



New South Wales

## Mine Health and Safety Bill 2004

### Explanatory note

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

### Overview of Bill

This Bill is about the health, safety and welfare of people who work at mines (other than coal operations within the meaning of the *Coal Mine Health and Safety Act 2002*). The *Occupational Health and Safety Act 2000* (the **OH&S Act**) is the main Act that deals with the health, safety and welfare of people at work and covers people at work at a mine. This Bill puts in place special additional obligations, protections and procedures necessary for the control of particular risks arising from work at a mine. The obligations, protections and procedures in the *Occupational Health and Safety Act 2000* will continue to apply to mines.

This Bill also contains a number of amendments to the *Coal Mine Health and Safety Act 2002* to clarify the operation of that Act and to make it consistent with the provisions of the proposed Act.

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## Outline of provisions

### **Part 1 Preliminary**

**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** defines terms used in the proposed Act.

**Clause 4** clarifies that a person is at work for the purposes of the proposed Act when the person is at a mine.

**Clause 5** makes it clear that risks arising out of the activities of persons at work include risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking or the condition of premises used for the purposes of an undertaking.

### **Part 2 Application of Act**

**Clause 6** specifies the places of work (called *mines* in the proposed Act) to which the proposed Act applies.

**Clause 7** provides for the regulations to exclude a mine or place from the operation of the proposed Act and for the Minister to specify (by notice published in the Gazette) mines or places to which the proposed Act does not apply.

**Clause 8** provides that, if any question arises, otherwise than in proceedings before a court, as to whether a mine or other place is a mine or place to which the proposed Act applies, the question is to be referred to the Minister, whose decision on the question is final and binding on any court in proceedings arising under the proposed Act or the OH&S Act. This provision is based on section 76 of the *Mines Inspection Act 1901* (which is to be repealed by the proposed Act).

**Clause 9** provides that the proposed Act does not apply to coal mines.

**Clause 10** provides that the proposed Act does not apply to railway operations.

**Clause 11** provides that the proposed Act does not apply to civil engineering works.

**Clause 12** provides that the proposed Act does not apply to any part of a mine used for the purpose only of manufacturing bricks, tiles, pottery, earthenware pipes, terracotta, chinaware, refractory material or cement.

**Clause 13** provides that the proposed Act binds the Crown.

### **Part 3      Objects of Act**

**Clause 14** sets out the objects of the proposed Act.

### **Part 4      Application of Occupational Health and Safety Act 2000**

**Clause 15** provides that the proposed Act is to be read in conjunction with the OH&S Act.

**Clause 16** makes it clear that the proposed Act adds to the protection provided by the OH&S Act. The clause provides that if a provision of the OH&S Act applies to a mine or other place to which the proposed Act applies, that provision continues to apply, and must be observed, in addition to the proposed Act.

**Clause 17** provides that the OH&S Act will prevail if there is an inconsistency between the OH&S Act and the proposed Act.

**Clause 18** makes it clear that compliance with the proposed Act is not in itself a defence in any proceedings for an offence against the OH&S Act.

**Clause 19** provides that evidence of a relevant contravention of the proposed Act is admissible in any proceedings for an offence against the OH&S Act.

**Clause 20** prevents a person being punished twice in respect of an act or omission that constitutes an offence under both the proposed Act and the OH&S Act.

**Clause 21** makes it clear that documents or plans that by virtue of the proposed Act are required to be kept at a mine are taken to be documents that directly affect the occupational health and safety of employees within the meaning of section 81 of the OH&S Act.

### **Part 5      Duties relating to health, safety and welfare at mines**

#### **Division 1      Duties of mine holders**

**Clause 22** imposes a duty on a mine holder to nominate a person who is the employer with the day to day control of a mine as the operator of the mine. A mine holder must not undertake any work, or allow any other person to undertake any work directly related to mining at the mine unless the nomination has been made. The nomination is to be made in writing to the Chief Inspector, who may reject it. Many of the significant obligations imposed under the proposed Act are imposed on the operator of a mine.

**Clause 23** provides for the Chief Inspector to declare a person to be the operator of a mine.

**Clause 24** requires a mine holder to provide an operator with all information available to the mine holder that may reasonably be relevant to the development and implementation of a mine safety management plan for the mine.

**Clause 25** sets out the maximum penalty for offences against the proposed Division.

## **Division 2 Duties of operators of mines**

### **Subdivision 1 General duty**

**Clause 26** requires the operator of a mine to ensure that all persons working at the mine (including managers and supervisors) have the necessary skills, competence and resources to undertake their work safely and to ensure the safety of others.

### **Subdivision 2 Mine safety management plans**

**Clause 27** imposes a duty on the operator of a mine to prepare a mine safety management plan in accordance with the proposed Act and the regulations, stating how the health and safety of the persons who work at the mine, or who are directly affected by the mine, will be protected.

**Clause 28** requires the operator of a mine to ensure that work directly related to mining is not carried out at the mine unless a mine safety management plan that complies with the proposed Act and the regulations has been implemented for the mine.

**Clause 29** requires an operator to ensure compliance with the mine safety management plan.

**Clause 30** specifies the contents of a mine safety management plan.

**Clause 31** requires the persons who work at a mine to be consulted during the preparation of the mine safety management plan.

**Clause 32** requires the operator of a mine to communicate the mine safety management plan, or a summary of the plan, to the persons working at the mine, to regularly review the plan and to ensure that no contractor starts work at the mine without having been provided with a copy of, or access to, the mine safety management plan.

**Clause 33** requires a copy of the mine safety management plan for a mine to be kept at the mine and be made available for inspection by a government official, a site check inspector, an authorised representative or a worker.

**Clause 34** requires a person who ceases to be the operator of a mine to return to the mine holder any information provided to the person or obtained by the person in the course of exercising prescribed functions.

### **Subdivision 3 Management structure**

**Clause 35** requires the operator of a mine to prepare a management structure of the mine, which nominates persons within it by position and outlines their areas of responsibility and accountability.

**Clause 36** requires the operator of a mine to keep a register of the names of persons occupying positions in the management structure of the mine.

### **Subdivision 4 Duties regarding contractors**

**Clause 37** requires the operator of a mine to prepare a contractor management plan stating how the risks arising from the use of contractors at the mine will be managed.

**Clause 38** requires the contents of a contractor management plan to comply with the regulations.

**Clause 39** requires the operator of a mine to consult with any contractor proposing to work at the mine for the purpose of ensuring that the contractor is familiar with the relevant parts of the mine safety management plan and that the contractor's arrangements for safety management are consistent with the mine safety management plan for the mine.

**Clause 40** specifies the duties of an operator regarding contractors.

### **Subdivision 5 Emergency management**

**Clause 41** defines an *emergency* as existing at a mine when a situation is not controlled by the mine safety management plan for the mine and there is a threat to the life or physical well-being of persons at or outside the mine.

**Clause 42** imposes a duty on the operator of a mine to ensure that an emergency plan is prepared for the mine.

**Clause 43** requires the operator of a mine to ensure that work is not carried out at the mine unless an emergency plan is implemented for the mine.

**Clause 44** describes the contents of an emergency plan, which must include an up-to-date plan of the mine.

**Clause 45** provides for the review of an emergency plan after an emergency and whenever the mine safety management plan for the mine is reviewed.

### **Subdivision 6 Keeping of records and reporting**

**Clause 46** requires the operator of a mine to keep the records concerning health and safety that are required by the proposed Act or the regulations.

**Clause 47** requires the operator to make reports concerning health and safety as required by the regulations.

### **Subdivision 7 Penalties**

**Clause 48** sets out the maximum penalty for offences against the proposed Division.

### **Subdivision 8 Saving of certain notices and directions**

**Clause 49** provides that if a notice or direction is given under the proposed Act to a person as the operator of a mine and that person is replaced as operator by another person, any notice or direction is taken to have been given to the new operator.

## **Division 3 Duties and rights of employees**

**Clause 50** requires an employee who works at a mine to comply with the mine safety management plan and imposes other duties. An employee is required to immediately report to a supervisor any situation that he or she believes could present a risk to health and safety that is not within the employee's competence to control.

**Clause 51** provides that every employee has a right to remove himself or herself from any location at the mine when circumstances arise that appear to the employee, with reasonable justification, to pose a serious danger to his or her own health, safety or welfare.

**Clause 52** protects employees from being unlawfully dismissed or victimised. The clause makes it an offence for an employer of any person who works at a mine to dismiss an employee, injure an employee in his or her employment or alter an employee's position to his or her detriment because the employee participates in a consultation process required by or under the proposed Act, exercises rights under the proposed Act, reports a notifiable incident, is a site check inspector or for certain other reasons.

**Clause 53** makes it clear that the proposed Division applies to employees of a contractor who work at a mine.

## **Division 4 Duties of persons in management positions**

**Clause 54** requires a person who holds a management position at a mine to comply with the mine safety management plan for the mine.

**Clause 55** requires a person who holds a management position at a mine to inform the operator of the mine if he or she is aware that the conduct of the mine does not conform with the OH&S Act or the proposed Act or the regulations under either Act.

**Clause 56** sets out further obligations on those who hold management positions, including to ensure that the workplace and work methods for which he or she is responsible are safe.

**Clause 57** sets out the maximum penalty for offences against the proposed Division.

### **Division 5      Duties of supervisors**

**Clause 58** requires a supervisor at a mine to comply with the mine safety management plan for the mine.

**Clause 59** requires a supervisor at a mine to inform the operator if he or she is aware that the conduct of the mine does not conform with the OH&S Act or the proposed Act or the regulations under either Act.

**Clause 60** imposes further obligations on a supervisor at a mine.

**Clause 61** sets out the maximum penalty for offences against the proposed Division.

### **Division 6      Duties of and in relation to contractors**

**Clause 62** requires a contractor to comply with the mine safety management plan for the mine.

**Clause 63** gives a contractor the option to prepare a safety management plan.

**Clause 64** requires a contractor to prepare a safe work method statement.

**Clause 65** requires a contractor to ensure that work is carried out in accordance with the safe work method statement.

**Clause 66** specifies a contractor's duties regarding subcontractors.

**Clause 67** sets out the maximum penalty for offences against the proposed Division.

### **Division 7      Duty to give notice**

**Clause 68** imposes a duty on a person not to commence drilling operations unless the Chief Inspector has been given notice of the operations.

**Clause 69** allows for the regulations to require a person, or persons of a specified class, to give notice of the commencement or discontinuation of prescribed operations or activities at a mine.

**Clause 70** sets out the maximum penalty for offences against the proposed Division.

## **Division 8      General**

**Clause 71** makes it clear that a person can have more than one duty under the proposed Part.

**Clause 72** provides that compliance with the regulations is not in itself a defence in any proceedings for an offence against the proposed Part but that a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against the proposed Part.

**Clause 73** deals with multiple contraventions of general duties under the proposed Part. It provides that contraventions of 2 or more provisions of the proposed Part that arise out of the same factual circumstances may be charged as a single offence or as separate offences but that contraventions of 2 or more provisions may not be charged as a single offence.

**Clause 74** makes it clear that nothing in the proposed Part confers a right of action in any civil proceedings in respect of any contravention of any provision of the proposed Part and that nothing in the proposed Part confers a defence to an action in any civil proceedings or otherwise affects a right of action in any civil proceedings.

## **Part 6      Miscellaneous matters concerning mines**

### **Division 1      Mine plans**

**Clause 75** provides for the making of regulations concerning mine plans.

### **Division 2      Hours of work**

**Clause 76** limits the hours that a person can work underground in a mine.

**Clause 77** provides for the Chief Inspector to direct the operator of a mine to limit working hours or to alter associated working arrangements.

**Clause 78** provides for the regulations to make provision concerning the hours of work of persons working at mines.

**Clause 79** requires shift roster regimes to be prominently displayed at a mine.

**Clause 80** requires the operator of a mine to keep records of the hours worked underground by each employee at the mine.

**Clause 81** sets out the maximum penalty for offences against the proposed Division.

**Clause 82** creates a defence to offences against the proposed Division.

### **Division 3      Tourist and educational activities**

**Clause 83** defines terms used in the proposed Division.

**Clause 84** provides that tourist activities must not be conducted in or about a mine without a permit. The clause also provides that a mine must not be used principally for educational purposes without a permit.

**Clause 85** provides for the issue of permits authorising tourist activities or the use of the mine principally for educational purposes or both.

**Clause 86** provides for the revocation or variation of such permits.

**Clause 87** provides that the Crown, the Minister and officers of the Department of Mineral Resources are not liable for any claim arising out of anything done or omitted to be done pursuant to, or as a consequence of, the permit.

## **Part 7      Notification of incidents**

### **Division 1      Notification of certain incidents**

**Clause 88** requires the operator of a mine to give the Chief Inspector notice of certain notifiable incidents, namely any incident that has resulted in a person being killed or any incident or other matter that the regulations declare to be required to be notified.

**Clause 89** ensures the non-disturbance of plant involved in a notifiable incident. If such an incident has occurred at a mine, the operator must ensure that plant at the mine is not used, moved or interfered with after it has been involved in a notifiable incident, and that the area surrounding the place of the notifiable incident is not disturbed, for 24 hours.

**Clause 90** requires the keeping of records of notifications under the proposed Division.

**Clause 91** sets out the maximum penalty for offences against the proposed Division.

## **Division 2      Health and safety**

**Clause 92** requires the operator of a mine to keep records of medical and first aid treatment.

**Clause 93** prevents an operator from providing a financial benefit or incentive to a person to discourage reporting of a health or safety matter.

**Clause 94** sets out the maximum penalty for offences against the proposed Division.

## **Division 3      Inquiries**

**Clause 95** provides for the constitution of a Board of Inquiry to conduct a special inquiry into any event causing death or serious injury, any dangerous occurrence, certain practices at a mine or any matters relating to the safety, health, conduct or discipline of persons at or in relation to a mine.

**Clause 96** makes provision regarding witnesses and evidence at special inquiries.

**Clause 97** provides for a Board of Inquiry to prepare a report.

**Clause 98** provides that no appeal lies from any decision or determination of a Board of Inquiry on a special inquiry.

**Clause 99** sets out the maximum penalty for offences against the proposed Division.

## **Part 8          Stop work orders**

**Clause 100** provides that if the Minister is of the opinion that any action is being, or is about to be, carried out by any person at a mine or other place that involves, or is likely to result in, a serious breach of a provision of the OH&S Act or the proposed Act, the Minister may order the person to cease that action and that no action, other than any specified action, is to be carried out in or in the vicinity of the place, or a specified part of the place, for a period not exceeding 28 days.

**Clause 101** makes it clear that the Minister is not required to notify any affected person before making a stop work order.

**Clause 102** provides for the Minister to extend the duration of a stop work order.

**Clause 103** requires consultation about the modification of proposed detrimental action to avoid the need for a stop work order.

**Clause 104** provides that a stop work order prevails over any approval, notice, order or other instrument made or issued under the OH&S Act or under any other Act that requires or permits the work.

**Clause 105** provides for the Minister to enforce a stop work order by carrying out work for the purpose of stopping the work specified in the order and provides for the Minister to recover any costs or expenses incurred in doing so.

**Clause 106** makes it an offence to fail to comply with a requirement imposed by a stop work order.

## **Part 9      Competence standards**

### **Division 1      Key obligations**

**Clause 107** provides for the regulations to specify functions to which the proposed Part applies and to specify, or authorise the Board to determine, what is sufficient evidence of competence to perform those functions.

**Clause 108** provides that the operator of a mine must not employ a person at the mine to perform a specified function unless the person holds specified evidence of competence to perform that function. The operator must not permit a specified function to be performed by a person who does not hold specified evidence of competence.

**Clause 109** provides that a contractor must not employ a person at a mine to perform a specified function unless the person holds specified evidence of competence to perform that function.

**Clause 110** provides that a person at a mine must not perform a specified function unless the person holds specified evidence of competence to perform that function.

**Clause 111** sets out the maximum penalty for offences against the proposed Division.

### **Division 2      Metalliferous Mines and Extractive Industries Competence Board**

**Clause 112** constitutes the Metalliferous Mines and Extractive Industries Competence Board.

**Clause 113** provides that the Board is subject to Ministerial control and direction.

**Clause 114** sets out the membership of the Board.

**Clause 115** provides that the regulations may make provision for the procedure of the Board.

### **Division 3      Functions of Board**

**Clause 116** sets out some of the functions of the Board. These include to oversee the development of competence standards for persons performing functions at mines that may impact on health and safety, to undertake initial and ongoing assessments of the competence of persons and to advise the Minister on certain matters.

**Clause 117** requires the Board to prepare an annual report.

### **Division 4      Certificates of competence**

**Clause 118** provides for the Minister to grant certificates of competence to perform specified functions.

**Clause 119** provides for the making of regulations concerning competence standards and certificates of competence.

**Clause 120** provides for the making of Ministerial orders concerning competence standards and certificates of competence.

### **Division 5      Offences**

**Clause 121** makes it an offence to use another person's certificate of competence, lend a certificate of competence or allow it to be used by another person.

**Clause 122** makes it an offence to forge a certificate of competence or to possess a forged certificate.

**Clause 123** makes it an offence to make false or misleading statements in relation to the grant of any certificate of competence, the issue of a duplicate certificate, the restoration of a certificate of competence or for the purpose of obtaining employment at a mine to perform functions for which a certificate is required.

**Clause 124** makes it an offence for a person whose competence has been declared as not recognised to continue to perform functions for which that competence was required.

**Clause 125** sets out the maximum penalty for offences against the proposed Division.

## **Part 10 Oversight of mines**

### **Division 1 Outline of this Part**

**Clause 126** outlines the proposed Part which provides for the appointment, functions and powers of government officials (namely, the Chief Inspector, inspectors, mine safety officers and investigators) as well as persons to carry out inspections as representatives of the workforce at mines (namely, site check inspectors).

### **Division 2 Inspections by government officials**

#### **Subdivision 1 Appointment of government officials**

**Clause 127** provides for the appointment of public servants as the Chief Inspector and as inspectors, mine safety officers and investigators.

**Clause 128** specifies the qualifications of inspectors.

**Clause 129** provides for the appointment of consultants as investigators.

#### **Subdivision 2 Functions of government officials**

**Clause 130** specifies the functions of the Chief Inspector.

**Clause 131** requires a government official to bring certain concerns regarding the health, safety or welfare at work of persons at the mine to the attention of the most senior person at the mine.

**Clause 132** requires a government official to consider any complaint made to the official by a site check inspector for a mine, being a complaint concerning the health, safety or welfare at work of persons who work at the mine. A government official may investigate a complaint and is required to report to the site check inspector who made the complaint as to the results of the official's consideration or investigation of the complaint.

**Clause 133** provides for a government official to audit and review the mine safety management plan for a mine.

**Clause 134** provides for a government official to provide advice to the Chief Inspector on matters relating to the health, safety and welfare of persons at work at mines and to make reports on incidents or other matters at mines.

#### **Subdivision 3 Powers of government officials**

**Clause 135** empowers a government official to enter any mine at any time.

**Clause 136** empowers a government official to cross private land to gain entry to a mine.

**Clause 137** provides that a government official may require the operator of a mine to provide the government official with a plan of the mine marked with information that the government official considers necessary for an investigation or inquiry.

### **Division 3      Inspections on behalf of work force**

#### **Subdivision 1   Site check inspectors**

**Clause 138** provides for the election of site check inspectors for the purpose of enabling inspections to be carried out at a mine on behalf of the persons at work at the mine.

**Clause 139** provides that an election of a site check inspector for a mine must be held if one or more positions are vacant and an employee requests in writing that an election be held or the Chief Inspector directs that an election be held.

**Clause 140** provides for the conduct of elections of site check inspectors.

**Clause 141** provides that a site check inspector for a mine holds office for 2 years.

**Clause 142** sets out when a site check inspector ceases to hold office and sets out notification requirements.

**Clause 143** requires a person elected as a site check inspector to notify the operator of the mine of his or her election and contact details.

**Clause 144** lists the functions of a site check inspector, which include to keep under review the measures taken to ensure the health, safety and welfare of persons at the mine, including procedures to control risks, and to investigate any matter that may be a risk to health and safety at the mine.

**Clause 145** provides for the training of site check inspectors in matters of occupational health and safety.

**Clause 146** sets out the duties of operators in relation to site check inspectors.

**Clause 147** sets out the duties of contractors in relation to site check inspectors.

**Clause 148** requires the operator of a mine and all other persons at the mine to afford every facility and assistance to a site check inspector for the purposes of an inspection of the mine by a site check inspector.

**Clause 149** provides for the making of reports by site check inspectors.

## **Subdivision 2 Inspections on behalf of work force**

**Clause 150** makes provision for inspections by site check inspectors on behalf of the work force.

**Clause 151** provides that, for the purposes of an inspection, a site check inspector may be accompanied by the operator or a representative of the operator.

**Clause 152** provides that a site check inspector must not leave his or her place of work for the purposes of exercising functions as a site check inspector under the proposed Division unless he or she has given notice to the operator or a supervisor.

**Clause 153** empowers a site check inspector or an authorised representative to cross land to gain entry to a mine.

## **Division 4 Offences**

**Clause 154** makes it an offence to fail to comply with a requirement made by a government official.

**Clause 155** makes it an offence to obstruct a site check inspector in the exercise of his or her functions.

**Clause 156** makes it an offence to wilfully interfere with a site check inspector or a government official in the exercise of functions under the proposed Act.

**Clause 157** makes it an offence to impersonate a site check inspector or a government official.

## **Part 11 Mining industry codes of practice**

**Clause 158** specifies that the purpose of a mining industry code of practice is to provide practical guidance to operators, employers and others who have duties under Part 5 of the proposed Act or Part 2 of the OH&S Act with respect to occupational health, safety and welfare at mines.

**Clause 159** provides that the Minister may prepare, or cause to be prepared, draft mining industry codes of practice.

**Clause 160** requires the Minister to arrange consultation about a draft mining industry code of practice.

**Clause 161** provides for the Minister to approve a mining industry code of practice.

**Clause 162** provides for the publication of an approved mining industry code of practice in the Gazette, specifies when a code takes effect and provides that a copy of each approved code must be made available for public inspection without charge.

**Clause 163** provides for the amendment or revocation of an approved mining industry code of practice.

**Clause 164** provides that in any proceedings for an offence against the proposed Act or against the OH&S Act or the regulations under either Act, an approved mining industry code of practice that is relevant to any matter that it is necessary for the prosecution to prove to establish the commission of the offence by a person is admissible in evidence in those proceedings. The person's failure to observe the code at any material time is evidence of the matter to be established in those proceedings. A person is not liable to any civil or criminal proceedings by reason only that the person has failed to observe an approved mining industry code of practice.

## **Part 12 Regulations**

**Clause 165** empowers the Governor to make regulations under the proposed Act.

**Clause 166** lists specific matters that the regulations may deal with.

**Clause 167** enables the regulations to prescribe decisions that are to be reviewable by the Administrative Decisions Tribunal.

**Clause 168** provides for the regulations to adapt the provisions of Part 5.

**Clause 169** provides for the regulations to modify the application of Part 5 of the proposed Act to contractors.

**Clause 170** provides for the regulations to apply, adopt or incorporate any publication as in force at a particular time or from time to time.

**Clause 171** provides for the regulations to create offences.

**Clause 172** provides for the regulations to create exemptions from obligations created by the regulations or from certain requirements of the proposed Act.

**Clause 173** provides for the regulations to modify obligations regarding consultation required by the proposed Act.

## **Part 13      Miscellaneous**

### **Division 1      Enforcement**

**Clause 174** imposes liability on directors of corporations, and those concerned in the management of corporations, for certain contraventions by corporations.

**Clause 175** makes it an offence for a person to aid, abet, counsel, procure or to be directly or indirectly concerned in the commission of an offence against the proposed Act.

**Clause 176** provides that it is a defence to any proceedings against a person for an offence under the proposed Act if the person proves that it was not reasonably practicable for the person to comply with the provision, or that the commission of the offence was due to causes over which the person had no control and against the happening of which it was impracticable for the person to make provision.

**Clause 177** provides that it is not a defence to an action in any criminal proceedings that a given course of action was not objected to by the Chief Inspector or the Department, even if the proposed Act gives the Chief Inspector or the Department an opportunity to object to that course of action.

### **Division 2      Information**

**Clause 178** protects information obtained in connection with the administration and execution of the proposed Act from disclosure except in specified circumstances.

**Clause 179** prohibits the making of false or misleading statements in purported compliance with the proposed Act.

**Clause 180** specifies when a person has a defence to a charge under the proposed Division.

### **Division 3      Exercise and delegation of functions**

**Clause 181** provides that the Chief Inspector is subject to Ministerial control and direction.

**Clause 182** provides for the delegation of functions by the Minister to the Director-General or the Board.

**Clause 183** provides for the delegation of functions by the Chief Inspector.

**Clause 184** provides for the delegation of functions by the Director-General.

#### **Division 4      Service of documents**

**Clause 185** provides for the service of documents under the proposed Act.

**Clause 186** provides for the supply of documents and other things to the operator of a mine.

**Clause 187** provides for the supply of documents and other things to the Chief Inspector.

#### **Division 5      Fees**

**Clause 188** provides for the Minister to determine certain fees and charges.

#### **Division 6      Liability**

**Clause 189** protects certain persons from liability in relation to things done or omitted in good faith for the purpose of executing any provision of the proposed Act.

**Clause 190** makes it clear that nothing in the proposed Act imposes an obligation on a person to exercise any power because the person is a site check inspector.

#### **Division 7      Repeals and amendments**

**Clause 191** repeals the *Mines Inspection Act 1901* and certain other legislation.

**Clause 192** gives effect to the amendments to the *Mining Act 1992* in Schedule 1.

**Clause 193** gives effect to the amendments to the *Occupational Health and Safety Act 2000* in Schedule 2.

**Clause 194** gives effect to the amendments to the *Coal Mine Health and Safety Act 2002* in Schedule 3.

**Clause 195** gives effect to the amendments, required as a consequence of the enactment of the proposed Act, to the legislation set out in Schedule 4.

#### **Division 8      General**

**Clause 196** gives effect to the savings and transitional provisions set out in Schedule 5.

**Clause 197** provides for Ministerial review of the proposed Act.

## **Schedule 1 Amendment of Mining Act 1992**

**Schedule 1 [1]** amends the *Mining Act 1992* to provide for the lodgment of a single security deposit over all mining leases within a colliery holding or mine holding. (At present, a single security deposit is only acceptable where all leases are held by the same holder).

**Schedule 1 [2]** deals with the registration of certain colliery holdings. It provides that land subject to a mining lease for coal must be registered as a colliery holding or part of an existing colliery holding prior to the leaseholder commencing mining operations under the lease. It also provides that a person who has a right on any land to carry out mining purposes in connection with the mining of coal may apply to have the land registered as a colliery holding or recorded on the register as part of an existing colliery holding. A person with such an interest in a colliery holding may apply to have the registration cancelled or amended.

**Schedule 1 [3] and [4]** are consequential amendments.

**Schedule 1 [5]** provides for the registration of mine holdings under the *Mining Act 1992*.

## **Schedule 2 Amendment of Occupational Health and Safety Act 2000**

**Schedule 2** amends the *Occupational Health and Safety Act 2000* (as proposed to be amended by the *Mining Legislation Amendment (Health and Safety) Act 2002* and the *Coal Mine Health and Safety Act 2002*) as a consequence of the enactment of the proposed Act and for other purposes.

**Schedule 2 [1]** omits the *Mines Inspection Act 1901* from the list of associated occupational health and safety legislation. It is not necessary to include the proposed *Mine Health and Safety Act 2004* in that list because of the operation of Part 4 of the proposed Act.

**Schedule 2 [2]** omits the definition of *mine*.

**Schedule 2 [3]** inserts the definition of *mining workplace*, which means a place of work that is a mine within the meaning of the proposed Act or a place of work at which activities under the *Petroleum (Onshore) Act 1991* or the *Petroleum (Submerged Lands) Act 1982* are carried out.

**Schedule 2 [4] and [15]** replace references to mines with references to mining workplaces.

**Schedule 2 [5]** amends section 17 of the OH&S Act, which deals with the establishment of OHS committees and the election of OHS representatives. The amendment provides that, in relation to a place of work that is a mine, a site check inspector for the mine must be a member of any OHS committee for that place of work.

**Schedule 2 [6]** removes mining workplaces from the jurisdiction of inspectors appointed under proposed section 47 (2) of the OH&S Act.

**Schedule 2 [7]** provides that a person appointed as a government official under the proposed Act is taken to have been appointed as an inspector for the purposes of the OH&S Act and the regulations made under it. Such a person is only authorised to exercise functions under the OH&S Act in relation to a mining workplace, but may exercise certain functions in relation to certain other places.

**Schedule 2 [8]–[10]** provide for the identification of people taken to have been appointed as inspectors.

**Schedule 2 [11]** updates a reference to the Act proposed to be repealed by the proposed Act.

**Schedule 2 [12]** amends a provision that empowers employees' representatives to accompany inspectors by providing that in the case of a place of work that is a mine, the representative of the employees should, to the extent practicable, be a site check inspector elected under the proposed Act for that mine.

**Schedule 2 [13]** provides for the continuation of certain actions by inspectors.

**Schedule 2 [14]** amends provisions empowering an employees' representative to investigate suspected breaches of certain legislation so as to include suspected breaches of the proposed Act.

**Schedule 2 [16]–[20]** provide for the prosecution of offences under the proposed Act.

**Schedule 2 [21] and [22]** make consequential amendments.

### **Schedule 3 Amendment of Coal Mine Health and Safety Act 2002**

Most of the amendments to the *Coal Mine Health and Safety Act 2002* (referred to in this Schedule as the *Principal Act*), especially in relation to definitions provisions relating to the operation of the Act, are made for the purpose of bringing the Principal Act, when it commences, into line with the provisions of the proposed *Mine Health and Safety Act 2004* and the OH&S Act.

**Schedule 3 [1]** inserts a definition of *abandoned coal operation*.

**Schedule 3 [2]** inserts a revised definition of *coal exploration site*.

**Schedule 3 [3]** amends the definition of *mine* to include activities prescribed by the regulations.

**Schedule 3 [4]–[6]** amend the definition of *operator* to make it clear that a nomination has effect only if it is not rejected by the Chief Inspector.

**Schedule 3 [7]** amends the definition of *previous offender* to include in that term persons who have been convicted of an offence against the *Mines Inspection Act 1901* or the proposed Act.

**Schedule 3 [8] and [9]** make it clear when a person (and not just an employee) is taken to be at work for the purposes of the Principal Act.

**Schedule 3 [10]** provides for the regulations, or Ministerial notice published in the Gazette, to exclude places from the operation of the Principal Act.

**Schedule 3 [11] and [12]** clarify the relationship between the Principal Act and the OH&S Act.

**Schedule 3 [13]** makes it clear that the failure by the operator of a coal operation to comply with a provision of the Principal Act does not affect any liability of an employer or other person under the Principal Act or the OH&S Act.

**Schedule 3 [14]** brings a provision dealing with the prevalence of the OH&S Act into line with the corresponding provision of the proposed Act.

**Schedule 3 [15]** makes it clear that documents or plans required to be kept at a coal operation by virtue of the Principal Act are taken to be documents directly affecting the occupational health and safety of employees.

**Schedule 3 [16]–[20]** clarify the duty of a colliery holder to nominate the operator of a coal operation.

**Schedule 3 [21]** makes it clear when an operator is not required to prepare a management plan for a mine.

**Schedule 3 [22]** modifies the definition of *emergency* in relation to provisions dealing with emergency management systems.

**Schedule 3 [23] and [24]** provide that if a waiting period is prescribed by the regulations in relation to the commencement of when a high risk activity, the period may be varied by the Chief Inspector in a particular case.

**Schedule 3 [25]** makes the provision dealing with the unlawful dismissal or victimisation of employees consistent with the OH&S Act and the proposed Act.

**Schedule 3 [26]** provides that if notice has been given of drilling operations on particular land, no further notice is required if other related drilling operations are later commenced on that land.

**Schedule 3 [27]** substitutes the definition of *drilling operation* to make it consistent with the proposed Act.

**Schedule 3 [28]** omits a provision dealing with alternative verdicts in relation to offences under the Principal Act and the OH&S Act.

**Schedule 3 [29]** substitutes provisions concerning permits for tourist or educational activities in coal mines.

**Schedule 3 [30]–[42]** clarify and modify provisions relating to the operation and enforcement of stop work orders under the Principal Act.

**Schedule 3 [43]** extends the obligation of a government official to bring concerns regarding health, safety or welfare to the attention of senior management so that it applies whenever the official is exercising his or her powers.

**Schedule 3 [44]** inserts a note relating to the powers of government officials under the OH&S Act.

**Schedule 3 [45]** omits a redundant provision relating to the appointment of inspectors.

**Schedule 3 [46]** makes it clear that the powers of entry of a government official extend to any place to which the Principal Act applies.

**Schedule 3 [47]–[49]** make it clear that a site check inspector, and his or her union, have the right to make submissions to the Chief Inspector concerning any application to disqualify the site check inspector. The amendments also make it clear that the Chief Inspector must investigate a relevant matter prior to imposing any disqualification.

**Schedule 3 [50]** corrects references in relation to OHS committees.

**Schedule 3 [51] and [52]** remove references to discontinued mines, and former mines, which will be referred to as “abandoned mines” in the Principal Act.

**Schedule 3 [53]** provides for the making of regulations for or with respect to the consumption of alcohol or other drugs by those who visit mines or abandoned mines under the authority of a permit for tourist or educational activities.

**Schedule 3 [54]** provides for the making of regulations for or with respect to regulating or preventing the provision of any financial benefit or financial incentive to a person for the purpose of discouraging that person from reporting a health or safety matter.

**Schedule 3 [55] and [56]** bring certain provisions of the Principal Act into line with similar provisions of the OH&S Act.

**Schedule 3 [57]** omits a provision enabling the Minister to exercise the functions of the Chief Inspector.

**Schedule 3 [58]** makes it clear that the provision relating to protection from personal liability applies only in relation to things done (or omitted to be done) in the execution of the Principal Act (and not any other Act).

**Schedule 3 [59]** makes a consequential amendment.

**Schedule 3 [60] and [61]** omit uncommenced amendments to the OH&S Act concerning the establishment of OHS committees and alternative verdicts.

**Schedule 3 [62] and [63]** insert additional amendments to the OH&S Act that follow similar amendments made to that Act by Schedule 2 to the proposed Act.

**Schedule 3 [64]** adds to an amendment to the *Dams Safety Act 1978* so as to remove redundant words.

**Schedule 3 [65]** adds an amendment to the *Defamation Act 1974* to extend protection from defamation to reports to and by the Chief Inspector under the Principal Act.

**Schedule 3 [66]** omits an uncommenced amendment to the *Mining Act 1992*.

**Schedule 3 [67]** substitutes uncommenced amendments to the workers compensation legislation so as to maintain the status quo in relation to the application of the workers compensation legislation to coal miners.

**Schedule 3 [68]–[70]** modify the savings and transitional provisions contained in the Principal Act to bring them into line with similar provisions in the proposed Act.

## **Schedule 4 Amendment of other legislation**

**Schedule 4** makes consequential amendments to other legislation.

## **Schedule 5 Savings, transitional and other provisions**

**Schedule 5** makes savings and transitional provisions consequent on the enactment of the proposed Act.