

TASMANIA

**WORKPLACE HEALTH AND SAFETY
AMENDMENT (MINE SAFETY) BILL 2010**

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**WORKPLACE HEALTH AND SAFETY
AMENDMENT (MINE SAFETY) BILL 2010**

*(Brought in by the Minister for Workplace Relations, the
Honourable David James O'Byrne)*

A BILL FOR

An Act to amend the *Workplace Health and Safety Act 1995*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Workplace Health and Safety Amendment (Mine Safety) Act 2010*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Principal Act

In this Act, the *Workplace Health and Safety Act 1995** is referred to as the Principal Act.

*No. 13 of 1995

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “approved code of practice”:

“atomic substance” has the same meaning as in the *Mineral Resources Development Act 1995*;

- (b) by inserting the following definition after the definition of “dangerous incident”:

“dangerous substances location” has the same meaning as in the *Dangerous Substances (Safe Handling) Act 2005*;

- (c) by inserting the following definitions after the definition of “financial year”:

“fossick” means to search for minerals for a purpose other than for commercial gain to a depth of 2 metres by –

- (a) digging by hand; or
(b) using hand held instruments;

“geothermal substance” has the same meaning as in the *Mineral*

Resources Development Act
1995;

- (d) by inserting the following definition after the definition of “health and safety committee”:

“hours worked” means hours worked calculated in accordance with section 32D;

- (e) by omitting the definition of “mine” and substituting the following definitions:

“major hazard facility” has the same meaning as in the *Dangerous Substances (Safe Handling) Act 2005*;

“mine” includes any place at, in, on or under which mining operations are carried out;

“mine holder” means –

- (a) in relation to mining operations, the holder of a mining lease or sublease under Part 4 of the *Mineral Resources Development Act 1995* relevant to those mining operations; or
- (b) in relation to exploration, the holder of a mineral tenement under the

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Mineral Resources
Development Act 1995
relevant to that
exploration; or

- (c) where paragraphs (a) and (b) do not apply, the person for whose benefit the mining operations are carried out;

“mine operator” means the entity or individual appointed as, or taken to be, a mine operator under section 32E;

“mineral” means a mineral within the meaning of section 3AA;

“mine worker” means a worker who performs mining operations at a mine;

“mining operations” means mining operations within the meaning of section 3AAB;

- (f) by inserting the following definition after the definition of “plant”:

“possible major hazard facility” has the same meaning as in the *Dangerous Substances (Safe Handling) Act 2005*;

- (g) by inserting the following definition after the definition of “service provider”:

“site senior officer” means a site senior officer appointed under section 32H;

5. Sections 3AA and 3AAB inserted

After section 3 of the Principal Act, the following sections are inserted in Part 1:

3AA. Minerals

In this Act, mineral includes the following:

- (a) an inorganic substance;
- (b) an atomic substance;
- (c) a geothermal substance;
- (d) coal;
- (e) oil;
- (f) petroleum;
- (g) gas;
- (h) sand, rock, crushed stone, gravel or clay produced or excavated for commercial purposes;
- (i) matter forming part of the crust of the earth –

but does not include –

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- (j) the subsoil; or
- (k) the layer of soil sustaining vegetation; or
- (l) water (except where it is a geothermal substance).

3AAB. Mining operations

- (1) In this Act, “**mining operations**” includes any activity associated with the following:
 - (a) the exploration for minerals involving the mechanical disturbance of the ground;
 - (b) the extraction or excavation of minerals, or other material containing minerals, from the ground;
 - (c) the following activities undertaken on the same site, adjacent to, or as part of, a continuous process of extraction:
 - (i) the preparation or processing of extracted or excavated material, ore, minerals, tailings, spoil heaps or waste dumps including crushing, grinding, sizing, washing, concentrating, separating, smelting and refining;

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- (ii) the extraction, excavation, removal, handling, transport and storage of minerals, substances, contaminants and waste;
 - (iii) the construction, operation, maintenance and removal of plant and buildings;
 - (d) the decommissioning, rehabilitation, repair or maintenance of a place at which an activity referred to in paragraph (a), (b) or (c) occurs;
 - (e) any other activity or operation declared by the Director to be a mining operation, whether at a particular site or generally, and having regard to the nature of the work, risks or hazards involved.
- (2) The term mining operations does not include the following:
- (a) any activity associated with the production on private land of any rock, crushed stone, gravel, sand or clay for the private, non-commercial use of the owner;
 - (b) fossicking.

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- (3) A declaration under subsection (1)(e) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

6. Section 13 amended (Duties of self-employed persons)

Section 13 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: Fine not exceeding 500 penalty units.

7. Part 5A inserted

After section 32 of the Principal Act, the following Part is inserted:

PART 5A – MINE SAFETY
Division 1 – Interpretation

32A. Object

The object of this Part is to assist in securing the health and safety of mine workers, and other people exposed to risks to their health or safety arising from mining operations, through the implementation of additional health and safety measures specific to mines and mining operations.

32B. Interpretation of Part

In this Part –

“**commencement day**” means the day on which the *Workplace Health and Safety Amendment (Mine Safety) Act 2010* commences.

32C. Concurrent duties

If more than one person is under a duty or obligation imposed by Part 3 or this Part, each person must –

- (a) satisfy the duty or obligation imposed on the person without regard to the fact that another person may also be responsible for satisfying that duty or obligation; and
- (b) cooperate with any other person who is performing that duty or obligation.

32D. Calculation of hours worked

- (1) The number of hours worked at a mine in a month is the average of the hours worked per month over the previous 6 months during which work has been carried out at the mine.

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- (2) If work has been carried out at the mine in less than 6 of the previous 12 months, the average hours per month are to be calculated on a reasonable expectation for the forthcoming month.
- (3) In calculating the number of hours worked at a mine, all hours worked by all individuals at the mine are to be included, regardless of whether they are the mine holder, mine operator, employees, self-employed persons, employees of contractors or other employers, labour hire workers or persons engaged for work under any other arrangement.

Division 2 – Mine operators

32E. Appointment of mine operator

- (1) Before any mining operations are carried out at a mine, the mine holder must appoint a mine operator.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
 - (b) a natural person, a fine not exceeding 100 penalty units.
- (2) A mine holder –

- (a) may appoint himself, herself or itself as the mine operator; or
- (b) may –
 - (i) appoint as the mine operator a person conducting a business or undertaking with respect to mining operations to be carried out at the mine for or on behalf of the mine holder; and
 - (ii) authorise that person to manage or control the mine and the mining operations to the extent necessary to discharge the mine operator's duties.
- (3) The appointment of a mine operator under subsection (2)(b)(i) is to be made in writing and is to include –
 - (a) where the proposed mine operator is not the mine holder, a signed statement to the effect that the proposed mine operator agrees to the appointment; and
 - (b) the date the appointment takes effect.
- (4) In making an appointment under this section, the mine holder must exercise due diligence in selecting a mine

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operator who has the capacity and resources to ensure that work at the mine can be carried out safely.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
 - (b) a natural person, a fine not exceeding 100 penalty units.
- (5) The mine holder, in accordance with subsection (6), must advise the Chief Inspector of Mines in writing of –
- (a) the name and contact details of the mine operator; and
 - (b) the commencement date of the appointment.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
 - (b) a natural person, a fine not exceeding 20 penalty units.
- (6) The mine holder must advise the Chief Inspector of Mines under subsection (5) within 14 days after –

- (a) the making of the appointment under subsection (2); or
- (b) the commencement day, where the mine holder or a person who satisfies the requirements set out in subsection (2) is carrying out the duties of a mine operator on that day.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
 - (b) a natural person, a fine not exceeding 20 penalty units.
- (7) The mine holder must advise the Chief Inspector of Mines of any subsequent change in the mine operator's details or the termination of the mine operator's appointment within 14 days after that change or termination.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

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- (8) If a mine holder does not appoint a mine operator in accordance with this section, the mine holder is taken to be the mine operator.
- (9) The Chief Inspector of Mines may approve, in writing and with or without conditions, an arrangement under which more than one entity or individual has responsibility for various mining operations at a mine.
- (10) Approval under subsection (9) must not be given unless –
 - (a) the mine holder provides a clear statement of the respective responsibilities of each party at the mine; and
 - (b) the Chief Inspector is satisfied that –
 - (i) the proposed arrangement will enable sufficient coordination and control of the work; and
 - (ii) will not diminish occupational health and safety at the mine.
- (11) Where the mine holder and the mine operator are different persons –
 - (a) and the mine holder has any control over (including the

capacity to control) the resources available to the mine operator, the mine holder must, so far as is reasonably practicable, ensure that adequate resources are available to the mine operator to ensure that the mining operations can be carried out safely; and

- (b) the mine holder must, so far as is reasonably practicable, provide adequate information including relevant plans to the mine operator to ensure that the mining operations can be carried out safely.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) a natural person, a fine not exceeding 100 penalty units.

32F. Duties of mine operators

- (1) A mine operator must, so far as is reasonably practicable, ensure –
 - (a) the health and safety of mine workers and other persons at the mine; and

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- (b) that persons are not exposed to risks to their health or safety arising from the mining operations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
 - (b) a natural person, a fine not exceeding 500 penalty units.
- (2) Without limiting the generality of subsection (1), the mine operator must, so far as is reasonably practicable –
- (a) provide and maintain a working environment in which workers are safe from injury and risk to their health; and
 - (b) provide and maintain systems of work at the mine that are safe and do not expose workers to risks to their health; and
 - (c) provide any information, instruction, training and supervision reasonably necessary to ensure that each mine worker is safe from injury and risks to health; and

- (d) ensure that all persons working at the mine have the necessary skills, competence and resources to undertake their work safely and to ensure the safety of others; and
- (e) implement and maintain effective consultation arrangements in relation to mining operations, to ensure that workers are consulted in relation to matters affecting their health and safety arising from activities at the mine; and
- (f) ensure that any premises, plant, equipment, materials and substances at the mine are safe and do not expose workers to risks to their health.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
 - (b) a natural person, a fine not exceeding 500 penalty units.
- (3) In determining the training required to be provided in accordance with subsection (2)(c), regard must be had to the functions performed by mine workers and the capacities in which they are engaged.

32G. Additional duties of employer at mine

An employer at a mine must –

- (a) so far as is reasonably practicable, comply with the mine operator's health and safety management system, if any; and
- (b) so far as is reasonably practicable, ensure employees comply with any direction of the mine operator including any requirement to work in accordance with any health and safety management system operating at the mine; and
- (c) as required by the mine operator, consult with the mine operator and facilitate consultations between the employees and the mine operator on matters which affect the health and safety of the employees.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 750 penalty units; and
- (b) a natural person, a fine not exceeding 250 penalty units.

Division 3 – Site senior officers

32H. Appointment of site senior officer

- (1) Subject to subsection (4), a mine operator must appoint a site senior officer who satisfies the requirements of subsection (3).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
 - (b) a natural person, a fine not exceeding 20 penalty units.
- (2) Where the mine operator is a natural person who employs or engages other mine workers, he or she may appoint himself or herself as the site senior officer.
- (3) A site senior officer must –
- (a) be a natural person; and
 - (b) have the qualification requirements set referred to in section 32K.
- (4) Where the mine operator is a natural person who does not employ or engage any other mine workers, he or she is not required to appoint a site senior officer.

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- (5) Where an appointment is made under subsection (1) and the person appointed is not the mine operator, the mine operator must –
- (a) give the individual appointed written advice of the appointment; and
 - (b) give notice of that appointment, as far as reasonably practicable, to all persons employed or engaged at the workplace; and
 - (c) notify the Chief Inspector of Mines in writing of the name, relevant experience and qualifications of the site senior officer as soon as practicable after –
 - (i) the appointment is made; and
 - (ii) any change in the appointment is made.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

- (6) Where a mine operator appoints himself or herself as the site senior officer, he or she must –
- (a) give notice of that appointment, as far as reasonably practicable, to all persons employed or engaged at the workplace; and
 - (b) notify the Chief Inspector of Mines in writing of the mine operator's name, relevant experience and qualifications as soon as practicable after –
 - (i) the appointment is made; and
 - (ii) any change in the appointment is made.

Penalty: Fine not exceeding 20 penalty units.

- (7) Where the mine operator is an employer carrying out a business or undertaking at the mine, the responsible officer appointed under section 10 must be the same person as the site senior officer appointed under subsection (1).

32I. Site senior officer to maintain presence at mine

The mine operator must ensure that the site senior officer maintains a presence at

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the mine commensurate with the nature, size and complexity of the mine and mining operations and the associated risks, taking into account any relevant guidance material published by the Chief Inspector of Mines.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

32J. Additional requirements where site senior officer not mine operator

- (1) This section applies where the site senior officer is not the mine operator.
- (2) Unless otherwise approved, with or without conditions, by the Chief Inspector of Mines, the mine operator must ensure that the site senior officer at the mine is the most senior officer (in terms of level of authority to direct operations at the mine) employed or engaged by the operator at the mine.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; and
 - (b) a natural person, a fine not exceeding 50 penalty units.
- (3) The mine operator must ensure that the site senior officer has responsibility for mining operations and health and safety at the mine and –
- (a) is based in Tasmania at times when the mine is operational; and
 - (b) has sufficient authority and control over the mining operations to close or suspend operations at the mine or in parts of the mine that may expose employees to an unreasonable risk to their health or safety.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; and
 - (b) a natural person, a fine not exceeding 50 penalty units.
- (4) The mine operator must ensure that the site senior officer at the mine has input into –

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- (a) the development, implementation, maintenance, monitoring and review of the health and safety management system at the mine, at the appropriate stages in the life cycle of the system at the mine; and
- (b) the development, implementation, and maintenance of risk management systems at the mine; and
- (c) the development, implementation and maintenance, at the appropriate times, of the management structure for the mine.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) a natural person, a fine not exceeding 100 penalty units.

32K. Qualifications of site senior officer

The site senior officer for a mine must have the following qualifications:

- (a) appropriate background, experience and competence for

the functions of site senior officer under the Act, at the mine concerned, taking into account the level of risk to health and safety arising from mining operations at the mine, the size of the mine and the technical expertise available to the site senior officer at the mine;

- (b) any requirements specified in the regulations, including qualifications, training, background, experience, knowledge and understanding.

32L. Duties of site senior officer

- (1) The site senior officer for a mine must ensure, as far as practicable and in relation to matters over which he or she has the capacity to control or to influence control, that the mining operations or the state of the mine do not adversely affect the health or safety of any person.

Penalty: Fine not exceeding 250 penalty units.

- (2) Without limiting subsection (1), the site senior officer must ensure the following, so far as is reasonably practicable:
 - (a) adequate planning, organisation, leadership and control of

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- operations to ensure that the operations do not adversely affect health and safety;
- (b) the carrying out of critical work at the mine that requires particular technical competencies;
 - (c) adequate and competent supervision and control of operations on each shift at the mine;
 - (d) regular monitoring and assessment of the working environment, work procedures, equipment and installations at the mine;
 - (e) appropriate inspection of each work area at the mine including, where necessary, pre-shift inspections;
 - (f) compliance with the mine's health and safety management system, if any;
 - (g) appropriate means, practices and procedures for communication between –
 - (i) workers; and
 - (ii) workers and management; and

(iii) shifts;

- (h) cessation of work, closure and or evacuation, as appropriate, at all or part of the mine when there is an imminent and material risk of serious injury, serious illness or death, until the risk is eliminated or minimised.

Penalty: Fine not exceeding 250 penalty units.

- (3) The site senior officer at a mine must report to the operator of the mine –
- (a) any risks to health or safety at the mine that have not been eliminated, or adequately managed, reduced or controlled; and
 - (b) any significant departures from, or identified inadequacies in, the mine's health and safety management system that are likely to give rise to increased risk of injury or harm to the health of a person; and
 - (c) vacancies or inadequacies in the management structure that the site senior officer at the mine is unable to rectify and that are likely to impact adversely on the health or safety of persons

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affected by the mining operations.

Penalty: Fine not exceeding 250 penalty units.

32M. Absence of site senior officer

(1) If the site senior officer is absent from the mine for –

(a) a significant period of time in relation to the complexity of operations at the mine, the size of those operations and the level of risk at the mine; or

(b) in any event, more than 7 continuous days during which mining operations are undertaken at the mine –

the mine operator must make arrangements for another individual to undertake the duties of the site senior officer.

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; and

(b) a natural person, a fine not exceeding 50 penalty units.

- (2) If, at a mine where the number of hours worked is 3 000 or more per month, a site senior officer, who is not the mine operator, is absent for more than 14 continuous days during which mining operations are undertaken at the mine, the mine operator must advise the Chief Inspector of Mines, in writing and as soon as practicable, of the site senior officer's absence and the alternative arrangements put in place, or proposed to be put in place, during that absence.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

32N. Guidance material in relation to appropriate presence and qualifications

For the purposes of this Part, the Chief Inspector of Mines may publish guidance material relevant to determining what constitutes an appropriate presence at the mine.

Division 4 – Health and Safety

32O. Employees, workers and self-employed persons to comply with health and safety requirements

(1) An employee or worker at a mine must, so far as he or she is reasonably able, comply with –

(a) any reasonable health and safety direction issued by the mine operator or site senior officer; and

(b) any health and safety management system for the mine.

Penalty: Fine not exceeding 100 penalty units.

(2) A self-employed person at a mine must, so far as is reasonably practicable, comply with –

(a) any reasonable health and safety direction issued by the mine operator or site senior officer; and

(b) any health and safety management system for the mine.

Penalty: Fine not exceeding 250 penalty units.

32P. Contractor to comply with health and safety requirements

- (1) A contractor at a mine must ensure, so far as is reasonably practicable, that a person is not exposed to a risk to his or her health and safety arising from the mining operations of the contractor.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; and
 - (b) a natural person, a fine not exceeding 500 penalty units.
- (2) A contractor must comply, so far as is reasonably practicable, with –
- (a) any health and safety management system for the mine; and
 - (b) any reasonable health and safety direction issued by the mine operator or site senior officer.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 750 penalty units; and

- (b) a natural person, a fine not exceeding 250 penalty units.

32Q. Visitors to comply with health and safety requirements

A visitor to a mine must comply, so far as he or she is reasonably able, with –

- (a) any reasonable health and safety direction issued by the mine operator or site senior officer; and
- (b) any health and safety management system for the mine; and
- (c) any other health and safety requirements relevant to him or her.

Penalty: Fine not exceeding 100 penalty units

32R. Management structure to be maintained

- (1) The operator of a mine must establish and maintain an appropriate management structure of competent persons for the mine which includes having others acting in, and the timely filling of, vacant positions in the structure (including the

position of site senior officer at the mine).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; and
 - (b) a natural person, a fine not exceeding 50 penalty units.
- (2) The management structure must include competent persons with appropriate technical or engineering competence commensurate with the nature, size and complexity of the mine and mining operations and the associated risks.
- (3) The management structure must be set out in a document which nominates persons within the structure by position and outlines their areas of responsibility and accountability.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; and
- (b) a natural person, a fine not exceeding 50 penalty units.

32S. Health and safety management system

- (1) A mine operator must develop, implement, maintain and review an auditable, documented health and safety management system for the mine that complies with the requirements in the regulations for health and safety management systems, and is commensurate with the nature, size and complexity of the mine and mining operations, and the associated risks.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 750 penalty units; and
- (b) a natural person, a fine not exceeding 50 penalty units.
- (2) A health and safety management system is an auditable, documented system that complies with the regulations and that systemically protects, so far as is reasonably practicable, the health and safety of mine workers and other persons who may be exposed to risks arising from mining operations.

32T. Consultation with workers

During the preparation or amendment of any part of the health and safety management system relevant to their activities, a mine operator must consult, so far as is reasonably practicable, with workers who may be exposed to risk to their health or safety arising from the mining operations.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; and
- (b) a natural person, a fine not exceeding 20 penalty units.

32U. Timing of implementation of health and safety management system

- (1) Where a mine operator at a mine that is in operation on or before the commencement day is required to implement a health and safety management system in accordance with this Act, that system must be implemented by –
 - (a) in the case of a mine where the number of hours worked is less than 3 000 per month,

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1 January 2012 or such later date as the Director may specify in a notice published in the *Gazette*; or

- (b) two months after the date of commencement of the *Workplace Health and Safety Amendment (Mine Safety) Act 2010*, in any other case.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 750 penalty units; and
- (b) a natural person, a fine not exceeding 50 penalty units.
- (2) Subject to subsection (1), mining operations must not be commenced at a mine unless a health and safety management system that complies with this Act is in place at the mine.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 750 penalty units; and
- (b) a natural person, a fine not exceeding 50 penalty units.

- (3) A notice under subsection (1)(a) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

32V. Work to be in accordance with health and safety management system

A mine operator must ensure that any work at the mine is carried out in compliance with any health and safety management system for the mine, including work undertaken by contractors and their workers.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; and
- (b) a natural person, a fine not exceeding 50 penalty units.

32W. Audit and review of health and safety management system

- (1) An inspector may at any time audit and review all or part of –
- (a) the health and safety management system, if any, and any of the elements required by regulation to be included as part of the

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health and safety management
system; and

- (b) any other requirements for the mine required by the Act or the regulations.
- (2) An inspector may at any time request a mine operator to provide a copy of any documentation pertaining to any of the matters mentioned in subsection (1).
- (3) An audit and review of any of the matters mentioned in subsection (1) may occur periodically, after the occurrence of an event prescribed by the regulations or at any other time that the inspector thinks is appropriate.
- (4) An audit and review is not limited to an examination of the documentation relating to any of the matters mentioned in subsection (1).
- (5) An inspector may do whatever is necessary (within the scope of his or her powers) to assess the relevant matters.
- (6) A mine operator must comply with an inspector's request under this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and

- (b) a natural person, a fine not exceeding 100 penalty units.

32X. Inadequate health and safety management system

- (1) An inspector, if of the opinion that a health and safety management system is inadequate, may direct the operator of the mine to –
 - (a) amend the health and safety management system or any of its components as directed by the inspector; or
 - (b) review and revise the health and safety management system or any of its components in order to address the identified inadequacy.
- (2) A direction is to –
 - (a) be in writing; and
 - (b) state reasons for the view that the health and safety management system is inadequate and, in doing so, specify the inadequacy; and
 - (c) specify the date by which a reviewed and revised health and safety management system is to be implemented; and

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- (d) provide for the reviewed and revised health and safety management system to be reassessed by the inspector prior to the required date for implementation.
- (3) If an inspector directs that a review be undertaken under subsection (1)(b), the inspector may specify the focus of the review.
- (4) A mine operator must comply with a direction under this section.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
- (b) a natural person, a fine not exceeding 100 penalty units.
- (5) A mine operator may appeal against a direction under this section in accordance with section 41.

32Y. Chief Inspector of Mines may require independent audit

- (1) Where the risks arising from the operation of a mine have the potential to give rise to the serious injury or death of a person, an emergency, or a dangerous

situation, and the Chief Inspector of Mines is not satisfied that the health and safety management system for the mine adequately manages the risk, he or she may direct the mine operator to obtain an independent audit of the health and safety management system, either in general or in relation to one or more specific aspects.

- (2) The mine operator must obtain the audit and provide the outcome of it to the Chief Inspector of Mines.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; and
 - (b) a natural person, a fine not exceeding 100 penalty units.
- (3) A direction under subsection (1) is to state –
- (a) the reasons for requiring the audit to be carried out and its objectives; and
 - (b) that the person who carries out the audit must be a person approved by the Chief Inspector of Mines; and

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- (c) the date by which the outcome of the audit is to be provided to the Chief Inspector of Mines.
- (4) For the purposes of subsection (3)(b), the Chief Inspector of Mines may approve a person, or group of persons, only if –
 - (a) the person or group has the necessary qualifications or experience to carry out the audit; and
 - (b) the Chief Inspector of Mines is satisfied that the person or group is able to provide an independent audit.
- (5) Subject to the approval of the Chief Inspector of Mines, the mine operator may appoint a bipartite team to assist in carrying out the audit.
- (6) The Crown is not liable to pay for, or contribute to, the costs of the independent audit.
- (7) A member of a bipartite team incurs no civil liability arising from anything done or omitted to be done in good faith in relation to the audit.
- (8) Subsection (7) does not apply to a person who operates as, or is employed by, an entity whose line of work includes the provision of consultancy services for

payment in an area relevant to the audit concerned.

- (9) A mine operator may appeal against a direction under this section in accordance with section 41.
- (10) For the purposes of this section –
- “bipartite team”** means a team of persons with appropriate expertise of whom –
- (a) at least one is employed by, or is a member of, a union representing mine workers; and
- (b) at least one is a mine operator from another mine or is employed –
- (i) in undertaking, or providing services to, mining; or
- (ii) by a mining industry organisation.

Division 5 – Miscellaneous

32Z. Notification of commencements and suspension of mining operations

- (1) The operator of a mine must notify the Chief Inspector of Mines –

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- (a) before mining operations are commenced at the mine; and
 - (b) if mining operations are under way at the time this provision comes into effect, within 14 days after the date of effect; and
 - (c) before mining operations are resumed after their suspension; and
 - (d) before mining operations are abandoned; and
 - (e) before mining operations are suspended.
- (2) Subsection (1) does not apply to mining operations that consist solely of exploration activities unless those activities are drilling that is not –
- (a) post hole drilling; or
 - (b) drilling undertaken using only hand-held instruments.

32ZA. Record book to be kept

- (1) A mine operator at a mine, other than a mine where exploration is the only mining operation, must keep a record book in a form approved by the Chief Inspector of Mines to record the inspections made by inspectors, together

with instructions given by those inspectors, and other information specified in writing by the Chief Inspector of Mines.

- (2) The mine operator must ensure that a record book required to be kept in accordance with subsection (1) is made available for inspection by employees, contractors and self-employed persons at the mine.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 25 penalty units; and
- (b) a natural person, a fine not exceeding 10 penalty units.

32ZB. Exemption from safety management system in respect of major hazard facilities, &c.

- (1) A mine operator who –
- (a) is the occupier of a major hazard facility, a possible major hazard facility or a dangerous substances location, under the *Dangerous Substances (Safe Handling Act) 2005*, at the mine; and
 - (b) considers it likely that the safety management system proposed to

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be implemented in compliance with that Act does or will cover all mining operations at the mine to a standard at least equivalent to the standard under this Act –

may apply to the Chief Inspector of Mines for an exemption from some or all of the provisions relating to health and safety management systems under this Act.

- (2) The Chief Inspector of Mines may grant full or partial exemption, with or without conditions, from the requirements relating to a health and safety management system where he or she is satisfied that the proposed safety management system will deliver a standard at least equivalent to the standard required by the exempted provisions of this Act.
- (3) The Chief Inspector may temporarily exempt the applicant from compliance until the application is determined.
- (4) The Chief Inspector may require any information to be submitted to assist in his or her determination of the application.
- (5) Where the applicant is a possible major hazard facility, the applicant may apply for an exemption from some or all of the provisions relating to health and safety

management systems under this Act until it is determined whether or not the applicant is a major hazard facility.

- (6) If the applicant is determined to be a major hazard facility, the applicant may apply for a further exemption until the safety management system is required to be developed and implemented under the *Dangerous Substances (Safe Handling Act) 2005*.

32ZC. Certain information declared to be guidance material

- (1) For the purpose of providing guidance and informing the decision-making process at a mine, the Chief Inspector of Mines may –
 - (a) declare as guidance material all or specified parts of any code, standard, rule, specification, provision or document relating to occupational health or safety, whether prepared or published by the Department or any other body or authority; and
 - (b) incorporate by reference any other such document either as it is in force at the time the guidance material is approved or as amended from time to time.

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- (2) A declaration under subsection (1) is to specify the scope of the application of the guidance material, which may be to all mines or to all mines of a certain size, type or characteristic.
- (3) The Chief Inspector of Mines may revoke or amend a declaration under subsection (1).
- (4) The Chief Inspector of Mines must cause a declaration or the revocation or amendment of a declaration under this section to be published in the *Gazette* and on the World Wide Web.
- (5) A declaration under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

32ZD. Appeals

A person may appeal, in accordance with section 41, against any decision made by the Chief Inspector of Mines under this Part.

8. Section 35 amended (Chief Inspector of Mines)

Section 35 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- (2) The Chief Inspector of Mines is, subject to the direction of the Director, responsible for –
- (a) the administration of this Act and the regulations in relation to mines; and
 - (b) the oversight and direction of inspectors assigned primarily to mines; and
 - (c) any other functions conferred on the Chief Inspector of Mines by this Act or the regulations.
- (3) The Chief Inspector of Mines may declare any material relevant to occupational health and safety at mines to be guidance material for the purposes of this Act.

9. Section 36 amended (Powers and functions of inspectors)

Section 36(1) of the Principal Act is amended by inserting after paragraph (d) the following paragraph:

- (da) provide information or advice to any person for the purpose of facilitating compliance with the Act; and

10. Section 41 amended (Right of appeal)

Section 41(1) of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (ab):
 - (ac) a direction by an inspector where it is specified in this Act that the direction is appealable; or
- (b) by inserting the following subparagraph after subparagraph (i) in paragraph (b):
 - (ia) the Chief Inspector of Mines; or
- (c) by inserting “, direction” after “vary the notice”.

11. Section 44 amended (Protection from liability)

Section 44 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “An” and substituting “The Chief Inspector of Mines or an”;
- (b) by inserting in subsection (1) “Chief Inspector or” after “by the”;
- (c) by inserting in subsection (1) “Chief Inspector or” after “of the”;
- (d) by inserting in subsection (2) “the Chief Inspector or” after “that”.

12. Section 47 amended (Notice of serious accidents and dangerous incidents to be given)

Section 47 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “illness –” and substituting “illness; or”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (c) an incident of a kind prescribed for the purposes of this section occurs –
- (c) by inserting in subsection (2) “prescribed” after “notification of the”.

13. Section 57 amended (Regulations)

Section 57 of the Principal Act is amended as follows:

- (a) by inserting in subsection (5) “or the Chief Inspector of Mines” after “Director”;
- (b) by inserting the following subsections after subsection (13):
 - (14) The regulations may exempt a person, thing or activity or a class of persons, things or activities from the operation of this Act or

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the regulations or any provision of this Act or the regulations.

- (15) Regulations made in respect of mines and mining operations may apply to all mines or to only those mines meeting such criteria as may be set out in the regulations, such as size, product, nature of the work or location above or below ground.

14. Schedule 1 amended (Regulations)

Schedule 1 to the Principal Act is amended by inserting after item 6 the following items:

- 6A.** The making of major hazard management plans.
- 6B.** The circumstances in which, and the terms on which, a mine operator may appoint a person or persons with particular expertise to assist a site senior officer to perform his or functions or discharge his or her duties at a mine or part of a mine.

15. Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.