



New South Wales

Mines Inspection Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Mines Inspection Act 1901* as follows:

- (a) to provide for positions and functions of general managers and production managers of mines,
- (b) to require a production manager who is the holder of a certificate of competency as production manager to undertake training to maintain the competencies required to discharge the duties of a production manager,
- (c) to provide for a board of examiners for shotfirers and related matters.
- (d) to incorporate certain provisions of the International Labour Organisation requirements contained in the *International Labour Organisation Convention No 176 (Convention concerning Safety and Health in Mines)* (the *Convention*).

* Amended in committee—see table at end of volume.

- (e) to omit certain provisions that are no longer required,
- (f) to make other amendments of a minor or consequential nature.

The Bill makes consequential amendments to the *Mines Inspection General Rule 1994* (the **General Rule**) and the *Defamation Act 1974*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Mines Inspection Act 1901* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Mines Inspection General Rule 1994* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendment to the *Defamation Act 1974* set out in Schedule 3.

Schedule 1 Amendment of Mines Inspection Act 1901

Positions of “general manager” and “production manager”

Schedule 1 [2] inserts definitions of *general manager* and *production manager* in the Act. The general manager of a mine is the person who is nominated and approved to be the general manager of the mine in accordance with proposed section 5 of the Act. The general manager of a mine is responsible for the daily supervision, control and management of the mine. The production manager of a mine is the person who supervises the production operations at a mine (**Schedule 1 [2]** inserts a definition of *production operations*).

Provision is also made for the appointment of an acting general manager of a mine (**Schedule 1 [12]**, proposed section 5A). Production operations at a mine are to be supervised only by a person who is the holder of a certificate of competency as production manager, a certificate of service as production manager or a production manager’s permit granted in respect of the class of mine concerned. Provision is also made for the grant of production managers’ permits by the Chief Inspector of Mines (**Schedule 1 [12]**, proposed sections 5B and 5C). Certain functions of a general manager may be delegated. A production manager’s functions may be delegated only to a person who is qualified to be a production manager (**Schedule 1 [12]**, proposed section 5D).

(Schedule 1 [7], [11], [13], [14], [16]–[18], [21]–[25], [28]–[32], [35], [38]–[45], [58], [59], [66], [68], [69]–[72], [77], [78], [81] and [82] make consequential amendments.)

Maintenance of competencies by production managers

Schedule 1 [20] inserts new Division 2A (proposed sections 18B–18D) in Part 2 of the Act containing the following provisions relating to the maintenance of competencies by production managers who hold certificates of competency as production manager:

- (a) Proposed section 18B provides that such a production manager must do the following:
- (i) undertake professional training prescribed by the general rules to ensure maintenance of competencies required to discharge the duties of a production manager,
 - (ii) keep records prescribed by the general rules of any such training undertaken,
 - (iii) produce the records on demand to an inspector.

The Chief Inspector of Mines may by written notice require the production manager to provide evidence that the production manager has maintained the required competencies or to undertake specified additional training if the Chief Inspector is of the opinion that the production manager requires the additional training to discharge the duties of a production manager competently. Failure by the production manager to comply with a notice issued under the section is an offence.

- (b) Proposed section 18C makes it an offence for a person who holds a certificate of competency as production manager and who has not performed the duties of a production manager for a certain period to exercise the functions of a production manager without the written approval of the Chief Inspector.

The Chief Inspector of Mines may by written notice require the person to produce evidence that the person is competent to discharge the duties of a production manager or to undertake additional training required to enable the person to discharge the duties of a production manager competently.

- (c) Proposed section 18D allows the Chief Inspector to exempt persons from any or all of the requirements of the proposed Division.

Shotfirers

Schedule 1 [2] inserts a definition of *shotfirer* in the Act. A shotfirer means a person who is the holder of a current certificate of competency as shotfirer or a current shotfirer's permit.

Schedule 1 [20] inserts new Division 2B (proposed sections 18E–18K) in Part 2 of the Act which contains the following provisions in relation to shotfirers:

- (a) Proposed section 18E makes it an offence for a person to undertake blasting operations at a mine unless the person is a shotfirer. However, persons who are not shotfirers may be authorised by the general rules to undertake blasting operations or undertake blasting operations of a certain type. (**Schedule 1 [2]** inserts a definition of *blasting operations*.)
- (b) Proposed section 18F provides for a board of examiners of shotfirers to hold examinations for shotfirers and for the Minister to make rules in respect of matters relating to the board.
- (c) Proposed section 18G enables the Minister to grant a certificate of competency as shotfirer to an applicant who has satisfactorily passed the requisite examination conducted by the board.
- (d) Proposed section 18H makes provision in relation to certificates of competency as shotfirer granted outside New South Wales.
- (e) Proposed section 18I provides for the form of certificates and the particulars that must be specified in the certificates.
- (f) Proposed section 18J enables inspectors to issue shotfirers' permits that may be subject to conditions.
- (g) Proposed section 18K provides for the keeping of a register of certificates.

(**Schedule 1 [21]–[25]** and **[28]–[32]** make consequential amendments.)

Information on accidents, dangerous incidents and occupational diseases

Schedule 1 [48] amends section 40 to require certain information relating to certain accidents, dangerous incidents and occupational diseases to be included in the annual report of the Department of Mineral Resources. Article 5.2 (d) of the Convention requires the compilation and publication of statistics on such matters.

Plans to be made of proposed workings of a mine

Section 41 (1) of the Act currently requires, in certain cases, a plan to be prepared for a mine after operations at the mine have commenced that shows the workings of the mine. Article 5.5 of the Convention requires appropriate plans of workings of a mine to be prepared before the start of operations at the mine and for the plan to be revised to show any significant modifications to the workings that occur once operations have commenced. **Schedule 1**

[49] incorporates this requirement by replacing section 41 (1) of the Act with modifications requiring the plan to be prepared before operations at a mine commence and to be periodically revised.

(**Schedule 1 [50]–[56]** make consequential amendments.)

Risk management obligations

Schedule 1 [62] inserts new Division 3 (proposed section 46) in Part 4 of the Act which requires the general manager of a mine, as soon as is reasonably practicable, to identify and assess any risk associated with the safety and health of persons while employed at the mine and to eliminate the risk or, if that is not reasonably practicable, to minimise the risk. Failure to comply with the section is an offence. This provision incorporates Article 6 of the Convention which requires an employer to take preventive and protective measures at the mine concerned by assessing safety and health risks and dealing with the risks in a specified manner.

Notification of serious accidents, dangerous incidents and certain diseases

Schedule 1 [62] inserts new Division 4 (proposed sections 47–48) in Part 4 of the Act relating to the notification of serious accidents, dangerous incidents and certain diseases. The sections restate section 43 (Notification to be given of accidents in mines) of the Act so as to extend it to dangerous incidents and with certain modifications relating to:

- (a) the type of accidents of which notice must be given, and
- (b) the time within which, and persons to whom, notice must be given.

The Division contains the following provisions:

- (a) Proposed section 47 requires the owner or general manager of a mine to give notice to specified persons of any serious accident or dangerous incident that occurs. Oral notice must be given immediately, and written notice must be given within 24 hours, after the serious accident or dangerous incident occurs. (**Schedule 1 [2]** inserts in the Act definitions of *serious accident* and *dangerous incident*.)
- (b) Proposed section 47A provides for the preservation of the site of a serious accident or dangerous incident.
- (c) Proposed section 47B provides for the inspection of such sites.
- (d) Proposed section 47C provides that notice must be given to an inspector if a person employed at the mine has contracted a specified disease.

- (e) Proposed section 47D provides that notice must be given to an inspector of any deaths resulting from injuries received in serious accidents or from certain diseases.
- (f) Proposed section 47E requires records to be kept of certain accidents occurring at a mine.
- (g) Proposed section 48 restates section 39 of the Act (that section deals with the preparation and publication of special reports in relation to incidents at mines causing the death of, or injury to, persons). The proposed section requires serious accidents or dangerous incidents to be investigated and reported on. Article 10 (d) of the Convention requires such matters to be investigated.

(Schedule 1 [46], [60], [67], [68], [73], [79] and [80] make consequential amendments.)

Other amendments

Schedule 1 [1], [3], [19], [26], [27], [36], [37] and [74]–[76] make amendments by way of statute law revision.

Schedule 1 [2] inserts definitions of *Department* and *Director-General* in the Act. (**Schedule 1 [8], [47] and [57]** make consequential amendments.)

Schedule 1 [4]–[6], [9] and [10] amend various definitions used in the Act to bring them up to date with current mining practice.

Schedule 1 [15] amends section 7 of the Act to make it clear that applicants for certificates of competency as production manager are required to produce evidence of their qualifications before the certificate is granted.

Schedule 1 [33] omits Division 1 of Part 3 of the Act which contains section 25 (Prohibition of payment of wages at public-houses etc) as the Division is obsolete.

Schedule 1 [34] omits section 26 (4) of the Act which deals with certain restrictions on the employment of inexperienced persons in certain mining operations as the provision is obsolete.

Schedule 1 [61] amends section 44 to make it clear that notice is to be given of the opening or abandonment of a mine at which any person is employed (currently the section requires notice to be given at any mine at which 2 or more persons are employed).

Schedule 1 [62] omits Divisions 3 (Boilers) and 5 (Lead poisoning) of Part 4 of the Act as these Divisions are obsolete.

Schedule 1 [63] omits Part 5 relating to the drainage of mines as the Part is no longer required. (**Schedule 1 [83]** makes a consequential amendment.)

Schedule 1 [64] enables general rules to be made in relation to matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for the purposes of the Act.

Schedule 1 [65] enables general rules to be made in relation to the keeping of registers for production managers' permits and shotfirers' permits and the issue of a duplicate permit in certain circumstances.

Schedule 1 [84–[87] insert provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of the Mines Inspection General Rule 1994

Schedule 2 [1] amends clause 7 of the General Rule to require the general manager of a mine to do the following:

- (a) provide an effective communication system at the mine so that immediate communication is available with persons who are employed at the mine,
- (b) where practicable, provide two separate exits from each underground working place at the mine,
- (c) provide a system at the mine that enables the general manager, and the production manager, of a mine to be aware of the name of any person employed in an underground working place at the mine and, as far as is reasonably possible, the person's location in that place.

The amendment incorporates Articles 7 (a) and (d) and 10 (c) of the Convention.

Schedule 2 [2] inserts Part 7A in the General Rule to provide for health and safety at mines, in relation to waste materials produced at mines. The amendment incorporates Article 5.4 (d) of the Convention in respect of requirements for the safe storage, transportation and disposal of waste produced at mines.

Schedule 2 [3] and **[4]** amend the definition of *emergency* in clause 55 of the General Rule to include foreseeable industrial or natural disasters. (**Schedule 2 [5]** makes a consequential amendment.)

Schedule 2 [6] amends clause 56 of the General Rule to require the general manager of a mine to ensure that any strategies or procedures for responses to emergencies at the mine are integrated with emergency response plans prepared by emergency services organisations for the area in which the mine is located. Article 8 of the Convention requires the preparation of emergency response plans in relation to such matters.

Schedule 3 Amendment of Defamation Act 1974

Schedule 3 inserts proposed section 17U in the Act to provide a defence of absolute privilege in respect of the publication of a report referred to in section 48 of the *Mines Inspection Act 1901* relating to a serious accident or dangerous incident.