



MineSafe

Western Australia



Special issue on
changes to the Mines
Safety and Inspection Act



General duty
of care page 4

Electing safety
and health
representatives page 8



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MineSafe

This edition...

- 2. Editorial
- 3. Safety improvements to come from amended Mines Safety and Inspection Act
- 4. General duty of care
- 5. Duty of care — labour hire industry
- 6. Establishing safety and health committees
- 8. Electing safety and health representatives
- 10. Issue of provisional improvement notices by safety and health representatives
- 10. Employer-provided accommodation
- 11. Role of inspectors
- 13. Inspectorate improvement and prohibition notices
- 14. Enforcement and penalties
- 15. Occupational Safety and Health Tribunal
- 15. MOSHAB to become MIAC
- 15. Further information
- 16. Mining industry seminars and conferences

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Editorial

This special issue of *MineSafe* takes an in-depth look at the new *Mines Safety and Inspection Amendment Act 2004* that comes into operation on 4 April 2005. The amendments strengthen and improve the existing *Mines Safety and Inspection Act 1994* in relation to safety at mines and mining operations, and the inspection and regulation of mines, mining operations and plant.

The Department of Industry and Resources (DoIR) believes the new legislation will further improve safety in our industry — but this will only happen if each employer and employee ensures the provisions for consultation and implementation of better safety practices are fully utilised.

DoIR's Safety and Health Division will be participating in seminars and other events on the workings of the legislation at various centres around Western Australia, and will be pleased to answer any questions you have.

The amendments to the Act result from a statutory review conducted by Robert Laing, a former Commissioner of the Australian Industrial Relations Commission. Mr Laing simultaneously conducted a review of the *Occupational Safety and Health Act 1984*. The review involved extensive public consultation followed by a period to allow public comment.

Among many other improvements, the resulting Amendment Act further refines the general duty of care to provide better coverage of the workforce, empowers safety and health representatives, and increases penalties, as well as introduces a range of non-monetary sanctions.

As a worker or an employer in Western Australia's \$17 billion minerals industry, these new amendments are important to you. I urge you to read this issue of *MineSafe* very carefully so you will understand your obligations and responsibilities under the new legislation. Keep this issue handy over the coming months, as it should also prove a useful resource as we make the transition in early April.

MineSafe is DoIR's flagship publication for communicating safety awareness, mine safety practices and health issues to mine workers, the minerals industry and wider community. It also provides you with the latest information on safety in mining, and notification of current hazards, risks and critical incidents.

In addition, *MineSafe* gives you information on relevant seminars, conferences and training opportunities, keeps you informed about our inspectorate activities, and provides a forum for contributions and viewpoints from the mining industry.

By providing best-practice regulatory services, using statutory inspections and safety management audits, DoIR's Safety and Health Division contributes to Western Australia having an effective and safe mining industry employing more than 40 000 people. We also provide education, training support and information to industry, with safety meetings, presentations to mine site employees, and briefings to industry safety and health representatives complementing our inspection activities.

Your comments on *MineSafe* are welcome.

Malcolm Russell
 Director, Safety and Health Division
 Department of Industry and Resources

Safety improvements

to come from amended Mines Safety and Inspection Act

Changes to the *Mines Safety and Inspection Act 1994* (the Act) will help ensure everyone in Western Australia's mining industry returns home safely from work every day.

"This is the bottom line for all of us," said Malcolm Russell, Director of the Safety and Health Division at the Department of Industry and Resources (DoIR). "All our efforts are directed at ensuring the safety and health of the minerals industry workforce."

"On 4 April 2005, amendments to the Act, which governs safety and health within our industry, will become law, and everyone — employers, employees, contractors and labour hire companies operating in the minerals industry in Western Australia — will need to know and understand what the new provisions mean for them."

Mr Russell, whose division is responsible for implementing the legislation, said the amendments to the Act generally represented a strengthening and improvement of existing provisions, and resulted from the 2002 review by former Australian Industrial Relations Commissioner, Robert Laing.

The main changes include expanding the general duty of care, largely to close the gaps in the labour hire industry, and changing the penalty provisions to reflect the gravity of an offence that ends a person's life or causes injury — with imprisonment an option in cases constituting gross negligence. The

legislation also provides for alternative, non-monetary penalties, such as enforceable undertakings, community service orders, publicity sanctions, and work, restoration or remedial orders, aimed at improving occupational safety and health for lesser offences under the Act.

In addition, the new legislation provides more flexible processes for the election of safety and health representatives, and the establishment of health and safety committees. Importantly, appropriately trained and accredited safety and health representatives will have the right to issue provisional improvement notices.

An Occupational Safety and Health Tribunal is being established under the auspices of the Western Australian Industrial Relations Commission to deal with administrative issues, including appeals of the State Mining Engineer's decisions on reviews of notices.

"The legislation also allows my inspectors to issue improvement notices and prohibition notices, complementing the long-established record book system, which will be retained," said Martin Knee, State Mining Engineer.

"It's important to note that the legislation ensures that well-established practices that work well in the mining industry are maintained," Mr Knee added.

Mr Russell indicated that considerable alignment has been achieved between

the *Mines Safety and Inspection Act 1994* and the *Occupational Safety and Health Act 1984*, to ensure consistency of policy and action by government and industry.

"This means that an employer active in the mining industry, but also having activities in other parts of the economy, is essentially working with similar State government rules and regulations in relation to the occupational safety and health of the workforces under their control," said Mr Russell.

What constitutes a mine and mining operations?

To ensure consistency of meaning and understanding, the *Mines Safety and Inspection Act 1994* (part 1, section 4) carefully defines many of the terms used in the legislation.

Mine: a place at which mining operations are carried on.

Mining operations: any method of working by which the earth or any rock structure, coal seam, stone fluid, or mineral bearing substance is disturbed, removed, washed, sifted, crushed, leached, roasted, floated, distilled, evaporated, smelted, refined, sintered, pelletised, or dealt with for the purpose of obtaining any mineral or rock from it for commercial purposes or for subsequent use in industry, whether it has been previously disturbed or not.

Mining operations does not include the operation of steel-making plants, rolling mills, or facilities for the manufacture of goods from mining products, nor does it include sand, gravel, limestone or rock excavation carried on by or for any State agency or local government for its own use, or excavation activities on private land by and for the use of the owner of the land.



General duty of care

Duties of employees

Employees have a general duty of care to ensure their own safety and health at work. They also have a general duty of care towards others, to ensure their actions or inactions do not put others' safety or health at risk. The duty of care applies to anyone who can reasonably be foreseen as likely to be injured by an act or omission.

How careful is an employee expected to be? The answer is the degree of care a reasonable person would be expected to observe.

Basic principles are that the standard of care required would rise with the seriousness of the injury that could result from carelessness.

Secondly, the greater the likelihood of injury, the greater the care that should be taken to avoid it.

Thirdly, the easier it is to avoid injury, the more reasonable it is to expect that appropriate mitigating measures will be taken.

The principle of having a duty of care applies to all workers (including those who are self-employed), supervisors, managers and employers at all levels, including corporations, and is aimed at preventing anyone from being killed, injured or contracting an illness because of work activities in the minerals industry.

Under the legislation, gross negligence occurs if the offender knew their contravention of a provision of the Act was likely to cause death or serious harm to a person to whom a duty of care was owed, and they acted or failed to act in disregard of that likelihood, resulting in death or serious harm to that person.

Depending on severity, an employee's failure to comply with the duty of care provisions under section 10 of the Act carries penalties for a first offence ranging from \$10 000 to \$25 000.

Duties of employers

Employers are required to provide and maintain a working environment where employees are not exposed to hazards, so far as is practicable. This includes providing and maintaining safe workplaces, plant and systems of work, as well as providing information, instruction, training and supervision so that employees can work without being exposed to hazards. Necessary personal protective clothing and equipment must be provided at no cost to employees.

In addition, employers must consult and cooperate with any safety and health representatives and other employees regarding occupational safety and health at the mine.

The use, cleaning, maintenance, transportation and disposal of plant, and the use, handling, processing, storage, transportation and disposal of substances, must also be carried out in ways that ensure employees are not exposed to hazards.

Contravention of section 9 of the Act can invoke a penalty for a first offence of up to \$250 000 with two years imprisonment for an individual, and up to \$500 000 for a corporation.

Duties of principals, contractors, employers and self-employed persons

Where a principal employer engages a contractor to carry out work, the principal has the duty of care responsibilities of an employer towards the contractor and any employees of the contractor, or other persons engaged by the contractor. This applies as if the contractor and employees were employees of the principal. However, the principal's duty applies only in relation to matters over which the principal has the capacity to exercise control. At the same time, contractors having their own employees retain the duties of employers towards these employees.

It is important to note that both the contractor and the principal have duties of care to the contractor's employees.



In addition, the contractor may have both the duties of an employer (in relation to their employees) and the duties of an employee (in relation to the work of the principal).

Failure to comply with safety requirements

Employees breach the Act if they fail to reasonably comply with the employer's safety instructions, fail to correctly use protective clothing and equipment provided by the employer after being properly instructed, or misuse or damage safety equipment provided at the site.

Depending on severity, failure by employees and self-employed persons to comply with the duty of care provisions under sections 10 and 12 of the Act, respectively, carries penalties ranging from \$10 000 to \$25 000.

Hazard notification

Every person working in a mine must immediately report to their supervisor any potentially serious occurrence that arises in connection with their work, as well as any situation in the mine they believe could be a hazard to any person. In turn, the supervisor must immediately advise the manager (or delegate) of the report.

In addition, unless it is known that someone has made a report, workers are required to report to the mine manager any injury suffered by any other person in the mine.

Within a reasonable time, the mine manager is required to investigate the situation, determine what action to take, and also notify the outcome to the person who made the report.



Photo courtesy of Sons of Gwalia

Duty of care

— labour hire industry

Failure to report dangerous situations or occurrences in a mine is an offence under section 11 of the Act, carrying a fine of \$10 000.

Safe access to the mine

The principal employer and mine manager must ensure that people are not exposed to hazards while they are entering or leaving a mine. Employees and contractors also have a responsibility to notify the principal employer or mine manager if they become aware of a hazard affecting access to and from parts of a mine.

Contravention of section 13 of the Act can invoke a penalty for a first offence of up to \$250 000 with two years imprisonment for an individual, and up to \$500 000 for a corporation.

Safety of mine plant by manufacturers

It is essential that all plant installed and used at a mine site is designed and constructed so it is safe to use and maintain. This means all plant must be tested and examined to ensure its design and construction will not expose users to hazards.

In addition, adequate information must be provided regarding any dangers associated with the use of the plant, how it should best be used, and what maintenance regime should be instituted. This information must be provided when the plant is installed and whenever subsequently requested.

A failure to comply with these requirements can invoke penalties under section 14 of the Act ranging up to \$250 000 and two years imprisonment.

Labour hire refers to the arrangement where a host organisation or person (the client) engages workers from an organisation that specialises in providing labour (the labour hire agency or agent). The arrangement is characterised by:

- an agreement for remuneration between the client and the agent regarding supply of a worker to carry out work for the client
- an agreement, which may be a contract of employment, between the agent and the worker to carry out work for the client
- no contract of employment between the client and the worker.

An agent is a person who conducts a business that provides workers, who can be employees or contractors, to carry out work for another employer. This includes a group-training organisation as defined in section 7(1) of the *Industrial Relations Act 1979*.

Workers are usually employed and paid by a labour hire agency or agent that requires them to perform their tasks for a client, usually under the client's direction.

Sometimes, there is a misunderstanding that engaging a worker through a labour hire agent

Continued on page 6



Duty of care — labour hire industry from page 5

involves fewer safety and health obligations. However, both the agent and the client have the same general duties of care as those applicable to an employer, in matters that each has the capacity to control.

Under contract labour arrangements, where a labour hire organisation provides workers to work at a mine, the client is deemed to be the employer in matters over which it has control. This means the client is ultimately responsible for the employer's duty of care to the hired workers. However, the client and the agent in charge of the labour hire organisation are both equally required to provide and maintain a mine working environment where employees are not exposed to hazards. This includes providing and maintaining safe workplaces, plant and systems of work, as well as information, instructions, training and supervision so that employees can work without being exposed to hazards. Necessary personal protective clothing and equipment must be provided at no cost to employees. The use, cleaning maintenance, transportation and disposal of plant and substances must also be carried out in a way that ensures employees are not exposed to hazards.

In addition, the client must consult and cooperate with any safety and health representatives and other employees regarding occupational safety and health at the mine.

Contravention of section 9 of the Act by the client and/or labour hire organisation can invoke a penalty for a first offence of up to \$250 000 plus two years imprisonment for an individual, and up to \$500 000 for a corporation.

Duties of the agent

Although it is recognised that the agent may not have day-to-day control of work at the client's workplace, the agent's responsibilities do not stop simply because the work is not carried out at their workplace. There is much the agent can do, including:

- verifying and matching training, skills and experience of the worker to the needs of the task
- providing general induction and arranging specific induction relevant to the task and the plant to be used at the client's workplace
- ensuring any change of duties do not present a hazard to the worker
- providing information and training to ensure the worker knows how to safely carry out their activities
- ensuring the work environment is safe, including plant and equipment, systems of work and other matters under the control of the client
- ensuring adequate on-site supervision is provided
- ensuring the work of the client's employees does not harm the safety and health of the labour hire worker.

Duties of the client

The client usually has day-to-day control of the labour hire worker, so there is much the client can do to ensure a safe workplace, including:

- ensuring the work environment is safe, including plant and equipment, systems of work and other matters under the client's control
- providing specific induction for the tasks to be undertaken and the plant to be used
- notifying the agent if any change is being considered

Establishing safety and health committees

Safety and health committees are vital because they provide a valuable forum at mine sites for facilitating consultation and cooperation between management, employers and employees to consider, initiate, develop and implement safety and health measures and monitoring programs.

Employers must establish a safety and health committee if required by regulation, instructed to do so by the State Mining Engineer, or requested by an employee at a mine.

If the request comes from an employee, the employer must advise the employee and any safety and health representatives at the mine within 21 days that the request has been agreed to, or that the request has been referred to the State Mining Engineer for review.

Generally, the employer must establish the safety and health committee within three months.

However, if matters cannot be agreed to meet this timeframe, the State Mining Engineer may grant an extension of time.

Of course, the employer of their own initiative is able to establish a safety and health committee at a mine.

The composition and membership of a safety and health committee is determined by agreement between the employer, any safety and health representatives for the mine, and the employees' delegates. At least half of the committee must be representatives of the employees, comprising safety and health representatives and/or employee delegates. The balance of membership can be made up of the employer and its representatives, or any other members as agreed.

With the employer's approval, a safety and health committee can have responsibility for more than one mine, with subcommittees being appointed at each mine site. If the

- providing information and training to ensure the worker knows how to safely carry out their activities
- providing adequate on-site supervision
- ensuring the work of employees does not harm the safety and health of the labour hire worker
- reporting notifiable injuries and diseases to DoIR's district inspector.

Joint responsibilities of agent and client

Following consultation, some actions can be taken jointly by the agent and client, including:

- identifying hazards in relation to the task and assessing the

associated risk, prior to placement of a worker

- understanding the obligations of how to deal with hazards
- considering and implementing control measures to ensure a safe environment
- ensuring personal protective equipment is provided at no cost to the worker
- providing on-site training and induction, and resolution of issues procedures.

Duties of the worker

A worker in a labour hire arrangement has the same general duties of care as those applicable to an employee. Workers must take reasonable care of their own safety

and health, and that of others in the workplace.

It is important to note that the Act does not allow a person to contract out of their responsibilities.

Duty periods in mine record book

The registered mine manager, underground manager, quarry manager and alternate managers for any of these functions must each maintain a log of their periods of duty in the mine record book. Failure to do so carries a penalty of \$5000.

committee is to exercise its functions in more than one mine, then the safety and health representatives and/or employees selected to represent the employees must be invited to join the consulting parties to agree on whether the committee should cover all the mines in question and if so, how this will be done.

The functions of a safety and health committee include:

- enabling and assisting consultation and cooperation between the employer and employees
- helping initiate, develop and implement safety and health measures
- keeping informed about safety and health standards in similar workplaces
- making recommendations on safety and health rules, programs, measures and procedures at the workplace
- ensuring information on hazards is kept where it is readily accessible
- considering and making recommendations about changes

that may affect the safety and health of employees

- considering matters referred to it by safety and health representatives
- any other functions prescribed in the Act or regulations or given to the committee, with its consent, by the employer.

The committee may also deal with policy development, monitoring programs, emergency procedures, training and supervision, trends in accident and illness reports, and

resolution of safety and health issues.

Safety and health committees can be varied or abolished if they no longer suit the needs of the workplace. This can occur by written agreement between the employer and the members of the committee.

The State Mining Engineer is empowered to arbitrate any matters that cannot be agreed upon, with the option available for review of the State Mining Engineer's decision by the Occupational Safety and Health Tribunal.



Electing safety and health representatives

In his 2002 review of the *Mines Safety and Inspection Act 1994*, Mr Laing said that those in the workplace were best placed to deal with safety and health matters, and that for employee representatives to be effective, they should be given authority and decision-making power.

Elected safety and health representatives provide increased participation and improved consultation between employees and employers, leading to safer and healthier workplaces.

Safety and health representatives are not the same as safety and health officers or inspectors, and are not responsible for solving safety and health matters in the mine. However, elected safety and health representatives do represent fellow workers on safety and health matters, and carry out specific functions related to mine safety and health.

It is an offence under the Act for an employer to discriminate against or disadvantage an employee or contractor for the dominant or substantial reason that they are or were a safety and health representative.

Powers

The safety and health representatives for a mine have the powers needed to carry out their functions.

Employers must permit a safety and health representative to be present at an interview with an employee concerning the occupational safety or health of employees at the mine, if the employee makes this request.

In addition, the mine manager and all employers must consult with safety and health representatives on intended changes to the mine, plant or substances where those changes may reasonably be expected to affect employees' safety or health.

Safety and health representatives may inspect any part of a mine at any time as agreed with the mine manager, who must ensure a suitably experienced person is responsible for arranging their safe conduct.

In the event of an accident, dangerous occurrence or where there is risk of imminent and serious injury, the safety and health representative can carry out an appropriate investigation.

Safety and health representatives must immediately report to the mine manager and employer any hazard or potential hazard that comes to their

attention, and consult and cooperate with the manager, employers and employee's inspectors on all matters relating to the safety and health of persons at the mine. They also refer appropriate matters to the health and safety committee for its consideration.

Safety and health representatives incur no civil liability arising from their performance, or failure to perform in good faith any of their functions.

Election of safety and health representatives

An employer or employee can start the election process to appoint safety and health representatives. If requested by an employee, the employer must respond within 21 days by inviting employees to appoint delegates to participate in consultation about the election.

The election should be held within a reasonable time of the initial decision to appoint safety and health representatives. But before the election is held (or a single nominee appointed), the employer and the employee delegates must discuss and agree on the matters relevant to the election of safety and health representatives. It is useful for all parties to have this agreement in



Photo © Allan Francis



writing. Matters to be discussed and decided should include:

- the number of safety and health representatives to be elected
- how and when the election process will be carried out (must be by secret ballot)
- who will run the election (a person at the mine, a union, an employer group, the Electoral Commission or any other person can conduct the election)
- what will happen if a vacancy arises during a safety and health representative's term (due to ceasing employment, resigning or being disqualified)
- the areas, matters and kinds of work over which the safety and health representatives will exercise their functions.

When these matters have been agreed, the election may be held and, since decisions were made cooperatively, there is less opportunity for misunderstanding. The election is conducted in the way agreed during the consultation and in accordance with an election scheme, if there is one (see following section).

Employees at a mine or who are members of a distinct unit of the employer's workforce may, by secret ballot, elect one of their members as a safety and health representative.

Every relevant employee is entitled to vote. Relevant employees are those directly represented by the safety and health representatives when one is elected.

If only one eligible candidate is nominated, a ballot is not needed and the candidate is duly elected. The person holds office for two years.

It is important to note that the elected representative must have at least 12 months of underground mining operations experience if they are to represent fellow underground miners.

Election scheme

If the parties in the workplace require more flexibility to elect safety and health representatives, then a scheme may be considered and agreed on before the election takes place. Decisions in relation to a scheme are in addition to and not instead of the decisions reached through consultation as listed above. It is not compulsory to have a scheme.

The employer and employee delegates can establish an election scheme that may provide for the election of one or more safety and health representatives for one or more mines, or for any distinct employee group. In this context, contractors and their employees are regarded as employees of the principal who engages the contractor.

The employer and employee delegates need to consider the following if they wish to have a scheme:

- identify and define the workplaces or group that the safety and health representatives will represent
- decide whether a contractor and/or the employees of the contractor can be safety and health representatives
- identify workplaces at which there are employees who will be affected by the proposed scheme
- decide whether the scheme is to apply to future elections
- decide how matters relating to the election scheme can be changed after it is set up

With respect to the third item, if the employer has not already invited employees at that workplace to appoint a delegate for the purposes of consultation about the election of safety and health representatives, then they must be invited to appoint a delegate. A scheme cannot apply to workplaces where the employer has not invited the employees to appoint a delegate.

Agreements made under an election scheme must be in writing.

Notification of election as a safety and health representative

After the election of a representative or representatives, the person conducting the election must advise the State Mining Engineer of the results. The notification form is available on DoIR's website.

Issue of provisional improvement notices

by safety and health representatives

A provisional improvement notice (PIN) is similar to an improvement notice issued by a mining inspector, except for its "provisional" nature. Only elected safety and health representatives who have completed the training required to become a qualified safety and health representative can issue PINs, and they issue them at the mine where they work (or if elected by a group, at a mine where any member works) if they believe there is a breach of the *Mines Safety and Inspection Act 1994* or regulations.

Before issuing a PIN, the safety and health representative must consult about the matter that needs remedying with the person to whom the notice is to be issued, and if practicable, also with any other safety and health representative for that mine. Consultation may provide an opportunity for the alleged breach to be addressed without the need to issue a PIN.

A pro forma PIN will be available on DoIR's website from 4 April 2005. The notice must state the qualified

representative's opinion that a person is either contravening the Act or has contravened it in circumstances that make it likely the contravention will continue or be repeated. Reasonable grounds for the opinion must be provided. The PIN should also contain the date before which the person must remedy the situation (more than seven days hence) and contain a brief summary of the right to have the notice reviewed by a DoIR inspector. In addition, the PIN may include a choice of measures to be taken to remedy the contravention.

If the initial notice is given to another employee, the safety and health representative must, as soon as practicable, also give a copy of the PIN to the mine manager, who must give a copy to the principal employer. Copies must also be displayed at the mine and securely fixed in the mine record book.

The principal employer and manager must take all reasonable steps to ensure the person issued with the notice complies with it. Failure to

do so constitutes an offence under the Act. Failure to comply with the PIN itself also constitutes an offence under the Act.

The person issued with a PIN, the mine manager or the principal employer can have an inspector review the notice. DoIR must receive this request not later than the day specified in the notice for remedy of the situation. The PIN is suspended while the review takes place. As soon as practicable, an inspector must go to the mine, inquire into the circumstances, and will then either affirm the notice, with or without modification, or cancel the notice. If affirmed, the notice is taken over by the inspector.

There are checks and balances in the system to guard against misuse of the power to issue PINs, although the experience in other states where PINs have been in operation for some time suggests initial fears have been unfounded. If a person misuses their power to issue PINs, they can be disqualified from being a safety and health representative.

Employer-provided accommodation

Many mine sites in Western Australia are located in remote areas that are long distances from townsites. Because of the distance involved and the amount

of time that would be spent in travelling to and from work, mine site employers may have to provide residential premises for their workers.

While employees have a duty of care to ensure their own safety and health at the premises, the employer providing accommodation for workers must maintain the premises so the occupants are not exposed to hazards. This obligation applies in relation to premises where the residence is owned or controlled by the employer, is outside the metropolitan area or a gazetted townsite, and workers must live there because no other accommodation is reasonably available in the area. The obligation does not apply where there is a tenancy agreement or lease-like arrangement; in these cases, the Tenancy Act usually applies.



Role of inspectors



Inspectors employed by DoLR are responsible for administering the requirements of the *Mines Safety and Inspection Act 1994*.

District inspectors must hold a first class mine manager's certificate of competency.

Special inspectors are appointed because of their technical or scientific

training or knowledge, and have the same powers as district inspectors.

Employee's inspectors are appointed following election by a majority of persons employed at mines in the designated region. An employee's inspector must usually hold a certificate of competency as an underground supervisor and have been engaged in

general practical underground mining for at least five years. Employee's inspectors are appointed for not more than four years, although they are eligible for reappointment following re-election. They have the same powers as district inspectors except they cannot interview people and take statements unless requested by a district inspector, and they cannot initiate prosecutions unless authorised by the State Mining Engineer.

There is also provision for assistant inspectors, who have the same powers as an employee's inspector.

Powers of inspectors

In order to fulfil their duties, inspectors must be allowed access to all mine sites at any time. They can enter, inspect and examine anything, although they must do so in a way that does not unnecessarily impede or obstruct the working of the mine, and should, where possible, provide notice of intent to the mine manager or other responsible person on arrival. Where practicable,

Continued on page 12

The change to the Act was brought about because, in the past, workers have had no protection if provided with unsafe accommodation in remote areas where no alternative is available. Employers providing residential accommodation need to ensure that:

- the building is in good repair and separated from noise, heat, dirt and atmospheric contaminants
- electrical outlets are safe to use and protected by residual current devices where appropriate.
- precautions are in place to prevent fires, and the provision and regular maintenance of portable extinguishers
- people can enter and exit safely, particularly in an emergency
- there is an emergency evacuation plan in place and residents are familiar with it
- there are adequate facilities for showering, handwashing and laundering, along with an appropriate number of toilets
- clean, cool drinking water is available at a location separate from the toilet area
- cooking and refrigeration facilities are adequate and safe to use
- the building is regularly cleaned
- if appropriate, hygienic areas are provided for preparing and eating meals
- sleeping furniture and fittings are structurally sound and well maintained
- occupants are protected from extremes of heat and cold
- there is adequate ventilation and lighting.

An employer contravening section 15D of the Act in circumstances of gross negligence may be liable for a penalty up to \$500 000. However, it is a defence if the employer proves death or serious harm would not have occurred if the employee had taken reasonable care to ensure their own safety and health at the premises.

Role of inspectors from page 11

the mine manager or responsible person must then immediately notify the relevant safety and health representative of the mine.

Inspectors can remove any substance or item from a mine for examination or testing, or for use as evidence, and they can also take photographs and measurements, make sketches and recordings, and take copies of documents.

In addition, inspectors can require that any portion of a mine be left undisturbed. This is usually the case when an incident has occurred, and further investigation is still to be carried out.

Mine record book

After inspecting a mine, the inspector must enter in a record book kept at

the mine the parts inspected, nature of the inspection, and any defects observed.

Any notices issued will also be noted. The inspector must notify the person to whom the notice is directed and, where practicable, any safety and health representative concerned, of the actions taken and what other actions are required to be taken. If the inspector is unable to advise the safety and health representative at the time, this responsibility transfers to the mine manager or delegate.

The mine record book is to be open at all reasonable times for inspection by the inspectors, every person working at the mine, and any other person authorised by the State Mining Engineer.

A failure to comply with section 21 of the Act can attract a penalty of \$5000 for an individual and \$25 000 for a corporation.

Interviews by inspectors

Importantly, district and special inspectors are empowered to interview any person who they believe was at any time during the preceding three years (it was two years before this amendment), an employee at the mine, or any other person who they believe might have information relating to their inquiries. Employee's inspectors and assistant inspectors may be delegated this power by a district inspector.

At interview, inspectors can require a person to answer any question and, if appropriate, complete a statutory declaration.

Inspectors can obtain written statements from potential witnesses, and appear at inquiries held regarding mining accidents. They can call, examine and cross-examine witnesses at inquests.

The amendments to the Act now specify that any interview can be conducted in private if either the inspector believes that to be appropriate, or if the person to be interviewed requests this, although the inspector can have another person present whose assistance is required.

Complaints to inspectors

A person working at a mine may complain to an inspector about anything that the inspector is under a duty to report on or remedy. The inspector must investigate the matter but the name of the complainant is not to be disclosed.

Employee's inspector

An employee's inspector involved with safety and health matters at a mine must liaise with the safety and health representative and committee, if any. If there is more than one representative, then the liaison is with the person who has functions relevant to the inquiry.

The employee's inspector may also report to a trade union on safety at a mine if a member of that union is employed there, and the matter relates to the person or their work.



Photo courtesy of Macmahon Holdings Ltd

Inspectorate improvement and prohibition notices

Notices issued by inspectors

Where inspectors become aware of non-compliance with the *Mines Safety and Inspection Act 1994* or regulations, they may issue verbal directions, written directions, or commence prosecution action. Written directions are known as improvement and prohibition notices.

Improvement notices

An improvement notice is a written direction issued by an inspector that requires a person to fix an alleged breach of the Act or regulations. If the improvement notice is not issued directly to the manager of the mine, then the inspector must give a copy to the manager. The manager must give a copy of the notice to the principal employer.

Improvement notices are issued when the inspector believes a provision of the Act is being contravened, or has been contravened in circumstances that make it likely to continue or be repeated.

The notice states the inspector's opinion regarding contravention of the Act, the reasonable grounds for the opinion, and the relevant part of the Act that has been breached. It may include directions on what needs to be done to remedy the situation. It also sets the date by which the specified breach is to be fixed. Failure to comply by the due date constitutes an offence and could lead to prosecution.

The mine manager must display the improvement notice and fix a copy in the mine record book. After the requirements of the improvement notice have been completed, the mine manager must provide written notice of compliance to the issuing inspector.

Review of improvement notice

Requests for review of improvement notices will be available from the DoIR website from 4 April 2005.



They must be lodged with the State Mining Engineer before the deadline specified in the notice. Improvement notices are suspended while they are being reviewed.

After considering a request for review of an improvement notice, the State Mining Engineer can affirm, modify or cancel the notice.

Following informal discussion with the applicant, the State Mining Engineer may make a decision or hold a formal hearing. A copy of the decision must be displayed in the mine record book.

Decisions of the State Mining Engineer can be appealed to the Occupational Safety and Health Tribunal. The tribunal issues its own appeal forms.

Prohibition notices

Prohibition notices are similar in their requirements to improvement notices, except they are issued when a mine, plant, mining practice or hazardous substance at a mine is dangerous or likely to become dangerous, and urgent action is required.

A prohibition notice imposes requirements to be complied with by the principal employer or manager until the inspector is satisfied the hazard has been removed or fixed. An inspector may require work to stop in all or part of the mine, or for a particular activity to be stopped. There may also be a requirement to remove people from all or part of the mine. The notice may also include directions on what needs to be done to remedy the situation.

Failure to immediately comply with a prohibition notice is an offence under the Act and leaves the offender open to prosecution.

The mine manager must display the prohibition notice and fix a copy in the mine record book.

Review of prohibition notice

Prohibition notices can be appealed to the State Mining Engineer (not later than seven days from date of issue), and then the Occupational Safety and Health Tribunal in a similar manner to improvement notices. However, the prohibited activity continues to be suspended unless the State Mining Engineer gives written permission to the contrary.

Enforcement and penalties

Penalties

Under the amended legislation for the *Mines Safety and Inspection Act 1994*, maximum penalties for offences have more than doubled. This reflects the community's view regarding the seriousness of particular offences.

For a contravention that caused death or serious injury to an employee, the previous maximum penalty was \$200 000 for a corporation and \$20 000 for an individual. For a general duty of care breach, the penalty was \$100 000 for a corporation, and \$10 000 for an individual. The highest penalty awarded to date was \$150 000 in 2004.

With the changes that come into effect on 4 April 2005, prosecutions can be launched against employees and employers, with the latter including individuals and corporations. A corporation convicted of the most serious offence can now be fined up to \$500 000 for a first offence, with a subsequent offence attracting a maximum penalty of \$625 000.

Penalties are divided into four levels of increasing severity based on the type and extent of the breach:

- Level 1 — a breach of the Act, excluding General Duty provisions (part 2, division 2), or regulations

- Level 2 — a breach of the General Duty provisions of the Act that does not result in serious harm or death
- Level 3 — a breach of the General Duty provisions of the Act that results in serious harm or death
- Level 4 — a breach of the General Duty provisions of the Act in circumstances of gross negligence that results in serious harm or death

Enforceable undertakings — alternative penalties

An enforceable undertaking provides an alternative to paying a fine for breaching the Act, with the aim of improving occupational safety and health, resulting in significant and tangible benefits to workers, industry and the community.

Courts will be able to make an order allowing an offender to either pay a monetary penalty or enter into an undertaking with the State Mining Engineer to take action, such as fixing the problem, publicising details of the offence or punishment imposed, and/or carrying out a specified project or activity to improve occupational safety and health in the community.

The option of an enforceable undertaking is available only if ordered by the court. It is open for either the

prosecutor or defendant to ask the court to adjourn proceedings to allow each to consider if an enforceable undertaking is appropriate.

Enforceable undertakings legally bind an offender found guilty under the Act. The undertaking is an alternative to paying a fine, with the value of the undertaking about the same or greater than the level of the penalty. Once the offender has chosen an undertaking, an election must be lodged no later than 28 days from when the order was made. The court specifies the date by which the undertaking must be entered into.

The offender and the State Mining Engineer agree on the nature and terms of the undertaking. This includes the offender agreeing to take the action specified, taking responsibility for all associated costs, and completing the required action by a specified date. The undertaking may be varied by agreement between the offender and the State Mining Engineer. An undertaking cannot include actions the offender would have had to take anyway to comply with the Act.

Failure to comply with an undertaking is an offence and, if convicted, the offender would be required to pay the original penalty as well as a further penalty for non-compliance.

Table of penalties

	Employees		Employers			
	First	Subsequent	Individuals		Corporations	
First			Subsequent	First	Subsequent	First
Level 1	\$5000	\$6250	\$25 000	\$31 250	\$50 000	\$62 500
Level 2	\$10 000	\$12 500	\$100 000	\$125 000	\$200 000	\$250 000
Level 3	\$20 000	\$25 000	\$200 000	\$250 000	\$400 000	\$500 000
Level 4	\$25 000	\$31 250	\$250 000 and 2 years in jail	\$312 500 and 2 years in jail	\$500 000	\$625 000

Vicarious offences

Where a person commits an offence under the Act, a superior officer of that person (this includes a director, manager, company secretary or other officer of a corporation) also commits the offence (and attracts the same penalty) if it can be proved that they knowingly permitted or employed the person to commit the offence, it was attributable to their neglect, or they consented or connived in the acts or omissions.

Double jeopardy

A person is not liable to be punished twice under the Act in respect of any act or omission.

Time limit for prosecutions

The period within which proceedings for an offence against the *Mines Safety and Inspection Act 1994* must commence has increased from one year to three years after the offence was committed.

Occupational Safety and Health Tribunal

The Occupational Safety and Health Tribunal, established under the auspices of the Western Australian Industrial Relations Commission, will hear any appeals against decisions of the State Mining Engineer. The tribunal may confirm, vary or revoke a decision or determination of the State Mining Engineer that is referred to it for consideration.

A person may also refer to the tribunal a claim that their employer or prospective employer has disadvantaged them for the dominant or substantial reason they are or were a safety and health representative. If the claim is upheld, the tribunal can order the employer to reinstate the claimant if they were dismissed

from employment and/or pay compensation for loss of employment or loss of earnings.

A person whose certificate of competency is suspended or cancelled by the Board of Examiners may appeal in writing to the tribunal within 30 days of receiving notice of the suspension or cancellation. Similarly, a person whose authorised mine surveyor's certificate is suspended or cancelled by the Mines Survey Board may appeal in writing to the tribunal within 30 days of receiving the suspension or cancellation notice. The tribunal may dismiss the appeal or make any decision in relation to the appeal.

The tribunal issues its own appeal forms.

MOSHAB to become MIAC

From 4 April 2005, the Mining Industry Advisory Committee (MIAC) will replace the existing Mines Occupational Safety and Health Advisory Board (MOSHAB), which will then cease to exist.

MIAC will advise and make recommendations to the Minister responsible for the *Mines Safety and Inspection Act 1994* and the Minister responsible for the *Occupational Safety and Health Act 1984*, as well as to the Commission for Occupational Safety and Health.

Its functions will include:

- advising the Ministers on matters relating to mining safety and health
- inquiring and reporting on matters referred to it by the Ministers
- making recommendations to the Ministers on the formulation, amendment or repeal of mining safety and health laws

- preparing or recommending adoption of codes of practice, guidelines, standards, specifications or other safety and health guidance material
- advising of education, training and training courses
- advising the Ministers on publications relevant to the mining industry
- liaising with the Commission for Occupational Safety and Health to coordinate activities on related functions and maintain parallel standards.



Further information

The *Mines Safety and Inspection Act 1994* and *Mines Safety and Inspection Regulations 1995* are available online from the State Law Publisher at: www.slp.wa.gov.au

The following forms can be downloaded from the Department of Industry and Resources website from 4 April 2005. Go to www.doir.wa.gov.au/safety-pubs and click on "Forms":

- Notification of election as safety and health representative
- Request for review of prohibition notice
- Request for review of improvement notice
- Provisional improvement notice

A copy of DoIR's Enforcement and Prosecution policy is available from www.doir.wa.gov.au/safety-pubs

Other relevant information is available from:

- WorkSafe — www.safetyline.wa.gov.au
- Department of Consumer and Employment Protection — www.docep.wa.gov.au

The Department of Industry and Resources produces a range of publications which are available on our website at www.doir.wa.gov.au/safety-pubs or by telephoning +61 8 9222 3229.

Mining industry seminars and conferences

Australian Industrial Minerals Conference

Sydney NSW, 17–18 March 2005
More information email aim05@aimsoc.org

Crushing, grinding and screening

Murdoch University, Perth 21–22 March 2005
More information at www.murdoch.edu.au

Asia Mining Congress

Oriental Hotel, Singapore, 21–24 March 2005
More information at
www.terrapinn.com/2005/mining_SG

Ground Support in Mining (Metalliferous and Coal)

Brisbane Qld, 5–8 April 2005
More information at
www.acg.uwa.edu.au/pdf_files/Flyer_0503.pdf

MiningWorld Russia 2005

World Trade Center, Moscow Russia
5–8 April 2005
More information at www.miningandevents.com

Ausindustry Expo 05

Burswood, Perth, 12–15 April 2005
More information at www.waindustryweek.com

12th Australian Tunnelling Conference

Sheraton, Brisbane Qld, 17–20 April 2005
More information at www.tunnelling2005.com

Paste and Thickened Tailings

Santiago Chile, 20–22 April 2005
More information at www.paste2005.cl

Mining Rocks Conference and Exhibition

Toronto Canada, 24–27 April 2005
More information at www.cimtoronto2005.org

Coal Operators Conference

Brisbane Qld, 26–28 April 2005
More information at www.ausimm.com

AusIMM New Leaders Conference

Brisbane Qld, 28–29 April 2005
More information at www.ausimm.com

Performance evaluation of mineral processing plants

Murdoch University, Perth, 2–4 May 2005
More information at www.murdoch.edu.au

Second World Conference on Sampling and Blending

Sunshine Coast Qld, 9–12 May 2005
More information at www.ausimm.com

2005 Surface Mine Emergency Response Competition

Kalgoorlie, 13 May 2005
More information at www.cmewa.com.au

Alta Nickel, Cobalt and Copper Conference

Perth, 16–20 May 2005
More information at www.altamet.com.au

Second World Conference on Sampling and Blending

Sunshine Coast Qld, 9–12 May 2005
More information at
www.ausimm.com/events/upcoming.asp

Creating Cost Effective Rock Dumps and Stockpiles

Perth, 26–27 May 2005
More information at www.acg.uwa.edu.au

Minerals Week 2005

Hyatt, Canberra, 30 May–5 June 2005
More information at www.minerals.org.au/corporate/upcoming_events/minerals_week_2005

Centenary of Flotation 2005

Brisbane Qld, 6–9 June 2005
More information at
www.ausimm.com/events/upcoming.asp

Processing and Disposal of Mineral Industry Wastes '05

Falmouth UK, 13–15 June 2005
More information at
www.min-eng.com/conferences

Processing of Industrial Minerals '05

Falmouth UK, 16–17 June 2005
www.min-eng.com/conferences

Tailings Management and Decommissioning

Perth, 23–24 June 2005
More information at www.acg.uwa.edu.au

John Floyd International Symposium on Sustainable Developments in Metals Processing

Melbourne Vic, 3–6 July 2005
More information at www.floydsymposium.com

8th International Mine Ventilation Congress

Brisbane Qld, 6–8 July 2005
More information at www.ausimm.com

Fundamentals of Hydrometallurgy

Murdoch University, Perth, 25–27 and 28–29 July 2005
More information at www.murdoch.edu.au

Fundamentals of Flotation

Murdoch University, Perth, 1–2 August 2005
More information at www.murdoch.edu.au

3D Mapping for Geology and Geotechnical Assessment — Sirovision Software

Ibis Hotel, Perth, 2 August 2005
More information at www.acg.uwa.edu.au

Advanced Geomechanics in Underground Mines

Ibis Hotel, Perth, 3–4 August 2005
More information at www.acg.uwa.edu.au

FLAC-3D Numerical Modelling

Perth, 5 August 2005
More information at www.acg.uwa.edu.au

Leaching Processes

Murdoch University, Perth, 15–16 and 18–19 August 2005
More information at www.murdoch.edu.au

Central Australian Basin Symposium (CABS)

Alice Springs NT, 16–18 August 2005
More information at
www.conferences.minerals.nt.gov.au/cabs

International Symposium on Treatment of Gold Ores

Calgary, Alberta Canada, 21–24 August 2005
More information email gdeschen@nrncan.gc.ca

44th Annual Conference of Metallurgists, and 35th Annual Hydrometallurgical Meeting

Calgary, Alberta Canada, 21–24 August 2005
More information email gdeschen@nrncan.gc.ca

Practical Application of Flotation

Murdoch University, Perth, 29–30 August 2005
More information at www.murdoch.edu.au

Structure, Tectonics and Ore Mineralisation Processes (STOMP 2005)

Townsville Qld, 29 August – 2 September 2005
More information email
stewart.parker@jcu.edu.au

Hoist and Haul 2005

Perth, 5–7 September 2005
More information at www.ausimm.com

Separation Processes

Murdoch University, Perth, 12–13 and 15–16 September 2005
More information at www.murdoch.edu.au

Blasting for Stable Slopes

ACG Perth, 15–16 September 2005
More information at www.acg.uwa.edu.au

Iron Ore 2005

Fremantle, 19–21 September 2005
More information at www.ausimm.com

AusIMM Extractive Metallurgy Operators' Conference 2005

Brisbane Qld, 26–30 September 2005
More information at
www.ausimm.com/events/upcoming.asp

32nd Biennial International Conference on Safety in Mines Research Institutes

Sheraton, Brisbane QLD, 2–5 October 2005
More information email
stewart.bell@nrnm.qld.gov.au

Dewatering

Murdoch University, Perth, 3–4 October 2005
More information at www.murdoch.edu.au

Metal Reduction Processes

Murdoch University, Perth, 10–11 and 13–14 October 2005
More information at www.murdoch.edu.au

Mine Open Day 2005

Statewide, 15 October 2005
More information at www.cmewa.com.au

Underground Mining Seminar Series:

Day 1: Open Stope Mining
Day 2: Narrow Vein Mining
Day 3: Caving Geomechanics
Ibis, Perth, 26–28 October 2005
More information at www.acg.uwa.edu.au

First Extractive Metallurgy Operators Conference

Brisbane Qld, 7–8 November 2005
More information at www.ausimm.com

Minebox Expo 2005

Burswood, Perth, 9–11 November 2005
More information email info@minebox.com.au

Tailings Disposal

Murdoch University, Perth, 25 November 2005
More information at www.murdoch.edu.au

Gravity Gold

Murdoch University, Perth, 28–29 November 2005
More information at www.murdoch.edu.au

Gold Hydrometallurgy

Murdoch University, Perth, 30 November – 2 December 2005
More information at www.murdoch.edu.au

Tailings and Paste Management, Decommissioning and Water Management

Ibis Hotel, Perth, 30 November – 2 December 2005
More information at www.acg.uwa.edu.au

