

LEGISLATIVE ASSEMBLY

Read 1°5 April, 1978

(Brought in by Mr. Balfour and Mr. Borthwick.)

A BILL

To amend the *Mines Act* 1958 and for other Purposes.

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. (1) This Act may be cited as the *Mines (Amendment) Act* 1978. Short title.

(2) In this Act the *Mines Act* 1958 is called the Principal Act.

Principal Act
No. 6320.
Reprinted to
No. 7876.
Subsequently
amended by
Nos. 8039, 8060,
8181, 8337,
8427, 8469,
8516, S.R. 174/
74, S.R. No.
261/74, and
Acts Nos. 8805,
8920, 8953.

(3) The several provisions of this Act shall come into operation on a day or the respective days to be fixed by proclamation or successive proclamations of the Governor in Council published in the *Government Gazette*.

Commence-
ment.

Amendment of
No. 6320 s. 18.
Minister may
delegate certain
powers in
relation to
claims.

2. After section 18 (2) of the Principal Act there shall be inserted the following sub-sections :—

“(3) The Minister may—

- (a) delegate all or any of his powers or functions under sub-section (2) of this section or section 19 (3) (except this power of delegation) ; and 5
(b) vary or revoke a delegation given by him.

(4) A power or function delegated by the Minister may be exercised or performed by the delegate—

- (a) in accordance with the instrument of delegation ; and 10
(b) if the exercise or the power or the performance of the function is dependent upon the opinion belief or state of mind of the Minister in relation to a matter—upon the opinion belief or state of mind of the delegate in relation to that matter. 15

(5) A delegation of a power or function under sub-section (3) does not prevent the exercise of the power or the performance of the function by the Minister.

(6) A copy of each instrument by which a delegation under this section is made shall be published in the *Government Gazette*.” 20

Amendment of
No. 6320 s. 369.

3. Section 369 of the Principal Act is amended as follows :—

(a) In the interpretation of “ Mine ”—

(i) after paragraph (b) there shall be inserted the following paragraph :—

“(ba) any trench under construction— 25

(i) where the excavated depth is more than 1·5 metres ;
or

(ii) where the excavated depth is or is less than 1·5 metres but where explosives are used in the course of construction ;” ; and 30

(ii) before the words “ shaft on a building construction site ” there shall be inserted the words “ trench or ” ; 35

(b) After the interpretation of “ Mineral ” there shall be inserted the following interpretation :—

“ Mining.”

“ “ Mining ” includes all operations conducted in the course of any one or more of the following, 40
namely—

(a) prospecting for or obtaining gold or minerals ;

(b) constructing

(b) constructing a tunnel ;

(c) constructing a trench the excavated depth of which is more than 1·5 metres or a shaft the excavated depth of which is more than 2 metres ;

(d) constructing a trench where the excavated depth is or is less than 1·5 metres and where explosives are used in the course of construction.' ;

(c) In the interpretation of " Plant "—

(i) for the word " structures " there shall be substituted the words " buildings structures works " ; and

(ii) after the word " equipment " there shall be inserted the words " or works " ;

(d) After the interpretation of " Shaft " there shall be inserted the following interpretation :—

' " Trench " means any horizontal or inclined way or opening commencing from the surface of the ground downwards and open to the surface along its length, the length of which is not less than its depth and the width of which is less than its length and includes all works and plant associated with the construction of such way or opening ;'

(e) for the expression " 369. In " there shall be substituted the expression " 369. (1) In " ; and

(f) at the end of the section there shall be inserted the following expression :—

" (2) The Minister by Order published in the *Government Gazette* may exempt a mine within the meaning of paragraph (b), (ba), (c) or (d) of the interpretation of " Mine " in sub-section (1) from compliance with any of the provisions of this Division specified in the Order and so long as the Order remains in force that mine shall be exempt from compliance with that provision.

(3) An Order under this section—

(a) may be expressed to apply to a particular mine or to the mines included in a class of mines ;

(b) may specify the period during which the Order shall remain in force ; and

(c) may be made subject to such conditions as are specified in the Order.

(4) The

(4) The Minister may by Order published in the *Government Gazette* revoke or vary an Order made under sub-section (2).

(5) Where an Order under this section is made subject to conditions the manager of a mine to which the Order applies shall comply with those conditions. 5

(6) The Minister may by writing authorize any officer in the public service, either by name or by reference to the officer's office only (in which case the holder for the time being of the office shall be authorized) to exercise and perform the powers and functions of the Chief Mining Inspector under this Division, either during any specified period or without any limitation of time and may by writing revoke the authority. 10 15

(7) Anything by this Act appointed or required or authorized to be done by the Chief Mining Inspector may be done by a person authorized pursuant to sub-section (6) to exercise the powers authorities duties and functions of the Chief Mining Inspector and shall be as valid and effectual as if done by the Chief Mining Inspector. 20

(8) A reference in this Division to the Chief Mining Inspector includes a reference to a person authorized under sub-section (6) to exercise and perform the powers authorities duties and functions of the Chief Mining Inspector." 25

Amendment of No. 6320 s. 371.
Repeal of prohibition on employment of females in mines.

4. In section 371 (2) of the Principal Act the words " and females shall not be employed in on or about any mine " are repealed. 30

New section substituted for No. 6320 section 381.
Posting up of General Regulations relating to certain mines.

5. For section 381 of the Principal Act there shall be substituted the following section :—

' 381. A printed copy of the General Regulations for the time being in force relating to mines within the meaning of paragraph (a) of the interpretation of " Mine " in section 369 shall be displayed in the office and on a building or board in some conspicuous place in connexion with each mine within the meaning of paragraph (a) of that interpretation.' 35

Amendment of No. 6320 s. 383.
Regulations as to mines.

6. Section 383 of the Principal Act is amended as follows :—

(a) For the expression " 383. The " there shall be substituted the expression " 383 (1) The " ; 40

(b) In

(b) In paragraph (f)—

(i) after the words “holder of land” there shall be inserted the words “or other person”; and

(ii) after the word “land” (where third occurring) there shall be inserted the words “or in regard to any other matter in relation to a mine”;

(c) In paragraph (g)—

(i) for the expression “\$100” there shall be substituted the expression “\$1,000”; and

(ii) for the expression “\$10” there shall be substituted the expression “\$100”; and

(d) At the end of the section there shall be inserted the following expression :—

“ (2) Regulations under this section—

(a) may be general or may be restricted in operation to any part of Victoria or to any particular description of land or mode of mining or to any class or classes of mines or time place or circumstances ;

(b) may confer powers or impose duties in connexion with the regulations on the Minister, the Chief Mining Inspector, inspectors of mines, officers of the Department of Minerals and Energy, owners of mines, mining managers or any other persons ;

(c) may authorize the Minister—

(i) to exempt any mine or class or classes of mines from compliance with all or any of the regulations subject to such conditions (if any) as are prescribed and to such other conditions (if any) as are determined by him ;

(ii) to revoke any such exemption ;
and

(iii) to require determine or dispense with any matter or thing ; and

(d) may

(d) may incorporate or adopt by reference any standard formulated or published by any authority or body of persons as formulated or published on a particular date.”

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Amendment of
No. 6320 s. 386.

7. In section 386 of the Principal Act for sub-sections (1), (2) and (3) there shall be substituted the following sub-sections :—

Qualifications
of mine
managers.

‘ (1) A person shall not be qualified to be the manager of a mine employing more than two men unless—

(a) in the case of a mine which is a prescribed mine or is included in a class of mines prescribed for the purposes of this section, not being a mine within the meaning of paragraph (a) of the interpretation of “ Mine ” in section 369 (1)—

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(i) he is registered as the holder of a certificate of competency of the appropriate prescribed class issued by the Board of Examiners for Mine Managers constituted under this Sub-division (in this Subdivision called “ the Board ”) ; or

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(ii) he holds a permit in force under this section authorizing him to manage the mine in question ; and

(b) in the case of any other mine—he is registered as the holder of a certificate of competency of the appropriate prescribed class issued by the Board.

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(2) A person who wishes to be the manager of a mine which is a prescribed mine or is included in a class of mines prescribed for the purposes of this section may apply to an inspector of mines for a permit authorizing him to manage the mine.

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(3) An application under sub-section (2)—

(a) shall be in a form approved by the inspector to whom the application is made and shall contain the prescribed particulars ;

(b) shall be accompanied by evidence satisfactory to the inspector that the owner of the mine proposes to nominate the applicant to be the manager of the mine if a permit is granted to the applicant ; and

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(c) shall be accompanied by the prescribed fee which shall not exceed \$50.

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(3A) Subject to sub-section (3B) an inspector of mines to whom an application under sub-section (2) is made may grant or refuse to grant the permit applied for.

(3B) An inspector

(3B) An inspector of mines shall refuse to grant a permit applied for under sub-section (2) unless he is satisfied that—

- 5 (a) the owner of the mine in question proposes to nominate the applicant to be manager of the mine if the permit is granted to the applicant ;
- (b) the applicant has passed the prescribed examinations, if any ; and
- (c) the applicant is competent to manage the mine.

10 (3C) A permit under this section—

(a) shall specify—

- (i) the name of the person to whom it is granted ;
- (ii) the mine in respect of which it is granted ; and
- (iii) such other particulars as are prescribed ;

15 (b) authorizes the person named in the permit to manage the mine specified in the permit during the period for which the permit remains in force ;

(c) unless sooner cancelled or suspended remains in force for a period commencing on the date on which the permit is granted and ending with the day on which an inspector of mines is satisfied that the mining operations specified in the permit are completed ;

20 (d) shall be in writing in or to the effect of the prescribed form ;

(e) is subject to such conditions as are prescribed ;

25 (f) may be granted subject to such conditions and restrictions (if any) as the inspector determines and as are specified in the permit, so long as they are not inconsistent with the prescribed conditions or restrictions ; and

30 (g) may be revoked or suspended by the Minister in accordance with the provisions of this section.

35 (3D) Where a permit is made subject to any conditions or restrictions, the holder of the permit shall comply with them and in respect of any act or thing done in breach of a condition or restriction to which his permit is subject shall be deemed not to be the holder of the permit.

40 (3E) Where an inspector of mines grants a permit under this section, he shall on or before the expiration of seven days after granting the permit give notice in writing to the Board of the name of the person to whom the permit was granted and such other information as may be prescribed.

(3F) The Board shall keep a register of the names of the holders of permits under this section, and the register shall be in such form and contain such particulars as are prescribed.

(3G) Where

(3G) Where a permit held by a person is revoked under this section the Board shall remove the name of that person from the register.

(3H) A copy of the register signed by the Secretary to the Board shall be *prima facie* evidence of the facts contained therein and the absence of the name of a person from the register shall be *prima facie* evidence that that person is not or was not the holder of a permit. 5

(3I) A certificate signed by the Secretary to the Board stating that a person is or was or is not or was not registered as the holder of a permit under this section shall be *prima facie* evidence of that fact. 10

(3J) Where a report is made to the Board by an Inspector of Mines that the holder of a permit is incapable incompetent or unfit to discharge his duties under this Act or the regulations or that the holder of a permit has been convicted of an offence against this Act or the regulations, the Board may hold an inquiry into the circumstances of the report or offence. 15

(3K) Where the Board is of opinion that an inquiry ought to be held into the competency capacity or fitness of a holder of a permit to discharge his duties under this Act or the regulations, it may hold that inquiry. 20

(3L) An inquiry under this section shall be held at such time and place as the Board determines.

(3M) Where the Board determines to hold an inquiry under this section, it shall give to the holder of the permit ten days' notice in writing of the time and place for holding the inquiry together with a copy of any report made by an inspector of mines in relation to that person and shall inform him that he is entitled to be represented by counsel at the inquiry. 25 30

(3N) At an inquiry under this section—

- (a) the holder of the permit is entitled to be represented by counsel but shall give to the Board three days' notice of his intention to employ counsel ;
- (b) the Board may inquire into the circumstances giving rise to the inquiry ; and 35
- (c) the Board after considering the evidence put before it at the inquiry may make such findings as it thinks fit.

(3O) Where the Board finds that the holder of a permit in relation to whom an inquiry under this section has been made is incapable incompetent or unfit to discharge his duties under this Act or the regulations or has been convicted of an offence against this Act or the regulations it may recommend to the Minister that the permit be revoked or suspended. 40

(3P) Where

(3P) Where the Board makes a recommendation under this section the Minister may by notice published in the *Government Gazette* revoke or suspend the permit in accordance with the recommendation of the Board.

- 5 (3Q) A suspension of a permit under this section—
 (a) has effect for such period as is specified by the Minister in the notice suspending the permit ; and
 (b) may at any time be revoked by the Minister by notice published in the *Government Gazette*.

- 10 (3R) Where a permit is suspended under this section—
 (a) particulars of the suspension shall be recorded by the Board in the register kept by it under this section ; and
 (b) the person whose permit has been suspended shall during the period of the suspension be deemed not to be the holder of a permit.

- 15 (3s) On publication of a notice in the *Government Gazette* under this section the person whose permit has been revoked or suspended shall surrender the permit to the Board and—

- 20 (a) where the permit has been revoked—the Board shall retain the permit and endorse it as having been revoked ; and
 (b) where the permit has been suspended—the Board shall retain the permit until the suspension is revoked or the period of the suspension expires (as the case may be).

- 25 (3T) The Board may make such order as it thinks fit in relation to the costs and expenses of an inquiry held under this section and that order may be enforced as a civil debt recoverable summarily.

- 30 (3U) A person who feels aggrieved by a decision of an inspector of mines refusing to grant him a permit under this section or by a decision of the Minister revoking or suspending a permit granted to him under this section may within one month after receiving notification of the decision appeal pursuant to the *Magistrates' Courts Act 1971* to the County Court against the refusal suspension
 35 or revocation in the same manner as a person may appeal from the summary conviction of a magistrates' court.

(3v) The decision of the County Court upon the appeal shall be final and without appeal.'

- 40 8. Section 390 of the Principal Act is amended as follows :—
 (a) For sub-section (1) there shall be substituted the following sub-sections :—

“(1) There shall be a Board to be called the Board of Examiners for Mine Managers appointed by the Minister.

Amendment of
 No. 6320 s. 390.
 Reconstitution
 of Board of
 Examiners for
 Mine Managers.

(1A) The

(1A) The Board shall consist of—

- (a) the Secretary for Minerals and Energy or his nominee, who shall be Chairman ;
- (b) three officers of the Department of Minerals and Energy who have experience in mining engineering ; 5
- (c) two representatives of each of the several kinds of mining appointed by the Minister after consultation with such persons or bodies as the Minister thinks represent the interests of persons engaged in those several kinds of mining. 10

(1B) In relation to any particular question the Board shall be constituted by the person referred to in paragraph (a), and one of the persons referred to in paragraph (b) who is nominated by the Secretary for Minerals and Energy to consider the question then under discussion, together with the persons referred to in paragraph (c) who are appointed to represent the interests of the kind of mining which is concerned with the matter then under discussion. ” ; 15 20

- (b) In sub-section (2) for the words “ other than the chairman ” there shall be substituted the words “ who are not officers of the public service ” ; 25
- (c) In sub-sections (3) and (8) for the expression “ Governor in Council ” (wherever occurring) there shall be substituted the word “ Minister ” ;
- (d) In sub-section (4) for the word “ two ” there shall be substituted the word “ three ” ; 30
- (e) Sub-section (7) is repealed ; and
- (f) After sub-section (8) there shall be inserted the following sub-sections :—

“ (9) Notwithstanding any reconstitution of the Board effected by section 8 of the *Mines (Amendment) Act 1978* the Board shall be deemed to be the same body after as before the reconstitution and no act matter or thing shall be abated or affected thereby. 35

(10) On the commencement of section 8 of the *Mines (Amendment) Act 1978* the persons who immediately before the said commencement held office as members of the Board shall go out of office but shall be eligible for re-appointment. 40

5 (11) If any member of the Board is unable whether on account of illness or otherwise to perform the duties of his office the Minister may appoint a suitable person to act as a member of the Board during that period of inability and any person so appointed shall be entitled to the fees expenses and travelling and other allowances to which the member in whose place he acts is entitled."

10 9. In section 391 of the Principal Act for the words " either the first second or third class " there shall be substituted the expression " an appropriate class prescribed pursuant to section 400E ".

Amendment of No. 6320 s. 391. Applications for certificates of competency.

10 10. In section 392 (1) of the Principal Act for the words " either the first second or third class " there shall be substituted the expression " classes prescribed pursuant to section 400E ".

Amendment of No. 6320 s. 392. Examinations for certificates of competency.

15 11. (1) In section 393 of the Principal Act for sub-section (1) there shall be substituted the following sub-sections :—

Amendment of No. 6320 s. 393.

" (1) Where an applicant for a certificate of competency—

Issue of certificates of competency.

20 (a) passes an examination conducted by the Board for the class of certificate applied for ;

(b) satisfies the Board that he is or is about to be engaged in mining in Victoria ;

(c) satisfies the Board that he has the prescribed qualifications for the certificate applied for ; and

(d) pays the prescribed fee—

25 the Board may issue him a certificate of competency of the class applied for.

30 (1A) Notwithstanding anything to the contrary in sub-section (1), the Board may issue a certificate of competency as a mine manager to an applicant who is not qualified to be issued with a certificate of competency under sub-section (1) by reason only of the fact that he does not hold the prescribed qualifications or has not passed the prescribed examinations, if the applicant satisfies the Board that—

35 (a) he has been engaged in mining for a period of time considered adequate by the Board ;

(b) he is competent to manage mines of the class to which the certificate applied for would, if it were granted, relate ;

40 (c) he is or proposes to be engaged in mining in Victoria ; and

(d) he has paid the appropriate prescribed fee."

(2) Notwithstanding

(2) Notwithstanding anything in sub-section (1) a certificate of competency as a mine manager issued prior to the commencement of this section shall continue to have the same status operation and effect as it would have had if this section had not been enacted.

New s. 396A
inserted in
No. 6320.

Appeal.

12. After section 396 of the Principal Act there shall be inserted the following section :— 5

“ 396A. (1) A person who feels aggrieved by a decision of the Board refusing to issue him a certificate of competency may within one month after receiving notification of the decision appeal pursuant to the *Magistrates' Court Act 1971* to the County Court against the refusal in the same manner as a person may appeal from the summary conviction of a magistrates' court. 10

(2) The decision of the court upon the appeal shall be final and without appeal.”

13. In section 400A (1) of the Principal Act— 15

Amendment of
No. 6320 s.
400A.

Work which
may not be
done by persons
whose
certificates of
competency or
permits have
been cancelled
revoked or
suspended.

(a) for the words “ A holder of a certificate of competency whose certificate of competency has been cancelled or suspended ” there shall be substituted the words “ A person whose certificate of competency has been cancelled or suspended or whose permit under section 386 has been revoked or suspended ” ; 20

(b) after the word “ certificate ” (where third occurring) there shall be inserted the words “ or permit ” ;

(c) after the word “ cancelled ” (where second occurring) there shall be inserted the word “ revoked ” ; and 25

(d) after the words “ certificate of competency ” (where third occurring) there shall be inserted the words “ or permit ” .

Amendment of
No. 6320 s.
400c.

Offences in
relation to
certificates of
competency
and permits.

14. Section 400c of the Principal Act is amended as follows :—

(a) In paragraph (a) after the words “ such certificate ” there shall be inserted the expression “ or any permit granted under section 386 ” ; 30

(b) In paragraph (b) after the word “ copy ” there shall be inserted the expression “ or permit granted under section 386 ” ; 35

(c) In paragraph (c) after the word “ Board ” there shall be inserted the expression “ or any permit granted under section 386 ” ; and

(d) In paragraph (d)—

(i) after the words “ certificate of competency ” there shall be inserted the words “ or permit ” ; and 40

(ii) after the word “ certificate ” (where second and third occurring) there shall be inserted the words “ or permit ” . 45

15. (1) In

15. (1) In section 400E (1) of the Principal Act after the words “certificates of competency” there shall be inserted the words “or permits”.

Amendment of
No. 6320 s.
400E.

Regulations
relating to
certificates of
competency
and permits.

(2) In section 400E (2) of the Principal Act—

- 5 (a) in paragraph (a) after the words “conducted under this subdivision” there shall be inserted the words “the qualifications to be possessed by applicants for such examinations”;
- (b) in paragraph (b)—
- 10 (i) after the word “cancellation” there shall be inserted the word “revocation”; and
- (ii) after the word “Board” there shall be inserted the expression “or permits granted under section 386”;
- 15 (c) in paragraph (c) after the words “certificates of competency” there shall be inserted the expression “or conditions or restrictions to which permits granted under section 386 are subject”;
- 20 (d) in paragraph (d) after the word “Board” there shall be inserted the expression “or permits granted under section 386”;
- (e) in paragraph (g) after the words “certificates of competency” there shall be inserted the words “or permits”;
- 25 (f) the word “and” occurring after paragraph (g) shall be repealed; and
- (g) after paragraph (g) there shall be inserted the following expression :—
- 30 “(ga) prescribing classes of certificates of competency which the Board may issue;
- (gb) prescribing classes of mines in respect of which certificates of competency may be issued;
- (gc) prescribing classes of certificates of competency required to be held by mine managers generally or any class thereof;
- 35 (gd) prescribing classes of mines for the purposes of section 386;
- (ge) prescribing the form of the register to be kept under section 386 and the particulars to be contained in the register;
- 40 (gf) prescribing anything authorized or required to be prescribed or necessary or convenient to be prescribed in relation to permits and applications

applications for permits under section 386, including (but without limiting the generality of the foregoing) the forms of applications and permits, and the fees which are to accompany applications ; and ”.

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Amendment of
No. 6320 s. 419.
Penalties.

16. In section 419 (2) of the Principal Act—

- (a) after the word “ Division ” there shall be inserted the expression “ or any regulations made pursuant to section 383 ” ;
- (b) for the expression “ \$100 ” there shall be substituted 10 the expression “ \$1,000 ” ;
- (c) for the expression “ \$20 ” there shall be substituted the expression “ \$100 ” ; and
- (d) for the expression “ \$10 ” there shall be substituted the expression “ \$50 ”.

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Amendment of
No. 6320.
Corrections and
revisions.

17. In sections 385, 386 (4), 389 (2) and 389 (4) of the Principal Act for the words “ Chief Inspector of Mines ” (wherever occurring) there shall be substituted the words “ Chief Mining Inspector ”.