

TASMANIA

**MINES WORK HEALTH AND SAFETY
(SUPPLEMENTARY REQUIREMENTS) BILL 2011**

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**MINES WORK HEALTH AND SAFETY
(SUPPLEMENTARY REQUIREMENTS) BILL 2011**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
15 November 2011

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

A BILL FOR

An Act to establish certain requirements, in respect of health and safety in relation to mines, that are additional to the requirements established by or under the *Work Health and Safety Act 2011*

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Mines Work Health and Safety (Supplementary Requirements) Act 2011*.

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2. Commencement

This Act commences on the day on which the *Work Health and Safety Act 2011* commences.

3. Object of Act

The object of this Act 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 health and safety measures, specific to mines and mining operations, that are in addition to the measures imposed under the *Work Health and Safety Act 2011*.

4. Incorporation of Act into *Work Health and Safety Act 2011*

- (1) This Act is to be incorporated in, and read together with, the *Work Health and Safety Act 2011* as a single Act and accordingly –
 - (a) subject to subsection (2), words and expressions that are used in this Act or regulations made under this Act and that are defined in the *Work Health and Safety Act 2011* have, unless the contrary intention appears, the same respective meanings; and
 - (b) a reference in the *Work Health and Safety Act 2011* to “this Act” includes,

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unless the contrary intention appears, a reference to this Act and any regulations made under this Act; and

- (c) a reference in any regulations made under the *Work Health and Safety Act 2011* to “the Act” includes, unless the contrary intention appears, a reference to this Act and any regulations made under this Act; and
 - (d) a reference in any regulations made under the *Work Health and Safety Act 2011* to a matter “under the Act” includes, unless the contrary intention appears, a reference to any regulations made under this Act.
- (2) Despite subsection (1)(a), words that are used in this Act and that are defined in Part 2 are, in this Act, to be taken to have the meaning they have in this Act.
 - (3) Despite subsection (1), a reference in this Act to “this Act” is not to be taken to be a reference to the *Work Health and Safety Act 2011*.

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Part 2 – Interpretative Provisions

PART 2 – INTERPRETATIVE PROVISIONS

5. Interpretation

In this Act –

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

“Chief Inspector of Mines” means the inspector who is designated to be the Chief Inspector of Mines under section 8(1);

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

(a) digging by hand; or

(b) using hand-held instruments;

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

“hours worked” means hours worked, as calculated in accordance with section 7;

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

“mine holder” means –

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- (a) in relation to mining operations, the holder of a mining lease, or a sublease, under Part 4 of the *Mineral Resources Development Act 1995*, that is relevant to those mining operations; or
- (b) in relation to exploration, the holder of a mineral tenement, under the *Mineral Resources Development Act 1995*, that is relevant to that exploration; or
- (c) if 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 11;

“mineral” includes the following:

- (a) an inorganic substance;
- (b) an atomic substance;
- (c) a geothermal substance;
- (d) coal;
- (e) oil;
- (f) petroleum;
- (g) gas;

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(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 the following:

(j) subsoil;

(k) the layer of soil sustaining vegetation;

(l) water, except where it is a geothermal substance;

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

“mining operations” – see section 6;

“regulator” means the regulator within the meaning of Schedule 2 to the *Work Health and Safety Act 2011*;

“site senior officer”, for a mine, means the person appointed under section 14 to be the site senior officer for the mine.

6. Meaning of “mining operations”

(1) In this Act, **“mining operations”** includes any activity associated with the following:

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- (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;
 - (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 or has occurred;

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- (e) any other activity or operation declared under subsection (3) to be a mining operation.
- (2) Despite subsection (1), in this Act, “**mining operations**” does not include –
 - (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; or
 - (b) fossicking.
- (3) The regulator, having regard to the nature of the work, risks or hazards involved in an activity or operation, may, by notice in the *Gazette*, declare the activity or operation to be a mining operation at a particular site or generally.
- (4) A declaration under subsection (3) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

7. 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.
- (2) If work has been carried out at the mine in less than 6 of the previous 12 months, the number of hours worked per month is to be calculated by

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making a reasonable estimate as to the number of hours that will be worked at the mine in the forthcoming month.

- (3) In calculating the number of hours worked, or that will be worked, at a mine, all hours worked or estimated to be worked, respectively, by all individuals at the mine are to be included, regardless of whether the individuals 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.

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Part 3 – Health and Safety in Mines

PART 3 – HEALTH AND SAFETY IN MINES

Division 1 – Chief Inspector of Mines

8. Chief Inspector of Mines

- (1) The regulator is to designate an inspector to be the Chief Inspector of Mines.
- (2) The Chief Inspector of Mines is, subject to the direction of the regulator, responsible for –
 - (a) the oversight and direction of inspectors assigned primarily to mines; and
 - (b) any other functions conferred on the Chief Inspector of Mines by this Act or the regulations.

9. Chief Inspector of Mines may issue directions to mine operator and site senior officers

- (1) For the purpose of preventing injuries to, and risks to the health of, workers and any other person at a mine, the Chief Inspector of Mines, by notice in writing served on a mine operator or site senior officer, may –
 - (a) direct the person on whom the notice is served to take the steps that the Chief Inspector of Mines considers necessary and specifies in the notice; or

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- (b) direct that any specified plant, equipment, appliance or substance must not be used in or in connection with, or stored at, a mine that is specified in the notice.
- (2) Without limiting subsection (1), a notice may require that the person on whom the notice is served must, so far as is reasonably practicable, do all or any, or a combination of any, of the following:
- (a) employ or engage a person who, being suitably qualified in relation to occupational health and safety, is able to provide advice to the person in relation to the health and safety of workers and any other person at a mine;
 - (b) monitor, at a mine, conditions likely to affect the health and safety of any person;
 - (c) prepare a written health and safety policy.
- (3) A person on whom a notice is served under subsection (1) must comply with the notice.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$65 000 and a daily fine not exceeding \$6 500 each day that the body corporate

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fails to comply with the notice;
and

- (b) a natural person, a fine not exceeding \$26 000 and a daily fine not exceeding \$2 600 for each day that the person fails to comply.

10. Protection from liability

- (1) The Chief Inspector of Mines does not incur any personal liability in respect of any act done or omitted to be done by the Chief Inspector of Mines in good faith in the performance or exercise, or purported performance or exercise, of any function or power of the Chief Inspector of Mines under this Act.
- (2) Subsection (1) does not preclude the Crown from incurring liability that the Chief Inspector of Mines would, but for that subsection, incur.

Division 2 – Mine operators

11. Appointment of mine operators

- (1) The mine holder in respect of a mine must appoint a mine operator before any mining operations are carried out at the mine.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding \$65 000; or
 - (b) an individual, a fine not exceeding \$13 000.
- (2) A mine holder may appoint as the mine operator –
- (a) himself, herself or itself; or
 - (b) a person conducting a business or undertaking in respect of mining operations to be carried out at the mine for or on behalf of the mine holder.
- (3) If a mine holder appoints a person under subsection (2)(b), the mine holder must authorise that person to manage or control the mine and the mining operations to the extent necessary to discharge the mine operator's duties.
- (4) The appointment of a mine operator under subsection (2) is to be made in writing and is to include the date on which the appointment takes effect.
- (5) Subsection (4) does not apply in relation to the appointment of a mine holder to be the mine operator, if notice of the appointment is given under section 12(1).
- (6) If the proposed mine operator is not the mine holder, the appointment of a mine operator under subsection (2) is to contain a signed statement to

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the effect that the proposed mine operator agrees to the appointment.

- (7) In making an appointment under this section, the mine holder must exercise due diligence in selecting a mine 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 \$65 000; or
 - (b) an individual, a fine not exceeding \$13 000.
- (8) If a mine holder does not appoint a mine operator under subsection (2) in accordance with this section, the mine holder is taken to be the mine operator.

12. Advice of appointment, &c., to be given to Chief Inspector of Mines

- (1) The mine holder must advise the Chief Inspector of Mines, in writing, of –
- (a) the name and contact details of the mine operator; and
 - (b) the date on which the appointment takes effect.

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- (2) The mine holder must advise the Chief Inspector of Mines under subsection (1) within 14 days after the making of the appointment under section 11(2).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$13 000; or
 - (b) an individual, a fine not exceeding \$2 600.
- (3) 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 \$13 000; or
 - (b) an individual, a fine not exceeding \$2 600.
- 13. Chief Inspector of Mines may approve multiple persons to have responsibility for certain mining operations**

- (1) The Chief Inspector of Mines may approve, in writing and with or without conditions, an arrangement under which more than one entity

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or individual has responsibility for various mining operations at a mine.

(2) The Chief Inspector of Mines may not approve an arrangement under subsection (1) in respect of a mine 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 the arrangement –

(i) will enable sufficient coordination and control of the work; and

(ii) will not diminish occupational health and safety at the mine.

(3) If –

(a) the mine holder and the mine operator are different persons; and

(b) 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.

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$65 000; or
 - (b) an individual, a fine not exceeding \$13 000.
- (4) If the mine holder and the mine operator are different persons, 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 \$65 000; or
- (b) an individual, a fine not exceeding \$13 000.

Division 3 – Site senior officers

14. Site senior officers

- (1) Subject to subsection (5), a mine operator in respect of a mine must appoint a site senior officer for the mine who satisfies the requirements of subsection (3).

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding \$13 000; or
 - (b) an individual, a fine not exceeding \$2 600.
- (2) If 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 appointed under subsection (1) must –
 - (a) be a natural person; and
 - (b) have the appropriate qualifications.
- (4) The appropriate qualifications are –
 - (a) appropriate background, experience and competence for the functions of site senior officer under this Act at the mine concerned, taking into account –
 - (i) the level of risk to health and safety arising from mining operations at the mine; and
 - (ii) the size of the mine; and
 - (iii) the technical expertise available to the site senior officer at the mine; and
 - (b) any requirements specified in regulations for the purposes of this subsection,

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including qualifications, training, background, experience, knowledge and understanding.

- (5) If 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.
- (6) If an appointment is made under subsection (1) and the person appointed is not the mine operator, the mine operator must –
- (a) give the person 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 \$13 000; or

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- (b) an individual, a fine not exceeding \$2 600.

- (7) If 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 \$2 600.

15. Site senior officer to maintain presence at mine

The mine operator must ensure that the site senior officer maintains a presence at 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 declared by the Chief Inspector of Mines under section 33.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding \$13 000; or
- (b) an individual, a fine not exceeding \$2 600.

16. Additional requirements if site senior officer is not mine operator

- (1) This section applies if the site senior officer for a mine is not the mine operator for the mine.
- (2) Unless otherwise approved under subsection (3), 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 mine operator at the mine.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$32 500; or
 - (b) an individual, a fine not exceeding \$6 500.
- (3) The Chief Inspector of Mines may approve, with or without conditions, a person being the site senior officer at a mine even though the person is not the most senior officer (in terms of level of authority to direct operations at the mine) employed or engaged by the mine operator at the mine.

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- (4) The mine operator for a mine must ensure that the site senior officer –
- (a) has responsibility for mining operations and health and safety at the mine; and
 - (b) is based in Tasmania at all times when the mine is operational; and
 - (c) 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 \$32 500; or
 - (b) an individual, a fine not exceeding \$6 500.
- (5) The mine operator for a mine must ensure that the site senior officer at the mine contributes to –
- (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

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- (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 \$65 000; or
- (b) an individual, a fine not exceeding \$13 000.

17. Duties of site senior officers

- (1) The site senior officer for a mine must ensure, as far as practicable, 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 \$32 500.

- (2) Without limiting the generality of subsection (1), the site senior officer is not to be taken to have ensured that the mining operations or the state of the mine do not adversely affect the health or safety of any person unless he or she, so far as practicable, has ensured the following matters, if he or she has the capacity to control or to influence control over them:

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- (a) adequate planning, organisation, leadership and control of 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) workers on one shift and workers on another shift;
- (h) cessation of work, closure and or evacuation, as appropriate, at all or part of the mine when there is an imminent

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and material risk of serious injury, serious illness or death, until the risk is eliminated or minimised.

- (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 adversely affect the health or safety of persons affected by mining operations at the mine.

Penalty: Fine not exceeding \$32 500.

18. Absence of site senior officer

- (1) The mine operator must make arrangements for another individual to undertake the duties of the site senior officer if the site senior officer is absent from the mine for –

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- (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.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$32 500; or
 - (b) an individual, a fine not exceeding \$6 500.
- (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 –
- (a) the site senior officer's absence; and
 - (b) 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 \$13 000; or

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- (b) an individual, a fine not exceeding \$2 600.

Division 4 – Compliance with directions

19. Compliance with directions of mine operator or site senior officer

- (1) A person who conducts a business or undertaking at a mine must comply, so far as is reasonably practicable, with any reasonable direction, issued by the mine operator or site senior officer for the mine, in relation to health or safety.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$97 500; or
- (b) an individual, a fine not exceeding \$32 500.
- (2) A mine worker who is not a person who conducts a business or undertaking at a mine must comply, so far as he or she is reasonably able, with any reasonable direction, issued by the mine operator or site senior officer for the mine, in relation to health or safety.

Penalty: Fine not exceeding \$13 000.

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Part 4 – Health and Safety Management Systems

**PART 4 – HEALTH AND SAFETY MANAGEMENT
SYSTEMS**

20. Health and safety management system

- (1) A mine operator must develop, implement, maintain and review a health and safety management system for the mine that 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 \$97 500; or
 - (b) an individual, a fine not exceeding \$6 500.
- (2) Mining operations must not be commenced at a mine unless a health and safety management system that complies with this Part is in place at the mine.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$97 500; or
- (b) an individual, a fine not exceeding \$6 500.

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- (3) If the number of hours worked at a mine is less than 3 000 per month, subsections (1) and (2) do not apply in relation to the mine until –
- (a) 1 July 2012; or
 - (b) a later date declared, if at all, under subsection (4).
- (4) The regulator, by notice in the *Gazette*, may declare a date, that is after 1 July 2012, on which subsection (1) is to apply in relation to a mine to which subsection (3) applies.
- (5) A health and safety management system is an auditable, documented system that –
- (a) complies with the requirements in the regulations for health and safety management systems; and
 - (b) 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.
- (6) A notice under subsection (4) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

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21. Workers to be consulted in preparation and amendment of system

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 for the mine.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$13 000; or
- (b) an individual, a fine not exceeding \$2 600.

22. Work to be carried out in accordance with system

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

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$32 500; or
- (b) an individual, a fine not exceeding \$6 500.

23. Audit and review of system

- (1) An inspector may at any time audit and review all or part of –
 - (a) the health and safety management system, if any, for a mine and any of the components required by the regulations to be included as part of the health and safety management system; and
 - (b) any other requirements for the mine required by this Act or the regulations.
- (2) An inspector may at any time request a mine operator to provide a copy of any documentation that relates 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.

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$65 000; or
- (b) an individual, a fine not exceeding \$13 000.

24. Inadequate health and safety management system

- (1) An inspector, if of the opinion that a health and safety management system for a mine is inadequate, may direct the mine operator 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 date specified 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 \$65 000; or
- (b) an individual, a fine not exceeding \$13 000.

25. Chief Inspector of Mines may require independent audit

- (1) In 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 –

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(i) in undertaking, or providing services to, mining; or

(ii) by a mining industry organisation.

(2) If –

(a) 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

(b) the Chief Inspector of Mines is not satisfied that the health and safety management system for the mine adequately manages the risk –

the Chief Inspector of Mines 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.

(3) A mine operator who is directed under subsection (2) to obtain an audit 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 \$65 000; or

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- (b) an individual, a fine not exceeding \$13 000.
- (4) A direction under subsection (2) 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
 - (c) the date by which the outcome of the audit is to be provided to the Chief Inspector of Mines.
- (5) For the purposes of subsection (4)(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.
- (6) 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.
- (7) The Crown is not liable to pay for, or to contribute to, the costs of the independent audit.

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- (8) 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.
- (9) Subsection (8) 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.

26. Exemptions

- (1) An occupier of land on which a mine is situated may apply to the Chief Inspector of Mines for an exemption from the requirements of a provision of this Part in relation to the mine.
- (2) The Chief Inspector of Mines may grant a full or partial exemption, with or without conditions, from the requirements of a provision of this Part in relation to a mine.
- (3) The Chief Inspector of Mines may only grant an exemption under subsection (2) in relation to a mine if he or she is satisfied that there is a system for safety management of the mine under the *Work Health and Safety Act 2011* that will ensure all mining operations at the mine will be covered to a standard at least equivalent to the standard under this Part.

PART 5 – MISCELLANEOUS

27. Notification of commencement of operations

- (1) The operator of a mine must notify the Chief Inspector of Mines before –
- (a) mining operations are commenced at the mine; and
 - (b) mining operations are resumed after their suspension; and
 - (c) mining operations are abandoned; and
 - (d) mining operations are suspended.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$13 000; or
 - (b) an individual, a fine not exceeding \$2 600.
- (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.

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28. Persons conducting operations to consult about work health and safety

A person who conducts a business or undertaking at a mine and who is not the mine operator must facilitate consultation, between workers at the mine and the mine operator, on matters that affect, or may affect, the health or safety of workers at the mine.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$13 000; or
- (b) an individual, a fine not exceeding \$2 600.

29. 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.

Penalty: Fine not exceeding 100 penalty units.

30. Record book

- (1) A mine operator at a mine (other than a mine where exploration is the only mining operation) must record the following in a record book that is in a form approved by the Chief Inspector of Mines:
- (a) the inspections made by inspectors;
 - (b) instructions made by inspectors;
 - (c) other information specified in a notice to the mine operator under subsection (2).

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$3 250; or
 - (b) an individual, a fine not exceeding \$1 300.
- (2) The Chief Inspector of Mines, by notice in writing to a mine operator, may specify information as being required to be kept in the record book.
- (3) 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 –

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- (a) a body corporate, a fine not exceeding \$3 250; or
- (b) an individual, a fine not exceeding \$1 300.

31. 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.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$32 500; or
 - (b) an individual, a fine not exceeding \$6 500.
- (2) For the purposes of subsection (1), an appropriate management structure of competent persons for a mine is not established or maintained unless the management structure includes competent persons with appropriate technical or engineering competence commensurate with the nature, size and complexity of the mine and mining operations and the associated risk.
 - (3) For the purposes of subsection (1), an appropriate management structure of competent persons for a mine is not maintained unless, when a vacancy in an essential position in the

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structure, including the position of site senior officer, occurs –

- (a) a person acts in the position until the position is filled; and
 - (b) the position is filled in a timely manner.
- (4) The operator of a mine must ensure that the management structure is set out in a document that 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 \$32 500; or
- (b) an individual, a fine not exceeding \$6 500.

32. Mine layout, design and construction

A person who has, to any extent, control over the layout, design or construction of a mine must ensure, so far as is reasonably practicable, that the layout, design or construction takes into account –

- (a) relevant geological, geotechnical, meteorological and topographical data; and

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- (b) any other relevant information, including information about the following:
- (i) means of access and travel-ways;
 - (ii) processes and facilities for the extraction and treatment of minerals;
 - (iii) fixed emergency facilities;
 - (iv) ground support and control;
 - (v) hazardous substances at the mine;
 - (vi) noise and dust;
 - (vii) stockpiles, dumps and tailings dams;
 - (viii) underground and surface water;
 - (ix) the use of vehicles at the mine;
 - (x) ventilation.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding \$32 500; or
- (b) an individual, a fine not exceeding \$6 500.

33. 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 that material by reference, either as the material is in force at the time the guidance material is approved or as amended from time to time.
- (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 a website of the Department.
- (5) A declaration under this section is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

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- (6) Guidance material that was published under section 32ZC of the *Workplace Health and Safety Act 1995* and has not been revoked under that section is to be taken to be guidance material published under this section.

34. Certain decisions to be reviewable under *Work Health and Safety Act 2011*

For the purposes of the *Work Health and Safety Act 2011*, the following table is taken to be inserted below the table to section 223 of that Act and to form part of that table:

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Item	Provision of <i>Mines Work Health and Safety (Supplementary Requirements) Act 2011</i> under which reviewable decision is made	Eligible person in relation to that decision
1.	Section 9(1)	<p>1. A worker whose interests are affected by the decision.</p> <p>2. A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>3. A health and safety representative who represents a worker whose interests are affected by the decision.</p>

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Item	Provision of <i>Mines Work Health and Safety (Supplementary Requirements) Act 2011</i> under which reviewable decision is made	Eligible person in relation to that decision
2.	Section 13(1)	<p>1. A worker whose interests are affected by the decision.</p> <p>2. A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>3. A health and safety representative who represents a worker whose interests are affected by the decision.</p>

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Item	Provision of <i>Mines Work Health and Safety (Supplementary Requirements) Act 2011</i> under which reviewable decision is made	Eligible person in relation to that decision
3.	Section 16(3)	<p>1. A worker whose interests are affected by the decision.</p> <p>2. A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>3. A health and safety representative who represents a worker whose interests are affected by the decision.</p>

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Item	Provision of <i>Mines Work Health and Safety (Supplementary Requirements) Act 2011</i> under which reviewable decision is made	Eligible person in relation to that decision
4.	Section 24(1)	<p>1. A worker whose interests are affected by the decision.</p> <p>2. A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>3. A health and safety representative who represents a worker whose interests are affected by the decision.</p>

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Item	Provision of <i>Mines Work Health and Safety (Supplementary Requirements) Act 2011</i> under which reviewable decision is made	Eligible person in relation to that decision
5.	Section 25(2)	<p>1. A worker whose interests are affected by the decision.</p> <p>2. A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>3. A health and safety representative who represents a worker whose interests are affected by the decision.</p>

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Item	Provision of <i>Mines Work Health and Safety (Supplementary Requirements) Act 2011</i> under which reviewable decision is made	Eligible person in relation to that decision
6.	Section 26(2)	<p>1. A worker whose interests are affected by the decision.</p> <p>2. A person conducting a business or undertaking whose interests are affected by the decision.</p> <p>3. A health and safety representative who represents a worker whose interests are affected by the decision.</p>

35. Transitional and savings provisions

(1) In this section –

“commencement day” means the day on which this Act commences.

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- (2) The person who was, immediately before the commencement day, the Chief Inspector of Mines under the *Workplace Health and Safety Act 1995*, is to be taken to be designated under section 8 of this Act to be the Chief Inspector of Mines until the designation is revoked or another person is so designated under section 8.
- (3) A declaration of an activity or operation by the Director under section 3AAB(1)(e) of the *Workplace Health and Safety Act 1995* that was in force immediately before the repeal of that Act is to be taken to be a declaration under section 6(3) of this Act.
- (4) If a person was, immediately before the commencement day, the mine operator, under the *Workplace Health and Safety Act 1995*, in relation to a mine –
 - (a) he or she is to be taken to be the mine operator, or site senior officer, in relation to the mine under section 11 until his or her appointment as such is terminated under this Act; and
 - (b) the mine holder for the mine is to be taken to have given in relation to the person the advice required under section 12.
- (5) If a person was, immediately before the commencement day, the site senior officer, under the *Workplace Health and Safety Act 1995*, in relation to a mine –

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- (a) he or she is to be taken to be the site senior officer in relation to the mine under section 14 until his or her appointment as such is terminated under this Act; and
 - (b) the mine holder for the mine is to be taken to have given in relation to the person the notice required under section 14.
- (6) If a direction has been given to a person under section 32X(1), section 32Y(1) or section 39 of the *Workplace Health and Safety Act 1995* and the direction is in force immediately before the commencement day, the direction is to be taken to be a direction given to the person under section 24(1), section 25(2) or section 9(1), respectively, of this Act.
- (7) If an approval has been given under section 32E(10), section 32J(2) or section 32ZA(1) of the *Workplace Health and Safety Act 1995* to a person and the approval is in force immediately before the commencement day, the approval is to be taken to be an approval given to the person under section 13(1), section 16(2) or section 30(1), respectively, of this Act.
- (8) A specification of information in writing by the Chief Inspector of Mines under section 32ZA(1) of the *Workplace Health and Safety Act 1995* that is given to a person and has not been revoked before the commencement day is to be taken to be a specification of information in

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writing by the Chief Inspector of Mines given to the person by notice under section 30(2) of this Act.

- (9) An exemption, in relation to a facility, under section 32ZB of the *Workplace Health and Safety Act 1995* that is in force immediately before the commencement day is to be taken to be an exemption under section 26 of this Act until it is revoked, if at all, under section 26 of this Act.

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Part 6 – Concluding Provisions

PART 6 – CONCLUDING PROVISIONS

36. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Workplace Relations; and
- (b) the department responsible to the Minister for Workplace Relations in relation to the administration of this Act is the Department of Justice.

37. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may provide for the following:
 - (a) plans, design, layout and construction of mines;
 - (b) ground stability, or ground support, at a mine;
 - (c) atmosphere and ventilation in mines;
 - (d) the safe use of electricity in mines;

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- (e) prevention of explosion or fire in mines and mining operations;
 - (f) the safe use of plant, machinery, and vehicles, in mines and mining operations;
 - (g) the closure or abandonment of mines or mining operations;
 - (h) plans for the management of major hazards at mines or in mining operations;
 - (i) 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 the site senior officer's functions, or discharge the site senior officer's duties, at a mine or part of a mine or in mining operations;
 - (j) requirements for the notification of incidents or accidents;
 - (k) risk management;
 - (l) emergency response plans and rescue arrangements;
 - (m) consultation about any matters related to health and safety at mines;
 - (n) health monitoring and programs to control risks to health or safety arising from fatigue or alcohol or drug consumption;

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- (o) inrush and flooding;
 - (p) shafts and winding equipment;
 - (q) closing or abandoning mines;
 - (r) prohibiting items at mines;
 - (s) restriction of access to a mine or part of a mine.
- (3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (4) The regulations may –
- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding \$13 000 and, in the case of a continuing offence, a further fine not exceeding \$1 300 for each day during which the offence continues.
- (5) The regulations may –
- (a) provide for savings or transitional matters necessary or expedient for bringing this Act into operation; and
 - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day

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specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

- (6) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Secretary of the Department, the regulator or the Chief Inspector of Mines.
- (7) The regulations may require a building used as a workplace to comply substantially with the provisions of the *Building Act 2000*.
- (8) The regulations may adopt either wholly or in part and with or without modification, and either specifically or by reference, any of the standards, rules, codes or specifications of any prescribed authority, whether the standards, rules, codes or specifications are published or issued before or after the commencement of this Act.
- (9) A reference in subsection (8) to standards, rules, codes or specifications includes a reference to an amendment of those standards, rules, codes or specifications, whether the amendment is published or issued before or after the commencement of this Act.
- (10) Nothing in the regulations prejudices or affects the application of –
 - (a) the *Building Act 2000*; or
 - (b) the Building Regulations or the Plumbing Regulations, within the meaning of the *Building Act 2000*; or

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(c) the *General Fire Regulations 2000*.

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