



Occupational Health and Safety Amendment

(Prosecutions) Bill.

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [5.40 p.m.]: I move:

That this bill be now read a second time.

The Occupational Health and Safety Amendment (Prosecutions) Bill 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, initiated a commission of inquiry into the deaths of the four miners, 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 purposes of determining whether offences had been committed under the Occupational Health and Safety Act 1983.

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 a trade union whose members were concerned in the matter to which the proceedings related. On 22 December 1999, under section 48 (1) (a) of the 1983 Act, the former Attorney General and Minister for Industrial Relations, the Hon. J. W. Shaw, signed consents to commencement of prosecutions under the 1983 Act. In December 1999, in the Industrial Relations Commission in Court Session, a total of 52 charges were laid against the Newcastle Wallsend Coal Company Pty Ltd, Oakbridge Pty Ltd and eight individuals.

As Minister for Industrial Relations, I consented to the prosecutions on 29 June 2000. These replaced the earlier consents signed by Minister Shaw in December 1999. This occurred because of concerns about the procedural requirements associated with the original filing of charges. The concerns arose in another case that is unrelated to the issue addressed in the bill. The substantive trial commenced on 12 August 2003, on the basis of the consent given in 2000, and 90 days were set aside for the hearing before Justice Patricia Staunton. On 18 November 2003, after more than 40 hearing days, the defence indicated that it 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, not the Minister for Industrial Relations, should have given the consent.

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

However, the Government 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 fail 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 to the House.

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