

Agreement in Principle

Ms LYLEA McMAHON (Shellharbour—Parliamentary Secretary) [10.08 a.m.]: I move:

That this bill be now agreed to in principle.

The Coal Mine Health and Safety Amendment Bill 2010 makes a number of necessary amendments to the Coal Mine Health and Safety Act 2002. These amendments will clarify the intent of the Act and provide certainty for investigators and for industry. The first major amendment clarifies the jurisdiction of the Act. In doing so, it makes sure that the Act covers all coalmining-related activities. The second major amendment also relates to the jurisdiction and application of the Act. This amendment will enable the Minister to make, in particular circumstances, a binding determination on whether the Act applies. Such a determination will be conclusive for the purposes of deciding a jurisdictional question.

Before considering these amendments in detail, it will be helpful to briefly explain the legislative framework within which they will operate. The Coal Mine Health and Safety Act 2002 aims to secure the health, safety and welfare of those working in the New South Wales coalmining industry. The Act supports the Occupational Health and Safety Act 2000 by addressing risks specific to coalmining. One of the intents of the Coal Mine Health and Safety Act is to define the jurisdictional boundaries of the Occupational Health and Safety Act 2000, and therefore the division of responsibilities between WorkCover and Industry and Investment NSW. Industry and Investment NSW has jurisdiction for administering the Occupational Health and Safety Act at workplaces covered by the Coal Mine Health and Safety Act and the Mine Health and Safety Act 2004. WorkCover has jurisdiction for all other workplaces.

A statutory review of the Coal Mine Health and Safety Act was undertaken in 2009. The review identified the need to clarify the places of work to which the Coal Mine Health and Safety Act applies. In particular, the review identified difficulties with using colliery holding boundaries to identify the jurisdiction boundary for most mining activities. Using colliery holding boundaries for this purpose resulted in some coalmining activities at some mines not being covered by the Coal Mine Health and Safety Act. It was also unclear whether some mining-related activities outside colliery holdings were covered by the Coal Mine Health and Safety Act. This has created jurisdictional uncertainty related to the administration of the Occupational Health and Safety Act at these sites.

In turn, the potential was created for uncertainty in the lawfulness of regulatory action under the Occupational Health and Safety Act. This could mean that those responsible for workplace incidents and accidents might avoid prosecution or other regulatory action under the Occupational Health and Safety Act. It is not in the interests of justice or safety to allow breaches of the Occupational Health and Safety Act to go unpunished because of technicalities over jurisdictional boundaries.

New South Wales has achieved outstanding improvements in coalmining safety over the past decade. The successful prosecution of significant breaches of the safety legislation has helped to achieve these improvements. It is of critical importance that these efforts are not undermined in the future by technicalities unrelated to the legislated duties of employers and employees. The amendments before the House will ensure that whenever a breach of duty of care has occurred, whoever is responsible can be held accountable. The amendments will achieve this in the following ways. First, the bill removes the geographical concept of a colliery holding as the basis for the application of the Act. At present there is no requirement for all coalmining-related activities to be within a colliery holding. Because of this, there are activities subject to the Coal Mine Health and Safety Act at some coalmining operations, but not at others. Different regulatory requirements and different regulators for the same activities at different mines have therefore resulted.

To overcome this problem, the proposed amendments will base the application of the Coal Mine Health and Safety Act on the activities intended to be covered by it. This will ensure that similar activities are regulated consistently across the State. The amendment will clarify the application of the Act. It will therefore clarify the jurisdictional boundary between WorkCover NSW and Industry and Investment NSW. It will overcome the situation of having different regulators and different rules applying to the same activities at different locations.

The second amendment seeks to overcome a further potential difficulty. Although it would be uncommon, it is possible that even the activity-based test might result in uncertainty about whether the Act applies to a particular workplace. The coalmining industry needs to understand where the Coal Mine Health and Safety Act applies. The proposed amendment therefore gives the Minister the power to make a binding determination on the application of the Act where it would not otherwise be clear. The determination will provide a simple mechanism for removing any doubts regarding jurisdiction. This will provide certainty for the regulators, and a clear way to resolve uncertainties. It will ensure that any enforcement action is not subject to legal uncertainty because of a jurisdictional question. WorkCover and Industry and Investment NSW will consult to ensure that decisions on jurisdictional boundary are applied consistently.

There is a further matter to be considered in relation to these amendments. We know that the amendments already outlined will make sure that jurisdiction under the Coal Mine Health and Safety Act is clear for the future. However, we must also make sure that the amendments apply to current investigations and prosecutions. It is in the interests of justice that any potential breaches of the Occupational Health and Safety Act that occurred prior to these amendments can be investigated and, if necessary, prosecuted. The bill addresses this issue by including a number of important savings and transitional provisions. These provisions will apply to investigation and enforcement actions under both the Occupational Health and Safety Act and the Coal Mine Health and Safety Act. Certain actions must be undertaken before these amendments will be deemed valid. They will be deemed valid if they could have been undertaken lawfully had the amendments been in force at the time the action was taken. These important provisions apply to matters such as the collection of evidence, the issuing of safety notices, and the initiating of prosecutions.

The bill validates the actions of inspectors exercising important safety regulatory functions in relation to coalmining workplaces in New South Wales. Importantly, these amendments will put beyond doubt the validity of any previous investigations, or pending prosecutions for offences or suspected offences, under the Occupational Health and Safety Act. They will remove the basis for a technical challenge by a defendant that an investigation or prosecution is invalid because of jurisdictional uncertainty. This ensures that a defendant does not escape liability for a breach of duty on a jurisdictional technicality.

These amendments will not create any new obligations for anyone under the Occupational Health and Safety Act. This is because the amendments are concerned only with clarifying whether Industry and Investment NSW or WorkCover investigate and prosecute alleged breaches in coalmining workplaces. The amendments will have no effect on cases that have already been decided. It also needs to be said that the amendments will not alter the investigation powers of Industry and Investment NSW or WorkCover NSW. However, the amendments may result in some coalmining activities being the subject of the Coal Mine Health and Safety Act where previously they were not.

The bill proposes other amendments to the Coal Mine Health and Safety Act and to the Mining Act 1992. The first of these is based on a finding of the Coal Mine Health and Safety Act review. The review identified that some of the requirements to notify incidents and occurrences did not apply to all places of work under the Act. It is proposed to amend the Act to ensure that its regulatory functions can be exercised at all the places of work it covers. The amendments will also ensure that the chief inspector and industry check inspectors are informed of all notifiable incidents.

The review of the Coal Mine Health and Safety Act also recognised that grouping leases for non-coalmining related activities would have administrative advantages for Government, industry and the community. The bill therefore amends the Mining Act to replace the existing colliery holding register with a single register of coal and other mines. The register will be publicly available and will provide a ready means of quickly identifying what mining titles make up a particular mining operation.

Members of this House will be aware that this Government has already done much to improve the safety performance of the State's mining industry. Since 1999 the incidence of fatalities and serious injuries in mining has fallen significantly. Education and advice are playing an increasing role in improving mine safety. However, investigation and enforcement still remain an important function of the regulation of coal workplace occupational health and safety. Investigation and enforcement ensure that standards are established and maintained. During the past 10 years, investigation work has led to more than 50 convictions for serious breaches of mine safety across the New South Wales mining industry. These convictions have let the mining industry know that New South Wales is determined to have a safe industry.

The coalmining industry has achieved a dramatic improvement in safety outcomes, but there is still much work to be done. Sadly, three workplace fatalities were recorded in the coalmining industry during the past 12 months. The proposed amendments will make sure that those responsible for deaths or injuries in coal workplaces face the consequences of not complying with the legislation. Without these amendments, a potential injustice to the families of those who are injured or killed could occur. The amendments will provide for the clear and effective jurisdiction of the Coal Mine Health and Safety Act 2002, now and into the future. I commend the bill to the House.