



## **Coal Mine Health And Safety Bill Coal Industry Amendment (Fees For Rescue Services) Bill**

**Corrected  
Copy  
05/12/2002**

**Second Reading  
In Committee**

### **COAL MINE HEALTH AND SAFETY BILL COAL INDUSTRY AMENDMENT (FEES FOR RESCUE SERVICES) BILL**

Page: 7788

#### **Second Reading**

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [3.56 p.m.]: I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in *Hansard*.

**Leave granted.**

#### **COAL MINE HEALTH AND SAFETY BILL**

The Carr Labor Government remains strongly committed to protecting the health and safety of the State's 9,500 coal mine workers.

Coal is one of the State's largest exports, with total production last financial year of \$5 billion.

However, the success of this industry has, in the past, come at a terrible cost.

Tragically, more than 1,500 coal mine workers have been killed in New South Wales since 1900.

This year is the centenary of the Mount Kembla disaster where 96 men and boys lost their lives.

This tragedy remains Australia's worst industrial disaster.

Sadly, there have been other disasters, which have taken coal miners from their families.

Catastrophes such as:

- the fire and explosion at Bellbird colliery in 1923, with the loss of 21 lives;
- the fire at Bulli colliery in 1965, with the loss of four lives; and
- the explosion at Appin colliery in 1979, with the loss of 14 lives.

In more recent times, three miners were killed in the 1991 roof fall at Western Main colliery.

In the same year an outburst also occurred at the South Bulli colliery where three more lives were taken, and in 1996, there was the tragic loss of four lives in the inrush at the Gretley mine.

In late 1996, against a backdrop of tragic deaths and near misses, this Government commissioned a wide ranging review of mine safety in New South Wales and implemented a number of key reforms.

These changes have included:

- a new specialist investigation unit to thoroughly investigate and report on serious mine safety incidents;
- the adoption of a prosecution policy and a \$1 million mine safety prosecution fund;
- a Mine Safety Advisory Council to bring together Government, employers and unions to work on mine safety issues; and
- the reform of mine safety laws.

This Government has overseen significant improvements in mine safety.

However, there is no room for complacency when the lives and safety of New South Wales' coal mine workers are at stake.

The safety performance of the mining industry still needs to further improve.

One death, one injury is one too many.

The *Coal Mine Health and Safety Bill* is the result of an extensive review of the laws covering health and safety in coal mines, and in particular the *Coal Mines Regulation Act 1982*

The Bill will modernise the current twenty year-old coal safety legislation.

The *Coal Mine Health and Safety Bill* has been prepared following a detailed consultation process with mining industry operators and employees.

The Minister for Mineral Resources, the Honourable Eddie Obeid, announced the start of this process in July 2000.

This saw the release of a comprehensive discussion paper - *Transforming Health and Safety Regulation in New South Wales Coal Mines*.

The paper called for comments and submissions from those with an interest in improving safety in the New South Wales coal industry.

Based on the outcomes of the first round of detailed consultation, a further paper titled *Safety Works* was released by the Minister for Mineral Resources for community comment in February 2002.

The *Coal Mine Health and Safety Bill 2002* reflects the outcomes of this extensive consultation process.

I take this opportunity to thank—on behalf of the Minister for Mineral Resources—all those who, through submissions or comments, have contributed to the development of the Bill.

In particular, the Minister has advised me that the representatives of mining companies and mining workers, have both been particularly constructive throughout the consultative process.

As members of the house would be aware, the *Occupational Health and Safety Act 2000* applies to every industry in NSW, including the coal mining industry.

However, the potential danger inherent in any coal operation is too high to be dealt with solely by the *Occupational Health and Safety Act*.

That is why there has always been specific coal mine health and safety laws in this State.

The Bill replaces the twenty-year-old *Coal Mines Regulation Act* with new, modern legislation that better protects the health, safety and welfare of people who work in the NSW coal industry.

The *Coal Mine Health and Safety Bill* is complementary to the more general Occupational Health and Safety Act.

The Government must have a strong role in the regulation and enforcement of mine safety standards.

If coal mines are not appropriately regulated there can be catastrophic loss of life.

This Bill provides a framework to manage the particular risks arising from coal mining, such as underground fires, explosions or roof collapses.

The Bill lays the foundation for an integrated approach to mine safety - through the development of health and safety management systems, major hazard management plans and emergency systems.

This Bill does not reduce the importance of Government inspectors, investigators and mine safety officers in providing independent and effective safety regulation for the industry.

I will now describe some of the central features of the *Coal Mine Health and Safety Bill*.

The Bill will apply to all places of work within a colliery holding under the *Mining Act 1992*.

The Bill requires a colliery holder to nominate an operator for any coal operation.

The operator must be the employer with day to day control of a coal operation.

A coal operation may be an underground mine, an open cut mine or a coal preparation plant.

A central element of the Bill is the requirement that an operator develop and implement a comprehensive health and safety management system as a condition for mining to be undertaken.

At the present time there are a variety of rules, schemes, systems and plans required under the *Coal Mines Regulation Act* to be prepared by a mine manager.

The Bill consolidates that mixture of requirements within a single, integrated and comprehensive health and safety management system.

The various rules, schemes, systems and plans will become important elements of the integrated system.

Health and safety management systems will be required to cover such matters as: major hazard management plans; the management structure for a coal operation; and a contractor management plan.

The systems will be comprehensive, and cover all those at a coal operation including employees, visitors and contractors.

To maintain existing arrangements, training requirements for the systems will need to be compatible with training schemes required under the *Coal Industry Act 2002*.

An important part of an operator's health and safety management system will be a management structure.

The management structure must include competent persons to perform key health and safety related functions.

The ongoing operation of health and safety management systems will be monitored by the Department of Mineral Resources inspectorate.

These officials will have available prohibition and improvement notice powers to ensure identified safety deficiencies are remedied.

The Bill will ensure that effective emergency provisions are also developed and maintained at coal operations.

The Bill requires an emergency management system to be developed.

This system would operate separately from the health and safety management system for two important reasons.

Firstly, it reinforces the importance of adequate emergency preparedness.

Secondly, it recognises that in an emergency different means of management, such as the formation of incident control teams and the close engagement of external emergency services may be necessary.

As with the health and safety management system, an emergency system will cover employees, visitors and contractors at a coal operation.

The Bill retains important provisions of the *Coal Mines Regulation Act* which are intended to protect the community from potential health and safety impacts of coal mining or to protect the safety of people in adjoining mines.

These include an ability for the Minister to require the leaving of barriers or protective pillars in mines, the closing of shafts or outlets in abandoned mines, the control of emplacement areas and a requirement for permits for former mines to be used for tourist or educational activities.

To ensure appropriate compliance and enforcement of the new laws, a range of offences, in addition to those contained in the *Occupational Health and Safety Act*, are included in the Bill.

Penalties for offences in the Bill are at a level commensurate with similar offences under the *Occupational Health and Safety Act*.

When enacted the legislation will be enforced in mines by inspectors and others with powers under the *Occupational Health and Safety Act*.

Another important feature of the Bill is the proposed new Coal Competence Board, which will replace the Coal Mining Qualifications Board.

The Coal Competence Board will oversee the development of competence standards and assessment of people performing particular functions in coal operations.

Importantly, the Board will be able to continue to arrange for the examination of candidates and the issue of certificates of competence.

Standards of competence for those performing critical health and safety functions in coal operations are essential if risks are to be appropriately identified and managed.

Those who work in coal mines need to have the recognised competencies to ensure they are able to perform their duties without placing themselves and others at risk.

A person will not be able to be employed in connection with a coal operation as a Manager, Deputy Manager, Under Manager in Charge, Under Manager or Deputy if they do not hold the relevant qualification for that position.

The new Act will not commence without regulations being made that recognise these positions and the corresponding competency standards and functions.

Those currently in statutory positions will be taken as having the necessary capability to perform the corresponding functions under the *Coal Mine Health and Safety Act*.

An important part of safety management is to ensure that employees who often work in challenging underground conditions, are fit for work and not fatigued.

Section 168 of the *Coal Mines Regulation Act* contains important safety provisions regarding hours of work.

As part of the modern legislative framework, these provisions are not expressed in the Bill, but rather will be retained in the regulations.

It is important to note that the regulations will be a key component of the safety framework that gives operational effect to important provisions of the Bill.

To ensure a smooth transition to the new legislation, the regulations will be developed in close consultation with mining company representatives and mine worker representatives.

Where necessary, the regulations will be able to make provision for existing arrangements, under the *Coal Mines Regulation Act*, to be acceptable as fulfilling requirements under the *Coal Mine Health and Safety Act*, for a limited period.

This will allow existing safety measures to satisfy the relevant requirements of the new legislation, while the required work is undertaken to implement new safety standards.

The *Coal Mine Health and Safety Bill 2002* provides a basis for a safer coal industry in New South Wales.

We must learn from the lessons of the past, by ensuring that effective measures are in place to prevent disasters and that the general safety, health and welfare of our coal mine workers is protected.

The Carr Government remains committed to putting in place the best possible arrangements to protect the lives, health and safety of our coal mine workers.

We trust that those who share a similar commitment will support the timely passage of this Bill.

I commend the Bill to the House.

### **COAL INDUSTRY AMENDMENT (FEES FOR RESCUE SERVICES) BILL**

Since 1 January 2002 the Coal Industry Act 2001 has provided for altered arrangements in the NSW coal industry in respect of the delivery of occupational health and safety, workers compensation and mines rescue services.

Honourable members will recall that those services are now performed by private corporations approved by the Minister for Industrial Relations who, apart from exercising an appointment power in relation to the companies' boards of industry-representative directors, retains a reserve monitoring and regulatory role under the Act in relation to the companies' performance of their approved statutory functions.

The mines rescue functions specified in the Act are undertaken by Mines Rescue Proprietary Limited.

Section 22 of the Coal Industry Act presently prohibits the charging of fees by Mines Rescue Pty Limited in the exercise of its principal underground coal mine rescue services as listed in the Act's section 14.

The funding of these services is intended to be accommodated under the Act by the company's annual monetary levying of owners of all coal mines (being both underground and open cut operations) according to the mine's size, rescue training needs, accident risk assessment and likely cost of rescue services.

It is the case that Mines Rescue Pty Limited is not an instrumentality or agent of the New South Wales Crown and the new statutory arrangements are designed to allow the coal industry parties (Construction, Forestry, Mining and Energy Union and the NSW Minerals Council Limited) to be responsible for the overall administration of the industry's functioning, including mine rescue activities.

In this capacity, the board of directors of Mines Rescue Pty Limited has informed the Government of its unanimous view (corresponding with the common stance of their backing bodies) that the present section 22 fee-charging prohibition is unsustainable in terms of the future financial standing of the company.

The Government accepts the case presented by the company.

Accordingly, the Coal Industry Amendment (Fees for Rescue Services) Bill proposes that there should be permissible fee-charging by the approved mines rescue company for the provision of rescue services after the first eight hours (or greater prescribed period) of an emergency at an underground coal mine.

The Mines Rescue Pty Limited board advises that the likely cost of its rescue services in an emergency are as much as \$0.2 million per day. The company points out that it is unable to accumulate adequate reserves under the present levy system to cope with a prolonged emergency such as the 1979 Appin explosion when Mines Rescue Service personnel and brigades were involved at that mine for approximately six weeks.

The board emphasises that to simply increase the current statutory levy could result in the more economically marginal mines being forced to close. This alternative form of action by the company is also not amenable to the Government.

I am further advised by the company that the former Mines Rescue Board which Mines Rescue Pty Limited replaced apparently acted in ignorance of the equivalent section 22 fees prohibition under the repealed Mines Rescue Act 1994.

Whenever the established Mines Rescue Service attended an emergency, the cost for the first shift (or 8 hours) in respect of both underground and open cut coal mines was met as a charge against the statutory levy which the former board made on the industry. All operating and labour costs for employees and brigades after that first shift were then to be charged to the colliery (and its insurer).

Since 1994 there have fortunately been no emergencies extending beyond eight hours involving risk to life.

The system of charging all collieries after the first eight hours apparently dates from the 1970s.

Prior to the adoption of the fee-charging system some mine managers used the Mines Rescue Service as a source of free labour. For example, with spontaneous combustion at mines, heating might advance to a point where breathing apparatus and mines rescue teams were required to make

the mine safe. Additionally, the initially free service over the first 8 hours for open cut mines was introduced so as not to discourage those mine managers from activating the service if they were in any doubt that the service was really required to be used.

Clearly, there is established industry acceptance of the present common fee-charging system for rescue work at both underground and open cut coal mines despite former and current Act provisions.

Moreover, the responsible coal industry parties charged with performing mine rescue services are of the firm view that the alternative of differential economic treatment according to mine type would be financially unsustainable for Mines Rescue Pty Limited and the industry at large in the event of a major emergency or a series of emergencies.

For these reasons, the Government is convinced that the Coal Industry Act requires appropriate amendment.

To this end, the bill which I introduce today establishes a threshold of 8 hours (being the accepted industry standard) before fee-charging will be permitted by the mines rescue company in the actual provision of rescue services in dealing with an emergency at an underground coal mine in New South Wales.

The term "emergency" has a specific meaning under the Coal Industry Act. It is defined to relate to an actual or imminent occurrence (such as fire, explosion, accident or flooding) that has resulted in a person's death or injury or is endangering or threatening to endanger a person's life or physical well-being.

Fee-charging will not apply at any stage to the mines rescue company's exercise of its more general or non-emergency section 14 principal functions at underground coal mines—for example, functions relating to the training and equipping of brigades.

Concerning the intended non-entrenchment of the eight hours mark as the threshold point for mines rescue fee-charging, it is to be noted that the proposed variant regulation-making power will be limited only to possibly increasing the allowable fees-free period. The eight hours (or first shift) mark is the industry's recommended and currently applicable fees threshold, but the Government is of the view that the Act should contain some regulatory flexibility to perhaps afford lessened mines emergency rescue costs to mine owners over time as a result of, say, enhanced rescue operations.

The regulatory power is not so variant as to permit a period of less than eight hours as this would be both contrary to the present industry standard and potentially cost disadvantageous to mine owners at some future time.

Honourable members may be assured that the bill is acceptable to Mines Rescue Pty Limited, the Minerals Council and the Construction Forestry Mining and Energy Union whose key officers were made aware of the bill's contents in the drafting process.

The recognition of the Government in its coal industry structural arrangements reform of last year was that the industry parties are in the best position themselves to know how their industry can optimally function.

Confirmation of the correctness of the Government's Coal Industry Act approach lies in this bill's genesis in the approved company's early analysis of the currently inadequate mines rescue funding arrangements and the industry's resultant reform call.

I commend the board of directors of Mines Rescue Pty Limited for bringing this matter to the Government's attention as I also now commend the bill to the House.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [3.56 p.m.]: The Opposition does not oppose the Coal Mine Health and Safety Bill or the Coal Industry Amendment (Fees for Rescue

Services) Bill. We recognise the importance of maintaining and strengthening the health and safety conditions of the State's coalminers. We also recognise the need to maintain a world's best standard of conditions in New South Wales coalmines. New South Wales coalmining companies are committed to improving health and safety in the workplace, and I also acknowledge the work of employee representative bodies in this regard. The overview of the Coal Mine Health and Safety Bill as contained in the explanatory note is as follows:

This Bill is about the Health, safety and welfare of people who work at coal operations, that is, people who work at colliery holdings (including coal mines, oil shale mines and kerosene shale mines), at coal exploration sites and in the exploration for or recovery of offshore coal.

The explanatory note goes on to state:

This Bill puts in place special additional obligations, protections and procedures necessary for the control of particular risks arising from coal operations. The obligations, protections and procedures in the *Occupational Health and Safety Act 2000* will continue to apply to coal operations.

The Coalition supports the broad intent of the legislation. We will not oppose any move that will strengthen the protection offered to the men and women who work in coalmines. It is a dangerous occupation—although, not as dangerous as it was in the past—and that is why we do not oppose the legislation. I have been informed that coalmining companies support the provisions of the Coal Mine Health and Safety Bill, which improve consistency between coal industry specific requirements and the mainstream occupational health and safety regulations that will provide coalmine operators with the flexibility to establish effective management structures and systems to improve the safety and health of coal mine workers.

There are about 60 active coalmines in New South Wales directly employing 10,000 workers in open-cut and underground operations. Almost half the industry work force and two-thirds of physical output come from open-cut mines. The industry has made major advances with regard to health and safety issues, with the New South Wales Minerals Council and individual workplaces implementing new strategies and practices to reduce lost-time injuries and fatalities in coalmining. According to the Joint Coal Board's lost-time injuries and fatalities statistics for 2000-01, the frequency of workers compensation claims resulting in one or more days lost shows a dramatic decline in the period 1992 to 2001.

I suspect that anyone who has visited mines in the Hunter—as I did a week or so ago when I toured some Coal and Allied mines—would have noticed on entering a mine a major board showing, for the benefit of both visitors and coalminers, not the days lost but the number of days since the last accident. In many mines the number of such days is considerable. Joint Coal Board figures for coalmine fatalities show a decline from 17 fatalities in 1981 to just one so far in 2002. The Minerals Council has informed me that the safety performance of the industry is now on par with that of other industries, including forestry, agriculture, construction and heavy manufacturing.

The bill House has had a lengthy history, starting with the 1997 mine safety review that identified some shortcomings with the regulatory framework associated with coalmine health and safety. The consultative process for this bill began in July 2000 with the release of a discussion paper. The Government released a position paper in February this year, with feedback considered during the final drafting stages. However, some concerns remain about the speed with which the bill has come before the House this afternoon. It is a concern that the draft bill was not referred to the New South Wales Mine Safety Advisory Council for review or endorsement despite policy advice being that council's stated purpose. I understand further that the department and the minister's office resisted requests to refer the bill to the Coal Mines Safety Advisory Committee for review despite a resolution from the committee in this regard.

Following a six-month hiatus after the close of submissions on the safety works discussion paper, key stakeholders had only four days in which to review a 150-page first draft bill and then a whole 24 hours to review the revised draft. Despite the significant new requirements on contractors,



they have had no opportunity to review or to comment properly on the bill as they are generally not members of the industry groups that were consulted. This is the typical scenario with which we are faced at the end of the parliamentary sittings each year. It is becoming the hallmark of this Government, as it tries to force through by the end of the sitting legislation that has not been considered properly.

As I said before, this bill will apply in addition to the Occupational Health and Safety Act 2000. Current Coal Mine Regulation Act regulations will be remade after the passage of this bill and additional new regulations will be made. Furthermore, consideration will be given to applying to coalmines hazard-based regulations under the Occupational Health and Safety Act. Employers and peak industry groups have identified several positive features of the proposed legislation, including greater consistency with the Occupational Health and Safety Act; placing primary responsibility on employers rather than on individual mine managers and other designated personnel; the requirement to implement a health and safety management system, which is already utilised widely by many mine operators across New South Wales; the placement of a rigid set of coalmine management and supervisory positions, with requirements for documented management structures comprising experienced personnel; and the retention of a specialised and expert mines inspectorate in the Department of Mineral Resources, with functions and powers consistent with WorkCover inspectors.

Despite our position of not opposing the bill, the Coalition shares the concerns of many industry representatives and employers relating to the workplace consultative mechanisms and the Construction, Forestry, Mining and Energy Union [CFMEU] industry check inspectors who will be put in place under this legislation. The bill strengthens considerably the powers and functions of government-funded district or industry check inspectors. Under the bill before the House, four industry check inspectors—who will be appointed directly by the CFMEU rather than employee elected—will have the power to stop work in coalmines across the State. In addition, coalmine operators will be required to forward to CFMEU offices a range of documents detailing health and safety management and safety incidents. CFMEU industry check inspectors will be able to delegate to a site check inspector their power to stop work. Workers at coalmines will be prevented from electing occupational health and safety inspectors and site check inspectors will be elected instead. Additionally, regulations to be made under the legislation will specify which workers at coalmines will be able to vote in elections for site check inspectors and will provide for a specified union to conduct such elections.

This is the part of the bill that concerns the Coalition. We understand that significant and detailed concerns about these provisions were expressed to the Government during the consultative and drafting process but, according to the Government, they are strictly non-negotiable. The coalmining companies are concerned that the details I have mentioned will entrench the CFMEU in the inspection process and that CFMEU officials will be able to use their power under the legislation to stop work over real or perceived safety concerns in order to further their own agenda. There is also a concern that the appointment of CFMEU officials will effectively double up on existing inspectorate powers afforded to the New South Wales Department of Mineral Resources. The Government has some questions to answer. Why has the CFMEU been offered an entrenched position of undeniable power in this bill? Why are these provisions non-negotiable? Is the Government being held to ransom by the CFMEU in this regard?

I emphasise that the Coalition is not seeking to water down in any way the health and safety provisions in this legislation. However, we are concerned that the Government is shifting from regulation to legislation—a function that will effectively entrench CFMEU officials in an undoubted position of power. I note that new mining legislative requirements were put in place in Victoria—which also has a Labor Government—at the end of October with absolutely no specified role for unions. Why has the New South Wales Government legislated to entrench their role? We will seek to amend the bill appropriately in Committee.

The Coalition does not oppose the establishment of the proposed Coal Competency Board to replace the Coal Mining Qualification Board. This board will oversee the development of appropriate competency standards and the assessment of people performing particular functions in coalmining operations. This is an important part of the bill and we recognise that it is essential that the

appropriate training, assessment and accreditation is undertaken. The Minister for Land and Water Conservation in another place stated in his second reading speech on this legislation that it is important to learn from the past and to ensure that effective measures are in place to prevent accidents in coalmines. The Coalition supports that statement totally, and that is why we will not oppose this legislation.

**The Hon. MELINDA PAVEY** [4.08 p.m.]: The Opposition is also pleased to support the Coal Industry Amendment (Fees for Rescue Services) Bill, which seeks to amend the Coal Industry Act 2001 to permit fee charging by the Mines Rescue Service for the provision of rescue services after the first eight hours of an emergency at an underground coalmine. Many honourable members will be aware of the excellent work done by accredited mines rescue units across New South Wales. The highly trained members of mines rescue brigades undertake difficult, dangerous work at the time of accidents in underground coalmines, often putting themselves at risk to save the lives of miners trapped underground. It is a sad fact that accidents do happen in underground coalmining operations, and it is only through the excellent work of these dedicated and highly trained rescue personnel that the death toll from underground mining operations is not greater.

The former Mines Rescue Board and the Joint Coal Board ceased to exist from 1 January this year. The activities of the two entities were placed with a new private company called Coal Services Pty Ltd, which is now charged to provide occupational health and safety, workers compensation and the Mines Rescue Service to the New South Wales coal industry. Coal Services Pty Ltd is owned by the coal industry, with the New South Wales Minerals Council and the Construction, Forestry, Mining and Energy Union [CFMEU] each taking a 50 per cent shareholding in the company. The board of directors of Coal Services includes: two from the New South Wales Minerals Council; two from the CFMEU; two independent directors; and a seventh director to be the managing director and chief executive officer of the company

The reason that I have highlighted the structure of the board of Coal Services Pty Ltd is that the proposed legislative change allowing Mines Rescue Pty Ltd to charge a fee for service in underground rescue operations exceeding eight hours resulted from a request from the board. In other words, it has the support of both industry and the union movement. It is testament to the New South Wales coal industry that fatalities in New South Wales underground coalmines have fallen from a high of 16 in 1980-81 to just two in 2000-01. However, there will always be a need for a well-resourced and well-funded rescue service to provide rescue operations when they are needed. That is the nature of this industry.

The move to cost recovery is reflective of the need to maintain Mines Rescue Pty Ltd in an acceptable financial position. It is important to note that the proposed cost recovery measures do not extend to the other core work of mines rescue—that of training and equipping rescue brigades at underground coalmines. Instead, in the event that a rescue at an underground coalmine takes longer than eight hours, the service will shift to a cost recovery basis. I have been informed that if the cost recovery mechanism does not take effect then it is likely that there would be a need in the future to raise the level of the compulsory levy that all coalmines in New South Wales pay annually to fund rescue services. While large corporate operators may not have a problem with funding an increased levy, smaller operators and mines operating at the edge of their financial resources may have some difficulty in meeting an increased levy. That in turn could lead to the closure of some of those marginal operators if they are unable to meet their annual levy contributions.

I take this opportunity to extend the congratulations of this House to the New South Wales Minerals Council on its recent innovative solutions to safety risks in New South Wales mines awards. The council recently presented a range of awards to creative and innovative solutions that will prevent injuries and accidents in mines. The winner of the award was the Camberwell Coalmine at Singleton for its hydraulic pressure bleed manifold which prevents serious burns, eye injuries and oil injection injuries by allowing the safe release and testing of hydraulic systems in heavy equipment commonly used across the mining industry, such as excavators and front-end loaders. It also enables the environmentally friendly disposal of hydraulic system oils. Our congratulations to that company for its innovative solution.

I am sure that some of the other award recipients will be able to make an ongoing contribution to the coal industry across the world. They certainly need some better answers in China where there are large numbers of injuries and deaths in coalmines. In conclusion, the Opposition is pleased to be able to support this legislation. I want to extend the thanks of the Deputy Leader of the Opposition to the executive director of the New South Wales Minerals Council, John Tucker, for his advice on this matter. John is also one of the directors of Coal Services Pty Ltd. The Opposition offers support for this important legislation.

**Reverend the Hon. FRED NILE** [4.14 p.m.]: The Christian Democratic Party supports the Coal Mine Health and Safety Bill and the Coal Industry Amendment (Fees for Rescue Services) Bill. The Coal Mine Health and Safety Bill will replace the outdated Coal Mines Regulation Act 1982 with modern legislation to better protect the health, safety and welfare of people who work in the coal industry. A couple of years ago the Standing Committee on Law and Justice, chaired by the Hon. Brian Vaughan, conducted an inquiry into workplace safety and inspected various mines in the Hunter Valley. We inspected a longwall mining operation. We travelled in an underground mobile vehicle and then, on reaching the end of the tunnel, we walked to the coal longwall mining operation. We wore safety helmets, jackets and heavy rubber boots. I admired miners working in such conditions. I know that longwall mining has been introduced to speed up and more efficiently remove coal from mines but that operation certainly increases dangers to miners. There is a lot of noise and coal dust when a wall is virtually removed. Metal pneumatic machinery holds up the wall of the coalmine and inches along and it is almost like looking at a scene in a Dante painting.

**The Hon. Duncan Gay:** That is the closest you will ever get to Hades.

**Reverend the Hon. FRED NILE:** That is the point I am making. I have always had great admiration for coalminers but having been in the mine my admiration dramatically increased. Safety issues are so important for them and that is why we are very pleased to support this legislation. We know that the large coalmining industry is very important in this State. This legislation is designed to protect the health and safety of 9,500 coal mine workers in this State. The industry brings in a great deal of revenue for New South Wales and Australia. The total production last financial year was more than \$5 billion. We need health and safety legislation because, tragically, since 1900 more than 1,500 coalminers have been killed in New South Wales. I imagine that is the highest death rate of any industry in Australia.

This year was the centenary of the Mount Kembla disaster when 95 men and boys lost their lives. Other tragedies include the 1923 Bellbird colliery accident in which 21 lives were lost; the 1965 Bulli colliery fire in which four miners died; the 1979 Appin colliery explosion in which 14 lives were lost; and the 1991 roof fall at the Western main colliery when three lives were lost. In 1996 at the South Bulli colliery three people lost their lives when miners suddenly broke into an old tunnel which was full of water, and similarly four lives were lost at the Gretley mine. We do not need to be reminded of the dangers inherent in underground coalmining in this State.

We also inspected a number of open coalmines. Open coalmining does not compare with underground mining as a dangerous occupation, but it involves different types of dangers. When we inspected the open coalmines I noted the presence of huge trucks; they gave the impression of being almost as big as this Chamber. Huge excavators remove coal from the walls of the mines and then place it in huge trucks. Obviously, if the miners are not careful, if a mine operator is careless, or if there is a mishap, miners could still be killed in an open coalmine. We are pleased to support the Coal Industry Amendment (Fees for Rescue Services) Bill, which will allow for more modern health and safety management practices with, importantly, an emphasis on consultation with the work force.

In the past there was almost a tradition in Australian mines, and perhaps in mines in the United Kingdom, of confrontation: the mine owners and/or operators versus the miners. We must move beyond that, and I believe that that is the purpose of this bill with its emphasis on consultation. That is probably one reason why the Government has continued with industry check inspectors. Although the Opposition gave the impression that it is an innovation, I understand that it is not. I have been advised that industry check inspectors have always been nominated by the Mining and Energy

Division of the Construction, Forestry, Mining and Energy Union [CFMEU]. I imagine that the check inspector initiative offers an incentive for mine operators and miners to work in a spirit of co-operation, the bottom line being miner safety and a reluctance to use these powers for frivolous reasons, for example, to cause a mine to stop operating if another union demanded a wage increase.

I expect the industry check inspectors to carry out their duties correctly and not to abuse the position they hold. The purpose of the provision seems to be to achieve co-operation and to encourage miners and their representatives to work in harmony with mine operators. We are concerned that deleting that provision could cause alienation and take the industry one step back instead of moving forward. We support the Coal Industry Amendment (Fees for Rescue Services) Bill.

**The Hon. IAN COHEN** [4.22 p.m.]: The Greens support the Coal Industry (Fees for Rescue Services) Bill which, while providing for fee for rescue services beyond eight hours, should not result in any disincentive to mining companies availing themselves of opportunities for equipping, training and safety auditing of day-to-day mining practices, which could otherwise be the case. Only by the timely and regular attendance to mining safety matters can the considerable hazards of this activity be minimised. A fee for extended service only may provide an incentive to improve workplace standards.

It is to be hoped that the less dramatic but, nevertheless, important sources of mine-related mortality and morbidity—the day-to-day hazards of dust, fumes, noise, vibrations and a host of other dangers, both underground and at the surface—do not slip into the background. Only by continual vigilance and improvement to coalmine workplace health and safety can we as a society justify our dependence on this activity, which is damaging specifically to the health of those who extract coal for us, and to all of us through destabilisation of the climate on which our collective health and safety depends.

I turn now to the Coal Mine Health and Safety Bill. Coalmining has always been a dangerous business. Indeed, only the organisation of workers into unions has forced improvements to health and safety conditions over time. For decades miners suffered from black lung as a result of breathing in coal dust, even though the technology for removing it had long been available. Too many miners died a horrible death as a result; so, too, those who perished down the mines as a result of cave-ins and subsidences. Fortunately our society has legislated to ensure that there are adequate standards to minimise such occurrences. Even so, even with our laws and precautions, far too many miners still perish down the mines. Our society has made a deal with the devil in becoming so reliant on coal as our primary source of energy. Is it any wonder that this lustrous black inheritance makes possible a lifestyle unprecedented in history? Now, however, the world's top scientists are suggesting that it is unwise to continue with this lifestyle, although there is still coal underground, because of the negative climatic consequences of our high life.

**The Hon. Duncan Gay:** Point of order: While the honourable member's contribution up until now has been totally within the leave of the bills, he is now moving into an area that I believe is well outside the leave of the bills. I totally agree with the commitment he made earlier, but he is now addressing the rights and wrongs of using coal, which are completely outside the purview of the bills before the House. I ask you to draw the honourable member back to the bills before the House.

**The Hon. IAN COHEN:** To the point of order: It will probably take longer to respond to the interjection than to read the few remaining lines of my speech. The health and safety of miners is very much tied up with the important use of the product. Drawing another relevant factor into the use or otherwise of coalmining is not unreasonable in terms of extrapolating the health and wellbeing of miners in relation to the health and wellbeing of all people involved in this industry and outside.

**The PRESIDENT:** Order! It is a convention in this House that members may make general comments about aspects of a bill that is being debated. The member may proceed.

**The Hon. IAN COHEN:** Addicted as we have become to this treasure trove of the distant past,

we are obliged to ensure that those who work in this most dangerous workplace are properly protected. Recently, the body in charge of mine safety—the Commonwealth-State Joint Coal Board—was swept away, to be replaced by a private company operated by the the Construction, Forestry, Mining and Energy Union [CFMEU] and the Minerals Council jointly established last year. Now, less than a year after we passed that coal industry bill into law, we are faced with another weighty, 120-page bill which seeks to give effect to the far-reaching changes in the way health and safety are managed. Guidance from the Federal Government is nowhere to be seen, despite the strong recommendation of the International Labour Organisation Convention on Safety and Health and Mines, that national consistency is a key factor in ensuring effective delivery.

Nonetheless, the Greens note the assurances of the Mining and Energy Division of the CFMEU that it has played an integral role in the development of the bill and believes that it will improve coalmine health and safety. Unfortunately, this legislation continues the artificial distinction between the verb "to mine" and the noun "mine". It is not obvious at first, but the activity of exploration appears to be exempt from this bill, because while mine owners may have built what looks like "a mine", miners are not "mining" under the narrowest possible meaning of the verb but exploring. This continues the artificial distinction and protection of the minerals exploration industry, which is also exempt from many of the environmental controls under which other industries are required to operate. The election of site check inspectors by the work force is a welcome step, but we are disappointed that the right to know of the work force and of the wider community is suppressed by restrictions on the information that may be disclosed. That only one-third of workplace agreements make reference to occupational health and safety matters is a sad reflection on the low status these important matters have in practice.

It is difficult to accept that this results from a lack of interest in occupational health and safety by the work force; rather it is the result of the difficult bargaining environment in which workers are placed when these matters are relegated to the bottom drawer. There has to be consultation with the people who work at the coal operation in setting up the health and safety management system. We applaud this provision and hope that all mineworkers will be able to use this opportunity to render their workplaces, on which we all depend, much safer than they have been in the past. The Greens support both pieces of legislation.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.30 p.m.], in reply: I thank honourable members for their contributions to debate on the Coal Mine Health and Safety Bill. I have a lengthy address in reply and seek leave to incorporate it in *Hansard*. I have specific points to make about the matters raised by the Deputy Leader of the Opposition and I will deal with them in Committee.

**Leave granted.**

I would like to take this opportunity to address the concerns raised in the debate on the Bill.

Firstly, the Opposition expressed a concern that this Bill was not subject to adequate consultation.

This certainly was not the case.

In developing this Bill, extensive consultation took place over an 18-month period.

This involved the public release of both a discussion paper and position paper, which forms the policy basis for this Bill.

The Mine Safety Council was directly involved in the preparation of the discussion and position papers, which formed the basis for further consultation.

It is the height of hypocrisy that the Opposition claims there has been inadequate consultation.

The Shadow Minister for Mineral Resources, the Honourable Duncan Gay, failed to provide a response to the Government's position paper, despite a written assurance that a response would be

forthcoming.

This failure indicates that the Opposition either doesn't have any policies or doesn't see mine safety as a priority.

There seems to be some confusion within the Opposition in regard to the arrangements for Industry Check Inspectors.

Industry Check Inspectors, known previously and more commonly as District Check Inspectors are vital health and safety personnel that have been contributing to mine safety since early last century.

History has shown the importance of the role of these positions in saving the lives of mineworkers.

In 1997, for example, at a Hunter Valley colliery, employees were exposed to diesel machines that had not undergone weekly gas testing.

This presented a potential hazard, which could have serious health effects from exposure to toxic gases.

The Industry Check Inspector took action and required untested diesel machinery to cease operation until tests were undertaken.

When the Department of Mineral Resources' Inspector reviewed the Industry Check Inspector's notice they found it to be appropriate.

In another example, coal mine workers were exposed to the potential risk of a roof collapse late last year at an Illawarra colliery.

Roof collapses have over many years resulted in the loss of lives.

In this case, the Industry Check Inspector issued a notice requiring a method of roof support being established that did not expose workers to the potentially catastrophic risk of an unsupported roof.

The Government Inspector in this case supported the action of the Industry Check Inspector, suspending operations in that coal panel.

History shows that the powers of Industry Check Inspectors have been used sparingly and responsibly. They have only been used in circumstances that clearly warranted their use.

The Bill essentially maintains the status quo in regard to the powers and authority of Industry Check Inspectors currently available under the Coal Mines Regulation Act.

The Government's approach on Industry Check Inspectors was outlined in the Government position paper released in February of this year.

At the time, the Opposition failed to raise any objections.

This is however not surprising, as previous Coalition Governments have supported the important safety role of these positions.

During the Griener and Fahey Governments, the Coalition has consistently supported the important role of the CFMEU in coal mine health and safety issues.

In fact the Griener and Fahey Governments provided a total of \$560,000 to the CFMEU to help fund their District Check Inspectors.

This is money well spent and has been maintained by this Government as it contributes to improved mine safety.

It is worth noting that since 1984, the law in NSW has provided for Industry Check Inspectors to be elected by members of the CFMEU.

This was the case even throughout the period of Coalition Government for very good reasons.

The CFMEU pays for over three-quarters of the total costs associated with Industry Check Inspectors.

The CFMEU is making a significant financial contribution to improve mine safety on behalf of their members.

More importantly, what has been critical to the success that Industry Check Inspectors have had in saving mineworkers lives has been their independence.

In addition to the role of industry compliance and Government mine safety law enforcement officers, Industry Check Inspectors have a vital role in protecting the lives of the State's mineworkers.

Their capacity to be an independent check and balance on mine safety and so contribute to better safety outcomes, is a role that is supported by this Government.

The involvement of employee representatives is crucial to improving mine safety.

This involvement reflects one of the key recommendations of the Mine Safety Review, which identified the need to ensure appropriate consultation with all key stakeholders including employee representatives.

The coal mining industry has a long history of the work force being able to elect representatives, known as 'Site Check Inspectors' who could then conduct safety inspections on their behalf.

Site Check Inspectors have a very similar role to the Occupational Health and Safety representatives introduced by the Occupational Health and Safety Act 2000.

To reflect the particular risks inherent in coal mining, Local Check Inspectors are provided with necessary powers to ensure mineworkers can be protected from imminent danger.

Local Check Inspector arrangements have been essentially retained in the Bill and Local Check Inspectors are referred to as Site Check Inspectors.

Under the Bill, all those employed in or about a coal operation are entitled to vote to elect a Site Check Inspector.

The Bill does provide the capacity for a Site Check Inspector at a coal operation to be delegated a power to suspend operations where there is an imminent danger to the safety or health of persons.

There are, however, strict procedures and conditions that must be met before a Site Check Inspector can be delegated this power and then exercise it.

The Site Check Inspector will only be able to exercise that power if they have received prescribed training and the Industry Check Inspector is not available or it is not practicable for them to attend at short notice.

As is the case now, these notices will cease to have effect if withdrawn by the issuing Site Check Inspector or, automatically, on attendance and assessment by a Government inspector.

Most importantly, the Bill provides an important safeguard by allowing for the disqualification of a person acting in the role of a Site Check Inspector should they misuse their powers.

In conclusion, I thank all Honourable Members who have contributed to the debate on the Bill.

I commend the bill to the House.

**Motion agreed to.**

**Coal Mine Health and Safety Bill read a second time.**

### **In Committee**

**The CHAIRMAN:** Order! The Committee will deal with the Coal Mine Health and Safety Bill.

**Parts 1 to 9 agreed to.**

### **Part 10**

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [4.34 p.m.]: I move Opposition amendment No. 1:

No. 1            Page 81, clause 173 (1) (a), lines 11 and 12. Omit all words on those lines.

The Opposition has moved this amendment because it is concerned with the entrenched position the Construction, Forestry, Mining and Energy Union [CFMEU] will gain under the bill. The honourable member for Swansea in the other place made a lengthy contribution criticising the Opposition for the position it has adopted on this section of the bill.

**The Hon. Jennifer Gardiner:** Which union is he in?

**The Hon. DUNCAN GAY:** One wonders what union he is in or which union sponsors him. The former Coalition Government did fund the position of district chief inspector provided by the CFMEU but I emphasise that that is not the current proposal. The current proposal pulls the CFMEU role out of the regulation and puts it fair and square in the legislation. Again I emphasise we are not trying to wind back any of the safety regimes put in place through this legislation. As I indicated in my speech on the second reading, the extra safety provisions were crucial and important. I cannot stress that point enough. The sections of this bill relating to the power of the CFMEU are of great concern. Detailed examination of the bill shows that the legislation is essentially inconsistent with a recent agreement reached by all mineral and petroleum resource Ministers to adopt a consistent approach to mine safety through the strategic mine safety framework.

As I said earlier, Victoria's new mine safety regulations, which commenced at the end of October, did not contain any specific union role. In Victoria, consultation and workplace representation is in line with the general occupational health and safety requirements and not in line with a specific union. Concerns have been raised in relation to the CFMEU's role as proposed in the bill. They include the fact that this is specifically special treatment for the CFMEU and the impact of these sections of the bill on non-union workplaces. I do not know how it will work in those mines that do not have CFMEU people. Does that mean that to fulfil this role the mine will have to import CFMEU people? No other New South Wales industry sector has union-specific provisions entrenched in its legislation. Concerns have also been raised about the removal of the current requirement for inspectors to have minimum safety qualifications and the fact that the Minister for Mineral Resources is unable to refuse to appoint a person to these positions.

In summary, the Coalition remains opposed to an entrenched position for the CFMEU in this legislation. I repeat for the benefit of Government members, we are not watering down safety provisions in this bill. We are not trying to unravel the mechanisms and safety regimes in this



important bill; we are just against special treatment for mates.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.36 p.m.]: The Government does not support this amendment, which would end the current arrangements for industry check inspectors, a vital group of individuals who play a key role in protecting and maintaining safety standards in coalmines. The Coalition has criticised the provisions in the bill that allow the Construction, Forestry, Mining and Energy Union [CFMEU] to appoint industry check inspectors. Its belated opposition to this provision is nothing more than shameless political grandstanding. The law currently states that industry check inspectors are selected by the CFMEU. I remind the Hon. Melinda Pavey that this is the very same law that was in force for the entire period of the Greiner and Fahey governments. Any honourable member who wants to check this needs only to refer to clause 6 of the Coal Mines Regulation (Election of Check Inspectors, District Check Inspectors and Electrical Check Inspectors) Regulation 1984. When the Coalition was in government it was quite happy for the CFMEU to select industry check inspectors.

There is more. The Greiner and Fahey governments provided \$560,000 directly to the CFMEU to help fund its industry check inspectors. It is understandable that the Greiner and Fahey governments, like the Carr Government, recognised the importance of the industry check inspectors selected by the CFMEU. Industry check inspectors save mineworkers lives. For example, late last year at an Illawarra colliery coal mine workers were exposed to potential risk of a roof collapse. As honourable members will appreciate, roof collapses can result in serious loss of life. In this case the industry check inspector attended the scene and issued a notice prohibiting work until a safer method of roof support was used. The government inspector later arrived on the site and supported the action of the industry check inspector. The industry check inspector's decisive action probably saved lives.

Finally, the election of industry check inspectors is covered by the rules of the CFMEU and the Workplace Relations Act. Clause 173 of the bill has been drafted to reflect this, rather than relying on the wording of previous or existing regulations. The Opposition's amendment is purely political and, if successful, would put at risk a successful part of our safety regulations.

**Question—That the amendment be agreed to—put.**

**The Committee divided.**

**Ayes, 14**

Mrs Forsythe	Mr M. I. Jones	Dr Pezzutti
Mr Gallacher	Mr Lynn	Mr Samios
Miss Gardiner	Mr Oldfield	<i>Tellers,</i>
Mr Gay	Mrs Pavey	Mr Colless
Mr Harwin	Mr Pearce	Mr Jobling

**Noes, 23**

Mr Breen	Mr Egan	Ms Saffin
Dr Burgmann	Mr Hatzistergos	Mrs Sham-Ho
Ms Burnswoods	Mr R. S. L. Jones	Ms Tebbutt
Dr Chesterfield-Evans	Mr Macdonald	Mr Tsang
Mr Cohen	Reverend Moyes	Dr Wong
Mr Costa	Reverend Nile	<i>Tellers,</i>
Mr Della Bosca	Mr Obeid	Ms Fazio
Mr Dyer	Ms Rhiannon	Mr Primrose

**PAIR**

Mr Ryan            Mr West

**Question resolved in the negative.**

**Amendment negatived.**

**Part 10 agreed to.**

**Parts 11 to 14 agreed to.**

**Schedules 1 to 3 agreed to.**

**Title agreed to.**

**Coal Mine Health and Safety Bill reported from Committee without amendment and passed through remaining stages.**

**Second Reading**

**The PRESIDENT:** Order! The House will resume debate on the Coal Industry Amendment (Fees for Rescue Services) Bill.

**The Hon. IAN MACDONALD** (Parliamentary Secretary) [4.48 p.m.], in reply: I seek leave to incorporate my speech in reply to the second reading debate.

**Leave granted.**

I thank honourable members for their contribution to the debate.

This Bill amends the Coal Industry Act 2001 to permit fee-charging by the Mines Rescue Service for the provision of rescue services after the first 8 hours (or greater prescribed period) of an emergency at an underground coal mine

Currently Section 22 of the Coal Industry Act prohibits the charging of fees by Mines Rescue Pty Limited in the exercise of its underground coal mine rescue services.

The board of directors of the company has unanimously requested the legislative change on the basis that—

- the costs of a major rescue emergency would be financially crippling for the company;
- fee-charging after the first shift is the accepted industry practice; and
- the alternative action in increasing annual financial levies payable by all coal mine owners could result in the closure of the more economically marginal mines.

Fee-charging will only apply to rescue services in an 'emergency' and will not apply to the company's exercise more general functions (eg training and equipping of brigades) at underground coal mines.

The proposed regulation-making power will be limited only to increasing the allowable fees-free period of the first 8 hours.

This proposal is supported by the NSW Minerals Council and the CFMEU—Mining Division.

I commend the Bill to the House.

**Motion agreed to.**

**Coal Industry Amendment (Fees for Rescue Services) Bill read a second time and passed through remaining stages.**

Bill Name: Coal Mine Health And Safety Bill Coal Industry Amendment (Fees For Rescue Services) Bill  
Stage: Second Reading, In Committee  
Business Type: Bill, Debate  
Keywords: 2R, COMM  
Speakers: Macdonald, The Hon Ian; Gay, The Hon Duncan; Pavey, The Hon Melinda; Nile, Reverend The Hon Fred; Cohen, The Hon Ian; President; Chairman  
Database: LC Hansard Extracts - 52nd Parliament of NSW / 523pc068 / 48

[Next Page](#)  
[Previous Page](#)