



## Work Health and Safety (Mines) Bill 2013 (Proof)

### Work Health and Safety (Mines) Bill 2013

Extract from NSW Legislative Council Hansard and Papers Tuesday 25 June 2013 (Proof).

## WORK HEALTH AND SAFETY (MINES) BILL 2013

Page: 17

### Second Reading

**The Hon. JOHN AJAKA** (Parliamentary Secretary) [12.40 p.m.], on behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in Hansard.

#### Leave granted.

The Work Health and Safety (Mines) Bill 2013 will ensure the ongoing regulation of health and safety in the New South Wales mining industry. Mining contributed over \$23 billion to the State's economy in 2011-2012, as well as \$1.46 billion in royalties. It employs around 35,000 people directly and more than 85,800 people indirectly. The bill will provide the platform for ongoing improvement in the State's health and safety record in mining. The harmonisation of mine safety laws will help lower the regulatory burden for mining companies operating across State borders.

The bill implements the policy developed with all States and Territories, unions and employer groups under the National Mine Safety Framework. As well, it finalises implementation of the national harmonisation of work health and safety laws in New South Wales and it provides for New South Wales to adopt the provisions of the national model Work Health and Safety (Mines) Regulation. It also provides for the additional provisions developed cooperatively by New South Wales, Queensland and Western Australian regulators, unions and employer groups. These additional provisions will ensure that safety standards in large-scale mining and particularly in underground coal are retained.

In 2008, the Council of Australian Governments agreed to implement a coordinated national approach in the areas of uniform work health and safety laws and consistent mine safety regulation. The significant risks involved with mining undertaken in the three major mining States, that is, New South Wales, Queensland and Western Australia, particularly in relation to coal mining, were also recognised. As a result, it was agreed that a tripartite, tri-state process would develop additional mining-specific, safety provisions. Ensuring that this legislation is enacted by 1 July will help ensure New South Wales to secure reward funding of \$79 million under the Council of Australian Governments [COAG] National Partnership Agreement to Deliver a Seamless National Economy.

The Work Health and Safety Act 2011 and Regulation already apply to mining workplaces in New South Wales. The bill before the House establishes the mechanism for including additional and appropriate mining-specific regulatory provisions for mining workplaces, within the Work Health and Safety Act framework. The Government is committed to reducing red tape for businesses but without lowering health and safety standards. The Work Health and Safety (Mines) Bill 2013 will replace the Coal Mine Health and Safety Act and the Mine Health Safety Act with one mine-specific legislative scheme.

The objects of the bill are clearly set out. These include assisting to secure the objects of the Work Health and Safety Act in mining. The objects of the bill also include protecting the health and safety of people at mines; effective provisions for emergencies; ensuring competency standards for people performing certain functions at mines; coal-specific worker representatives; and additional enforcement powers. The bill also enables the continuation of the Mine Safety Advisory Council, boards of inquiry and interstate regulatory cooperation. The bill applies to all workplaces that are mines. It adopts the model mining regulation provisions that define a mine as a place where mining operations are carried out. Mining operations include the extraction of, and exploration for, minerals and connected activities such as preparing, processing and handling. The bill maintains a consistent approach to the current jurisdiction and current application of the existing mine safety regulatory scheme in New South Wales.

I will now go through the provisions in the bill in detail. The notification of serious workplace incidents is a key element of the work health and safety framework. Under the bill, the appointed mine operator has overall responsibility for work health and safety at a mining workplace. Similar to the current legislation, the bill requires a mine operator to ensure that the regulator is notified of incidents defined as notifiable incidents. These include the death of a person, serious injury or illness, or a dangerous incident. The bill also requires a mine operator to notify other high-potential incidents. These will be specified in the regulation. It is essential to improving our safety performance that we know about injuries and illnesses, but in this high-hazard industry it is also essential to know about high-potential incidents. These are precursor events that do not result in injury or death, but indicate potentially significant and dangerous risks that require

attention.

The bill ensures there is appropriate regulatory oversight of mining operations. The regulator will be the Director General of the Department of Trade and Investment, Regional Infrastructure and Services. The bill provides for the powers and functions of the regulator that are consistent with the Work Health and Safety Act. These functions include monitoring and enforcing compliance and providing advice and information on work health and safety to the Minister for Resources and Energy, duty holders and the community. Additionally, the department head continues to be the regulator for the Work Health and Safety Act in respect of mining workplaces.

Recognising the significant risks associated with mining, the bill provides for Government officials, who will also be inspectors under the Work Health and Safety Act. Government officials include inspectors, mine safety officers and investigators who are required to have specific skills, knowledge, experience and qualifications related to mining operations. The bill provides for circumstances additional to those in the Work Health and Safety Act where an improvement notice or prohibition notice may be issued in respect of a mining workplace. These provisions maintain the effect of existing enforcement measures under the existing Coal Mine Health and Safety Act and the Mine Health and Safety Act. There is no reduction in enforcement powers for mines inspectors and investigators. The need for additional enforcement powers was agreed by the tri-state Legislation Working Group. These powers reflect the need for early intervention to prevent the effects of catastrophic risk associated with mining. The bill streamlines inspector's enforcement powers by using the improvement and prohibition mechanisms in the Work Health and Safety Act. As well, it adjusts them to enable proactive intervention to address mining risks. This is a better outcome than the current scheme, which effectively has two parallel sets of enforcement powers.

The bill also provides for the regulator to make a stop-work order, if it is necessary to prevent a serious risk to the health or safety of any person at a mine. This maintains the current stop-work powers and gives them to the mine safety regulator. Mining incidents have the potential to seriously injure or kill large numbers of mine workers. An underground coalmine explosion at New Zealand's Pike River coalmine in 2010 killed 29 mine workers. The Pike River Royal Commission made a number of recommendations about how to prevent mine tragedies after considering the fatal explosion at Pike River. The Royal Commission's final report was reviewed by the Mine Safety Advisory Council and the tri-state Legislation Working Group. As a result, some minor changes were proposed for the regulation under the bill. However, the review of the Pike River report confirmed that the proposed NSW legislative scheme applying to coalmines met the appropriate standards. The Government acknowledges the industry's commitment to improved health and safety performance and seeks to support those efforts.

The Work Health and Safety (Mines) Bill 2013 ensures that appropriate consultation and review arrangements are in place to address significant mine safety related matters. The Mine Safety Advisory Council, which advises the Minister for Resources and Energy on mine safety and health matters, was established under the Mining Act 1992. The bill provides for the continuation of the council with the provisions being transferred from the Mining Act 1992 into the bill. The council is a tripartite group made up of representatives from the regulator, employers and employees, as well as independent health and safety experts.

I turn now to the issue of the competence of people with safety-critical roles in mining. Many inquiries and commissions into major mining hazards have identified the need for people with specific skills and expertise to manage mining operations. The arrangements under the existing legislation for a Mining Competence Board will be maintained under the bill. The Mining Competence Board determines competence standards for safety-critical roles and undertakes the assessment of people to perform those roles. The bill also gives the Minister a power to establish boards of inquiry. A board of inquiry may be set up to inquire into an event or dangerous occurrence that has caused death or serious injury at a mine and its causes and circumstances.

The high-risk nature of coal mining has warranted special attention from governments and mining operators. Underground coalmines are inherently hazardous workplaces because of the potentially explosive atmospheres associated with methane. The bill ensures that the existing coalmine-specific worker representative arrangements are maintained. These arrangements are consistent with Queensland—the other key coal jurisdiction—and the recommendations from the Pike River Royal Commission report. Industry safety and health representatives and site-specific safety and health representatives will supplement existing Work Health and Safety Act worker representatives. The key coal mining stakeholders—the NSW Minerals Council and the Construction, Forestry, Mining and Energy Union [CFMEU] Mining and Energy Division are in agreement on the coal-specific worker representatives. This scheme is a realignment of the "check inspector" scheme under the Coal Mine Health and Safety Act. It enables a practical framework for the concurrent operation of worker representation, consultation and participation schemes under both the bill and the Work Health and Safety Act. The coalmine-specific safety and health representatives have all the powers and functions of health and safety representatives under the Work Health and Safety Act. The bill also provides that they have powers and functions consistent with those under the current Coal Mine Health and Safety Act scheme.

The bill provides for the Minister for Resources and Energy to appoint industry safety and health representatives. These industry safety and health representatives will be able to enter and inspect a workplace at a coalmine. Additionally, they will be able to review the content and implementation of a coalmine safety management system. As well, they will be able to participate in an investigation of an event, occurrence or notifiable incident and assist in training of other representatives. The bill requires industry safety and health representatives to take reasonable steps to notify a government official of their intent to issue a notice to suspend operations, before they issue the notice. In addition, a mine operator at a coalmine must ensure that an industry safety and health representative receives notification of a notifiable incident. The bill sets out provisions for the election, disqualification and rights of site-specific safety and health representatives, including electrical representatives. They may only exercise powers or perform functions in respect of the coalmine for which they are elected. The issuing of provisional improvement notices at a coalmine will be limited to site-specific safety and health representatives only. However, before they exercise this power, they must consult with relevant health and safety representatives under the Work Health and Safety Act to identify workers at the mine who will be affected by the provisional improvement notice. Electrical safety and health

representatives' powers and functions will apply to the whole of the coalmine, but only with respect to electrical equipment and installations, and issues and risks arising from their use.

The mining industry in New South Wales has a number of institutions where the industry works cooperatively together with the regulator to achieve safe mining. These arrangements will be maintained and strengthened. Under the bill the Mine Safety Advisory Council and the Mining Competence Board will continue and the Minister for Resources and Energy will be able to constitute a board of inquiry. The bill makes provision for the sharing of information with regulators of corresponding mining-specific work health and safety laws. This will enable effective regulation of the nationally harmonised model. These regulators may retain stand-alone mine safety legislation separate from the corresponding Work Health and Safety Act in their jurisdictions.

The model Work Health and Safety Act recognises the important role of codes of practice. The bill ensures that agreed mining codes of practice can be approved by the Minister for Resources and Energy. Codes of practice have evidentiary status and are one way that a duty holder can comply with their legislative obligations. The bill makes it clear that the process for developing mining codes of practice requires consultation only with stakeholders in the relevant jurisdictions, that is, those jurisdictions which intend to adopt the codes. The Government has consulted with the major mining stakeholder groups on the bill. These stakeholder groups—the NSW Minerals Council, Cement Concrete and Aggregates Australia, the Construction, Forestry, Mining and Energy Union and the Australian Workers Union—represent the bulk of mine operators and mine workers. These stakeholders have been involved all the way through the process of developing the model Work Health and Safety Mines Regulation.

In summary, the Work Health and Safety (Mines) Bill 2013 ensures that the necessary provisions to regulate high-risk mining activities are maintained and integrated into the model Work Health and Safety regulatory scheme. It implements the Government's policy of improving legislative consistency with other jurisdictions and importantly, the bill does not reduce the legislated safety standards for mine workers. I commend the bill to the House.