# Mine Health and Safety Bill.

**Second Reading**

**Mr KERRY HICKEY** (Cessnock—Minister for Mineral Resources) [10.55 a.m.]: I move:

That this bill be now read a second time.

The subjects of this legislation are metalliferous and other mines, and extractive industry quarries, which form a significant part of our State's economy and support our way of life. This sector of the mining industry is distinct from coalmines, which are covered by separate legislation. About 5,000 miners work to make this sector of the mining industry a success. History has shown that the employees in this industry have suffered from an unacceptably high rate of fatalities and injuries. They need legislation that protects them from the unique and potentially catastrophic risks of mining. That is the basic purpose of the bill.

The bill is a refinement of the Mine Health and Safety Bill 2002, which was introduced in December 2002 but which lapsed when Parliament was dissolved prior to the last election. There was extensive consultation with mining industry parties leading up to the introduction of the 2002 bill. The intervening period has provided an extended opportunity for consultation. The bill has been amended and strengthened in the light of comments received. I wish to place on record the Government's appreciation of the contribution of industry parties to the consultation process. I can assure each and every one of those parties that their comments have all been taken into account in the process of preparing this legislation. I would like to acknowledge the contributions made to the bill by these organisations, in alphabetical order: the Australian Mines and Metals Association; the Australian Workers Union; the Construction, Forestry, Mining and Energy Union Mining, Energy Division; the then Crushed Stone and Sandstone Association, now known as the Cement, Concrete and Aggregates Association; the Lightning Ridge Miners Association, and the Minerals Council of New South Wales.

It is a tribute to the consultative process and the stakeholders involved that, of the literally hundreds of issues considered, at the end of the day only three significant concerns remained unresolved. Those were: the use of the title "site check inspector"; the adoption of the district check inspector model from other mining sectors; and, the specification of maximum hours of work in the legislation. The Government has shown leadership in deciding the way forward with these issues. I would add that, overall, it is a way that is not to the advantage of any one group or industry party. These decisions are entirely based on safety considerations.

The decision to retain the title "site check inspector" was made in the light of the long history of these work force representatives in mining. In fact, the mining industry introduced this form of employee representation well before any other industry. To many, check inspectors are part of the tradition of the mining industry, a tradition that is highly valued. Along with the retention of their title, they are now more closely modelled on the occupational health and safety [OHS] representatives in the Occupational Health and Safety Act 2000. In the final analysis, they do not have significant powers or functions beyond those available to OHS representatives. The main area of difference is that they retain an emphasis on inspection in recognition of their traditional role.

In terms of district check inspectors, all industries in this State, including the mining industry, have people available who can substantively fulfil an industry representative role. This is through authorised representatives under the Occupational Health and Safety Act 2000. For this reason, the decision was taken to continue with authorised representatives, rather than introduce a new entity in the form of district check inspectors. This is also consistent with the longstanding arrangement in New South Wales that the Occupational Health and Safety Act is the centrepiece legislation in this area. The bill provides similar provisions for a ceiling on working hours underground to those in the current Mines Inspection Act 1901. These are essentially a maximum of eight consecutive hours in a shift with a maximum of 48 hours over a period of seven straight days. There is also an entitlement to a break of at least one full day's break of 24 hours in those seven days. With concerns about working hours and, in particular, concerns surrounding fatigue and its potentially serious effect in a high-risk industry, the Government wants to retain these basic entitlements.

However, it is important to recognise that these figures are not absolute. The bill allows for variation in the case of emergency, and there is a regulation-making power to support the development of regulations that will allow variation under strict conditions. As part of the Carr Government's reform agenda for health and safety in mines, it introduced the Coal Mine Health and Safety Act in 2002. That Act, which passed through both Houses unamended, will result in a significant modernisation of the legislation covering the coalmining industry. This bill will bring similar modernisation to the health and safety legislation covering the rest of the mining industry.

The extent of mining operations involved ranges from large mines employing hundreds down to one- or two-person undertakings in places such as Lightning Ridge. The operations are spread throughout the State and include many that

are worked only intermittently. This wide variety of mining workplaces represents a regulatory challenge that is capably addressed by the bill. Later I will indicate how this will be achieved. The Mine Health and Safety Bill will repeal and replace the Mines Inspection Act 1901. It will complete the modernisation and clarification of the mining legislation concerning occupational health and safety.

I turn now to describe the overall framework that the bill will put in place for health and safety in mines. The Occupational Health and Safety Act is umbrella occupational health and safety legislation in New South Wales applying to all workplaces. This is a longstanding arrangement, beginning with the first Occupational Health and Safety Act in 1983. The arrangement is reinforced by the Occupational Health and Safety Act 2000. The Mines Inspection Act has been the means of specific health and safety regulation in the metalliferous mining and quarrying industry. The current arrangement is that the Mines Inspection Act is associated legislation of the Occupational Health and Safety Act.

This bill does not continue the associated legislation model; rather, the new Act should be read in conjunction with the Occupational Health and Safety Act 2000. The relationship between the Occupational Health and Safety Act and the mining-specific legislation will be similar to the current arrangement in that the Occupational Health and Safety Act will continue to prevail in the case of any inconsistency. This arrangement makes it clear that employers have fundamental duties towards employees and that the employees, in turn, have fundamental rights relating to their health, safety and welfare in employment.

There are a number of other important aspects of the relationship between the two pieces of legislation. They are, first, the introduction of an operator entity. The operator usually will be the employer with the day-to-day control of a mining or quarrying operation. I say "usually" because there is provision to cater for very small mines where there may be no employer. In this case the Chief Inspector may deem someone, such as a claim holder, to be an operator. The importance of the operator is that they carry relevant duties of care under the Occupational Health and Safety Act and so provide a link between the legislation. Secondly, existing provisions of the Occupational Health and Safety Act will be relied upon, where possible. I will give two examples: The first is the use of the powers of inspectors in the Occupational Health and Safety Act for the purposes of both Acts. The second example is the broader application of the general hazard provisions in the Occupational Health and Safety Regulation 2001 across the board, applying to mining as well as to industry generally.

Only when necessary will provisions in or under the Occupational Health and Safety Act be supplemented to meet the specific requirements of the mining and quarrying industries. This will result in a consistent general duty-of-care approach across all industry in the State and retain the longstanding policy of maintaining the Occupational Health and Safety Act as centrepiece legislation. The penalties for offences will be much more consistent than they are presently, with the generally higher penalties available under the Occupational Health and Safety Act setting the standard. A proper recognition of the potential for catastrophic danger in mining means that there must be a rigorous approach to the risks arising from such danger. The need for systematic safety management in a high-risk industry is recognised through the requirement for mine safety management plans to be prepared. This means that the high risks of mining will be managed in a disciplined way while still maintaining flexibility at an operational or enterprise level.

The current Mines Inspection General Rule 2000 took a similar approach in introducing systematic safety management. Some of its key provisions are now being given more prominence by being moved into the Mine Health and Safety Act. Consequently, the bill is not introducing essentially new measures in this area but, rather, is consolidating those that are currently in place. It nevertheless will be necessary for mines and quarries to make some adjustments to how they do things. This is not expected to be onerous. Flexible regulation-making powers have been included in the legislation to support all parts of industry in its time of change. The Department of Mineral Resources will play an important role in working with industry to achieve the transition from the old to the new legislation. Places covered by the present Mines Inspection Act are defined by a combination of mining activity and proximity to that activity. While it is necessary to continue using the activity and proximity criteria to define the multitude of small operations covered by the legislation, an alternative improved arrangement will be made for large operations.

The Mine Health and Safety Bill will result in amendments to the Mining Act 1992 to allow for the registration of mine holdings. A mine holding will define the boundaries of large operations and, consequently, the area of application of the Mine Health and Safety Act. The Minister administering the Mine Health and Safety Act will be given increased ability to define places to which the Act applies. Savings provisions also have been introduced so that if a government officer commences an investigation in good faith and subsequently it is discovered or determined that the relevant place was not within that officer's jurisdiction, the matter will be able to be handed over to the correct agency. This will provide legislative support to the working relationship between officers of the Department of Federal Resources and the WorkCover Authority. Notices and evidence will be preserved in the handover.

Earlier I mentioned the important mine operator entity. Operators will have their responsibilities as an employer or self-employed person under the Occupational Health and Safety Act supplemented by the mining legislation. The bill will require a mine operator to implement risk-management processes, prepare and maintain both a mine safety management plan and an emergency plan, develop and document a management structure, ensure that people working in the mine have the necessary skills, competence and resources to work safely, and, finally, effectively monitor contractors. It is recognised that these requirements may be overly onerous for a small operation. For example, one might question the utility of requiring a management structure to be defined for a one- or two-person mine at Lightning Ridge. To cater for these concerns, the Mine Health and Safety Act will allow for small operations to be exempted from some management plan requirements. However, this is not to say that safety in small operations will be

compromised.

Small mines will still be required to have management plans, but they will be of a complexity matched to the size and risks of the operation. To cater for smaller operators, the legislation will continue to be supported by such initiatives as the Lightning Ridge opal miners course and a special initiative known as the small mines campaign. Employees also have obligations under the bill which supplement their duties under the Occupational Health and Safety Act. These obligations will emphasise the need to work safely and use safety procedures developed by the operator. Employees also will be required to report to their supervisor risks that they cannot control. Managers and supervisors will continue to have responsibilities under the Occupational Health and Safety Act. In addition, the Mine Health and Safety Act will require managers and supervisors to comply with an operator's mine safety management plan, implement risk-management practices in areas they control, and communicate safety information to relevant people.

The mine operator will be required to prepare a contractor management plan, including requirements for site induction training. Contractors will be required to conform to the operator's mine safety management plan except where they have their own plan accepted by the operator. Contractors in turn have obligations in the bill that complement the responsibilities of mine operators. For example, contractors engaged in mining work will be able to have a safety management plan containing safe work method statements. The bill contains a regulation-making power that will allow appropriate exemption of non-mining contractors—for example, delivery drivers or office equipment technicians. Contractors form a significant part of the mining industry.

The contractor provisions in the bill are based closely on provisions for the control of contractors contained in the current Mines Inspection General Rule 2000. As with hours of work mentioned earlier, the Government will maintain these important controls. They have been modified in the light of provisions for contractors under the Occupational Health and Safety Act 2000. The control of contractors is especially important for what may be very dangerous or enclosed mining workplaces. Here the inappropriate actions of a few may affect all, and possibly result in catastrophic loss of life.

Mine operators will continue to be required to notify the Department of Mineral Resources of more serious accidents and incidents that occur at their mines. This will include the notification of fatalities, more serious injuries, and incidents that have a high potential to cause serious injury or death. The bill contains significant penalties for a failure to properly report those incidents. Following from reports, full investigations will be able to be undertaken by officers of the Department of Mineral Resources, which will allow preventative measures to be put in place across the mining industry to prevent a recurrence of similar incidents. This will maintain a current role of the Department of Mineral Resources. Concern has been expressed that safety incentive schemes common in industry may lead, directly or indirectly, to the underreporting of accidents. This may also lead to artificially low accident statistics. The Government views this very seriously. For that reason the bill contains a provision that makes it an offence to put in place incentive schemes that may discourage reporting of accidents.

A key aspect of any safe system of work is the presence of suitably competent people in key positions. The Mines Inspection Act makes provision for the granting of a number of certificates of competence through boards of examiners. The Mine Health and Safety Bill will lead to the establishment of a Metalliferous Mines and Extractive Industries Competence Board. The new board will replace the existing board of examiners. The board will have tripartite membership, with government, employer and employee organisations being represented. The membership of the board will be supplemented by expertise in the area of the development and assessment of competence within a vocational education and training context as required. The board will have responsibility for reviewing and developing competence standards and assessment processes. It will be responsible for administering assessment and certification processes. The board will also have the capacity to recognise and implement national standards for competence in the mining industry.

The conduct of legal proceedings under the bill will be consistent with the equivalent processes under the Occupational Health and Safety Act. Arrangements for the review of notices and appeals against decisions are consistent with similar arrangements under the Occupational Health and Safety Act. Applications for review of notices issued by inspectors will be to a chief inspector in the first instance, and then to an industrial magistrate. Similar to arrangements under the Occupational Health and Safety Act, the regulations will be able to define decisions by government officers that will be appealable to the Administrative Decisions Tribunal.

The schedules to the bill contain consequential and necessary amendments to other Acts. They are generally to improve underlying administrative frameworks and the relationship between the statutes. Schedule 1 contains amendments to the Mining Act 1992. These amendments insert provisions to create the mine holdings referred to earlier. They also make amendments to the colliery holding provisions, as a means of improving the relationship between the Coal Mine Health and Safety Act and the Mining Act. Schedule 2 contains amendments to the Occupational Health and Safety Act 2000. Item [3] of schedule 2 inserts a definition of "mining workplace", which is used to define the mining jurisdiction for the purposes of the Occupational Health and Safety Act. This provision also makes it clear that places covered by the Petroleum (Onshore) Act 1991 and the Petroleum (Submerged Lands) Act 1982 are within that jurisdiction.

Proposed section 47A of the Occupational Health and Safety Act will result in a person being appointed as a government official under the Mine Health and Safety Act being deemed to be appointed as an inspector under the Occupational Health and Safety Act. This is the means by which government officials will derive most of their powers.

Schedule 3 makes sensible amendments to the Coal Mine Health and Safety Act 2002, and schedule 4 makes consequential amendments to other legislation.

While there are a large number of amendments to the Coal Mine Health and Safety Act, they are mainly by way of clarification, and are incremental rather than fundamental. They result from the considerable scrutiny given to the Mine Health and Safety Bill and the improvements that have resulted. The bill and the Coal Mine Health and Safety Act contain many similar, if not identical, provisions. An improvement in one has urged an amendment of the other. An example is the provisions covering the use of mines for tourist or educational activities. Here the opportunity has been taken to make a number of amendments in the interests of consistency, clarity, and administrative efficiency in the processing of permits for these undertakings.

I turn now to matters that may be of concern to the Legislation Review Committee of the Parliament. The bill has taken the approach of, wherever practicable, utilising arrangements already in force under the Occupational Health and Safety Act 2000. This is particularly the case in relation to powers of those who are called in the bill "government officials". The term "government officials" covers the equivalent of current inspectors, mine safety officers, and investigators under the Mines Inspection Act. These officers will have the powers of inspectors under the Occupational Health and Safety Act with only limited additions. Those additions are to require the preparation of a plan of an accident scene, to be able to enter a mine at any time, and to enter an abandoned mine irrespective of whether it is a place of work. These powers are already available under the existing mining legislation.

It has also been recognised that it may be necessary to cross land owned by others to reach a land-locked mine site. That has been dealt with by giving government officials and work force representatives a power to cross such land, including land containing residential premises, but not to enter those premises. By virtue of the powers of inspectors under the Occupational Health and Safety Act, government officials under this legislation will have entry, search, and seizure powers along with a coercive power to require answers to questions. They will be able to enter residential premises only with permission or after obtaining a search warrant. A person who is questioned by a government official will have the same protection from self-incrimination as a person who is questioned by a WorkCover inspector.

It is important to recognise that the powers of a government official do not, except in the limited areas already outlined, go beyond those already available to WorkCover inspectors. It is also important to recognise that a government official under the Mine Health and Safety Act will have powers which are only exercisable in relation to mining workplaces or to investigate matters occurring at mining workplaces. As I said earlier, decisions taken under the Mine Health and Safety Act will be made reviewable by the Administrative Decisions Tribunal by way of regulation. This is analogous to the arrangement under the Occupational Health and Safety Act. As a protection for this process, the Mine Health and Safety Act will require that such regulations cannot be made without the concurrence of the Minister administering the Administrative Decisions Tribunal Act 1997.

A broad power is given to the Minister administering the Mine Health and Safety Act to issue stop work orders. This power is considered warranted for an industry such as mining, and particularly underground mining, where imminent danger may require strong and urgent action. It is envisaged that the power would be only rarely used but, nonetheless, it is seen as providing a necessary avenue for high-level intervention where other steps have failed. With the power vested in the Minister, accountability to the Parliament is assured.

The legislation contains powers that will enable regulations to modify application of the Act. This is necessary for two reasons. First, the legislation covers a difficult industry demographic in that the mining industry ranges from large mines employing hundreds to single-person operations. While the underlying principles of the legislation are universally applicable, it would be unreasonable to expect very small mines with virtually no resources to meet all requirements. The example of the management structure required by the legislation and its unreasonableness or total impracticality for very small mines has already been given. Secondly, the regulation-making powers in the bill will provide flexible transitional arrangements from the old to the new legislation. Again, as indicated earlier, many of the arrangements required under the new Act have substantively been put in place as a result of the Mines Inspection General Rule 2000. The regulations will allow many of those arrangements to remain in place while the finetuning required to conform to the new Act is undertaken.

While the bill provides that regulations may incorporate documents such as Australian Standards as amended from time to time, it is intended that any reference to non-statutory material will be severely limited in the regulations. The Mine Health and Safety Bill has been developed through a process of extensive industry consultation. It will allow a major step forward to making the mining industry of New South Wales safer. Support for this bill will be support for the mines and miners of New South Wales. I commend the bill to the House.