WORK HEALTH AND SAFETY (MINES) AMENDMENT BILL 2014

Bill introduced on motion by Mr Anthony Roberts, read a first time and printed.

Second Reading

Mr ANTHONY ROBERTS (Lane Cove—Minister for Resources and Energy, and Special Minister of State) [4.20 p.m.]: I move:

That this bill be now read a second time.

The Work Health and Safety (Mines) Amendment Bill 2014 makes amendments to the Work Health and Safety (Mines) Act 2013. The Act is due to commence in the very near future and the amendments will ensure that the Act will work as intended. While individually the amendments may not appear to be major, together they will ensure that the meaning of the Act is clear, that roles and responsibilities are clear and that any ambiguities and wording are rectified. They will also close possible loopholes in the work health and safety legislative framework. The Work Health and Safety (Mines) Act provides for the regulation of health and safety in the New South Wales mining industry. This is a significant industry, and the nature of the work and the number of people it employs demand that we have a legislative framework that means that mining workplaces are safe.

The figures give a good idea of the size of the industry. Currently, mining in New South Wales employs about 35,000 people directly and more than 85,800 people indirectly. The safety of the large numbers of our community who work in our mines, therefore, makes these amendments important. The first amendment in this group clarifies the relationship of the Work Health and Safety (Mines) Act with the Work Health and Safety Act 2011 and the Work Health and Safety Regulation. Although the Work Health and Safety (Mines) Act is specifically aimed at work health and safety in mines, the Work Health and Safety Act also applies to that work environment.

The Work Health and Safety (Mines) Act provides that it is to be read as if it was part of the Work Health and Safety Act. For example, if a certain term is defined in the Work Health and Safety Act, the definition also applies to the Work Health and Safety (Mines) Act. However, it is not clear whether this provision encompasses the regulations to both Acts and it is obviously important that this is clear. It is therefore proposed to amend the wording of the Work Health and Safety (Mines) Act to clarify that the references in both Acts include references to the other and to both of the regulations. This amendment will provide certainty about the application of both the Acts and the regulations and ensure they work together for mine safety.

The second amendment addresses a quite different aspect of the Work Health and Safety (Mines) Act. This is the issue of the definition of "mine holder". Currently the Act does not include the operators of tourist mines in the definition. Tourist mines are former mines where mining hazards still exist. New South Wales has about 10 tourist mines and, because of these hazards, it is important for public safety that they have a mine operator and safety management system. The definition must be clear so that tourist mines meet safety requirements under the Act. The bill therefore amends definition of "mine holder" so that it is clear that a person conducting a tourist mine comes under the Work Health and Safety (Mines) Act. The amendment is also in keeping with the goals of national mine safety harmonisation.

The third amendment provides for a safety regulator to make a direction that a mine needs more than one mine operator. This might come about because of the complexity of the operation. On the other hand, because of the nature of the mining activity, several mines may need only one operator. This power exists in the Coal Mine Health and Safety Act 2002 and has been effective in ensuring complex and interconnected mining risks are adequately managed. By including it in the Work Health and Safety (Mines) Act, this strong safeguard for safety management will be ongoing.

The fourth amendment in the bill is to the definition of "injection of minerals" in mining regulations. As the definition currently stands, activity that is not associated with mining and is therefore not intended to be regulated may be caught by the definition. For example, sand or brine are considered to be minerals under the legislation and so the return of salty water to the ground by farmers could be unintentionally caught by the current definition. The definition makes it clear that mining operations only include injection of minerals where the primary purpose is to inject or return a mineral to the ground.

There is an apparent ambiguity in the legislation over some activities that may seem to come under the mine safety legislation. Under the Work Health and Safety (Mines) Act, certain activities are excluded because they are subject to regulation over separate safety laws. However, as currently drafted, the exclusion provisions in the Act may give rise to unintended interpretations. For example, one interpretation could be that a quarry where minerals are extracted for use in constructing public roads may be excluded from the operation of the Act. However, it is not the intention of the Act to exclude such a quarry.

Similar issues arise in relation to other activities. Amendments are therefore proposed to clarify the particular activities to which the Work Health and Safety (Mines) Act does not apply. The last amendment in this group addresses the transitional provisions in the Work Health and Safety (Mines) Act. These currently provide for amendments of a savings or transitional nature to be made to the Act, and the Work Health and Safety Act via the regulations up to 31 March 2015. The amendment to this regulation-making power will omit the date and thereby extend the period in which savings and transitional regulations can be made. It is clear that the amendments I have outlined do not change the intended policy intent of the Work Health and Safety (Mines) Act, but they do help to qualify and strengthen the Act through giving clear effect to its intent.

I now turn to two different amendment proposals to the Work Health and Safety (Mines) Act. The first of these addresses the issues of certain authorisations made by WorkCover under the Work Health and Safety Act. It has become evident that they may not be valid mining workplaces. These authorisations include high-risk work licences, registration of plant, general construction induction, training cards and licensing of asbestos removalists and asbestos assessors. The Government's policy intent has always been that WorkCover, as the regulator of the Work Health and Safety Act, could make such authorisations to be applicable at all workplaces, including mining workplaces. For example, a person who obtains a high-risk work licence should be able to use that licence at any workplace. They would not require a separate licence solely for a mining workplace. Amendments are therefore proposed to retrospectively clarify that previous authorisations made by WorkCover are valid at mining workplaces. The amendments will also provide that WorkCover can be the

regulator for such authorisations and other prescribed powers or functions for all workplaces in the future.

The bill will also amend the Work Health and Safety Regulation to clarify that WorkCover can be the regulator for such authorisations at all workplaces. This amendment will remove the necessity for both regulators to issue authorisations and for them to have to keep two sets of registers. It makes good sense and reduces regulatory duplication for Government, workers and operators, and reduces costs. It has also become evident that the scope of the work, health and safety regulator's jurisdiction at coal workplaces needs to be addressed. The regulator has jurisdiction at coal workplaces, which are places to which the Coal Mine Health and Safety Act applies. That Act applies to colliery holdings, including coalmining leases registered in the colliery holding by administrative means. The colliery holding is an area that can incorporate coalmining leases and freehold land where coalmining operations are to be carried out by a single mine operator.

To ensure there is no regulatory gap because of administrative defects, the amendment will ensure that all coalmining leases are taken to have been in a colliery holding. This will retrospectively validate any regulatory actions undertaken by NSW Trade and Investment under the Coal Mine Health and Safety Act 2002, the Occupational Health and Safety Act 2000 and the Work Health and Safety Act 2011 in relation to coalmining lease areas that were not included in the register of colliery holdings. The amendment does not reflect a policy change by this Government. The Government's intent has always been that NSW Trade and Investment is the specialist work health and safety regulator for all coal workplaces, including all coalmining lease areas.

The primary policy aim of the Work Health and Safety (Mines) Act is to regulate for the safety of persons engaged in the mining industry and mining operations. The proposed amendments are being made to ensure that the provisions of the Act are clear and will be implemented as intended. If the amendments are not made, the current provisions in the Act may be exploited with potential unwarranted outcomes for mine safety. The amendments will enable the industry and the regulator to operate under the regulatory framework with certainty. I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day a future day.