certificate issued by the Board of Examiners;

“**principal employer**” means an employer nominated as such in accordance with Section 15;

“**quarry**” means a surface 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;

“**registry book**” means, for a mine, the registry book for that mine maintained as contemplated in Section 41;

“**registered manager**” means, for a mine, the person who is appointed registered manager of that mine under Section 16(1);

“**risk**” in relation to any injury or harm, means the probability of that injury or harm occurring;

“**self-employed person**” means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not that person employs any other person;

“**shaft**” means:

- (a) a vertical or inclined development opening into or within a mine through which persons and materials are raised and lowered using winding engines and through which services may be provided; and
- (b) a vertical or inclined development opening into or within a mine used for ventilation;

“**significant employer**” means an employer who employs more than 30 employees at a mine;

“**supervisor**” in relation to mining operations, means a person who has:

- (a) the immediate supervision of some or all of the employees employed to carry out the mining operations; and/or

(b) the immediate supervision of all or part of those mining operations;

“**supply**” in relation to plant or a substance, includes supply or re-supply by way of sale, exchange, lease, hire or hire-purchase;

“**tenement**” means a tenement granted pursuant to the *Mining Act 1992*;

“**tribute agreement**” means an agreement made by the holder of a tenement with any other person whereby that person may work that tenement on terms providing that the holder shall receive from that person a portion or percentage of the minerals won or the proceeds of their sale;

“**underground**” in relation to mining operations, means any operations beneath the natural surface of the earth which are covered overhead by natural rock or earth, or by any earth, rock, fill, timber, or other material placed in the course of mining operations, and includes tunnels, drifts, shafts and winzes that are used in mining operations and are more than 2 metres deep sunk from the surface;

“**variable regulation**” means a regulation the application of which may be varied by a health and safety management system and which regulation is specified in the regulations as a “variable regulation”;

“**waste dump**” means an area or structure (including, without limitation, an erodable dump) a substantial use of which is or is intended to be for the permanent or long term storage of the waste products of a mine or mining operation but excludes:

- (a) a stockpile area; and
 - (b) any areas or structures excluded from the definition of waste dump by the regulations.
- (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) Subject to Subsection (5), where mining operations are being carried on in conjunction with one another at 2 or more places, each of those places is regarded as a separate mine for the purposes of this Act.
 - (4) Where the Chief Inspector considers that separate mines are constituted pursuant to a mining operation by virtue of Subsection (3), the Chief Inspector shall notify the owner of each such mine of that fact.
 - (5) The Chief Inspector may determine that mining operations carried on in conjunction with one another at two or more places shall be regarded as one mine for the purposes of this Act, where in the opinion of the Chief Inspector it is reasonable to make such a determination. The Chief Inspector shall notify the owner for that mine in writing of any such determination.

6. Application

Subject to Section 7, this Act shall extend and apply to every mine held under any tenement and to any mine at which mining of alluvial minerals is undertaken, and to every works operating in connection with mining or in the winning, or the treatment, of gold or minerals.

7. Power to exempt

- (1) The Minister may:
 - (a) by order published in the National Gazette exempt any, or any 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; and
 - (b) specify in the order any conditions which shall be complied with by the owner for a mine to obtain or rely on the benefit of the exemption.
- (2) A mine shall not be entitled, or shall cease to be entitled, to the benefit of an exemption set out in an order if the conditions necessary to obtain the benefit of that exemption are not complied with in respect of that mine.

PART 2 – GENERAL DUTIES RELATING TO OCCUPATIONAL HEALTH AND SAFETY

8. Duties of employers

- (1) An employer shall, 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 shall:
- (a) provide and maintain workplaces, plant and systems of work of a kind that ensures, so far as is practicable, the employer's employees are not exposed to hazards; and
 - (b) 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, so far as is practicable, exposed to hazards; and
 - (c) consult and co-operate with health and safety representatives, if any, and other employees at the mine regarding occupational health and safety at the mine; and
 - (d) to the extent that it is not practicable to avoid the presence of hazards at the mine, provide, at the cost of the employer and without cost to the employees, employees with such adequate personal protective clothing and equipment as is practicable to protect them against those hazards; and
 - (e) make arrangements for ensuring, so far as is practicable, that:
 - (i) the use, cleaning, maintenance, transportation and disposal of plant; and
 - (ii) the use, handling, processing, storage, transportation and disposal of substances,
 at the mine is carried out in such a manner that the employer's employees are not exposed to hazards; and
 - (f) ensure that any manager or supervisor is provided with such information, instruction and training as is necessary to ensure that each employee under his or her management or supervision is, while at work, so far as is practicable, safe from injury and risks to health.
- (2) In determining the training required to be provided in accordance with Subsection (1)(b), regard shall be had to the functions performed by employees and the capacities in which they are employed.
- (3) For the purposes of this Section, where, in the course of mining operations carried on by a person (in this Section called "**the principal**"), the principal engages another person (in this Section called "**the contractor**") to carry out work for the principal:
- (a) the principal is deemed, in relation to matters over which the principal has control or, but for an agreement between the principal and the contractor to the contrary, would have had control, to be the employer of:

- (i) the contractor; and
 - (ii) any employee or sub-contractor of the contractor used to carry out or to assist in carrying out the work to be performed by the contractor for the principal; and
- (b) the persons mentioned in paragraph (a)(i) and (ii) are deemed, in relation to those matters, to be employees of the principal.
- (4) Nothing in Subsection (3) derogates from:
- (a) the duties of the principal to the contractor; or
 - (b) the duties of the contractor to persons employed or engaged by the contractor.
- (5) The duties imposed under Subsection (1) on an employer are not taken to be discharged only by the appointment of a manager for the mine.
- (6) An employer who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 1,500 penalty units and in the case of an individual to a fine of up to 400 penalty units.
- (7) An employer who contravenes Subsection (1) and by that contravention causes the death of, or serious harm to, an employee commits an offence and is liable in the case of a corporation to a fine of up to 2,500 penalty units and in the case of an individual to a fine of up to 600 penalty units or imprisonment for up to 2 years.
- (8) An employer charged with an offence against Subsection (7) may, instead of being convicted of that offence, be convicted of an offence against Subsection (6).

9. Duties of employees

- (1) An employee shall take reasonable care:
- (a) to ensure his or her own health and safety at work; and
 - (b) to avoid adversely affecting the health or safety of any other person through any act or omission at work.
- (2) Without limiting the generality of Subsection (1), an employee contravenes that Subsection if that employee:
- (a) fails to comply, so far as the employee is reasonably able, with instructions given by that employee's employer or a manager for the mine for the employee's own health or safety or for the health or safety of other persons; or
 - (b) fails to use such protective clothing and equipment as is provided by the employee's employer in a manner in which the employee has been properly instructed to use it; or
 - (c) misuses or damages any equipment provided in the interests of health or safety; or
 - (d) fails on leaving work at the end of a shift to report to the person in immediate authority over that employee and, where practicable, the person relieving the

employee, of the state of that part of the mine where the employee has been working.

- (3) An employee shall co-operate with his or her employer and each manager for the mine in the carrying out by those persons of their obligations under this Act.
- (4) An employee who contravenes Subsection (1) or (3) commits an offence and is liable to a fine of up to 150 penalty units.
- (5) An employee who contravenes Subsection (1) or (3) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of up to 300 penalty units or imprisonment for up to 2 years.
- (6) An employee charged with an offence against Subsection (5) may, instead of being convicted of that offence, be convicted of an offence against Subsection (4).

10. Reporting of dangerous situations or occurrences

- (1) Every person working in a mine shall report immediately to the person in immediate authority over that person:
 - (a) any potentially serious occurrence, of which the person is aware, that arises in the course of or in connection with that person's work; and
 - (b) any situation at the mine of which the person is aware and that the person has reason to believe poses an immediate and material threat to the health or safety of any person at the mine,

and a person receiving a report under this Subsection shall convey the information in that report immediately to the registered manager for the mine or to a person designated for the purpose of receiving such reports by the registered manager.

- (2) If a person who is required by Subsection (1) to make a report does not have a person in immediate authority over that person, the report shall be made to the registered manager for the mine or to a person designated for the purpose of receiving such reports by the registered manager.
- (3) Every person working at a mine shall, unless a similar report has to his or her knowledge already been made, report immediately to the registered manager for the mine or to a person designated for the purpose of receiving such reports by the registered manager for the mine any injury or harm to health (of which the person is aware) suffered by any other person in connection with work at the mine (other than trivial injury or harm to health).
- (4) A person who contravenes Subsection (1), (2) or (3) commits an offence and is liable to a fine of up to 150 penalty units.

11. Duties of employers and self-employed persons

- (1) An employer or a self-employed person ("**Relevant Person**") at a mine shall:
 - (a) take reasonable care to ensure his or her own health and safety at work; and
 - (b) so far as is practicable, ensure that the health or safety of a person, not being an employee of the Relevant Person, is not adversely affected wholly or in

part as a result of the work in which that Relevant Person, or any employees of that Relevant Person at the mine, is engaged.

- (2) A person who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 1,500 penalty units and in the case of an individual to a fine of up to 400 penalty units.
- (3) A person who contravenes Subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable in the case of a corporation to a fine of up to 2,500 penalty units and in the case of an individual to a fine of up to 600 penalty units or imprisonment for up to 2 years.
- (4) A person charged with an offence against Subsection (3) may, instead of being convicted of that offence, be convicted of an offence against Subsection (2).

12. Duties of managers

- (1) The registered manager for a mine, and the deputy registered manager for a mine during such periods in which the registered manager for the mine is absent from the area of the mine, shall, so far as is practicable and subject to Subsection (2):
 - (a) ensure that there is provided and maintained at that mine a working environment in which the employees at that mine are not exposed to hazards; and
 - (b) ensure that the mine is operated in a manner consistent with the discharge of the employer's duties under Section 8; and
 - (c) where there is a health and safety management system for the mine, ensure that mining at the mine is carried out in compliance with the requirements of that system; and
 - (d) ensure that the mine and the means of access to and egress from the mine are such that persons who are at the mine, or use the means of access to or egress from the mine, are not exposed to hazards.
- (2) In determining the scope of a registered manager's duty and a deputy registered manager's duty under Subsection (1), regard is to be had to the fact that the owners and employers for a mine, and not the registered manager or deputy registered manager, are responsible for the provision of funds and access to adequate resources to ensure that there is provided and maintained at a mine a working environment in which the employees are not, so far as is practicable, exposed to hazards and the employer's other duties under Section 8 in relation to the mine are discharged.
- (3) Nothing in Subsection (2) relieves a registered manager or deputy registered manager of the obligation to notify the owners and employers for a mine of the need for more funds and resources to be provided to ensure that there is provided and maintained at that mine a working environment in which the employees are not, so far as is practicable, exposed to hazards and the employer's other duties under Section 8 in relation to the mine are discharged.
- (4) A manager for a mine (who is not a registered manager) shall, in respect of the areas of that mine for which that manager is delegated responsibility by the registered manager for that mine, so far as is practicable and having regard to:

- (a) the responsibilities and authority delegated to that manager by the registered manager for that mine; and
- (b) the resources made available to that manager by the owners, employers and registered manager for that mine,

ensure that:

- (c) there is provided and maintained in respect of those areas at that mine a working environment in which the employees at that mine are not exposed to hazards; and
 - (d) those areas of the mine are operated in a manner consistent with the discharge of the employer's duties under Section 8; and
 - (e) where there is a health and safety management system for the mine, that mining within those areas of the mine for which the manager is responsible is carried out in compliance with the requirements of that system; and
 - (f) those areas of the mine, and the means of access to and egress from those areas of the mine, are such that persons who are at the mine, or use the means of access to or egress from the mine, are not exposed to hazards.
- (5) The manager for a mine (including the manager for an area of the mine) shall, when it appears that the mine or part of the mine of which he or she is the manager poses an immediate and material threat to the health or safety of any person:
- (a) take all practicable steps to cease operations in and withdraw all persons from the mine or the part of the mine where the threat exists; and
 - (b) keep a record of the circumstances posing the threat including the date and nature of the circumstances.
- (6) A person who contravenes Subsection (1), (4) or (5) commits an offence and is liable to a fine of up to 300 penalty units.
- (7) A person who contravenes Subsection (1), (4) or (5) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable in the case of an individual to a fine of up to 600 penalty units or imprisonment for up to 2 years.
- (8) A person charged with an offence against Subsection (6) may, instead of being convicted of that offence, be convicted of an offence against Subsection (7).

13. Duties of manufacturers etc

- (1) A person who designs or manufactures, imports or supplies any plant or any materials or substance for use at a mine has a duty of care to any person who may be affected, directly or indirectly, by the plant, materials or substance, to ensure that, so far as is practicable, the plant, materials or substance does not expose any person to hazards and shall use all practicable means to discharge that duty.
- (2) A person who designs or constructs any building or structure, including a temporary structure, for use at a mine shall, so far as is practicable, ensure that the design and construction of the building or structure is such that:

- (a) persons who properly construct, maintain, repair or service the building or structure; and
 - (b) persons who properly use the building or structure,
- are not, in doing so, exposed to hazards.
- (3) A person who erects or installs any machinery, equipment, building or structure, including a temporary structure, for use at a mine shall, so far as is practicable, ensure that it is so erected or installed that persons who properly use the machinery, equipment, building or structure are not subjected to any hazard that arises from, or is increased by, the way in which the machinery, equipment, building or structure is erected or installed.
 - (4) A person who manufactures, imports or supplies any substance for use at a mine shall, so far as is practicable, ensure that adequate toxicological data in respect of the substance, and such other data as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance, is provided when the substance is supplied, and subsequently whenever requested.
 - (5) A person who contravenes Subsection (1), (2), (3) or (4) commits an offence and is liable in the case of a corporation to a fine of up to 1,500 penalty units and in the case of an individual to a fine of up to 400 penalty units.
 - (6) A person who contravenes Subsection (1), (2), (3) or (4) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable in the case of a corporation to a fine of up to 2,500 penalty units and in the case of an individual to a fine of up to 600 penalty units or imprisonment for up to 2 years.
 - (7) A person charged with an offence against Subsection (6) may, instead of being convicted of that offence, be convicted of an offence against Subsection (5).

14. Importation of duties/no double jeopardy/illegal mining

- (1) A duty imposed on a person under this Part:
 - (a) does not affect the application of any other more specific duty imposed on that person under this Act; and
 - (b) applies despite any other more specific duty imposed on that person under this Act.
- (2) The imposition of a duty on a person by this Act does not limit the scope of a duty imposed upon any other person under this Act.
- (3) A person does not discharge a duty imposed upon them under this Act merely by delegating the performance of that duty to another person.
- (4) A person is not liable to be punished twice under this Act in respect of the same act or omission.
- (5) Nothing in this Act imposes a duty on a person in respect of a second person who:
 - (a) enters land which is subject to a tenement without the consent of the holder of that tenement and which entry to that land is otherwise illegal; or

- (b) carries out mining operations in contravention of the *Mining Act* 1992 by virtue of those activities not being undertaken pursuant to a tenement granted under that Act.

PART 3 – MANAGEMENT OF MINES***Division 1 – Duties of employers and managers*****15. Nomination of principal employer**

- (1) The owner, or owners, for a mine shall, prior to the commencement of mining operations at that mine, notify the Chief Inspector of the principal employer for that mine and of the address of that principal employer.
- (2) The principal employer shall be a person or entity with general conduct of mining operations at the mine.
- (3) A person who contravenes Subsection (1) or (2) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.
- (4) The principal employer for a mine shall 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 the requirements of this Act.
- (5) A person who contravenes Subsection (4) commits an offence and is liable in the case of a corporation to a fine of up to 1,500 penalty units and in the case of an individual to a fine of up to 300 penalty units.
- (6) A principal employer may be an individual, a corporation, a partnership, a joint venture or other association of persons.
- (7) If mining operations at a mine are carried out by a joint venture or other association of persons in such a way that no person is employed at the mine, the name and address of an entity or person who is to assume the duties and responsibilities of the principal employer in respect of those mining operations shall be provided by that joint venture or association of persons in writing to the Chief Inspector, and that entity or person is deemed to be the principal employer for the purposes of this Act of all persons who work at the mine.

16. Registered manager

- (1) Before mining operations begin at a mine, the principal employer shall appoint a registered manager for the mine and subsequently shall ensure that at all times a registered manager is appointed for the mine.
- (2) A person appointed as the registered manager for a mine must be a senior manager within the managerial structure of that mine and must not be below the second most senior level of the managerial structure present on the mine site.
- (3) The principal employer for a mine shall appoint at least one deputy registered manager for that mine to assist the registered manager and to carry out the duties of the registered manager where the registered manager is absent from the mine or otherwise unable to carry out the registered manager's duties.
- (4) Within 7 days of the appointment of a registered manager for a mine or a deputy registered manager, the principal employer for that mine shall seek the Chief Inspector's approval to that appointment by lodging with the Chief Inspector:

- (a) a notice setting out the name and address of the registered manager or deputy registered manager and such other details as may be prescribed by the regulations; and
 - (b) a written acknowledgement, signed by the registered manager or deputy registered manager, of the registered manager's or deputy registered manager's appointment.
- (5) The Chief Inspector may refuse to approve the appointment of a person as a registered manager or deputy registered manager where:
- (a) that person has been convicted of a breach of this Act; or
 - (b) that person is not of good repute; or
 - (c) the Chief Inspector believes, on reasonable grounds, that that person will be unable to properly discharge, as applicable, the duties of a registered manager or deputy registered manager under this Act.
- (6) Where the Chief Inspector does not approve the appointment of a person as a registered manager or a deputy registered manager (as applicable) for a mine then:
- (a) that person may not act as the registered manager or deputy registered manager (as applicable) for that mine; and
 - (b) the principal employer shall appoint a replacement as the registered manager or deputy registered manager (as applicable) for that mine; and
 - (c) Subsections (4) and (5) apply to that replacement appointment,
- provided that paragraph (b) does not require the appointment of a replacement deputy registered manager where this would result in a mine having more than one deputy registered manager.
- (7) A person who is appointed as a registered manager or a deputy registered manager for a mine shall hold a prescribed manager's certificate and where the prescribed manager's certificate of a registered manager or a deputy registered manager for a mine is cancelled the principal employer for that mine shall (as applicable) in accordance with this Act appoint:
- (a) a replacement registered manager; or
 - (b) a replacement deputy registered manager (where necessary to ensure the mine has at least one deputy registered manager).
- (8) The Chief Inspector shall:
- (a) keep a register of the name and address of every registered manager and deputy registered manager for a mine and of the mine of which he or she is registered manager or deputy registered manager; and
 - (b) issue to the principal employer for the relevant mine or his or her agent a certificate of the registration.
- (9) The registered manager for a mine:

- (a) 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
 - (b) shall reside at a location in relation to the mine which shall allow the manager to control and supervise the mine effectively as required by this Act; and
 - (c) when absent from the site of the mine or the location referred to in paragraph (b) above for a period, shall ensure that there is at least one deputy registered manager for the mine who shall act on behalf of the registered manager for that period.
- (10) If the registered manager for a mine is to be absent from the site of the mine or the location referred to in Subsection (9)(b) for a period of more than 3 consecutive days, the registered manager shall notify the Chief Inspector of the identity of the deputy registered manager who is to act on behalf of the registered manager for that period pursuant to Subsection (9)(c).
- (11) Notice under Subsection (10) may be provided by way of the issue of a standing notice to the Chief Inspector.
- (12) Where a registered manager for a mine is absent from the site of the mine or the location referred to in Subsection (9)(b), the principal employer for that mine shall ensure that the deputy registered manager nominated under Subsection (9)(c) has effective control and supervision of the mine during the period of the registered manager's absence from the mine.
- (13) A person who contravenes this Section 16 commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.
- (14) If mining operations are carried out by a joint venture or other association of persons in such a way that no person is employed at the mine, no registered manager, deputy registered manager or other manager is required to be appointed and the members of that joint venture or those persons are jointly and severally responsible for the performance of those duties and responsibilities which are imposed on managers by this Act so far as those duties and responsibilities apply to an operation without employees.

17. Commencement or suspension of mining

- (1) The principal employer or the registered manager for a mine shall, in accordance with any requirements specified in the regulations, notify the Chief Inspector of:
- (a) the commencement of mining operations at the mine; and
 - (b) the recommencement of mining operations, at the mine, after their suspension; and
 - (c) the closure of mining operations at the mine; and
 - (d) the suspension of mining operations at the mine; and
 - (e) any substantial change to the mining operations at the mine; and

- (f) the commencement of installation of any major item of machinery or equipment at the mine; and
- (g) the commencement of any major construction activity at the mine,

which notice shall be provided prior to, as applicable, the commencement, recommencement, closure, suspension, substantial change, installation or major construction.

- (2) Notice under Subsection (1)(a), (c), (e), (f) or (g) must be provided at least 30 days prior to, as applicable, the commencement, closure, substantial change, installation or major construction.
- (3) Notice under Subsection (1)(b) or (d) must be provided, where practicable, at least 30 days prior to, as applicable, the recommencement or suspension and where not practicable then must be given as far as practicable in advance of the proposed recommencement or suspension.
- (4) A person who contravenes Subsection (1), (2) or (3) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

18. Delegates of registered manager

- (1) A registered manager shall 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.
- (2) A registered manager shall, so far as is practicable, ensure that:
 - (a) every person who is appointed by that registered manager, or by a delegate of that registered manager, to assist the registered manager carry out his or her duties under this Act (“**Appointee**”) understands the nature and scope of the duties which the Appointee is required to discharge; and
 - (b) the Appointee discharges those duties.
- (3) A manager (other than a registered manager) shall, so far as is practicable, ensure that:
 - (a) every person who is appointed by that manager to assist the manager carry out his or her duties under this Act (and the duties delegated to them by the registered manager) (“**Managerial Appointee**”) understands the nature and scope of the duties which the Managerial Appointee is required to discharge; and
 - (b) the Managerial Appointee discharges those duties.
- (4) A person who contravenes Subsection (1), (2) or (3) commits an offence and is liable to a fine of up to 80 penalty units.

19. Records of appointment

- (1) An employer or manager who appoints a person to perform duties or assist that person to perform duties imposed under this Act shall make the appointment in

writing and shall provide the person appointed with a written summary of their responsibilities and duties and, where a person is appointed as a manager, that written summary shall indicate that such person has been appointed as a manager for the purposes of this Act.

- (2) A manager shall, except where this Act or the regulations require the appointment to be notified in some other way, record the facts and nature of each appointment made by the manager as contemplated in Section 18 in the registry book.
- (3) A person who is notified of their appointment as contemplated in Subsections (1) and (2) shall, within 7 days of the appointment, acknowledge his or her appointment by signing:
 - (a) the registry book next to the record of the appointment; and
 - (b) the instrument of appointment if there is such an instrument.
- (4) The registered manager for a mine shall ensure that notice of each appointment under Section 18, whether by the registered manager or by a manager, is notified to the Chief Inspector within 14 days of that appointment being made and a manager for a mine who appoints an Appointee or Managerial Appointee must ensure the registered manager for that mine is notified in sufficient time of that appointment to enable the registered manager to comply with this requirement.
- (5) A person who contravenes Subsection (1), (2), (3) or (4) commits an offence.

20. Remuneration of Registered Managers and Deputy Registered Managers and other Appointees

The owners, and employers, for a mine must ensure that the remuneration of:

- (a) the registered manager for that mine; and
- (b) each deputy registered manager for that mine; and
- (c) any other person at that mine appointed to a position in that mine to satisfy a requirement of this Act or the regulations (excluding a health and safety representative or a member of a health and safety committee),

is commensurate with the additional duties and responsibilities assumed by:

- (d) the registered manager due to them holding the position of registered manager; and
- (e) the deputy registered manager due to them holding the position of deputy registered manager; and
- (f) the relevant person due to them holding a position required to be held under this Act or the regulations.

Division 2 – Certificates**21. Board of Examiners**

- (1) 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.
- (2) 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 prescribed manager's certificates, and to issue such certificates where appropriate; and
 - (b) to receive, consider and inquire into complaints concerning holders of certificates of competency and prescribed manager's certificates and to suspend or cancel such certificates where appropriate; and
 - (c) to perform such other functions as may be conferred by the regulations.
- (3) Members of the Board of Examiners are entitled to be paid such remuneration and travelling and other allowances as the Minister determines.

22. Complaint to Chief Inspector

- (1) An inspector or a person whose health, safety or financial interest is or may be impacted by the alleged conduct may lodge a written complaint with the Chief Inspector if the inspector or person has reason to believe that the holder of a certificate of competency or a prescribed manager'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
 - (c) is incompetent or unfit to perform his or her duties.
- (2) A complaint under this Section shall specify the reasons for the belief on which the complaint is based.
- (3) On receiving a complaint, the Chief Inspector may, if the Chief Inspector considers the referral justified, refer the complaint to the Board of Examiners.

23. Inquiry by Board of Examiners

- (1) After receiving a complaint from the Chief Inspector under Section 22, the Board of Examiners shall hold an inquiry into that complaint.
- (2) An inquiry is to be conducted in accordance with the procedures (if any) prescribed in the regulations.
- (3) Subject to any procedures prescribed by the regulations, the Board of Examiners may conduct an inquiry in whatever manner it considers appropriate and equitable and is not bound by the rules of evidence.

- (4) The Chief Inspector shall not sit on the Board of Examiners where the Board is holding an inquiry into a complaint.
- (5) If as a result of an inquiry, paragraph (a), (b) or (c) of Section 22(1) are found to apply in respect of a person, the Board of Examiners:
 - (a) may order the suspension of the certificate held by that person for the period of time specified in the order or the cancellation of that certificate; and
 - (b) if such an order is made, shall forward a copy of such order to the Chief Inspector.
- (6) A person may not act in a position for which a prescribed manager's certificate or certificate of competency is required during any period for which the certificate held by that person in respect of that position is suspended or cancelled under this Section 23.

24. Inquiries following accidents

- (1) If, as a result of an inquiry into an accident, it appears to the Board of Examiners that the accident was the result of the negligence or incompetence of a person holding a prescribed manager's certificate or a certificate of competency, the Board of Examiners may call on that person to appear before it and show cause why his or her certificate should not be suspended or cancelled.
- (2) If a person called under Subsection (1) is, after inquiry by the Board of Examiners, found to have acted negligently or incompetently, the Board of Examiners:
 - (a) may order the suspension of the certificate held by that person for the period of time specified in the order or the cancellation of that certificate; and
 - (b) if such an order is made, shall forward a copy of such order to the Chief Inspector.
- (3) An inquiry under this Section 24 is to be conducted in accordance with the procedures (if any) prescribed in the regulations.
- (4) Subject to any procedures prescribed by the regulations, the Board of Examiners may conduct an inquiry in whatever manner it considers appropriate and equitable and is not bound by the rules of evidence.
- (5) The Chief Inspector shall not sit on the Board of Examiners where the Board is holding an inquiry under this Section 24.
- (6) A person may not act in a position for which a prescribed manager's certificate or certificate of competency is required during any period for which the certificate held by that person in respect of that position is suspended or cancelled under this Section 24.

25. Appeal to Chief Inspector

- (1) A person whose certificate of competency or prescribed manager's certificate is suspended or cancelled by the Board of Examiners may appeal in writing to the Chief Inspector 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 Chief Inspector orders otherwise.
- (3) The Chief Inspector may:
 - (a) allow the appeal and reverse the decision of the Board of Examiners; or
 - (b) dismiss the appeal; or
 - (c) make any decision in relation to the matter of the appeal that the Board of Examiners might have made in relation to the conduct the subject of the appeal.

PART 4 –HEALTH AND SAFETY MANAGEMENT SYSTEMS

26. Duty of significant employer to prepare health and safety management system

- (1) A significant employer for a mine shall prepare a statement in accordance with this Act and the regulations stating how the health and safety of the people who work at the mine (in respect of which that employer is a significant employer), or who are otherwise present within the mine site, shall be protected. This is a **health and safety management system**.
- (2) If a person becomes a significant employer for a mine and that mine has an existing health and safety management system, then that person may adopt the existing health and safety management system and is not required, merely by virtue of the fact they have become a significant employer, to develop a new health and safety management system.
- (3) A significant employer who contravenes any provision of this Part 4 commits an offence and is liable in the case of a corporation to a fine of up to 1,000 penalty units and in the case of an individual to a fine of up to 200 penalty units.
- (4) An employer for a mine, which does not have a significant employer, may, by notice to the Chief Inspector, elect to establish a health and safety management system for that mine and, if the employer makes such an election:
 - (a) the employer for that mine, the managers for that mine and persons working at that mine are bound by the provisions of this Part 4 relating to health and safety management systems; and
 - (b) for the purposes of that application of this Part 4, that employer shall be regarded as a significant employer; and
 - (c) during the period that election is in force, Section 33 does not apply to the relevant mine.
- (5) A person who has made an election under Subsection (4) or another employer for the relevant mine may, provided that person is not a significant employer, by 60 days notice to the Chief Inspector elect to cancel the health and safety management system for the relevant mine and, from the time of that cancellation, the provisions of this Part 4 relating to health and safety management systems shall cease to apply to that mine, but without prejudice to their further application if:
 - (a) a further election is made under Subsection (4); or
 - (b) there is subsequently a significant employer for that mine.

27. No mining without health and safety management system

A significant employer for a mine shall ensure that mining operations are not carried out by any person at the mine unless a health and safety management system for that mine that complies with this Act and the regulations has been lodged with the Chief Inspector.

28. Compliance with health and safety management system

A significant employer for a mine shall ensure that mining operations at the mine are carried out in compliance with the health and safety management system for the mine. This includes activities undertaken by contractors who undertake work at the mine.

29. Contents of health and safety management system

- (1) The purpose of a health and safety management system is to provide the primary means by which the significant employer for a mine ensures the health, safety and welfare of employees and others present at that mine and of people directly affected by the mine, including people who are not at the mine.
- (2) A health and safety management system for a mine shall:
 - (a) provide the basis of identifying hazards and assessing risks arising from those hazards by the significant employer; and
 - (b) provide for the development of controls for those risks; and
 - (c) provide for the reliable implementation of those controls; and
 - (d) set out a site wide risk profile for the mine; and
 - (e) set out the procedures to be followed in investigating accidents and incidents at the mine; and
 - (f) set out the procedures to be followed to audit and monitor the effectiveness of the health and safety management system.
- (3) The regulations may prescribe matters which are required to be dealt with in a health and safety management system and the significant employer for a mine shall ensure the health and safety management system for that mine complies with any such requirements.
- (4) A health and safety management system may provide that, in respect of the mine to which the system relates, the application of one or more variable regulations is varied such that alternative requirements, for the purposes of ensuring health and safety, shall apply to the mine in place of the requirements of those variable regulations.
- (5) The application of a variable regulation may only be varied by a health and safety management system where doing so does not materially increase the risks to health and safety of employees and other persons present at the mine or who are otherwise directly affected by the mine.
- (6) Reasons for varying the application of a variable regulation by means of a health and safety management system include that:
 - (a) there is a more effective means, having regard to the characteristics of the specific mine, of ensuring the health and safety of employees and other persons than compliance with the requirements of the relevant variable regulation; and

- (b) having regard to changing technologies and the characteristics of the specific mine, the requirements of the relevant variable regulation are inappropriate; and
 - (c) having regard to the characteristics of the specific mine, the requirements of the relevant variable regulation are impracticable and there is an alternative method, which deals with the same subject matter as the variable regulation, of ensuring the health and safety of employees and other persons.
- (7) Where requested by an inspector, the significant employer for a mine shall, within 14 days, notify the inspector of the reason why the application of a variable regulation has been varied by a health and safety management system.
- (8) The Chief Inspector may, by notice to the significant employer for a mine, disallow the variation of a variable regulation by a health and safety management system where such variation contravenes Subsection (5) provided that, before issuing that notice, the Chief Inspector shall:
- (a) notify the significant employer of the reasons why the Chief Inspector proposes to disallow the variation; and
 - (b) allow the significant employer 30 days to lodge submissions in respect of whether it is appropriate to disallow the variation, which submissions shall be considered by the Chief Inspector.

30. Information to be supplied to Chief Inspector

Information relating to the health and safety management system for a mine shall be supplied by the significant employer for that mine to the Chief Inspector in the format and at the times required by the regulations.

31. Health and safety management system shall be reviewed

The significant employer for a mine shall:

- (a) regularly monitor the implementation and effectiveness of the health and safety management system for that mine in accordance with the regulations; and
- (b) amend that health and safety management system in the circumstances required by the regulations.

32. Amendment of health and safety management system

- (1) The Chief Inspector may, by notice to a significant employer for a mine, require an amendment to the health and safety management system for that mine if:
- (a) having regard to the information provided to the Chief Inspector under this Act or the regulations, the Chief Inspector considers (acting reasonably) such an amendment is necessary to ensure the health and safety management system is an effective means for ensuring the health, safety and welfare of employees and others present at the mine or directly affected by the mine and otherwise complies with the requirements of this Act; or

- (b) the Chief Inspector otherwise has reasonable grounds to believe that, due to deficiencies in the health and safety management system, there is a serious risk to the personal safety of employees and others present at the mine or directly affected by the mine; or
 - (c) due to evolving technologies and changing practices in the mining industry relevant to the mine the Chief Inspector considers there are new practices undertaken in the mine not adequately regulated by the regulations or the current content of the health and safety management system.
- (2) A notice served by the Chief Inspector upon a significant employer for a mine under Subsection (1) shall set out:
- (a) the reasons why the Chief Inspector requires an amendment to the health and safety management system; and
 - (b) the nature of the amendments required by the Chief Inspector to the health and safety management system.
- (3) A significant employer for a mine who is served with a notice by the Chief Inspector under Subsection (1) shall lodge with the Chief Inspector an amended version of the health and safety management system for that mine, which takes into account the concerns of the Chief Inspector, within 3 months of receipt of the Chief Inspector's notice.
- (4) A significant employer for a mine may, at any time, lodge with the Chief Inspector an amended version of the health and safety management system for that mine.

33. Special rules

- (1) Where a mine does not have a significant employer, then an inspector may, by written notice, require the principal employer for that mine to draw up and submit to the Chief Inspector within the time specified in the notice (which time shall be reasonable) special rules for the conduct and guidance of persons who work in, or are otherwise present within, the mine for the purposes of:
- (a) preventing accidents; and
 - (b) ensuring the health, safety and welfare of those persons.
- (2) The Chief Inspector may approve the special rules submitted to him or her under Subsection (1) or require such modification to those special rules as necessary to ensure that they effectively fulfil their purpose.
- (3) The principal employer shall ensure the special rules for a mine are modified in accordance with any direction given by the Chief Inspector under Subsection (2) within such period reasonably specified by the Chief Inspector.
- (4) Special rules for a mine shall come into effect upon their approval by the Chief Inspector or upon completion of their modification in accordance with Subsection (3).
- (5) An employer for a mine and the registered manager for that mine shall ensure that, where special rules apply to that mine, mining at that mine is carried out in accordance with those special rules.

- (6) The Chief Inspector may, where the Chief Inspector considers such a review is required (including, without limitation, due to the employment of new practices or technologies in a mine not adequately regulated by the regulations or current special rules for the mine), direct the principal employer for a mine to (within such reasonable time specified by the Chief Inspector):
- (a) undertake a review of the efficacy of the special rules for that mine; and
 - (b) amend the special rules as appropriate having regard to the results of that review; and
 - (c) submit the amended rules to the Chief Inspector for approval.

Subsections (2) to (4) apply to any such amended rules submitted to the Chief Inspector.

- (6) An employer or registered manager who contravenes this Section 33 commits an offence and is liable in the case of a corporation to a fine of up to 800 penalty units and in the case of an individual to a fine of up to 150 penalty units.

34. Regulations relating to Health and Safety Management Systems and Special Rules

The regulations may prescribe:

- (a) the consultation processes to be followed in the development of a health and safety management system or special rules; and
- (b) the consultation processes to be followed as part of any review or amendment of a health and safety management system or special rules; and
- (c) the conditions upon which access to a health and safety management system or special rules is to be provided to inspectors, employees at a mine or other persons; and
- (d) the required content of special rules; and
- (e) such other matters as the Head of State, acting on advice, thinks fit.

PART 5 – ADMINISTRATION OF ACT**35. Appointment of inspectors of mines**

- (1) The Minister may appoint suitable persons by notice in the National Gazette as:
 - (a) Chief Inspector; and
 - (b) inspectors,for the purposes of this Act.
- (2) An appointment under Subsection (1) shall be for the period specified in the relevant notice (which period may be expressed to be until such time as the Minister revokes the appointment).
- (3) The Minister shall issue to the Chief Inspector and to each inspector a certificate stating that he or she is an inspector.
- (4) In carrying out their functions under this Act inspectors are subject to the direction and control of the Chief Inspector.
- (5) An inspector shall undertake his or her duties in such areas of the State as directed by the Chief Inspector.
- (6) The Chief Inspector and inspectors shall at all times act reasonably in exercising any discretion vested in them by this Act.

36. Revocation of appointment

- (1) The Minister may revoke the appointment of an inspector at his or her discretion at any time by notice in the National Gazette.
- (2) Where the appointment of a person under Section 35 expires or is revoked under Subsection (1), that person shall immediately surrender to the Minister the certificate issued to him or her under Section 35(3).

37. Powers of inspectors

- (1) An inspector may, for the purposes of this Act:
 - (a) at all times of the day or night, enter, inspect and examine any mine or other place at which records and documents relating to a mine are kept and examine any plant, substance, document or other thing whatsoever at the mine or other place (but shall do so in such a manner as shall not unnecessarily impede or obstruct the working of the mine); and
 - (b) when entering a mine, take with the inspector such equipment and materials as the inspector considers appropriate; and
 - (c) conduct such examination and inquiry as the inspector (acting reasonably) 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; and

- (d) take and remove samples of any substance or other thing whatsoever at a mine (for the purposes of carrying out an investigation into the safety of the mine) without paying for them; and
 - (e) take possession of any plant or other thing for further examination or testing (for the purposes of carrying out an investigation into the safety of the mine) or for use as evidence; and
 - (f) take photographs and measurements, and make sketches and recordings; and
 - (g) require the production of, examine, and take copies of or extracts from, any document; and
 - (h) require the attendance of any owner, employer, manager or employee at a mine and interview, either in private or otherwise as the inspector considers appropriate, any such owner, employer, manager, employee or any other person whom he or she finds at the mine or whom the inspector has reasonable grounds to believe is, or was at any time during the preceding 2 years, an employee working at the mine; and
 - (i) require any person whom the inspector interviews under paragraph (h) to answer any question put to that person and, if the inspector considers it appropriate, to verify any such answer by statutory declaration; and
 - (j) require any person to state his or her name and address; and
 - (k) require the employer for or a manager for, or any person who works at, a mine to give such assistance to the inspector as the inspector (acting reasonably) considers necessary for the performance of the inspector's functions under this Act; and
 - (l) obtain written statements from potential witnesses, and appear at inquiries held regarding mining accidents, and at inquests, and call and examine witnesses and cross-examine witnesses; and
 - (m) exercise such other powers as are conferred on an inspector by the regulations or as may be necessary for the performance of the inspector's functions under this Act and for carrying this Act into effect.
- (2) In exercising any power under this Act, an inspector may be accompanied by any other persons (of appropriate experience and qualifications) whose assistance the inspector (acting reasonably) considers necessary, and those persons may do such things as are reasonably necessary to assist the inspector in the performance of his or her functions, and anything so done is deemed to have been done by the inspector.
- (3) In exercising any power under this Act, an inspector shall:
- (a) so far as practicable, not expose any person to a hazard; and
 - (b) so far as practicable, but without derogating from the effective performance of the inspector's functions under this Act, not unnecessarily impede or obstruct the workings of a mine; and
 - (c) except to the extent compliance with those policies and procedures would prevent the effective performance of the inspector's functions under this Act,

act consistently with the safety policies and procedures applying in respect of a mine.

- (4) Where an inspector intends to inspect and examine a mine under the powers conferred by this Section 37, the inspector shall, where practicable on entering the mine, give notice of his or her intention to do so either to the employer or to the registered manager for the mine, or, in their absence, to another responsible person.
- (5) A person to whom an inspector has given notice under Subsection (4) of intention to inspect and examine a mine shall, where practicable, immediately notify the health and safety representative for that mine (if any) of that intention, or if there is more than one health and safety representative for that mine, such of them as have functions relevant to the matter or area with which the inspector is concerned.
- (6) A person who contravenes Subsection (5) commits an offence.
- (7) Before exercising his or her powers under Subsection (1) in relation to a mine, the inspector shall produce his or her certificate referred to in Section 35(3) to the person present at the mine who is or appears to be in charge of the mine.
- (8) A person may not refuse to answer a question put by an inspector under Subsection (1) on the grounds that answering may incriminate that person but any such answer given by a natural person is not admissible in evidence in a prosecution against that natural person (other than an offence under Section 45(1)).
- (9) A person being, or to be, interviewed under Subsection (1)(h) has the right, if so requested by that person, to have a second person present during the course of the interview.

38. Inquiries

- (1) The Chief Inspector, or an inspector acting with the approval of the Chief Inspector, may conduct an inquiry into:
 - (a) health and safety practices at a specific mine; or
 - (b) an accident or incident at a mine; or
 - (c) health and safety practices in the mining industry generally or in a segment of that industry.
- (2) An inquiry under Subsection (1) is to be conducted in accordance with the procedures specified in the regulations.
- (3) A person may not refuse to answer a question put to them by an inspector at an inquiry held under Subsection (1)(a) or (1)(b) on the grounds that answering may incriminate that person but any such answer given by a natural person is not admissible in evidence in a prosecution against that natural person (other than a prosecution for failure to answer the relevant question).
- (4) No person may be compelled to attend at, answer questions at or produce documents to, an inquiry held under Subsection (1)(c).

39. Power to give directions

- (1) An inspector may for the purposes of this Act give a direction in writing under this Section 39 to an employer or manager for a mine if, in the opinion of the inspector:
 - (a) a contravention of a provision of this Act has occurred at the mine; or
 - (b) the mine, or the plant or a mining practice or a hazardous substance at or related to the mine, is a danger, or is likely to become dangerous, to the health or safety of any person at the mine (“**dangerous situation**”).
- (2) A direction under this Section 39 may direct:
 - (a) that the contravention of this Act be remedied and/or the dangerous situation be removed and may specify the nature of the action that the inspector requires to be taken to remedy the contravention and/or remove the dangerous situation; and/or
 - (b) that all or a specified part of the work at the mine shall stop and any person or persons shall be removed from the mine or a specified part of the mine until the provisions of this Act are not being contravened and/or the dangerous situation has been removed,

and an inspector may give a direction either under paragraph (a) or under paragraphs (a) and (b).
- (3) A direction shall specify the time within which the direction shall be complied with.
- (4) A direction may, where necessary because of a critical risk to health and safety, require that work not recommence at a mine until such time as an inspector has inspected and confirmed that the direction has been complied with but, in any other circumstances, a direction shall allow work to recommence at a mine upon the direction being complied with, irrespective of whether the inspector has an opportunity to inspect and confirm whether the direction has been complied with prior to work recommencing.
- (5) A direction under this Section 39 shall specify the provision of this Act which has been contravened or the nature of the dangerous situation.

40. Compliance with inspector’s directions

- (1) This Section 40 applies where an inspector gives a direction under Section 39 to the employer or the manager for a mine.
- (2) An employer or manager who is given a direction under Section 39 shall comply with it within the time specified in the direction or, if the employer or manager intends to object to the direction in accordance with Subsection (4), the employer or manager shall:
 - (a) cease to use the part of the mine to which the direction relates or the plant, mining practice or hazardous substance to which the direction relates; and
 - (b) withdraw all employees and other persons at the mine from the danger indicated by the inspector until the inspector directs otherwise.

- (3) Despite Subsection (2), the inspector may permit work to proceed at the mine, or the plant, mining practice or hazardous substance to be used or continue, subject to such restrictions and conditions as the inspector may impose and specify in writing in order to ensure the safety of employees and other persons at the mine and, if permission is given under this Subsection, the substance of the permission and any restrictions and conditions attached to the permission are to be entered in the registry book.
- (4) An employer or a manager may, within 7 days after receiving a direction, deliver to the Chief Inspector written objections to the direction specifying the grounds for those objections. The matter shall then be determined by the Chief Inspector.
- (5) An employer or manager who:
 - (a) contravenes a direction under Section 39; or
 - (b) in the event of an intention to object to the direction, contravenes Subsection (2),

commits an offence and is liable in the case of a corporation to a fine of up to 1,500 penalty units and in the case of an individual to a fine of up to 400 penalty units or imprisonment for up to 2 years.
- (6) An employer or a manager who delivers to the Chief Inspector written objections to a direction under Subsection (4) shall:
 - (a) immediately enter a record of those objections in the registry book; and
 - (b) without delay, enter a record in the registry book of the determination made by the Chief Inspector in relation to those objections.
- (7) An employer or manager who contravenes Subsection (6) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.
- (8) The Chief Inspector may, by notice in writing given to the employer or the manager for a mine, revoke a direction given under Section 39.
- (9) No person is precluded by a contract from doing such acts as are necessary to comply with a direction under Section 39.

41. Notice of result of inspection

- (1) The principal employer for a mine shall ensure that a registry book is maintained at the mine (or in such other place as may be prescribed) in which the inspector may make the entries contemplated by this Section 41.
- (2) After inspecting a mine, an inspector shall enter in the registry book for that mine a record of:
 - (a) the parts of the mine inspected by that inspector; and
 - (b) the nature of the inspection; and
 - (c) every defect which the inspector observed in the state and condition of the mine and plant at the mine; and

- (d) any direction that the inspector has given under Section 39, including the substance of the direction and the time within which the inspector requires action to be taken to comply with the direction.
- (3) The principal employer for a mine shall ensure that the registry book for that mine is 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 Chief Inspector.
- (4) A person may only be authorised in writing by the Chief Inspector to examine the registry book for a mine if that person is an employee of the department.
- (5) A principal employer who contravenes this Section 41 commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

42. Inspector shall inquire into complaints

- (1) A person working at a mine may complain to an inspector about anything which may constitute a hazard at the mine and in respect of which the person legitimately and reasonably considers that the duties imposed under Part 2 of this Act are not being complied with.
- (2) An inspector shall inquire as soon as reasonably practicable into any complaint made under Subsection (1) (unless the inspector considers (on a reasonable basis) the complaint to be frivolous or vexatious) and take such steps as the inspector considers necessary to investigate the matter, but the name of the person who made the complaint is not to be disclosed.
- (3) For the purposes of Subsection (2) the inspector may conduct a formal inquiry using the powers referred to in Section 37.

43. Use and misuse of information by inspectors

- (1) A person who is, or formerly was, an inspector, or a person assisting such an inspector, shall not:
 - (a) use for the gain of any person confidential knowledge or confidential information obtained by that person in the course of or as a result of that person's appointment as an inspector or as a result of that person assisting such an inspector (as applicable); or
 - (b) except in the proper performance of a function under this Act, intentionally or through a negligent act or omission disclose to any person information of a commercial nature concerning a mine or mining operations or information that is detrimental to or likely to be detrimental to the mining operations at a mine.
- (2) A person who is, or was formerly, an inspector, or a person assisting such an inspector, shall not disclose to any person a report prepared by an inspector, (including information in the report supplied under this Act by an employer or any

other person) concerning an accident at a mine which either resulted in death or injury to any person or had the potential to cause fatal or serious disabling injury to any person, unless the disclosure is made:

- (a) under or in connection with the administration of this Act; or
 - (b) to a court in accordance with a subpoena issued by the court; or
 - (c) in accordance with a requirement of some other Act.
- (3) A person who contravenes Subsection (1) or (2) commits an offence and is liable to a fine of up to 400 penalty units or imprisonment for up to 2 years.
- (4) Despite Subsections (1) and (2), an inspector, or a person assisting such an inspector, may with the approval of the Chief Inspector:
- (a) disclose to a coroner a report of an investigation into a fatal accident occurring at a mine; and
 - (b) provide a coroner with information that the inspector has grounds to believe to be accurate which appears likely to assist the coroner's investigation of a fatal accident at a mine.

44. Provision of facilities for inspection

- (1) An employer for a mine and a manager for a mine shall, on request by an inspector, provide that inspector and any person accompanying the inspector under Section 37(2) 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 and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

45. Obstruction

- (1) A person shall 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 threatening 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 shall 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, plant, data or records, or any other assistance which that person may lawfully and reasonably be required by that inspector to provide.

- (3) A person who contravenes Subsection (1) or (2) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

46. Provision of engineering report

- (1) If at any time the Chief Inspector so requires by notice in writing, the principal employer for a mine shall, as soon as reasonably practicable, procure an independent study:
 - (a) concerning health and safety at the mine, generally or in some particular respect specified by the Chief Inspector, or the 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 Chief Inspector shall state in any notice referred to in Subsection (1) the reasons why the independent study is required.
- (3) The principal employer for a mine shall provide to the Chief Inspector a copy of each independent study procured by that principal employer under Subsection (1).
- (4) The costs of procuring an independent study under this Section 46 and providing that study to the Chief Inspector shall be borne by the principal employer for the relevant mine.
- (5) An independent study required under this Section 46 shall be prepared by a professionally qualified engineer, or some other qualified professional person, nominated by the principal employer and approved by the Chief Inspector.
- (6) A study may not be requested under Subsection (1)(a) in respect of a mine more frequently than once in every 4 years unless:
 - (a) since the previous such study under that Subsection there has been a material change in the nature, scale, operations at or layout of the mine; or
 - (b) the Chief Inspector considers, on a reasonable basis, that the mine or any part thereof may not comply with the requirements of this Act.
- (7) A principal employer who contravenes this Section 46 commits an offence and is liable in the case of a corporation to a fine of up to 1,000 penalty units and in the case of an individual to a fine of up to 300 penalty units.

47. Codes of practice

- (1) The Chief Inspector may approve a code of practice for the purpose of providing practical guidance to employers, self-employed persons, employees and other persons on whom a duty is imposed by this Act.
- (2) A code of practice may consist of any code, standard, rule, specification or provision relating to occupational health or safety 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 Chief Inspector 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) Prior to approving, revising or revoking a code of practice, the Chief Inspector shall consult with the holders of each special mining lease and mining lease under the *Mining Act 1992*.
- (5) The Chief Inspector shall cause to be published in the National Gazette or in such other manner as permitted by the regulations notice of every approval, revision or revocation under this Section 47 and the approval, revision or revocation comes into force on the day of such publication.
- (6) The Chief Inspector 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 this Act or regulations otherwise than by observing that provision of the code of practice is a satisfactory defence.
- (8) A person is not liable to any civil or criminal penalty only because the person has not complied with a provision of a code of practice.

PART 6 – HEALTH AND SAFETY REPRESENTATIVES AND COMMITTEES

Division 1 – Health and safety representatives

48. Role of health and safety representatives

- (1) The role of a health and safety representative for a mine is to represent the interests of employees at that mine for the purposes of ensuring the health and safety of those employees.
- (2) A health and safety representative has such functions as prescribed by the regulations.
- (3) A health and safety representative for a mine has such powers as are necessary for the carrying out of the representative's functions (as prescribed in the regulations) 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.

49. Notice requiring election of health and safety representative

- (1) An employee who works at a mine (for which there is no incumbent health and safety representative) may give notice to his or her employer at the mine requiring the election of a health and safety representative for the mine.
- (2) The Chief Inspector, after the Chief Inspector or an inspector has consulted with employees at a mine (for which there is no incumbent health and safety representative), may direct the employer for that mine to arrange for the election of one or more health and safety representatives for that mine.
- (3) An employer for a mine, on whom a notice is served under Subsection (1) or (2), shall arrange for one or more health and safety representatives to be elected for that mine in accordance with the procedures prescribed in the regulations.
- (4) An employer for a mine may, at any time, arrange for the election of one or more health and safety representatives for that mine provided that any such election shall be conducted in accordance with the regulations.
- (5) An employer who contravenes Subsection (3) or Subsection (4) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

50. Term of office

- (1) A person who is elected as a health and safety representative holds office, subject to this Act, for a term of 2 years.
- (2) A person ceases to hold office as a health and safety representative if:
 - (a) the term of office of the person expires and the person is not re-elected; or
 - (b) the person ceases to be an employee who works at the mine for which that person was elected; or

- (c) the person resigns office by notice given to his or her employer; or
 - (d) the person is disqualified under Section 51.
- (3) The employer for a mine shall ensure that, not later than 21 days prior to the expiry of the term in office of a health and safety representative, an election is held, in accordance with the procedures set out in the regulations, of a replacement health and safety representative.
 - (4) A health and safety representative whose term in office expires under Subsection (1) may stand for re-election.
 - (5) Within 30 days of a person ceasing to hold office as a health and safety representative due to the application of Subsection (2), the employer shall ensure that an election is held, in accordance with the procedures set out in the regulations, of a replacement health and safety representative.
 - (6) An employer who contravenes this Section 50 commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

51. Disqualification of health and safety representative

- (1) A person specified in Subsection (2) may refer to the Chief Inspector the question of whether a health and safety representative for a mine should be disqualified on the ground that the representative:
 - (a) has acted other than in the legitimate performance of the health and safety representative's functions under this Act, with the intention of causing harm to an employer for the mine or a manager for the mine or a commercial or business undertaking of one of those persons; or
 - (b) has used or disclosed information acquired in the representative's capacity as a health and safety representative for a purpose that is not connected with the performance of the representative's functions under this Act; or
 - (c) has failed adequately to perform the functions of a health and safety representative under this Act,

or on more than one of those grounds.
- (2) A referral under Subsection (1) concerning the disqualification of a health and safety representative for a mine may be made by:
 - (a) an employer for the mine or a manager for the mine; or
 - (b) an employee who works at the mine; or
 - (c) an inspector.
- (3) If, upon a reference under Subsection (1), the Chief Inspector is satisfied that grounds for the disqualification of the health and safety representative exist, the Chief Inspector may disqualify the representative for a specified period or permanently from holding office as a health and safety representative.

- (4) In determining what disqualification, if any, should be imposed under Subsection (3), the Chief Inspector shall take into account:
- (a) the harm, if any, caused to the employer, or manager, for the mine or a commercial or business undertaking of one or more of those persons; and
 - (b) the past record of the health and safety representative in performing the functions of a health and safety representative under this Act; and
 - (c) whether the health and safety representative acted contrary to the public interest,

and may take into account any other matters that the Chief Inspector considers relevant.

52. Duties of employers and registered managers regarding health and safety representatives

- (1) This Section 52 applies in relation to a mine if there is a health and safety representative for that mine.
- (2) The registered manager for the mine and every employer for the mine shall make available to each health and safety representative for that mine such information as each of those persons has, or could reasonably be expected to have, relating to:
 - (a) hazards to persons that arise or may arise at the mine; and
 - (b) so far as it is relevant to the hazards mentioned in paragraph (a), the plant and substances used at the mine and the systems of work at the mine; and
 - (c) the health and safety of employees who work at the mine.
- (3) Where an employee so requests at an interview concerning occupational health and safety between an employer for the mine, the registered manager, or a representative of either of those persons, and the employee, that employer or registered manager shall permit a health and safety representative to be present.
- (4) The registered manager for a mine and every employer for that mine shall consult with health and safety representatives for that mine on intended changes to the mine or the plant or substances used at the mine where those changes may reasonably be expected to affect the health or safety of employees at the mine.
- (5) The employer of a health and safety representative shall permit that representative to take such time off work, with pay, as is provided for in the regulations, for the purposes of performing the functions of a health and safety representative under this Act.
- (6) Where any accident or dangerous occurrence takes place in a part of a mine where employees who are represented by a health and safety representative work, the employer and the registered manager for the mine shall ensure that the health and safety representative is notified without delay of the accident or occurrence.
- (7) Every employer for a mine shall ensure each health and safety representative for the mine is provided with such facilities and assistance as are reasonably required to

enable the health and safety representative to perform their functions under this Part, including any facilities and assistance as may be prescribed.

- (8) A person who contravenes Subsection (2), (3), (4), (5), (6) or (7) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

53. Restriction on disclosure of information

- (1) An employer for a mine and a manager for that mine:
- (a) shall not make available to a health and safety representative for that mine any medical information concerning an employee unless:
- (i) the employee has consented to the employer or manager doing so; or
- (ii) the information is in a form that does not identify, nor permit the identification of, the employee; and
- (b) is not required by Section 52(2) to make available information disclosing a trade secret.
- (2) An employer or a manager who contravenes Subsection (1)(a) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.
- (3) A health and safety representative shall not, except as required by law, use or disclose information acquired in the representative's capacity as a health and safety representative for a purpose that is not connected with the performance of the representative's functions under this Act.
- (4) A person who contravenes Subsection (3) commits an offence and is liable to a fine of up to 100 penalty units.

54. Regulations regarding time off work for health and safety representatives

The regulations may prescribe the time that a health and safety representative is to be permitted to take off work, with pay and other benefits, for the purposes of performing the functions that the representative is required to perform under this Act.

Division 2 – Health and safety committees

55. Role of health and safety committees

- (1) The role of a health and safety committee is to provide a forum to facilitate cooperation between employers and employees in relation to health and safety issues.
- (2) A health and safety committee has such functions as are prescribed by the regulations.

56. Request for health and safety committee to be established

- (1) An employee who works at a mine may request an employer for the mine to establish a health and safety committee for the mine.

- (2) Where an employer has been requested by an employee under Subsection (1) to establish a health and safety committee, the employer shall, within 21 days of the request:
 - (a) notify the employee and any health and safety representative for the mine that the request is agreed to; or
 - (b) if the employer considers that the circumstances of the case are such that a health and safety committee should not be required to be established under this Act, refer the question of whether such a committee should be established to the Chief Inspector and notify the employee and any health and safety representative for the mine that the matter has been referred to the Chief Inspector.
- (3) The Chief Inspector shall as soon as is practicable decide a question referred under Subsection (2) and notify the employer and the employee concerned of the decision.
- (4) In determining whether a health and safety committee should be established for a mine, the Chief Inspector is to have regard to the principle that a health and safety committee should be established for a mine unless:
 - (a) having regard to the scale of the mine, it is not practicable or necessary for such a committee to be established; or
 - (b) other arrangements are in place to ensure that the role and functions designed to be fulfilled by a health and safety committee are otherwise fulfilled.
- (5) Where an employee has made a request under Subsection (1) to establish a health and safety committee and the Chief Inspector determines that such a committee should not be established, then the employer for the mine is not required to respond to any request made under Subsection (1) unless that request is made at least one year after the Chief Inspector's decision.
- (6) An employer who contravenes Subsection (2) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

57. Establishment of health and safety committee

- (1) An employer for a mine shall, in accordance with this Division and the regulations, establish a health and safety committee for that mine within 3 months of:
 - (a) the coming into operation of a regulation requiring such a committee to be established by the employer or the application of a pre-existing regulation to the employer; or
 - (b) the service on the employer of a notice by the Chief Inspector, under Subsection (4), requiring the employer to do so; or
 - (c) being requested under Section 56 to do so where the employer, under Section 56(2)(a), agrees to the request; or
 - (d) the determination by the Chief Inspector under Section 56(3) that a health and safety committee should be established for the mine.

- (2) An employer who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.
- (3) An employer may, of the employer's own initiative, establish a health and safety committee at any time in accordance with this Division.
- (4) The Chief Inspector may direct an employer for a mine to establish a health and safety committee for that mine if, having regard to:
 - (a) the scale of the mine; and
 - (b) the arrangements otherwise in place at the mine,
 it is reasonably necessary to establish such a committee at the mine to ensure the objectives of this Act (in so far as applicable to that mine) are fulfilled and it is practicable for such a committee to be established.
- (5) Before issuing a direction under Subsection (4), the Chief Inspector shall provide the employers and employees for the mine with the opportunity to provide written and oral submissions to the Chief Inspector as to whether a health and safety committee should be established for the mine and may direct an inspector to undertake consultations with the employers and employees for the purposes of obtaining those submissions.

58. Composition and procedure of health and safety committees

- (1) A health and safety committee is to be constituted in accordance with the regulations.
- (2) Subject to Subsection (3) and to the regulations, a health and safety committee may determine its own procedure.
- (3) Each health and safety committee shall, unless otherwise approved by the Chief Inspector, meet at least 10 times each year.

59. Health and safety committees – restriction on disclosure of information

- (1) A member of a health and safety committee shall not, except as required by law, use or disclose information acquired in the person's capacity as a member of the health and safety committee for a purpose that is not connected with the performance of the committee's functions under this Act.
- (2) A member of a health and safety committee shall not purport to use that committee as a forum for resolution of issues which are not related to health and safety at a mine.
- (3) A person who contravenes Subsection (1) or (2) commits an offence and is liable to a fine of up to 100 penalty units.

60. Discrimination

- (1) An employer or prospective employer for a mine who in any way treats an employee or prospective employee less favourably than that employer or prospective employer otherwise would have done because the employee or prospective employee:
 - (a) is or has been a health and safety representative or a member of a health and safety committee; or

- (b) performs or has performed any legitimate function as a health and safety representative or a member of a health and safety committee; or
- (c) gives or has given assistance or information to an inspector, health and safety representative or any member of a health and safety committee; or
- (d) makes or has made a complaint in relation to health or safety to a person who is or was his employer, fellow employee, an inspector, a health and safety representative or a member of a health and safety committee,

commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

- (2) A mining union that in any way treats a person less favourably than it otherwise would have done because of the manner in which that person performs or has performed any function as a health and safety representative or a member of a health and safety committee commits an offence and is liable to a fine of up to 300 penalty units.

PART 7 – RESOLUTION OF HEALTH AND SAFETY ISSUES

61. Resolution of issues at a mine

- (1) Where an issue relating to occupational health or safety arises in relation to a mine, the employer concerned, or where the employer is not at the mine, the registered manager for the mine, shall, in accordance with the relevant procedure, attempt to resolve the issue with:
 - (a) the health and safety representative; or
 - (b) the health and safety committee; or
 - (c) the employees; or
 - (d) where relevant, any employer,whichever is specified in the relevant procedure.
- (2) For the purposes of Subsection (1), “**the relevant procedure**” means the procedure agreed, in accordance with any requirements specified in the regulations, between the registered manager for the mine and the employers and employees for the mine as applying in respect of the mine concerned or, where no procedure is so agreed, the procedure prescribed for that purpose in the regulations.
- (3) Where attempts to resolve an issue as mentioned in Subsection (1) do not succeed within one month of the issue being raised and there is both a health and safety representative and a health and safety committee in respect of the mine concerned, the health and safety representative shall refer the issue to the health and safety committee for it to attempt to resolve the issue.
- (4) A person who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

62. Inspector may be notified where issue unresolved

- (1) Where attempts to resolve an issue in accordance with Section 61 are unsuccessful, and there is a risk of imminent and serious injury, or imminent and serious harm to the health of any person, the registered manager for the mine, any employer or employee involved, or a health and safety representative for the mine, may notify an inspector of the unresolved issue.
- (2) An inspector, upon being notified of an unresolved issue under Subsection (1), shall attend without delay at the mine and either:
 - (a) take such action under this Act, including action under Section 39, as the inspector (acting reasonably) considers appropriate; or
 - (b) determine that in the circumstances no action is required to be taken under this Act.

63. Refusal by employee to work in certain cases

- (1) An employee may refuse to undertake work in a mine where that employee has reasonable grounds to believe that to continue to work would expose that employee or any other person at the mine to a risk of imminent and serious injury or imminent and serious harm to health.
- (2) In determining whether an employee has reasonable grounds for the belief referred to in Subsection (1) it is relevant to consider whether an inspector has attended the mine upon being notified under Section 62(1) of the risk and whether the measures, if any, required by the inspector to be taken to remedy the matters giving rise to the risk have been taken.
- (3) An employee may not refuse to work on the basis of an alleged threat to health and safety at a mine if an inspector has determined that no such threat exists or that whatever threat that exists is not sufficient to justify the cessation of work at the mine.
- (4) An employee who refuses to work as mentioned in Subsection (1) shall immediately notify:
 - (a) that person's employer; and
 - (b) if that person's employer is not at the mine, a manager for the mine; and
 - (c) if there are one or more health and safety representatives for the mine, one such health and safety representative,and the matter shall be regarded as an issue to which Section 62(1) applies.
- (5) An employee who refuses to work as mentioned in Subsection (1) shall not leave the mine concerned (during the employee's normal working hours) until the employee has provided notice under Subsection (4) and the employer or a manager for the mine has authorised the employee to leave that mine.
- (6) Subsection (5) does not apply if the employee has reasonable grounds to believe that to remain at the mine concerned would expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health.
- (7) Where an employee leaves a mine in reliance upon Subsection (6) the employee shall, unless this is not possible without continuing to expose the employee to a risk of imminent and serious injury or imminent and serious harm to his or her health, notify the employer or a manager for the mine of the employee's intention to leave the mine.
- (8) An employee who contravenes Subsection (3), (4), (5) or (7) commits an offence.
- (9) If an employee refuses to undertake work in accordance with this Section 63, the employer of that employee shall not on account of that refusal:
 - (a) terminate the employment of the employee; or
 - (b) injure the employee in his or her employment; or
 - (c) alter the position of that employee to the employee's prejudice.

- (10) An employer who contravenes Subsection (9) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

64. Assignment of other work

An employee who refuses to work as mentioned in Section 63(1) may be given reasonable alternative work to do until that employee resumes his or her usual work.

65. Entitlements to continue

- (1) An employee who refuses to work as mentioned in Section 63(1) is entitled to receive the same pay and other benefits, if any, which that employee would have been entitled to receive if the employee had continued to do his or her usual work.
- (2) Subsection (1) does not apply if:
- (a) the employee leaves the mine without the authorisation of an employer or a manager as required under Section 63(5); or
 - (b) the employee refuses to do reasonable alternative work that the employee is given under Section 64.

**PART 8 – SPECIFIC DUTIES RELATING TO
OCCUPATIONAL HEALTH AND SAFETY**

Division 1 – Conditions of Employment

66. Language

A person shall not be employed in a mine unless:

- (a) he or she is able readily and intelligibly to speak and readily read in print or manuscript English or Tok Pidgin; or
- (b) he or she is able to understand, and make himself or herself understood by, those under whom he or she is placed.

67. Age

A person shall not be employed in any capacity in or about a mine unless he or she is over the age of 16 years.

68. Liability of employer

An employer who breaches Section 66 or 67 commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

69. Underground mining

- (1) The employer and the registered manager for a mine shall ensure that every person who is not a licensed underground miner is, while employed on any underground face in that mine, employed only under the supervision of a licensed underground miner.
- (2) The employer and the registered manager for a mine shall ensure that every underground face in that mine at which a person who is not a licensed underground miner is employed is, at least once in every two hours during every working shift, visited and inspected by the licensed underground miner who is in charge of the underground face.
- (3) A person who contravenes this Section 69 commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

Division 2 – Reporting of Accidents

70. Notice of accident to be given

- (1) Where at a mine an accident or serious accident occurs, then the registered manager for the mine, and any other manager with responsibility for the relevant section of the mine in which the accident or serious accident occurs, are responsible for ensuring that notice of the accident or serious accident is given, (in accordance with any applicable requirements of the regulations), to the inspector nominated for that mine from time to time by the Chief Inspector, by notice to the registered manager for the mine, and to the Chief Inspector.

- (2) The notice required to be given under Subsection (1) shall:
 - (a) in the case of a serious accident, be given by the fastest practicable method of communication as soon as it is reasonably practicable to do so, and shall subsequently be confirmed in writing as soon as is practicable; and
 - (b) in the case of an accident, be given in writing within 7 days of the accident occurring.
- (3) Where notice is not given as required by Subsections (1) and (2) then the registered manager for the mine and each manager referred to in Subsection (1) are guilty of an offence and liable to a fine of up to 75 penalty units.
- (4) For the purposes of this Division 2:
 - (a) **“accident”** means an event or series of events at a mine causing injury to a person such that the person is unable to work during the next shift (following the injury) during which that person would, in the ordinary course, work; and
 - (b) **“serious accident”** means an event or series of events at a mine that causes:
 - (i) the death of a person; or
 - (ii) a serious disabling injury.

71. Recording of accidents

- (1) The registered manager for a mine shall after the occurrence of any accident or serious accident cause a record of the accident or serious accident to be entered without delay in the registry book.
- (2) A registered manager who contravenes Subsection (1) commits an offence and is liable to a fine of up to 50 penalty units.

72. Recording of occurrences in the registry book

- (1) The registered manager for a mine, and any manager with responsibility for the relevant section of the mine in which the occurrence occurs, are responsible for ensuring that notice of an occurrence to which this Section 72 applies is as soon as reasonably practicable given to the inspector nominated for that mine from time to time by the Chief Inspector, by notice to the registered manager for the mine, and to the Chief Inspector.
- (2) Subsection (1) applies whether or not any bodily injury to any person or damage to property resulted from the occurrence.
- (3) The registered manager for the mine and any manager with responsibility for the relevant section of the mine in which the occurrence occurs must ensure the Chief Inspector or an inspector are given such particulars in respect of the occurrence as they may require.
- (4) The registered manager for the mine, and any manager with responsibility for the relevant section of the mine in which the occurrence occurs, shall ensure that particulars of an occurrence to which this Section 72 applies are recorded in the registry book.

- (5) A registered manager or manager who contravenes Subsections (1), (3) or (4) commits an offence and is liable to a fine of up to 50 penalty units.
- (6) This Section 72 applies to an occurrence of:
- (a) any extensive subsidence, settlement or fall of ground or any major collapse of any part of the operations of a mine, or any earth movement; or
 - (b) any outbreak of fire above or below ground in any mine; or
 - (c) any breakage of a rope, cable, chain or other gear by which persons are raised or lowered; or
 - (d) any inrush of water from old underground operations or other source; or
 - (e) any accidental ignition of dust below ground or the discovery of the presence of potentially harmful or asphyxiant gas or an outburst of such gas in any part of a mine; or
 - (f) any accidental ignition or detonation of explosives, or any delayed or fast ignition of explosives; or
 - (g) any explosion or bursting of compressed air receivers, boilers or pressure vessels; or
 - (h) any electric shock or burn to a person and any dangerous occurrence involving electricity; or
 - (i) any incidence of a person being affected by poisoning or exposure to toxic gas or fumes; or
 - (j) any loss of control of heavy earth moving equipment, including failure of braking or steering; or
 - (k) any bursting of a significant pipeline; or
 - (l) any failure of a ventilation system at a mine designed to provide air for the benefit of persons as required by the regulations; or
 - (m) any significant and dangerous structural failure at a mine; or
 - (n) any death of a person on the mine site which death is due to natural causes.

73. Manager to report potentially serious occurrences

- (1) A manager for a mine shall ensure there is recorded in the registry book and an inspector informed (as soon as reasonably practicable) of any occurrence at the mine (of which the manager is aware) which in the manager's opinion had the potential to cause a serious accident (other than an occurrence referred to in Section 72) although no serious accident in fact happened.
- (2) A manager referred to in Subsection (1), and the registered manager for the mine, shall ensure an inspector is given such particulars of the occurrence as the inspector may require.

- (3) A registered manager or manager who contravenes Subsections (1) or (2) commits an offence and is liable to a fine of up to 50 penalty units.

74. Place of accident not to be disturbed and inspections by coroner

- (1) Subject to Subsection (2), a person shall not disturb a place at a mine where a serious accident (as defined in Section 70(4)) has occurred except with:
- (a) a view to saving life or preventing injury to any person; or
 - (b) the permission of an inspector or, where an inspector is not available, the permission of a coroner or a member of the police.
- (2) In the case of a fatal accident, a coroner may, as required (in the coroner's opinion) for the performance of the coroner's duties, inspect and disturb the place at the mine where the fatal accident occurred and may inspect the body or remains of any person who died in the accident.
- (3) A person who contravenes Subsection (1) commits an offence and is liable to a fine of up to 75 penalty units.
- (4) A person who obstructs or hinders a coroner undertaking an inspection referred to in Subsection (2) commits an offence and is liable to a fine of up to 100 penalty units.

Division 3 – Plans of Mines

75. Plans to be furnished

- (1) The registered manager for a mine shall 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 registered manager for a mine shall provide to the Chief Inspector copies of the plans referred to in Subsection (1) in accordance with the regulations.
- (3) If the Chief Inspector has reason to believe that a plan provided under this Section 75 is inaccurate or incomplete, the Chief Inspector may direct the employer for the relevant mine to have a check survey conducted at the employer's own cost and the employer shall comply with such a direction without delay.
- (4) The plans referred to in Subsection (1) shall be produced by the registered manager for the mine to an inspector, or any other person authorised for the purpose in writing by the Chief Inspector, and the registered manager shall, 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 shall allow that person to examine and take a copy of those plans.
- (5) The Chief Inspector may exempt any registered manager from complying with this Section.

- (6) A person who contravenes Subsection (1), (2), (3) or (4) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.
- (7) A person who knowingly or recklessly causes or permits to be omitted from any plan prepared for the purposes of this Section 75 any part of the workings of a mine commits an offence and is liable in the case of a corporation to a fine of up to 1,000 penalty units and in the case of an individual to a fine of up to 100 penalty units.
- (8) This Section 75 does not apply to mines at which the mining operations consist only of exploration operations.

76. Plans for closure or suspension

- (1) Where mining operations are about to be discontinued or suspended, the employer for the relevant mine shall cause to be prepared to the satisfaction of the Chief Inspector an accurate plan or plans of the mining operations to the time of discontinuance or suspension and shall furnish that plan or those plans to the Chief Inspector in accordance with the regulations before the mining operations are discontinued or suspended.
- (2) An employer who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

77. Copies of plans to be confidential

- (1) A person shall not, except with the consent of the Chief Inspector or the employer for the relevant mine, make a copy of, or tracing from, any copy of a plan furnished to or taken by the Chief Inspector, an inspector or other officer in accordance with this Act.
- (2) A person in possession of a copy of all or part of a plan for a mine shall not, except with the consent of the Chief Inspector or an employer for the relevant mine, allow any person to inspect, or give to any person any description of, or information relating to, the copy.
- (3) A consent may only be given by the Chief Inspector under Subsections (1) or (2) for the purposes of furthering the proper administration of this Act or some other statute.
- (4) Despite Subsections (1), (2) or (3), where the right or title to any mine is abandoned, surrendered or forfeited, a person may, on application to the Chief Inspector, be permitted to examine the copies of the plans of the mine held by the Chief Inspector.
- (5) A person who contravenes Subsection (1) or (2) commits an offence and is liable to a fine of up to 50 penalty units.

Division 4 – Construction and Use of Dams

78. Conditions relating to construction or alteration of dams

- (1) A person shall not commence to construct or enlarge or otherwise alter any dam with a capacity of more than 3,000,000 litres without the approval of the Chief Inspector.
- (2) Before approval under Subsection (1) is given, the person requiring it shall:

- (a) lodge with the Chief Inspector plans and specifications showing such details as may be prescribed of the construction or enlargement or other alteration proposed to be carried out; and
 - (b) satisfy the Chief Inspector that all proper measures have been and shall be taken to ensure the health and safety of the persons undertaking the construction, enlargement or alteration and the health and safety of all persons who shall work, or otherwise be present, in the vicinity of the dam (including persons who reside within the vicinity of the dam).
- (3) The Chief Inspector may make it a condition of his or her approval that the proposed construction or enlargement or other alteration be carried out only under the supervision of an inspector or some person nominated by him or her.
 - (4) A person shall not, in carrying out any work referred to in Subsection (1), depart in any particular from the plans and specifications on which the approval for the work was granted without the written consent of the Chief Inspector or the inspector or person under whose supervision the work is required to be carried out.
 - (5) A person shall not use a dam which is constructed, enlarged or altered pursuant to this Section 78 until an inspector has inspected it and certified that the dam is in a condition such that, to the extent practicable, it is not a danger to health and safety.
 - (6) Any person who contravenes any of the provisions of this Section 78 is guilty of an offence and liable in the case of a corporation to a fine of up to 750 penalty units and in the case of an individual to a fine of up to 75 penalty units.

79. Inspection of dams

- (1) All dams may, at all reasonable times, be inspected by an inspector.
- (2) Where it appears to an inspector that any dam is dangerous to human life or property he or she may, by written notice to the owner of the mine to which the dam relates or a person in charge of the dam, require them promptly:
 - (a) to empty the dam and keep it empty; or
 - (b) to discontinue its use until it has been repaired or reconstructed to the satisfaction of the inspector; or
 - (c) to take such other remedial measures as the inspector thinks fit.
- (3) A person who fails to comply with a direction given by an inspector under Subsection (2) commits an offence and is liable in the case of a corporation to a fine of up to 750 penalty units and in the case of an individual to a fine of up to 75 penalty units.
- (4) Where:
 - (a) an inspector considers it necessary to mitigate an immediate threat to human life or property; or
 - (b) any repairs, reconstruction or other work required under Subsection (2) have not been promptly carried out,

an inspector may undertake such measures for the repair of a dam such that it is not dangerous to human life or property and the cost of undertaking those measures shall be a debt due from the owner of the mine to which the dam relates to the State.

80. Discontinuance of use of dams

- (1) Where the owner for a mine to which a dam relates intends to discontinue use of the dam, he or she shall, before discontinuing that use, cause it to be emptied or to be treated in the manner prescribed in the regulations.
- (2) Within 14 days after discontinuing use of a dam the owner of the mine to which the dam relates shall, in writing, notify the Chief Inspector of the discontinuance.
- (3) A person who contravenes this Section 80 commits an offence and is liable in the case of a corporation to a fine of up to 750 penalty units and in the case of an individual to a fine of up to 75 penalty units.

Division 5 – Use of Waste Dumps

81. Approval to construct and alter waste dumps

- (1) A person shall not construct, enlarge the capacity of or otherwise make a structural alteration to, a waste dump without the approval of the Chief Inspector.
- (2) Before approval under Subsection (1) is given, the person requiring it shall:
 - (a) lodge with the Chief Inspector plans and specifications showing such details as may be prescribed of the construction or enlargement or other alteration proposed to be carried out; and
 - (b) satisfy the Chief Inspector that all proper measures have been and shall be taken to ensure the health and safety of the persons undertaking the construction, enlargement or alteration and the health and safety of all persons who shall work, or otherwise be present, in the vicinity of the waste dump (including persons who reside within the vicinity of the waste dump).
- (3) The Chief Inspector may make it a condition of his or her approval that the proposed construction or enlargement or other alteration be carried out only under the supervision of an inspector or some person nominated by him or her.
- (4) A person shall not, in carrying out any work referred to in Subsection (1), depart in any particular from the plans and specifications on which the approval for the work was granted without the written consent of the Chief Inspector or the inspector or person under whose supervision the work is required to be carried out.
- (5) A person shall not use a waste dump which is constructed, enlarged or altered pursuant to this Section until an inspector has inspected it and certified that the waste dump is in a condition such that, to the extent practicable, it is not a danger to health and safety.
- (6) Any person who contravenes any of the provisions of this Section 81 is guilty of an offence and liable in the case of a corporation to a fine of up to 750 penalty units and in the case of an individual to a fine of up to 75 penalty units.

82. Inspection of waste dumps

- (1) All waste dumps may, at all reasonable times, be inspected by an inspector.
- (2) Where it appears to an inspector that a waste dump is dangerous to human life or property he or she may, by written notice to the owner of the mine to which the waste dump relates or a person in charge of the waste dump, require that person to:
 - (a) discontinue the use of the waste dump until it has been repaired or reconstructed to the satisfaction of the inspector; or
 - (b) take such other remedial measures as the inspector thinks fit.
- (3) A person who fails to comply with a direction given by an inspector under Subsection (2) commits an offence and is liable in the case of a corporation to a fine of up to 750 penalty units and in the case of an individual to a fine of up to 75 penalty units.
- (4) Where:
 - (a) an inspector considers it necessary to mitigate an immediate threat to human life or property; or
 - (b) any repairs, reconstruction or other work required under Subsection (2) have not been carried out,

an inspector may undertake such measures for the repair of the waste dump such that it is not dangerous to human life or property and the cost of undertaking those measures shall be a debt due from the owner of the mine to which the waste dump relates to the State.

83. Discontinuance of use of waste dumps

- (1) Where the owner of the mine to which a waste dump relates intends to cease to use that waste dump, he or she shall, before ceasing that use, take such measures as prescribed by the regulations.
- (2) Within 14 days after discontinuance of use of a waste dump, the owner of the mine to which the waste dump relates shall, in writing, notify the Chief Inspector of the discontinuance.
- (3) A person who contravenes this Section 83 commits an offence and is liable in the case of a corporation to a fine of up to 750 penalty units and in the case of an individual to a fine of up to 75 penalty units.

Division 6 - Miscellaneous**84. Registry book**

- (1) Where a registry book is required under this Act to be kept at a mine or any other place, the registered manager for that mine shall ensure that:
 - (a) the book is kept solely for the purpose of making the entries required under this Act; and
 - (b) the book is kept safely in good order and condition.

- (2) A registered manager who contravenes Subsection (1) commits an offence and is liable to a fine of up to 50 penalty units.
- (3) With the consent of the Chief Inspector, which may not be unreasonably withheld, the registry book may be kept electronically, but which consent may be subject to such conditions as reasonably required to ensure the security and accuracy of that registry book and authenticity of the entries in that registry book.
- (4) An employer to whom consent to keep a registry book electronically is given, under Subsection (3), must in keeping such book electronically comply with any conditions of that consent.
- (5) The employer for a mine shall keep the registry book for that mine for so long as mining operations continue at that mine and shall record in the registry book the particulars, including the date, of any change in the employer for the mine.
- (6) If mining operations are discontinued or suspended, the employer for the relevant mine at that time shall keep the registry book for a period of 6 years from the time of discontinuance or suspension and, if the employer appears likely to go into liquidation or receivership, the employer shall take steps to ensure that such registry book is forwarded to the department for retention.
- (7) An employer or a person who was an employer who contravenes Subsections (4), (5) or (6) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

85. Residential Facilities

- (1) An owner or employer who provides residential facilities for use by persons who work at a mine shall take reasonable care to ensure that, so far as is practicable, those facilities are constructed and maintained in a safe and sanitary condition.
- (2) An owner or employer who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 1,000 penalty units and in the case of an individual to a fine of up to 100 penalty units.

PART 9 – ALLUVIAL MINING**86. Application of Act to alluvial miners**

- (1) This Part 9 and any other provisions of this Act specified in this Part 9 apply to alluvial miners and alluvial mines. Subject to Subsection (2), alluvial miners and alluvial mines are not, unless the contrary intention appears expressly or by necessary implication, bound by any other provisions of this Act.
- (2) The Chief Inspector may, by notice to the relevant alluvial miner, declare that the mining operations undertaken by an alluvial miner (and the alluvial mine) are subject to all or any provisions of this Act if, in the Chief Inspector's reasonable opinion, it is in all the circumstances reasonable and appropriate for those provisions to apply to the mining operations undertaken by the alluvial miner.
- (3) In determining whether to make a declaration under Subsection (2) and which provisions of this Act should be declared to apply to the mining operations undertaken by an alluvial miner, the Chief Inspector shall take into account:
 - (a) the health and safety risks at the alluvial mine at which the mining operations are undertaken; and
 - (b) the size of the mining operations conducted by the alluvial miner; and
 - (c) the number of employees working at the alluvial mine; and
 - (d) the nature of the mining operations; and
 - (e) that, having regard to the factors set out in paragraphs (a) to (d) above, a regulatory system should apply to the mining operations undertaken at the alluvial mine which shall best achieve the objects of this Act.
- (4) In determining whether to make a declaration under Subsection (2) the Chief Inspector shall also consider whether any of the provisions of this Part 9 (or other provisions of this Act specified in this Part 9) should cease to apply to the mining operations undertaken by the alluvial miner as a result of the other provisions of this Act being declared to apply to the mining operations.
- (5) A declaration under Subsection (2) shall:
 - (a) set out the provisions of this Act which are to apply to the mining operations carried on by the alluvial miner; and
 - (b) set out the provisions of this Part 9, and any other provisions of this Act, (if any), which no longer apply to the alluvial miner as a result of the declaration; and
 - (c) set out the reasons for the making of the declaration.
- (6) Prior to making a declaration under Subsection (2), the Chief Inspector shall provide a draft of that declaration to the alluvial miner and permit the alluvial miner to make submissions, within 60 days of receipt of the draft declaration (or such further period as the Chief Inspector allows), as to whether that declaration should be made.

- (7) Submissions under Subsection (6) shall be made in writing unless it is not reasonably practicable for the alluvial miner to make those submissions in writing, in which case the Chief Inspector shall facilitate those submissions being made orally to the Chief Inspector or to an inspector.
- (8) The Chief Inspector shall have regard to any submissions made under Subsection (6) in determining whether to make a final declaration under Subsection (2).
- (9) A declaration made by the Chief Inspector under Subsection (2) may be revoked by the Chief Inspector where the Chief Inspector considers, acting reasonably, that a change in the circumstances at the mine or the nature of the mining operations makes it appropriate to revoke the declaration.
- (10) A declaration made by the Chief Inspector under Subsection (2) may be varied by the Chief Inspector where, in the Chief Inspector's reasonable opinion, it is in all the circumstances reasonable and appropriate (having regard to the matters set out in Subsection (3)) to vary that declaration.
- (11) Subsections (4) to (8) apply to the making of a variation to a declaration under Subsection (2) in the same way as they apply to the making of a declaration.

87. General duties

- (1) An alluvial miner shall, so far as is practicable, provide and maintain at a mine a working environment in which the alluvial miner and any employees or any other persons working at the mine are not exposed to hazards and, in particular, but without limiting the generality of that obligation shall:
 - (a) provide and maintain workplaces, plant and systems of work of a kind that ensures, so far as is practicable, the alluvial miner, any employees and any other persons working at the mine are not exposed to hazards; and
 - (b) provide such information, instructions and supervision of any employees or other persons working at the mine to enable them, so far as is practicable, to perform their work in such a manner that they are not exposed to hazards; and
 - (c) consult and co-operate with employees or any other persons working at the mine regarding occupational health and safety at the mine; and
 - (d) to the extent that it is not practicable to avoid the presence of hazards at the mine, provide, at the cost of the alluvial miner and without cost to the employees and other persons, employees and any other persons working at the mine with such adequate protective clothing and equipment as is practicable to protect them against those hazards; and
 - (e) make arrangements for ensuring, so far as is practicable, that:
 - (i) the use, cleaning, maintenance, transportation and disposal of plant; and
 - (ii) the use, handling, processing, storage, transportation and disposal of substances,

at the mine is carried out in such a manner that the alluvial miner, employees and other persons working at the mine are not exposed to hazards.

- (2) An alluvial miner who contravenes Subsection (1) commits an offence and is liable to a fine of up to 200 penalty units.
- (3) An alluvial miner who contravenes Subsection (1) and by that contravention causes the death of or serious harm to an employee or any other person working at the mine commits an offence and is liable to a fine of up to 400 penalty units or imprisonment for up to 2 years.
- (4) An alluvial miner charged with an offence against Subsection (3) may instead be convicted of an offence against Subsection (2).

88. Duties of alluvial workers

- (1) An employee of an alluvial miner and any other persons working at an alluvial mine (“**alluvial worker**”) shall take reasonable care:
 - (a) to ensure his or her own health and safety at work; and
 - (b) to avoid adversely affecting the health or safety of any other person through any act or omission at work.
- (2) Without limiting the generality of Subsection (1), an alluvial worker contravenes that Subsection if that alluvial worker:
 - (a) fails to comply, so far as the alluvial worker is reasonably able, with instructions given by the owner of the alluvial mine, or a delegate of the owner, which instructions are given for the purpose of ensuring the health and safety of people who work at the alluvial mine; or
 - (b) fails to use such protective clothing and equipment as is provided to the alluvial worker by the owner of the alluvial mine, or a delegate of the owner, in a manner in which the alluvial worker has been properly instructed to use it; or
 - (c) misuses or damages any equipment provided in the interests of health or safety.
- (3) An alluvial worker who contravenes Subsection (1) commits an offence and is liable to a fine of up to 50 penalty units.
- (4) An alluvial worker who contravenes Subsection (1) and by that contravention causes the death of, or serious harm to, any person commits an offence and is liable to a fine of up to 150 penalty units or imprisonment for up to 2 years.
- (5) An alluvial worker charged with an offence against Subsection (4) may, instead of being convicted of that offence, be convicted of an offence against Subsection (3).
- (6) An alluvial worker shall report immediately to the person in immediate authority over that person:
 - (a) any potentially serious occurrence, of which the alluvial worker is aware, that arises in the course of or in connection with that alluvial worker’s work; and

- (b) any situation at the alluvial mine of which the alluvial worker is aware that the alluvial worker has reason to believe poses an immediate and material threat to the health or safety of any person at the alluvial mine; and
 - (c) (unless a similar report has to the knowledge of the alluvial worker already been made) any injury or harm to health (of which the alluvial worker is aware) suffered by any other person in connection with work at the alluvial mine (other than trivial injury or harm to health).
- (7) An alluvial worker who contravenes Subsection (6) commits an offence and is liable to a fine of up to 50 penalty units.

89. Alluvial Health and Safety Codes

- (1) The Chief Inspector may from time to time publish alluvial health and safety codes which codes set out health and safety procedures to be followed in undertaking alluvial mining.
- (2) An alluvial miner shall comply with any applicable alluvial health and safety codes which apply to the mine or mines at which the alluvial miner undertakes alluvial mining operations.
- (3) An alluvial miner who contravenes Subsection (2) commits an offence and is liable to a fine of up to 200 penalty units.
- (4) A person who works, or is otherwise present, at an alluvial mine shall comply with any applicable alluvial health and safety codes which apply to persons who attend at an alluvial mine in the same capacity as that person.
- (5) A person who contravenes Subsection (4) commits an offence and is liable to a fine of up to 50 penalty units.
- (6) Breach by an alluvial miner of an applicable provision of an alluvial health and safety code is prima facie evidence of a breach by that alluvial miner of Section 87(1).
- (7) Sections 47(2), (3), (5) and (6) apply to alluvial health and safety codes in the same manner in which those Subsections apply to codes of practice.

90. Application of Sections of other parts of this Act

- (1) Sections 6 and 7 apply to alluvial mines.
- (2) Sections 8(3) and (4) apply to an alluvial miner for the purposes of determining when a person is an employee of an alluvial miner (but without limiting any other means by which a person may be regarded as an employee of an alluvial miner).
- (3) Section 13 applies to alluvial mines but as though:
 - (a) the penalty for contravention of Subsection (1), (2), (3) or (4) were, for a corporation, a fine of up to 200 penalty units and in the case of an individual a fine of up to 200 penalty units; and
 - (b) the penalty for contravention of Subsection (1), (2), (3) or (4) where by that contravention the death of, or serious harm to, any person is caused were, for

a corporation, a fine of up to 400 penalty units and in the case of an individual a fine of up to 400 penalty units or imprisonment for 1 year.

- (4) Section 37 applies to alluvial miners but:
 - (a) the Section shall apply as though any reference to a “registered manager” or “manager” in that Section were deleted; and
 - (b) Subsections (5) and (6) do not apply.
- (5) Section 39 applies to alluvial mines but, for the purposes of the application of that Section, a manager means a person in day to day charge of all, or a significant part of, the alluvial mining operations at the relevant alluvial mine.
- (6) Section 40 applies to alluvial mines but:
 - (a) for the purposes of the application of that Section a manager means a person in day to day charge of all, or a significant part of, the alluvial mining operations at the relevant alluvial mine; and
 - (b) for the purposes of Subsection (3), the words “and, if permission is given under this Subsection, the substance of the permission and any restrictions and conditions attached to the permission are to be entered in the registry book” shall not apply; and
 - (c) for the purposes of Subsection (5), the penalties for commission of an offence are:
 - (i) in the case of a corporation, a fine of up to 200 penalty units; and
 - (ii) in the case of an individual, a fine of up to 200 penalty units or imprisonment for up to 2 years; and
 - (d) Subsections (6) and (7) do not apply.
- (7) Sections 42 and 43 apply to alluvial mines.
- (8) Section 44 applies to alluvial miners, but for the purposes of the application of that Section:
 - (a) a manager means a person in day to day charge of all, or a significant part of, the alluvial mining operations at the relevant alluvial mine; and
 - (b) for the purposes of Subsection (2), the penalty for commission of an offence is a fine of up to 50 penalty units.
- (9) Section 45 applies to alluvial mines but for the purposes of Subsection (3) the penalty for commission of an offence is a fine of up to 50 penalty units.
- (10) Sections 63 to 65 apply to alluvial mines but:
 - (a) Section 63(2) is replaced by the following Section:

“In determining whether an employee has reasonable grounds for the belief referred to in Subsection (1) it is relevant to consider whether an inspector has attended the mine upon being notified of the risk and whether the

measures, if any, required by the inspector to be taken to remedy the matters giving rise to the risk have been taken.”; and

- (b) Section 63(4) is replaced by the following Section:
 - “An employee who refuses to work as mentioned in Subsection (1) shall immediately notify that person’s employer”; and
 - (c) the words “or a manager for the mine” in Sections 63(5) and 63(7) do not apply; and
 - (d) for the purposes of Subsection (10), the penalty for commission of an offence is a fine of up to 40 penalty units; and
 - (e) the words “or a manager” in Section 65(2)(a) do not apply.
- (11) Section 74 applies to alluvial mines.
 - (12) Divisions 4 and 5 of Part 8 apply to alluvial mines provided that the maximum penalty for breach of any provision of those divisions is a fine of 75 penalty units.
 - (13) Parts 10 and 11 of this Act apply to alluvial mines.

91. Age

- (1) A person shall not be employed or otherwise work, in any capacity, in or about any alluvial mine unless he or she is over the age of 12 years.
- (2) A person who is aged between 12 and 16 years shall not be employed or otherwise work, in any capacity, in or about any alluvial mine unless they are at all times adequately supervised to ensure that, so far as is practicable, they are not exposed to hazards.
- (3) A person who is aged between 12 and 16 years shall not be given work to do at an alluvial mine which, having regard to the age of that person, that person is not able to safely undertake.
- (4) An employer, or other person in charge of an alluvial mine, who breaches this Section 91 commits an offence and is liable to a fine of up to 40 penalty units.

92. Accidents

- (1) Where at an alluvial mine a serious accident occurs, then the employer for the alluvial mine, and any other person in charge of the relevant section of the alluvial mine in which the serious accident occurs, are responsible for ensuring that notice of the serious accident is given to the Chief Inspector (and which notice shall comply with any requirements specified in the regulations).
- (2) Where notice is not given as required by Subsection (1) then the employer for the alluvial mine, and any other person in charge of the relevant section of the alluvial mine in which the serious accident occurs, are guilty of an offence and liable to a fine of up to 50 penalty units.
- (3) For the purposes of this Section 92, “**serious accident**” means an accident at a mine that causes:

- (a) the death of a person; or
- (b) a serious disabling injury.

93. Importation of duties/no double jeopardy

- (1) A duty imposed on a person under this Part:
 - (a) does not affect the application of any other more specific duty imposed on that person under this Act; and
 - (b) applies despite any other more specific duty imposed on that person under this Act.
- (2) The imposition of a duty on a person by this Act does not limit the scope of a duty imposed upon any other person under this Act.
- (3) A person does not discharge a duty imposed upon them under this Act merely by delegating the performance of that duty to another person.
- (4) A person is not liable to be punished twice under this Act in respect of the same act or omission.

PART 10 – OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

94. General penalty

A person who commits an offence against this Act is liable, if a penalty is not expressly provided for that offence, to a fine:

- (a) in the case of a corporation, not exceeding 400 penalty units; and
- (b) in the case of an individual, not exceeding 40 penalty units.

95. Continuing offences

- (1) Where an offence is committed by a person by reason of the contravention of a provision of this Act, or the regulations under 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 continued to be done, as the case may be.
- (2) Where an offence (“**principal offence**”) is deemed to continue, the person who committed the principal offence, whether by act or omission, commits an additional offence on each day during which the principal offence is deemed to continue and is liable to a fine not exceeding 10% of the maximum fine that may be imposed for the principal offence for every day on which the principal offence is so continued after the relevant day.
- (3) For the purposes of Subsection (2), the relevant day is the day (following receipt of notification from an inspector that, in the inspector’s opinion, the relevant offence has been committed) by which it was reasonably practicable for the person to remedy the offence.

96. Prosecutions and Spot Fines

- (1) Where requested by the Chief Inspector to prosecute an offence under this Act, the public prosecutor shall undertake a prosecution of that offence unless the public prosecutor is of the view there is no reasonable possibility of undertaking a successful prosecution.
- (2) The department may, with the consent of the public prosecutor or in circumstances where the public prosecutor does not wish to undertake a prosecution of an offence, undertake a prosecution for an offence under this Act and may engage a private sector law firm to assist it undertake that prosecution.
- (3) 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.
- (4) The Chief Inspector may notify a person of the department’s intention to commence a prosecution for an offence against this Act and offer the person the opportunity to pay a spot fine to the department of an amount not exceeding 50% of the maximum pecuniary penalty which may be imposed for that offence (on, as applicable, a corporation or natural person).
- (5) A notice served under Subsection (4) shall set out:

- (a) the relevant offence; and
 - (b) the basis upon which the Chief Inspector has determined the offence has been committed; and
 - (c) the amount of the spot fine; and
 - (d) such other details as may be prescribed.
- (6) If a person upon whom a notice is served under Subsection (4) within 60 days of service of that notice:
- (a) provides notice to the Chief Inspector acknowledging the commission of the offence; and
 - (b) pays to the department the amount of the spot fine,
- then that person is not liable to be prosecuted under this Act in respect of the act or omission to which the relevant offence relates.

97. Institution of proceedings

- (1) An offence against this Act (including against the regulations) shall be prosecuted:
- (a) before a Principal Magistrate, where the prosecution is against an individual and the maximum monetary penalty for the offence is equal to or less than 100 penalty units; and
 - (b) in the District Court, where the prosecution is against an individual and the maximum monetary penalty for the offence is equal to or less than 200 penalty units (but more than 100 penalty units); and
 - (c) in the National Court in any other case.
- (2) A prosecution for an offence against this Act may be commenced by the laying of an information in the relevant court.

98. Time limit for prosecutions

- (1) Subject to Subsection (2), every proceeding for an offence under this Act shall be commenced within 12 months after the offence was committed.
- (2) A proceeding for an offence under Section 8 or Section 87 shall be commenced within 2 years after the offence was committed.

99. Evidentiary provisions

- (1) In a proceeding for an offence under this Act, an assertion in the complaint that at a particular time:
- (a) a particular place was a mine; or
 - (b) a particular person was an employer of persons at a particular mine or was the principal employer for a mine; or
 - (c) a particular person was the registered manager or a manager for a mine; or

- (d) a notice required under this Act to be given by an owner, employer or manager had not been given; or
- (e) a prescribed fee had not been paid; or
- (f) a particular person was an employee or an inspector,

is deemed to have been proved in the absence of proof to the contrary.

- (2) 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) the validity of any delegation made by the Minister or Chief Inspector under this Act; or
 - (b) the validity of any appointment made by the Minister or Chief Inspector under this Act.

100. Vicarious responsibility of employers and managers

Where an offence under this Act is committed by a person and an employer or manager is proved knowingly to have permitted 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 conscious neglect on the part of, an employer or manager 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.

101. Offences by corporations

- (1) If a corporation is guilty of an offence against this Act, each:
 - (a) member of the governing body; and
 - (b) manager or executive of the corporation with responsibility for subject matter related to the offence,

is guilty of an offence and liable to the same penalty (other than a sentence of imprisonment) as is prescribed for that offence (when committed by a natural person) if that person knew of the commission of that offence or did not exercise all due diligence to prevent the commission of that offence.

- (2) A person may establish the exercise of all due diligence for the purposes of Subsection (1) by establishing that the corporation had in place, and properly implemented, a compliance system for the purposes of ensuring the corporation's compliance with the requirements of this Act.

102. False or misleading information

A person who knowingly or recklessly:

- (a) in relation to an application for a prescribed manager's certificate or certificate of competency; or

- (b) in response to a requirement, direction, inquiry or request made by the Chief Inspector, an inspector or other person (exercising authority under this Act) for the purposes of this Act,

makes a statement, or furnishes or causes to be furnished any report, or makes an entry in a registry 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.

103. Compensation for injuries

- (1) Subject to Section 104, if a person employed in or about a mine suffers bodily injury or is killed:
 - (a) as a result of the negligence of another person; or
 - (b) owing to the non-observance of any of the provisions of this Act by another person, such non-observance not being solely due to the negligence of the person so killed or injured,

the person injured, or his or her personal representatives, may recover from the other person compensation by way of damages as for a tort.

- (2) In determining the damages recoverable under Subsection (1), regard shall be had to the extent (if any) to which the person injured or killed contributed by any negligence or failure to comply with this Act on his or her own part to the injury or death.
- (3) This Section 103 does not take away from a person any right to take proceedings in respect of a claim for compensation for injury or death by accident which he or she may have under any law, but a person shall not be liable to pay compensation independently of and also under this Act in respect of the same injury or death.
- (4) The National Court shall have jurisdiction to hear and determine all claims for compensation under this Section 103.

104. Limitation on proceedings for compensation

- (1) Subject to Subsection (2), an action for the recovery of compensation under Section 103 shall not be maintained unless:
 - (a) written notice of the injury (or, as applicable, death) is given, and in such manner and form as may be prescribed, to the person against whom compensation is sought within 3 months of its occurrence (or where the injury is the occurrence of a disease, within 3 months of the occurrence of the disease becoming apparent); and
 - (b) the action is commenced within 12 months immediately after the occurrence of the injury or, as applicable, death (or where the injury is the occurrence of a disease, within 12 months of the occurrence of the disease becoming apparent).
- (2) The want of, or any defect or inaccuracy in, a notice shall not be a bar to the maintenance of the action in a case in which the Court is satisfied that the person against whom the claim is made has not been prejudiced by the want, defect or

inaccuracy where the want, defect or inaccuracy arose from mistake or absence from the country or from any other cause which the Court thinks reasonable.

PART 11 – FINAL PROVISIONS**105. Exemption from personal liability**

A person who is or was an inspector or a member of the Board of Examiners 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.

106. Power to make regulations

- (1) The Head of State, acting on advice, 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, including (and without limiting any other Section of this Act providing for the making of regulations):
 - (a) dealing with the duties, rights and obligations of owners, employers, employees, registered managers, deputy registered managers, managers, supervisors and other persons who attend at or are present at mines in relation to health and safety and related matters at mines; and
 - (b) dealing with the constitution of the Board of Examiners and the appointment and removal of members of that Board; and
 - (c) dealing with the conduct of meetings of the Board of Examiners, including without limitation quorums, voting procedure and the frequency of meetings; and
 - (d) empowering the Board of Examiners to determine the requirements which must be satisfied for the award of a certificate of competency or prescribed manager's certificate; and
 - (e) dealing with the requirements which must be met by persons to obtain certificates of competency or prescribed manager's certificates; and
 - (f) dealing with the fees payable in connection with obtaining certificates of competency or prescribed manager's certificates (including without limitation application fees, grant and renewal fees, exemption fees and fees for undertaking examinations); and
 - (g) dealing with the categories of occupation and activities for which a certificate of competency is required; and
 - (h) dealing with positions of responsibility within mines for which a certificate of competency is required; and
 - (i) dealing with the circumstances in which a person may act in a position for which a certificate of competency or prescribed manager's certificate is required without such certificate; and
 - (j) dealing with the conduct of examinations for certificates of competency and prescribed manager's certificates; and

- (k) dealing with other matters relating to certificates of competency and prescribed manager's certificates; and
- (l) dealing with the conduct of inquiries by the Board of Examiners; and
- (m) dealing with the procedure for election of health and safety representatives (including without limitation consultations in relation to the procedure for the conduct of such elections); and
- (n) dealing with the training required for health and safety representatives; and
- (o) dealing with the procedure for election of members of health and safety committees (including without limitation consultations in relation to the procedure for the conduct of such elections); and
- (p) dealing with the representatives of health and safety committees appointed by employers; and
- (q) requiring the appointment of a pit manager at a mine where surface mining operations are undertaken at that mine; and
- (r) dealing with the use of vehicles in mines, including, without limitation, matters relating to brakes, maintenance of vehicles, seat belts, parking, duties of drivers, the co-ordination of the movement of vehicles within a mine site and the safety and technical standards with which vehicles must comply; and
- (s) dealing with the carrying out of loading at mines; and
- (t) dealing with dumps and stockpiles at mines; and
- (u) dealing with lighting at mines; and
- (v) dealing with bench widths, working faces and benches at mines; and
- (w) dealing with roads and vehicle operating areas at mines; and
- (x) dealing with the taking account of geotechnical considerations in designing, operating, maintaining and closing a mine; and
- (y) dealing with sluicing at mines; and
- (z) dealing with sandpits at mines; and
- (aa) dealing with work near underground excavations; and
- (bb) dealing with the precautions to be taken at mines to minimise the impact of mining on areas surrounding the mine; and
- (cc) dealing with hydraulic monitors; and
- (dd) requiring the appointment of an underground manager at a mine where underground mining operations are undertaken at that mine; and

- (ee) dealing with matters relating to the safe and effective construction and development of underground mines; and
- (ff) dealing with contact with employees working alone in mines; and
- (gg) dealing with stoping operations, development headings, drives, excavations, rises, plats and shafts; and
- (hh) dealing with intersecting workings in underground mines; and
- (ii) dealing with the escape and exit routes required in mines; and
- (jj) dealing with the use of boring rods; and
- (kk) dealing with jams in passes and chutes; and
- (ll) dealing with the fencing required in mines; and
- (mm) dealing with the implementation of measures to address the risk of persons falling at mines; and
- (nn) dealing with the securing and protection of shafts, entrances and development openings; and
- (oo) dealing with the use of rock drills; and
- (pp) dealing with the measures required to address failures in ground integrity; and
- (qq) dealing with the use and storage of fuel at mines; and
- (rr) dealing with fire prevention at mines; and
- (ss) dealing with the use of fire suppression systems; and
- (tt) dealing with falling object protective structures; and
- (uu) requiring the appointment of an electrical manager at a mine where electricity is used in, or electrical work is undertaken at, that mine; and
- (vv) dealing with the undertaking of electrical work at mines; and
- (ww) dealing with electrical installations and electrical equipment at mines; and
- (xx) dealing with electricity supply systems at mines; and
- (yy) dealing with dangerous goods and substances; and
- (zz) requiring the appointment of an explosives manager at a mine where explosives are used at that mine; and
- (aaa) dealing with the use of explosives at mines, including without limitation, procedures for handling of explosives, warning signals in

- relation to use of explosives, blasting procedures and the keeping of explosives inventories; and
- (bbb) requiring the appointment of a machinery and equipment manager at a mine where machinery and equipment is used at that mine; and
 - (ccc) dealing with the use of plant and equipment at mines, and
 - (ddd) dealing with the use of ropes and chains at mines; and
 - (eee) dealing with ladders, travelling ways, footways and guiding ropes at mines; and
 - (fff) requiring the appointment of a winding operations manager at a mine where winding operations are undertaken at that mine; and
 - (ggg) dealing with winding operations at mines, including, without limitation, conveyances, winding systems, winding engines, winding ropes, headframes, sheaves, hoists, cages, skips, signaling systems, drum winding and friction winding; and
 - (hhh) dealing with the duties, training, competency, medical fitness and hours of work of operators of winding engines and hoists; and
 - (iii) dealing with boilers and pressure vessels; and
 - (jjj) dealing with the duties and powers of boiler inspectors; and
 - (kkk) dealing with dams and waste dumps; and
 - (lll) dealing with dredging; and
 - (mmm) dealing with smelting works and assay laboratories; and
 - (nnn) dealing with the provision and control of ventilation in mines, including the quantity, quality and velocity of ventilation flows, the methods of eliminating, extracting or dealing with atmospheric contaminants, the measuring, recording and reporting of data relevant to ventilation of mines and the use of compressed air for ventilation purposes; and
 - (ooo) dealing with ventilation between connected mines or mines in close proximity to each other; and
 - (ppp) dealing with air compressors and ventilation equipment; and
 - (qqq) dealing with air quality in confined spaces; and
 - (rrr) dealing with the connection of workings for ventilation purposes, including:
 - (ii) the sinking of winzes in mines concurrently with shaft sinking; and
 - (iii) the connection of adjoining mines by crosscuts and levels; and

- (iv) the connection of various workings in the same mine by crosscuts, levels, winzes and rises; and
- (v) the heights to which rises may be carried and the methods to be used in rising and the distances permissible between higher and lower levels and between air connections from one level to another; and
- (sss) dealing with measures to control dust and fumes at mines; and
- (ttt) empowering the Chief Inspector to impose conditions upon the conduct of operations at alluvial mines to ensure that, so far as is practicable, persons at such alluvial mines are not exposed to hazards; and
- (uuu) dealing with supervision of persons working at alluvial mines; and
- (vvv) dealing with health and safety practices at alluvial mines; and
- (www) dealing with the commencement of mining operations, including, without limitation, notifications required to be issued upon the commencement of such operations; and
- (xxx) dealing with the suspension of mining operations, including, without limitation, notifications required to be issued upon such suspension and procedures required to be taken to preserve health and safety during periods of such suspension; and
- (yyy) dealing with the resumption of mining operations after a period of suspension, including, without limitation, notifications required to be issued upon such resumption and procedures required to be taken to preserve health and safety during the implementation of such resumption; and
- (zzz) dealing with the closure of mines; and
- (aaaa) requiring and regulating the environmental rehabilitation of mine sites; and
- (bbbb) dealing with disused workings, including prohibiting members of the public from interfering with such disused workings and empowering a court to require a person breaching any such requirement to repair the disused working or pay to the State damages; and
- (cccc) dealing with wilful damage to or unauthorised removal of timber, plant or any other thing provided at a mine for the proper working of the mine; and
- (dddd) dealing with the procedures applicable to adjoining mines; and
- (eeee) requiring the appointment of a town and infrastructure manager at a mine where the owner or employer for that mines provides residential or associated facilities for use by persons who work at that mine; and
- (ffff) dealing with residential or associated facilities provided by the owner or employer for a mine to persons who work at that mine; and

- (gggg) dealing with the temperature which is to be maintained at mines; and
- (hhhh) dealing with the supervision of persons who work at mines; and
- (iiii) dealing with the inspection of areas of mines by the registered manager or delegates thereof; and
- (jjjj) dealing with working at heights in mines; and
- (kkkk) dealing with handrails and guards; and
- (llll) dealing with asbestos at mines; and
- (mmmm) dealing with radiation at mines including, without limitation, radiation sources and irradiating apparatus, protecting persons from exposure to radiation, maximum levels of exposure and management of radioactive waste; and
- (nnnn) dealing with the levels of noise at mines; and
- (oooo) dealing with the implementation of measures to prevent unauthorised or inadvertent access to a mine; and
- (pppp) dealing with the development of written procedures to minimise the risks resulting from hazards at mines; and
- (qqqq) restricting the consumption of alcohol at mines and persons working at mines where under the influence of alcohol or drugs; and
- (rrrr) dealing with the fitness of persons who work at, or are otherwise present in, mines and the assessment of that fitness; and
- (ssss) dealing with the use of measures to address fatigue of persons who work at mines; and
- (tttt) dealing with the number of hours that a person may work in a mine over any given period or the maximum number of hours a person may work without rest; and
- (uuuu) dealing with the assessment of the health of persons who work at mines; and
- (vvvv) restricting the presence in mines of persons suffering from diseases; and
- (wwww) dealing with the surveillance of the health and the biomedical monitoring of employees at mines and providing for the keeping of records concerning the health of employees and the provision of those records to the department and providing for the medical examination of persons employed or proposed to be employed at mines; and
- (xxxx) dealing with the amenities required to be provided at mines, including, without limitation, facilities for food storage and consumption, drinking water, washing, showering and toilet facilities, changing

facilities, facilities for refuse disposal and facilities for rest, sleep and recreation; and

- (yyyy) dealing with the training of persons who work in, or are otherwise present at, mines; and
- (zzzz) dealing with the treatment of stagnant water; and
- (aaaaa) dealing with protective equipment at mines; and
- (bbbbb) dealing with the monitoring of visitors at mines; and
- (ccccc) dealing with the development of emergency response plans for mines; and
- (dddd) dealing with first aid at mines and treatment for electric shock; and
- (eeee) dealing with rescue procedures, rescue personnel and rescue equipment at mines; and
- (ffff) dealing with procedures for responding to emergencies at mines; and
- (ggggg) dealing with procedures for evacuation from mines and escapeways at mines; and
- (hhhhh) dealing with the notification and recording of accidents; and
- (iiii) dealing with the provision of ambulance rooms with attendances and first aid facilities for use in case of accident; and
- (jjjj) dealing with the keeping of statistics in relation to accidents at mines; and
- (kkkkk) dealing with the conduct of inquiries, whether into accidents, practices or other specific incidents at mines or general inquiries into the safety of the mining industry, including, without limitation,;
 - (i) the procedure for the conduct of such inquiries; and
 - (ii) requirements for persons to attend such inquiries and provide written and documentary evidence; and
 - (iii) the procedure for taking evidence at such inquiries; and
 - (iv) the distribution and use of information obtained through such inquiries;
- (lllll) dealing with the keeping of records; and
- (mmmmm) dealing with the provision of notices in relation to changes in the name of a mine or any other matter at a mine; and
- (nnnnn) prohibiting persons damaging equipment at mines; and

- (ooooo) dealing with the circumstances in which exemptions from the requirements of the regulations may be granted; and
- (ppppp) dealing with the manner in which discretions vested in the Chief Inspector and inspectors may be exercised; and
- (qqqqq) dealing with the circumstances in which the Chief Inspector or an inspector may overrule the exercise of a discretion vested in an employer, registered manager, deputy registered manager, manager or some other person holding a position at a mine; and
- (rrrrr) requiring employees not to act so as to place another person in breach of the regulations; and
- (sssss) dealing with the procedure for the making of guidelines; and
- (ttttt) dealing with the format in which information is to be submitted to the Chief Inspector or inspectors; and
- (uuuuu) dealing with the conditions the Chief Inspector or inspectors may grant in connection with giving an approval; and
- (vvvvv) dealing with the appointment and functions of inspectors and defining the regions in which they are to carry out their duties; and
- (wwwww) dealing with methods of inspection of mines; and
- (xxxxx) dealing with action to be taken in the event of any accident, injury to the person or harm to the health of any person, or dangerous occurrence in connection with a mine; and
- (yyyyy) dealing with protective clothing and safety appliances for use at mines; and
- (zzzzz) dealing with the construction and demolition of buildings and other structures at mines; and
- (aaaaa) dealing with railways or other mechanical transport in or at a mine; and
- (bbbbb) dealing with the classification of mines and dealing with matters connected with the issue, suspension and cancellation of certificates, permits or other authorizations or exemptions required or permitted under this Act; and
- (ccccc) dealing with measures to control and deal with spontaneous combustion and dust explosions in mines and dealing with the prevention and laying of dust in mines; and
- (dddddd) dealing with the drainage of mines, the discharge of water over land adjacent to mines, the manner in which such drainage or discharge of water is to be carried out, the persons who may or shall carry out, or permit the carrying out, of that drainage or discharge of water, the persons who are to be liable for the costs or part of the costs of that drainage, arbitration in respect of those costs in default of agreement and the qualifications of persons who conduct such arbitrations, and

- proceedings in respect of the recovery of those costs and other remedies; and
- (eeeeee) dealing with the age limits of employees for certain classes of employment; and
- (fffff) dealing with hygiene and sanitation in mining operations, including:
- (i) the provision of potable drinking water; and
 - (ii) the standard, location, distribution and maintenance of hygiene and sanitation facilities; and
 - (iii) the removal and disposal of waste, refuse and stagnant water; and
- (ggggg) dealing with the provision of shelter at mines; and
- (hhhhh) dealing with the making of plans and surveys of mines; and
- (iiiiii) 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; and
- (jjjjj) prescribing the value of a penalty unit for the purposes of this Act; and
- (kkkkk) prescribing any matter contemplated to be prescribed by this Act.
- (2) Where Subsection (1) provides that a regulation may deal with or require a matter, that means that the regulations may regulate all aspects relating to that matter in so far as relevant to health, safety and welfare at, or in connection with, mines and areas which may be affected by activities at mines including, without limitation,:
- (a) the importing, design, manufacture, construction, labeling, operation, handling, storage, cleaning, maintenance, use, testing, treatment, processing, transport, repair, modification, alteration, inspection, auditing, disposal and decommissioning of that matter;
 - (b) provision of information in relation to that matter;
 - (c) record-keeping in relation to that matter;
 - (d) any safety and technical measures which may be taken in relation to that matter;
 - (e) imposition of restrictions upon the circumstances in which that matter may be undertaken;

- (f) where the matter relates to the appointment of a person, dealing with the circumstances in which that appointment must be made, the qualifications required of a person to be so appointed, the circumstances in which such appointment may be terminated and the responsibilities of a person appointed to the relevant position.
- (3) Regulations may be made under this Act:
- (a) so as to apply:
 - (i) 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; and
 - (ii) at all times or at a specified time or at specified times; and
 - (iii) throughout Papua New Guinea or in a specified part or specified parts of Papua New Guinea; or
 - (iv) subject to specified exceptions; and
 - (b) so as to require a matter affected by them to be:
 - (i) in accordance with a specified standard or specified requirements; 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, specified powers; 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 (3), “**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 500 penalty units for any offence in the case of a corporation and 50 penalty units in the case of an individual.
- (5) 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 the Standards Association of Australia and other Australian and international bodies of well established high repute.

107. Publication of regulations at mine

- (1) The principal employer and the registered manager for a mine shall ensure that either:
 - (a) (i) a correct copy in legible characters of all the regulations applicable to that mine is posted up in some conspicuous place, or kept in some

readily accessible place, at or near the mine where they may be conveniently read by the employees at the mine; and

- (ii) so often as the copy referred to in paragraph (i) becomes defaced, obliterated or destroyed, the copy is renewed without delay; or
- (b) a correct copy of all the regulations applicable to that mine is stored electronically at the mine and where required by an employee:
- (i) a hard copy of the regulations is printed out and provided to that employee; or
 - (ii) the employee is allowed to read the electronic copy.
- (2) A person who contravenes Subsection (1) is guilty of an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

SCHEDULE – TRANSITIONAL PROVISIONS

1. Repeal of the Mining (Safety) Act 1977

- (1) The *Mining (Safety) Act 1977* is repealed.
- (2) Despite Subsection (1), a prosecution may be brought, or a prosecution in progress may be continued, for a breach of the *Mining (Safety) Act 1977* occurring prior to its repeal as though that Act had not been repealed.

2. Nomination of Principal Employer

- (1) Where mining operations have commenced at a mine prior to the commencement of this Act, then:
 - (a) Section 15(1) of this Act does not apply to that mine; but
 - (b) within one month of the commencement of this Act, the owner, or owners, of that mine shall notify the Chief Inspector of the principal employer for that mine and of the address of that principal employer.
- (2) A person who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

3. Registered Manager and Deputy Registered Manager

- (1) Where mining operations have commenced at a mine prior to the commencement of this Act, then for the purposes of this Act the registered manager for that mine shall be, until such time as a new registered manager is nominated by the principal employer for that mine, the person registered as the manager for that mine under Section 16 of the *Mining (Safety) Act 1977* immediately prior to the commencement of this Act and such person's appointment as registered manager shall be deemed to have been approved by the Chief Inspector for the purposes of Section 16 of this Act.
- (2) A certificate of registration issued in respect of a manager of a mine under Section 16(5)(b) of the *Mining (Safety) Act 1977*, which manager is the registered manager for that mine by virtue of Subsection (1), shall be regarded as a certificate of registration issued under Section 16(8)(b) of this Act.
- (3) Where mining operations have commenced at a mine prior to the commencement of this Act, then the appointment of a deputy registered manager under Section 16(3) shall be made within one month of the commencement of this Act.

4. Notification of Commencement of Mining Operations

No notice is required to be given under Section 17(1)(a) of this Act in respect of mining operations at a mine which have commenced prior to the commencement of this Act.

5. Health and Safety Management System

- (1) Where mining operations at a mine have commenced as at the date of commencement of this Act, then the significant employer for that mine shall lodge a health and safety

management system for that mine with the Chief Inspector within 180 days of the date of commencement of this Act.

- (2) A person who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 1,000 penalty units and in the case of an individual to a fine of up to 200 penalty units.
- (3) Until such time as a health and safety management system for a mine, to which Subsection (1) applies, has been lodged with the Chief Inspector, Section 27 of this Act does not apply to that mine.

6. Chief Inspector and Inspectors

- (1) The person holding the office of Chief Inspector under the *Mining (Safety) Act 1977* immediately prior to the commencement of this Act shall be taken to have been appointed by the Minister under Section 35(1)(a) of this Act as the Chief Inspector under this Act, with effect from the commencement of this Act, until such time as the Minister revokes that appointment.
- (2) Each person holding the office of inspector under the *Mining (Safety) Act 1977* immediately prior to the commencement of this Act shall be taken to have been appointed by the Minister under Section 35(1)(b) of this Act as an inspector under this Act, with effect from the commencement of this Act, until such time as the Minister revokes that appointment.

7. Continuity of Record Book

- (1) Where there is located at a mine, immediately prior to the commencement of this Act, a record book maintained under Section 8 of the *Mining (Safety) Act 1977*, then the principal employer for that mine shall ensure that record book continues to be maintained at that mine and is used as the registry book required to be maintained at that mine under Section 41 of this Act.
- (2) A person who contravenes Subsection (1) commits an offence and is liable in the case of a corporation to a fine of up to 500 penalty units and in the case of an individual to a fine of up to 50 penalty units.

8. Prescribed Manager's Certificate

A person who, immediately prior to the commencement of this Act, holds a prescribed manager's certificate issued under the *Mining (Safety) Act 1977* shall be taken to hold a prescribed manager's certificate issued under this Act.

9. Underground Miner's Permit

A person who, immediately prior to the commencement of this Act, holds an underground miner's permit issued under the *Mining (Safety) Act 1977* shall be taken to hold a certificate of competency as a licensed underground miner under this Act and the permit held by that person shall be taken to be such a certificate of competency.

10. Continuation of Suspension

- (1) Where a certificate or permit has, immediately prior to the commencement of this Act, been suspended pursuant to Section 61 of the *Mining (Safety) Act 1977* then the

operation of that suspension is not affected by the commencement of this Act and the certificate or permit shall continue to be suspended until the expiry of the term of the suspension set under the *Mining (Safety) Act 1977*.

- (2) Nothing in Subsection (1) limits or otherwise affects any right a person may have to challenge the validity of, or appeal against, a suspension made pursuant to Section 61 of the *Mining (Safety) Act 1977*.

11. Continuation of Exemptions

- (1) Where an exemption has been granted to a person under the *Mining (Safety) Act 1977* (or the regulations under that Act) from a requirement of that Act (or the regulations under that Act) and that requirement is also included in this Act (or the regulations under this Act (“**corresponding requirement**”), then that exemption shall, unless otherwise determined by the Chief Inspector or until such time as revoked by the Chief Inspector, extend to exempt that person from that corresponding requirement.
- (2) A determination or revocation by the Chief Inspector under Subsection (1) shall be made by means of a notice issued to the relevant person.
- (3) Before issuing a notice under Subsection (2), the Chief Inspector shall:
 - (a) notify the person to whom the notice relates of the reasons why the Chief Inspector proposes to issue the determination or revocation; and
 - (b) allow the person 30 days to lodge submissions in respect of whether it is appropriate to issue the notice, which submissions shall be considered by the Chief Inspector.