DRAFT SECOND READING SPEECH

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Mines Work Health and Safety (Supplementary Requirements) Amendment Bill 2019

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Madam Speaker, I move that the Bill now be read a second time.

This Bill makes a number of clarifications, corrections and improvements to the *Mines Work Health and Safety (Supplementary Requirements) Act 2012*.

It is important to note that the Principal Act and its regulations, which I will refer to collectively as the mine safety laws, supplement Tasmania's strong work health and safety laws.

The mine safety laws are intended to be incorporated into and read together with the *Work Health and Safety Act 2012* as a single Act.

The mine safety laws address the hazards and risks that are not adequately covered by the work health and safety laws.

Maintaining consistency between Tasmania's mine safety laws and the work health and safety laws is therefore fundamentally important because the two related statutes need to operate at mines as one.

Tasmania's work health and safety laws are based on national model laws, which include a model Work Health and Safety Act, model Work Health and Safety Regulations, and model codes of practice.

These elements are supported by a national compliance and enforcement policy which sets out how our work health and safety regulator's monitor and enforce compliance.

By way of background, the mine safety laws are necessary in Tasmania because, although the work health and safety laws cover mines, they do not adequately address the hazards and risks of mining operations.

A tripartite Mine Safety Steering Committee has recently completed a comprehensive review of Tasmania's mine safety laws. The Steering Committee included representatives from relevant industry groups and unions, the Chief Inspector of Mines, and an independent person with mining-related expertise.

Overall, the Steering Committee concluded that the Principal Act is basically sound and requires only a small number of amendments for improvement. The review concluded that the Act provides a suitable platform on which to build improvements to the specific requirements applying to the mining industry in Tasmania.

With respect to the regulations, the Steering Committee concluded that the regulations lack both the depth and breadth necessary for the dynamic and potentially high hazard and high risk working environments in mining.

Accordingly, the changes contemplated by the Bill are a small part of a much broader package of potential reforms that are being developed. The proposed amendments to the Principal Act are largely minor and relatively straightforward, whereas proposals pertaining to the regulations are extensive and require consultation and further work.

I will now highlight a few key features of the Bill.

The Bill makes a number of minor amendments and improvements to the Principal Act to ensure that it is fit for purpose. The Bill proposes clarifying, correcting or improving key definitions, removing redundant transitional provisions, and ensuring the Principal Act operates seamlessly with the Work Health and Safety Act.

A number of preliminary provisions of the Principal Act, including definitions, determine the scope and application of the laws. There is a minor amendment proposed to the object of the Act to ensure it remains consistent with the content of the Act (once amended).

Section 4 of the Principal Act, which specifies that the Act is to be incorporated in and read together with the Work Health and Safety Act as a single Act, is to be amended. The proposed new provisions provide more detail on how the mine safety laws, especially the regulations, operate in conjunction with the work health and safety laws.

The Bill amends the definition of a 'mine' to clarify that fixtures, fittings, plant or structures at the place of mining operations are part of the mine. This is not intended to result in any significant change, but it will clarify the status of these items to avoid any doubt arising.

The definition of 'mining operations' under the Principal Act is particularly important. The Act is intended to apply to the entire life of the mine, from the initial site development and construction phase through to decommissioning and rehabilitation.

It is important that coverage commences as soon as work begins on site, because a mine is an evolving workplace, where the early work affects the later work and the hazards and risks that may arise. Initial work needs to start out in compliance with the mine safety laws to avoid the need for remedial work later in the development of the mine.

As it currently stands, the Principal Act is not clear about at what point during the development of a mine the work becomes mining operations.

The proposed amendments clarify that site development and construction of infrastructure for use in mining are mining operations. This will remove ambiguity about when, in the life of a mine, mining operations start and the Act therefore applies.

The existing provisions recognise that there is a need to allow some flexibility with the definition of mining operations. New techniques and processes arise over time, and may not necessarily be captured in the existing definition. The Principal Act provides the regulator with

the power to declare a particular activity or operation, either generally or at a particular place, to be a mining operation. The declaration is made administratively by notice in the Gazette.

The Bill proposes introducing more rigor by inserting a regulation making power to replace the administrative power to declare an activity, generally, to be a mining operation. This means that the 'scoping-in' of an activity generally will be subject to the rigor of making regulations and the scrutiny of Parliament.

The existing administrative power to scope-in an activity at a particular place will remain.

Just as there needs to be a mechanism to scope-in activities into the meaning of mining operations, circumstances could arise where an activity at a particular place, or generally, might technically meet the definition of mining operations but be so different to usual mining processes that the application of the mine safety laws would be inappropriate. It is proposed in the Bill that where an activity is to be excluded generally, it may be 'scoped-out' by way of regulations. Where it is a specific case in a particular place, it is proposed that the regulator have an administrative power to scope-out the activity.

Clause 9 of the Bill deals with the qualifications, knowledge skills and experience of the Chief Inspector of Mines, and Clause 11 covers the knowledge, skills and experience of mines inspectors.

In Tasmania, inspectors who go to mines are appointed under the general work health and safety laws, and they exercise powers and functions under those laws as well as the mine safety laws. There is no additional appointment process applicable to mines. The legislation does not address the knowledge, skills, experience, competencies and/or qualifications for the appointment of inspectors assigned to mines.

In the case of the Chief Inspector of Mines, the Principal Act provides for the regulator to designate an inspector to be the Chief Inspector of Mines. Again, the legislation does not specify any knowledge, qualifications, skills and so on.

In his 2008 report on the deaths of three mine workers at Renison Bell Mine, Coroner Jones made a recommendation relevant to inspector qualifications. In a recommendation pertaining to making adequate resources available to ensure that the mines inspectorate is competent and properly qualified, he added that his recommendation entailed that the legislation would specify minimum qualifications to be held by the Chief Inspector of Mines and mines inspectors under his or her control.

In practice, the Chief Inspector of Mines and inspectors assigned primarily to mines have an appropriate mix of qualifications, background and experience relevant to mines and mining operations. In a small jurisdiction with a small inspectorate, it is important to maintain some flexibility in recruitment practices to enable the filling of positions that meet the needs at the time.

Nevertheless, a minimum skill set is essential for an inspectorate that operates within an industry that is highly technical, potentially high risk, and is subject to constant change, both in terms of changing workplace conditions, which can deteriorate rapidly, and technological change.

The position of the Chief Inspector of Mines, in particular, requires qualifications in the field of mining engineering or equivalent, and the Bill references a means of identifying suitable qualifications as well as providing the regulator with the flexibility to identify suitable equivalents.

With respect to mines inspectors, a mix of skills, knowledge and experience will be required across the inspectorate and specification of a single qualification may prove unnecessarily limiting. The approach adopted in the Bill is that a mines inspector will have the knowledge, skills and experience that the regulator and the Chief Inspector of Mines have specified as relevant to mining operations to enable the person to effectively exercise the powers and perform the functions of a mines inspector under the Act.

These provisions will not preclude WorkSafe Tasmania inspectors without such knowledge, skills and experience from exercising powers under the Work Health and Safety Act at mines. What it does do is ensure that inspectors who exercise many of the powers and functions of the Principal Act that are highly specific to mines have the appropriate knowledge, skills and experience relevant to those powers and functions.

Much of the Bill relates to changes to the penalties under the Principal Act.

The existing penalties in the Act were adopted from the former Workplace Health and Safety Act. The penalties were not reviewed at that time, and therefore do not align well with those under the Work Health and Safety Act. This is inconsistent with the principle that the two Acts should operate as one.

The proposed maximum penalties set out in the Bill have been aligned with similar offences under the Work Health and Safety Act. Under the proposed changes, the maximum potential penalty for an offence under the Principal Act will be $500,000 for a body corporate and $100,000 for an individual. The Work Health and Safety Act does have higher penalties, but such offences are not mirrored in the mine safety laws.

On the face of it, it may appear that new penalties would result in considerable increases in the potential penalties that a duty holder may incur for an offence. In practice, duty holders under the mine safety laws also have responsibilities under the work health and safety laws, and the potential for higher penalties for offences already exists under those laws.

Nevertheless, the proposed changes send an important message. The mine safety laws are equally as important as the work health and safety laws, as will be reflected in consistent penalties for similar types of offences.

The final amendment that I will highlight is found in Clause 34 of the Bill and relates to the consultation process for codes of practice that are intended to apply specifically to mines and mining operations.

The Work Health and Safety Act allows the Minister to approve codes of practice for the purposes of the Act. Such codes of practice apply to a mine or mining operations, as in the case of other workplaces or work processes, if the subject matter is relevant. However, there are currently no codes of practice specific to mining.

Back when the national model laws were being developed, a number of codes of practice specific to mining were under development, in anticipation that they would support Chapter 10 of the regulations, on mines.

The Work Health and Safety Act requires codes of practice to be developed by a process involving a process of national consultation, in order to maintain national harmonisation of work health and safety laws. Now that mining is not part of the national model laws, there is no longer a mechanism for the national consideration of mine safety codes of practice. Given that mine safety laws are different in each jurisdiction, there is also no purpose to consulting nationally.

The Bill provides a mechanism to replace national consultation with a local consultative process for codes of practice specific to mines.

Madam Speaker, when mine safety fails, the results can be catastrophic. A 'worst case' mining disaster has the potential to take many lives, cause injury and distress, disrupt communities, damage infrastructure, incur high costs, and contribute to future economic loss. Sometimes it leads to permanent or long-term closure of a mine and loss of employment.

The complex, dynamic and potentially hazardous activities of mining need to be actively managed to ensure that risks, which may potentially lead to fatalities or catastrophic events, are identified and addressed.

Similarly, mine safety laws need to be actively managed. They need to be reviewed and updated to ensure that they remain effective and fit for purpose.

Although the changes proposed by the Bill are not major, their implementation is important maintenance work on the Principle Act, so that it will continue to serve as a suitable base for mine safety laws in Tasmania and remain consistent with Tasmania's work health and safety laws.

Madam Speaker, I commend the Bill to the House.