



Occupational Health and Safety Amendment

(Prosecutions) Bill.

Second Reading

Mr DAVID CAMPBELL (Keira—Minister for Regional Development, Minister for the Illawarra, and Minister for Small Business) [9.13 p.m.]: I move:

That this bill be now read a second time.

I seek the leave of the House to incorporate the second reading speech in *Hansard*.

Leave granted.

The bill before the House corrects a technical defect that threatens one of the most serious occupational health and safety prosecutions currently before the courts.

On 14 November 1996, four miners died when working in the Gretley colliery, from an inrush of water from the Young Wallsend Coal workings.

The then Minister for Mineral Resources, the Hon. Bob Martin MP, initiated a Commission of Inquiry into the deaths of the four miners in 1996, under Justice Jim Staunton.

The Commission of Inquiry reported in 1998 and made 48 recommendations, including that the papers be referred to the Crown Solicitor for the purpose of determining whether offences had been committed under the Occupational Health and Safety Act 1983 (the 1983 Act).

Section 48 of the Occupational Health and Safety Act 1983, which was in force at the time, provided for consents to prosecutions to be given:

- by the Minister; or
- for prosecutions to be commenced by an inspector appointed under the Occupational Health and Safety Act; or
- by a trade union whose members were concerned in the matter to which the proceedings related.

The former Attorney General and Minister for Industrial Relations, the Hon. J. W. Shaw, signed consents (under section 48(1)(a) of the 1983 Act) to commencement of prosecutions under the 1983 Act on 22 December 1999.

A total of 52 charges were laid in December 1999 against the Newcastle Wallsend Coal Company Pty Ltd, Oakbridge Pty Ltd and eight individuals in the Industrial Relations Commission of New South Wales in Court Session.

The current Minister for Industrial Relations consented to the prosecutions on 29 June 2000. These replaced the earlier consents signed by then Minister Shaw in December 1999. This occurred because of concerns about the procedural requirements associated with the original filing of charges. These concerns arose in another case and are unrelated to the issue addressed in the bill before the House.

The substantive trial commenced, on the basis of the consent given in 2000, on 12 August 2003 and 90 days were set aside for the hearing before Justice Patricia Staunton.

On 18 November, after more than 40 hearing days into the trial, the defence indicated that they intended to challenge the validity of the consent to the commencement of the prosecution.

The defendants are arguing before Justice Staunton that the Minister for Mineral Resources should have given the consent, not the Minister for Industrial Relations.

The issue identified by the defence to the prosecution is a purely administrative issue.

It is not a case where the prosecution has done anything that might adversely affect the substantive rights of the defendants.

The Occupational Health and Safety Act is generally allocated to the Minister for Industrial Relations, except in relation to mines. Matters concerning mines are the responsibility of the Minister for Mineral Resources.

Ordinarily, such a prosecution would have been instigated by an inspector employed in the Department of Mineral Resources.

However, the findings of the Coroner included recommendations concerning the department, and concerns were held about whether it was appropriate for consents to prosecutions to be given by the department or the Minister for Mineral Resources.

The Government, however, has decided to take the unusual step of placing the issue beyond doubt to ensure that the prosecutions in this very important matter can be tested on their merits rather than failing for a technical reason.

Accordingly, the bill has been introduced at this very late stage in the current parliamentary session to have the matter dealt with as a matter of urgency.

The bill makes it clear that any Minister can consent to a prosecution under the Occupational Health and Safety Act. It will overcome any similar problems that may arise in the future.

It will ensure that the Gretley prosecutions proceed on their merits without being compromised by this technical, administrative issue.

I commend the bill.

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