

CLAUSE NOTES

WORKPLACE HEALTH AND SAFETY AMENDMENT (MINE SAFETY) BILL 2010

Section 1 **Short title**

This is a formal provision specifying the title of the proposed Act as the *Workplace Health and Safety Amendment (Mine Safety) Act 2010*.

The Act amends the *Workplace Health and Safety Act 1995*, by inserting a new Part to provide for additional provisions to apply specifically to mine safety. A small number of other amendments to existing provisions of that Act, such as s.3 Interpretation, are made for the purposes of, arising from or to ensure consistency with, the new Part.

Section 2 **Commencement**

This is a formal provision specifying the commencement date of the Act, on a day to be proclaimed.

It is intended that the amendment Act will come into effect on the same day as regulations drafted to support its provisions. Proposed regulations have been drafted although not yet finalised. If possible, it is proposed that the new legislation (Act and regulations) will come into effect early in 2011.

Section 3 **Principal Act**

The *Workplace Health and Safety Act 1995* is referred to as the Principal Act throughout the Bill [and these

Clause Notes].

Section 4

Section 3 amended (Interpretation)

This clause of the Bill amends section 3 (Interpretation) of the Principal Act, primarily by adding a small number of new definitions (to allow for concepts in the new provisions).

The Bill inserts the following terms in the appropriate alphabetical order:

- (a) **“atomic substance”** which has the same meaning as in the *Mineral Resources Development Act 1995*.

The term “atomic substance” is necessary for later use in the definition of “mineral”. The definition refers to the meaning in the *Mineral Resources Development Act 1995* which is:

“(a) uranium; and

(b) thorium; and

(c) any other substance declared to be an atomic substance under section 199”;

- (b) **“dangerous substance location”** which has the same meaning as in the *Dangerous Substances (Safe Handling) Act 2005*.

This term is used in proposed new section 32ZB to deal with the situation where a mine is also a “dangerous substance location” covered by the *Dangerous Substances (Safe Handling) Act 2005*. The definition in this Bill must therefore be aligned with that Act.

Section 47(1) of the *Dangerous Substances (Safe Handling) Act 2005* states:

“(1) *A place is a dangerous substances location ("DSL") if dangerous goods or combustible liquids are, or are likely to be, handled at the place in a greater than prescribed quantity.*

- (c) **“fossick”** which means to search for minerals for a purpose other than for commercial gain to a depth of 2 metres by –
- (a) digging by hand; or
 - (b) using hand held instruments.

The term “fossick” is required as an exclusion to the definition of “mining operation”.

The definition has been drawn from the definition of “fossick” in the *Mineral Resources Development Act 1995*.

“geothermal substance” which has the same meaning as in the *Mineral Resources Development Act 1995*.

The term “geothermal substance” is used in the Bill in the definition of mineral. Its meaning in the *Mineral Resources Development Act 1995* is:

“a substance occurring naturally or introduced underground which is heated by the natural processes of the earth to a temperature in excess of 40° Celsius”.

- (d) **“hours worked”** which means hours worked calculated in accordance with section 32D.

The concept of “hours worked” per month at a mine is used to differentiate the application of some provisions. The means for calculating it is specified in the section in proposed new section 32D.

- (e) **“major hazard facility”** which has the same meaning as in the *Dangerous Substances (Safe Handling) Act 2005*.

A definition of “major hazard facility” is included for use of the term in a proposed new section 32ZB which covers a situation where a mine is also a “major hazard facility” under the *Dangerous Substances (Safe Handling) Act 2005*. The definition in this Bill must therefore be aligned with that Act.

Section 29(1) of the *Dangerous Substances (Safe Handling) Act 2005* states:

“A major hazard facility (“MHF”) is a facility that the Secretary classifies as a major hazard facility under this Division”.

“mine” which includes any place at, in, on or under which mining operations are carried out.

This replaces the current definition of a “mine” which, in part, refers to *“any place at, in, on or under which any operations or work are carried out on an area of land which is subject to a mining lease in force under Part 4 of the Mineral Resources Development Act 1995”.*

The change is proposed because a definition based on work activity rather than on the presence or absence of certain mineral rights over the land is more consistent with the work-related focus of the Principal Act. The new definition will also remove some existing anomalies, for example a place where

mineral exploration is undertaken is a mine if it is subject to a mining lease, but not otherwise.

Three definitions, “mine”, “mineral” and “mining operations” between them determine the scope of the mine safety provisions which apply in relation to a mine and/or mining operations and/or specified persons at a mine, according to the context.

“mine holder” which means the holder of a mining lease, sublease or mineral tenement relevant to the mining operations, or if there is no such lease or tenement, then the person for whose benefit the mining operations are carried out.

The definition of “mine holder” takes account of the fact that in some circumstances mining operations may not be carried out on land subject to a relevant mining lease or tenement.

By capturing mineral lease and tenement holders the Bill covers part of a recommendations (regarding coverage of mine safety legislation) made by Coroner Donald Jones in his 2008 report into three deaths which occurred in two accidents at Renison Tin Mine in 2001 and 2003.

“mine operator” which means the entity or individual appointed as, or taken to be, a mine operator under section 32E.

Coverage of mine operators implements another part of Coroner Jones’ recommendations regarding coverage of the new legislation. The mine operator is the primary duty holder at a workplace under the proposed provisions.

“mineral” which means a mineral within the meaning of section 3AA.

The definition of mineral is needed in the definition of “mining operations” in section 3AAB. The scope or application of the mine safety provisions will be influenced by the substance mined (in addition to the definition of mining operations discussed earlier). The substance mined is captured by the definition of “mineral”.

“mine worker” which means a worker who performs mining operations at a mine.

Later provisions focus on workers and mine workers rather than employees because of the varied nature of the work arrangements in the industry.

“mining operations” which means mining operations within the meaning of section 3AAB.

- (f) **“possible major hazard facility”** which has the same meaning as in the *Dangerous Substances (Safe Handling) Act 2005*.

A definition of “possible major hazard facility” is included for use of the term in a proposed new section 32ZB which covers a situation where a mine is also a “possible major hazard facility” under the *Dangerous Substances (Safe Handling) Act 2005*. The definition in this Bill must therefore be aligned with that Act.

Section 29(2) of the *Dangerous Substances (Safe Handling) Act 2005* states:

“A possible major hazard facility (“PMHF”) is either

of the following:

(a) a facility where a dangerous substance is handled in a greater than prescribed quantity;

(b) a facility that its occupier intends to use for the handling of a dangerous substance in a greater than prescribed quantity.”

Section 5 **Sections 3AA and 3AAB inserted**

After section 3 of the Principal Act, the following sections are inserted in Part 1.

Note that section numbers in section 5 of these clause notes refer to new section numbers to be inserted in the Principal Act.

Section 3AA **Minerals**

This section provides a detailed definition of mineral, which is needed for the definition of “mining operations” which in turn provides for much of the scope for the proposed mine safety provisions.

Neither the common everyday meaning nor the geological meaning would suffice because the former lacks clarity about inclusions and exclusions and the latter excludes many substances intended to be included.

A specific definition of mineral is required to remove doubt about what is covered.

Mineral is defined in this section as including::

- an inorganic substance;
- an atomic substance;

- a geothermal substance;
 - coal;
 - oil;
 - petroleum;
 - gas;
 - sand, rock, crushed stone, gravel or clay produced or excavated for commercial purposes;
 - matter forming part of the crust of the earth
- and excluding
- the subsoil; or
 - the layer of soil sustaining vegetation; or
 - water (except where it is a geothermal substance)

The definition is similar to, but not exactly the same as in the *Mineral Resources Development Act 1995*.

The definition is inclusive and it is unlikely that the specific list misses anything commonly or technically thought of as a mineral.

- Section 3AAB
- In brief, mining operations are defined in this provision as including:
- exploration for minerals involving manual disturbance of the ground;
 - the extraction or excavation of minerals, or mineral containing material, from the ground;
 - preparation and processing, extraction, excavation and handling of specified material and waste, construction operations and maintenance and removal of plant and buildings and the decommissioning, rehabilitation, maintenance or repair of a place where specified operations occurred, where the activities mentioned are undertaken on the
- (1) &
(2)

same site, adjacent to, or as part of, a continuous process of extraction.

Mining operations do not include fossicking or activities associated with the production on private land of rock, crushed stone, gravel, sand or clay for the private, non-commercial use of the owner.

Subsection 3AAB(1)(e) allows the Director of Industry Safety, having regard to the nature of the work, risks or hazards involved, to declare any other activity or operation as a mining operation. This is intended to allow for future coverage of emerging new activities (e.g. carbon sequestration) and/or non-mining activities (not covered by the proposed definitions) that use processes that are virtually identical to processes utilised in mining (for example tunnelling and dredging where the purpose is for, say, construction rather than mineral extraction).

The flexibility provided by subsection 3AAB(1)(e) will also allow any necessary additions, should they be needed, to more closely align coverage with proposed future national approaches to mine safety.

Early progress on proposals for nationally consistent mine safety legislation was taken into account, as far as possible, in the development of the definition of mining operations.

- (3) A declaration under subsection (1)(e) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

By stating this provision, the Bill makes it clear that the requirements of the *Rules Publication Act 1953* do not apply to such a declaration made by the Director

under subsection (1)(e).

Section 6 **Section 13 amended (Duties of self-employed persons)**

This clause makes a small technical amendment to existing section 13 of the Principal Act. Section 13 deals with a self-employed person, which is defined in existing section 3 in part as “a natural person...”. Given that a natural person cannot be a body corporate, the penalty stated in section 13 to be a penalty for a body corporate can never apply. This provision deletes the penalty (in full) from section 13 and inserts a penalty of a fine not exceeding 500 penalty units, which is the penalty currently specified in section 13 as applying to a natural person.

Section 7 **Part 5A inserted**

After section 32 of the Act, Part 5A is inserted.

Note that section numbers in Part 5A refer to new numbers to be inserted in the Principal Act.

Part 5A **MINE SAFETY**
Division 1 – Interpretation

Section 32A **Objects**

This section states the purpose of Part 5A in broad terms. The object is stated as “*to assist in securing the health and safety of mine workers, and other people exposed to risks to their health or safety arising from mining operations, through the implementation of additional health and safety measures specific to mines and mining operations*”. This is consistent with the legislative purpose recommended by Coroner Jones.

It sets the scene for the provisions that come later and, if the situation arises, may aid in the interpretation of the provisions.

Section 32B Interpretation of Part

This section provides a definition of “commencement day” as the day the amendment Act commences. The term is used in a number of provisions inserted to deal with transition to the new requirements.

Section 32C Concurrent duties

Proposed new Part 5A of the Act places new duties on existing and new duty holders. As with existing Part 3 of the Act, the duties are intended to be overlapping and are intended to apply regardless of whether another person has the same duty under Part 5 or Part 3. This provision makes it clear that the duties apply concurrently. It means a person cannot avoid the discharge of their obligations on the basis that someone else had the duty.

This provision also requires holders of the same duties under this Part or Part 3 to cooperate in performing their duties.

Section 32D Calculation of Hours worked

There are a small number of provisions in the Act that apply differentially to small mines than to medium and large mines. This ensures that the requirements are not overly complex for small mines that have less complex operations.

The number of hours worked per month at the mine has been used as a measure of size and complexity.

Although it is not perfectly correlated with risk, there needs to be some means of determining a cut-off point where some provisions will not be required or will be modified. This measure is relatively simple to apply.

The number of hours worked at a mine in a month is the average of the hours worked per month over the previous 6 months during which work has been carried out at the mine. This is a moving average and is a retrospective measure which can be easily verified. The measure covers everyone working at the mine, whatever their capacity.

If a mine has not been operating for six months of the previous 12 months, then a prospective measure is used – based on a reasonable expectation of the of the number of hours to be worked for the forthcoming month.

Division 2 – Mine operators

32E Appointment of mine operator

The provisions of this section establish a regime where a competent person is appointed to operate the mine safely.

- (1) The mine holder is required to appoint a mine operator to carry out mining operations. This reflects the usual arrangements where an individual or entity having the right to mine, determines who, or what entity, shall operate the mine. This person or entity does not have to be different to the mine holder, and this is made clear in the next subsection.

Appointment of a mine operator is consistent with

the recommendations of Coroner Jones. The formal requirement enables later provisions of this section, such as notification, to flow from this requirement.

The requirement to appoint an operator before mining commences ensures that the process starts off correctly, right from the beginning.

The penalty (not exceeding - 500 penalty units for a body corporate and 100 penalty units for a natural person) reflects that this duty is more than just a process matter and is a foundation provision from which other duties follow.

- (2) A mine holder may appoint himself, herself or itself (e.g. if the mine holder is a company), as the operator of a mine. Alternatively he or she may appoint another party, referred to in the Bill as a “person conducting a business or undertaking” to operate the mine. This ensures that the duties of the operator of a mine are not passed on to an employee. “A person conducting a business or undertaking” can be an individual or a body corporate.

If an individual or entity other than the mine holder is appointed as the mine operator, the mine holder must authorise that individual or entity to have management or control of the mine, at least to the extent necessary to discharge the mine operator’s duties. This recognises that the mine operator’s functions cannot be properly carried out if the operator does not have the appropriate level of control.

- (3) This subsection requires that where the mine operator and the mine holder are different, the mine holder must make the appointment in writing, with

the signed agreement of the proposed mine operator and must include the date of effect of the appointment.

This requirement makes it perfectly clear who (or what entity) the operator is; when the appointment starts; and ensures that the proposed operator knows and acknowledges the appointment. This requirements help provide clarity about responsibility for the operation of a mine.

- (4) The mine holder must exercise due diligence in selecting an operator with the capacity and resources to ensure the work can be carried out safely.

This holds the mine holder responsible for the choice of mine operator selected. Selecting a mine operator without any enquiry into the capacity of the proposed operator to carry out the work safely is inadequate to ensure health and safety. This provision is intended to act as a disincentive to doing so.

The penalty (not exceeding - 500 penalty units for a body corporate and 100 penalty units for a natural person) is set at the same level as subsection (1) in recognition that choosing the right operator for the job goes hand in hand with the requirement to appoint an operator.

- (5) This is an administrative provision requiring notification, to the Chief Inspector of Mines, of the name, contact details and start date of the appointment. Such provisions enable the mining inspectorate to know who or what entity is in charge of operations at the mine, and how to make contact. The keeping of such details by Workplace Standards

Tasmania was a recommendation of Coroner Jones.

The penalty (not exceeding - 100 penalty units for a body corporate and 20 penalty units for a natural person) is higher than usual for an administrative type provision under the Principal Act. This reflects the importance of the reporting requirement to the mine safety regime established by the Bill.

- (6) This subsection sets a time within which the notification of the mine operator must be made, i.e. within 14 days after:
- the appointment; or
 - the commencement day.

The second requirement is included to enable the mines inspectorate to obtain the details for existing mines.

The penalty (not exceeding - 100 penalty units for a body corporate and 20 penalty units for a natural person) is aligned with other penalties for offences of this nature in the Bill.

- (7) This provision follows from subsection (6) by requiring the mine holder to notify of any change to the mine operator's details, or termination of the appointment, within 14 days of such an event.

It has the same penalty as the previous provision, not exceeding - 100 penalty units for a body corporate and 20 penalty units for a natural person.

- (8) This subsection provides that unless a mine holder appoints a mine operator in accordance with this section, the mine holder is taken to be the mine operator.

This provides a default position that applies in the event that the mine holder fails to appoint a mine operator. Without this provision there would be no one responsible for complying with the duties of the mine operator, or liable for a breach of the operator's responsibilities. This subsection prevents a gap in the legislation that could otherwise arise by a mine operator failing to make the appointment.

Such a default provision was recommended by Coroner Jones.

- (9) The previous provisions are couched in terms of appointing an operator for each mine. However, it is recognised that not all mines operate in the same manner. Although it is usually desirable to have one operator only for a mine, there may be circumstances where there are good reasons to appoint more than one operator at a single mine.

This provision allows the Chief Inspector of Mines to approve in writing, and with or without conditions, an arrangement under which more than one entity or individual has responsibility for various mining operations at a mine.

Coroner Jones recommended the recording of responsibilities of each mine operator and the parts of the mine for which they are responsible, in cases where more than operator is responsible for different parts of a mine, or has different responsibilities. This provision allows the Chief Inspector of Mines to impose such conditions if approval is given for more than one operator at a mine.

(10) The primary concern with the appointment of more than one mine operator is that safety may be compromised by inadequate communication or coordination between the separate parties, or that workers (or the operators) are not clear who is in charge of what activities. These concerns are addressed by ensuring that before the Chief Inspector of Mines gives an approval under the above subsection, the mine holder must provide a clear statement of the respective responsibilities of each party at the mine; and the Chief Inspector must be satisfied that the proposed arrangement will enable sufficient coordination and control of the work; and will not diminish occupational health and safety at the mine.

(11) This provision only applies when the mine holder and the mine operator are different.

Subsection (a) applies only where a mine holder has any control or capacity to control the resources available to the mine operator.

The provision requires the mine holder to, so far as is reasonably practicable, ensure that adequate resources are available to the mine operator to ensure that the mining operations can be carried out safely. This places a positive duty on the mine holder to ensure such resources are available if the operator is in a position to exercise such control.

Subsection (b) is a more general requirement requiring the mine holder, so far as is reasonably practicable, to pass on adequate information and relevant plans to the mine operator. Again this is drafted as a positive duty, and is intended to trigger the mine holder to consider what information and

documents he, she or it holds that would be relevant to the safe operation of the mine and hence should be passed on.

The penalty (not exceeding - 500 penalty units for a body corporate and 100 penalty units for a natural person) reflects that this is a substantive provision that may potentially influence the capacity of the mine operator to run the mine safely.

32F Duties of mine operators

(1) The mine operator, as the individual or entity that has day to day control of mining operations at the mine, is the primary duty holder under the proposed new mine safety provisions, consistent with a recommendation of Coroner Jones.

- A mine operator must, so far as is reasonably practicable, ensure:
 - the health and safety of mine workers and other persons at the mine; and
 - that persons are not exposed to risks to their health or safety arising from the mining.

Assigning key broad general duties to the mine operator aligns with the way in which mines are operated in practice.

The mine operator may or may not be an employer at the mine, depending on how the workforce is engaged. Therefore earlier provisions of this Bill ensure there is always a mine operator if mining operations are carried out at the mine. This removes existing potential gaps in the legislation that may arise when a mine operator is not an employer. The approach in this Bill is also more targeted to the

way in which mines are operated. Only the mine operator undertakes the overall coordination and control at the mine. Other employers at the mine may have duties to their employees, however they have to fulfil them in the context that they have to work to the mine operator's broad directions.

The penalty (not exceeding - 1500 penalty units for a body corporate and 500 penalty units for a natural person) is set at the same level as the generally duty placed on other, similar, primary duty holders (such as an employer) under the Principal Act.

- (2) Without limiting the general duties in the previous subsection, the provisions of the Bill spell out in more detail further duties of the mine operator. These contain provisions similar to the general duties of employers and add further provisions that are more specific to the circumstances at a mine. A mine operator must, so far as is reasonably practicable:
- provide and maintain a working environment in which workers are safe from injury and risk to their health; and
 - provide and maintain systems of work at the mine that are safe and do not expose workers to risks to their health; and
 - provide any information, instruction, training and supervision reasonably necessary to ensure that each mine worker is safe from injury and risks to health; and
 - ensure that all persons working at the mine have the necessary skills, competence and resources to undertake their work safely and to ensure the safety of others; and
 - implement and maintain effective consultation arrangements in relation to mining operations, to ensure that workers are consulted in

- relation to matters affecting their health and safety arising from activities at the mine; and
- ensure that any premises, plant, equipment, materials and substances at the mine are safe and do not expose workers to risks to their health.

Given that these provisions detail specific requirements of the general duties of the mine operator, they attract the same penalty as the previous subsection: not exceeding - 1 500 penalty units for a body corporate and 500 penalty units for a natural person

- (3) This provision provides that in determining the training required to be provided in accordance with subsection (2)(c), regard must be had to the functions performed by mine workers and the capacities in which they are engaged.

This provision has been added in recognition of the vital role training plays in mine safety, and that to be effective, training must be appropriate to the work to be performed.

32G Additional duties of employer at mine

An employer at a mine must, so far as reasonably practicable:

- comply with the mine operator's health and safety management system; and
- ensure that employees comply with the with any health and safety management system at the mine.

The employer must, as required by the mine operator, consult with the mine operator and

facilitate discussions between the employees and the mine operator on matters affecting the employees' health and safety.

Employers retain their existing duties elsewhere in the Principal Act. The additional provisions in the Bill take into account the overall responsibility the mine operator has for operations at the mine as a whole, and provides a link between the operator and any employers at the mine. The new provisions recognise the relationship between an employer and employees, especially with respect to employers other than the mine operator. The provisions put the onus on employers to take steps to ensure that their employees follow the requirements of the mine operator, and to facilitate consultations with the mine operator.

The penalty (not exceeding - 750 penalty units for a body corporate and 250 penalty units for a natural person) has been set at a significant level, but lower than those under existing section 9(1) of the Principal Act, in recognition that the duties of this clause are not the primary general duties of an employer but are nevertheless important for mine safety.

Division 3 – Site senior officers

32H Appointment of site senior officer (1)

In recognition that clarity about who is in charge at a mine is important, this provision requires the appointment of a site senior officer meeting the requirements of subsection (3).

Although the mine operator is the primary duty holder at a mine, in all but some of the smaller mines

the mine operator will be a corporate entity rather than an individual. The appointment of a site senior officer recognises that in practice there is an individual that is in charge on behalf of the mine operator. This provision formalises that arrangement.

The penalty (not exceeding - 100 penalty units for a body corporate and 20 penalty units for a natural person) are lower than those for section 32E(1) (regarding the appointment of a mine operator) in recognition that there is a hierarchy of appointments at a mine and this appointment is lower on the hierarchy, on the basis that the site senior officer does not have the same high level responsibilities as a mine operator.

- (2) If the mine operator is an individual, i.e. a natural person, then he or she may appoint himself or herself as the site senior officer. This is expected to be relevant only to those smaller mines where operations do not warrant the appointment or establishment of a corporate entity as the mine operator.
- (3) The concept of a site senior officer being the individual in charge and the “go to person” who makes decisions on safety (and operations generally) requires that only a natural person can be a site senior officer.

There is also a requirement that the site senior officer have the qualifications referred to in section 32K. This is a reflection of the importance of the role.

- (4) Some very small mines are operated and worked by a

single individual and it would be meaningless to appoint a site senior officer. It would also involve unnecessary paperwork. Therefore, where mine operator is a natural person who does not employ any other mine workers, he or she is not required to appoint a site senior officer.

- (5) This section applies where the appointed site senior officer is not the mine operator. It sets up the requirements to ensure that relevant parties, including the person appointed and the Chief Inspector of Mines, knows about the appointment.

The mine operator must:

- give written advice of the appointment to the person appointed;
- give notice of the appointment, as far as reasonably practicable to everyone employed or engaged at the mine, and
- notify the Chief Inspector of Mines in writing of the name and experience and qualifications as soon as practicable after the appointment or any change in the appointment is made.

The penalty (not exceeding - 100 penalty units for a body corporate and 20 penalty units for a natural person) has been set at a significant level for an administrative type of provision because of the importance of the notifications for clarity of responsibilities at a mine.

- (6) This provision details the notification requirements where the mine operator [is a natural person and] appoints himself or herself as the site senior officer. As mentioned earlier this can be expected to be applicable to some small mines only.

In these circumstances the mine operator must give notice, as far as reasonably practicable, to everyone employed or engaged at the workplace and to provide written notification as soon as practicable after the appointment or change to appointment to the Chief Inspector of Mines with details of relevant experience and qualifications.

Given that this clause can only apply to an individual, the penalty of a fine not exceeding 20 penalty units is equivalent to the penalty for an individual under the previous provision.

- (7) If the mine operator is an employer, there is a current requirement under section 10 of the Principal Act to appoint a person to be a responsible officer at the workplace. It would be confusing to have a site senior officer and a responsible person as two separate individuals at a mine, and such circumstances may potentially lead to communication and coordination problems.

This provision therefore requires the responsible officer to be the same person as the site senior officer.

This will help ensure clarity and consistency of responsibility and decision making.

321 **Senior site officer to maintain presence at mine**

Given the key role played by the site senior officer, a suitable level of attendance at the mine is important.

This provision requires the mine operator to ensure the site senior officer maintains a presence at the

mine commensurate with the nature, size and complexity of the mine and mining operations and the associated risks, taking into account any relevant guidance material published by the Chief Inspector of Mines.

The amount of time required to be spent at the mine by the site senior officer will vary according to the operations and risks at the mine and will vary from mine to mine, and may also vary from time to time at the same mine. Any prescriptive requirements in this regard would be too inflexible to take all circumstances into account. Therefore it is proposed that the legislative requirement be general with more detail to be provided in guidance material.

The penalty (not exceeding - 100 penalty units for a body corporate and 20 penalty units for a natural person) has been set at the same level as a failure to appoint a site senior officer, because they are of a similar nature and importance.

32] Additional requirements where site senior officer not mine operator

(1) This provision applies where the site senior officer is not the mine operator. It is relevant to later subsections that cover the decision making authority of the site senior officer.

Such a provision is not necessary where the site senior officer and the mine operator are the same individual, being one and the same, the site senior officer would have the same decision making power as the mine operator.

(2) Unless otherwise approved by the Chief Inspector of

Mines, the mine operator must ensure that the site senior officer at the mine is the most senior officer (in terms of level of authority to direct operations at the mine) employed or engaged by the operator at the mine.

This ensures that the site senior officer is truly the decision maker on site. If he or she is not, his or her decisions could potentially be overturned, or another officer may make a different decision that may lead to confusion. The thrust of the changes introduced by the Bill is that there should be clarity in decision making and responsibility to reduce the potential for confusion and miscommunication, which in turn have the potential to compromise safety.

In recognition that the circumstances of each mine are different, the provision allows some flexibility by allowing the Chief Inspector of Mines to approve other arrangements with or without conditions. This will enable the Chief Inspector of Mines to satisfy him or herself that any proposed arrangements are suitable for the circumstances concerned before granting such approval (or alternatively the Chief Inspector of Mines may refuse any such request).

The penalty (not exceeding - 250 penalty units for a body corporate and 50 penalty units for a natural person) has been set at a significant level for this sort of breach because of the importance of ensuring that a site senior officer has sufficient authority, and also takes into account that the failure to ensure the appointee has the appropriate authority affects the capacity of that individual to fulfil his or her duties under the Act.

- (3) The mine operator must ensure that the site senior

officer has responsibility for mining operations and health and safety at the mine and –

- is based in Tasmania at times when the mine is operational; and
- has sufficient authority and control over the mining operations to close or suspend operations at the mine or in parts of the mine that may expose employees to an unreasonable risk to their health or safety.

This provision deals with two major concerns regarding current arrangements for mine safety. At present the relevant provisions relate to responsible officer. The mines inspectorate has encountered situations where a mine operator nominates a responsible officer who is located overseas, which was not the intent of the requirements. The more stringent requirements for a site senior officer will mean that the site senior officer must be based in Tasmania and requirements at subsection (3)(a) regarding presence at the site are intended to address this concern.

The second concern is whether a responsible officer (under current arrangements) can close a mine, or part of it, for safety reasons. In introducing the new arrangements for a site senior officer, this point is covered by requiring the mine operator to give the site senior officer such powers. This addresses a recommendation of Coroner Jones in this regard.

The penalty (not exceeding - 250 penalty units for a body corporate and 50 penalty units for a natural person) has been set at the same level as those under the previous section. In particular failure to give a site senior officer the power to close the mine for safety is regarded as being a particular instance of

failing to give sufficient authority to the site senior officer, therefore the proposed penalties are the same.

- (4) This provision requires the mine operator to ensure that the site senior officer at the mine has input into –
- the development, implementation, maintenance, monitoring and review of the health and safety management system at the mine, at the appropriate stages in the life cycle of the system at the mine; and
 - the development, implementation, and maintenance of risk management systems at the mine; and
 - the development, implementation and maintenance, at the appropriate times, of the management structure for the mine.

Under the new arrangements the site senior will be a key person on site. Given this importance and the requirements for the site senior officer's presence on site, and required qualifications, the site senior is in a position to provide valuable input into the health and safety management system for the mine, risk management systems and the management structure at the mine. Making it a requirement on the mine operator to ensure the site senior officer has input into these things ensures they are not developed in isolation and without the advice of the key person "on the ground".

This should ensure that large companies who develop a whole of company approach to health and safety and risk management systems are required to take the local conditions into account in the system applicable in each mine.

The penalty (not exceeding - 500 penalty units for a body corporate and 100 penalty units for a natural person) reflects the consideration that failure to allow the site senior officer to have input into these matters seriously impacts on the capacity of the mine operator to consider all relevant factors in relation to the health and safety management system, risk management systems and the management structure for the mine.

32K Qualifications of site senior officer

The senior officer is required to have appropriate background, experience and competence for the functions of site senior officer under the Act, at the mine concerned, taking into account the level of risk to health and safety arising from mining operations at the mine, the size of the mine and the technical expertise available to the site senior officer at the mine.

These requirements are sufficiently flexible to allow a mine operator to appoint a site senior officer appropriate to the particular mine concerned.

The second part of the qualifications requirement is to ensure that the site senior officer has any requirements specified in the regulations, including qualifications, training, background, experience, knowledge and understanding.

The latter provisions will allow regulations to prescribe particular additional requirements for specified types of mines.

Together these provisions will be able to work

together to provide for appropriate requirements across the diverse range of mines.

32L Duties of site senior officer

- (1) The site senior officer has an overarching general duty of care responsibility to ensure, as far as practicable and in relation to matters over which he or she has the capacity to control or to influence control, that the mining operations or the state of the mine do not adversely affect the health or safety of any person.

The penalty for a breach of this duty is a fine not exceeding 250 penalty units. This is a significant fine for an individual, but lower than that for breach of a mine operator's duty for an individual. The lower penalty recognises that the site senior officer is an individual that often does not have the same level of control as the mine operator (except where they are the same individual). At a medium to large mine, the site senior officer cannot be expected to have the same resources and budgetary control as a mine operator, hence the penalty for a site senior officer is lower. The penalty is a reflection of the site senior officer's position in the hierarchy of duties under the proposed new requirements.

- (2) Subsection (2) provides more detailed requirements, without limiting the site senior officer's general duty in the previous subsection.

The provisions are detailed and specific, focussing on matters relevant to safety within the scope of the role of the site senior officer.

So far as is reasonably practicable, the site senior

officer must ensure:

- adequate planning, organisation, leadership and control of operations to ensure that the operations do not adversely affect health and safety;
- the carrying out of critical work at the mine that requires particular technical competencies;
- adequate and competent supervision and control of operations on each shift at the mine;
- regular monitoring and assessment of the working environment, work procedures, equipment and installations at the mine;
- appropriate inspection of each work area at the mine including, where necessary, pre-shift inspections;
- compliance with the mine's health and safety management system, if any;
- appropriate means, practices and procedures for communication between –
 - (i) workers; and
 - (ii) workers and management; and
 - (iii) shifts; and
- cessation of work, closure and or evacuation, as appropriate, at all or part of the mine when there is an imminent and material risk of serious injury, serious illness or death, until the risk is eliminated or minimised.

The penalty of a fine not exceeding 250 penalty units is the same as for the previous subsection for similar reasons.

- (3) This provision requires the site senior officer to report certain matters to the operator of the mine, in brief:
- any risks to health or safety at the mine that have not been eliminated, or adequately

- managed, reduced or controlled; and
- any significant departures from, or identified inadequacies in, the mine's health and safety management system likely to give rise to increased risk of injury or harm to health; and
- vacancies or inadequacies in the management structure likely to impact adversely on health or safety.

These provisions provide a feedback loop from the site senior officer to the mine operator. By making this a specific statutory requirement, the mine operator will be made aware of key matters that will be required to be addressed. The provisions focus on matters that the mine operator is responsible for in his her or its responsibilities, that will likely be known or identified by the site senior officer by virtue of his or her position at the mine.

The mandatory communication of specified inadequacies is also expected minimise blame shifting to a site senior officer when he or she cannot exercise control over the matters.

The penalty of a fine not exceeding 250 penalty units is the same as the penalty for other duties of the site senior officer.

32M Absence of site senior officer

- (1) This provision requires absences of the site senior officer of a significant period of time in relation to the complexity of operations at the mine, their size and level of risk at the mine, to be covered by another individual.

To ensure that the general requirement above does

not lead to unduly lengthy periods without a site senior officer, the second part requires that absences of more than seven continuous days during which mining operations are undertaken at the mine must be covered with another individual.

Together the provisions mean that action must be taken where the absence of a site senior officer is, at the most, longer than seven operational days at a mine. However higher risk mines may be required to take action sooner, in accordance with its circumstances.

The penalty (not exceeding - 250 penalty units for a body corporate and 50 penalty units for a natural person) reflects the likely impact on safety of the absence of the site senior officer when one is normally present. Failure to meet this requirement can lead to urgent safety matters being left unaddressed.

- (2) This provision requires notification of the absence of the site senior officer when the absence is more than 14 days. It is limited to medium to large mines, in this case expressed as mines where the number of hours worked is 3000 or more per month (three thousand hours per month equates to approximately 20 workers, assuming a 38 hour week and 48 week year for each worker).

The requirement does not apply to a site senior officer who is the mine operator. Given that such a mine is operated by an individual (not a corporate entity) such mines are likely to be small and the notification process is unlikely to be warranted.

At the medium to large mines to which this

notification is likely to apply, there is likely to be sufficient risk for the mining inspectorate to be aware of changes at this important senior level.

The provisions require written notification to the Chief Inspector of Mines, as soon as practicable, of the absence and the arrangements put or to be put in place.

The penalty (not exceeding - 100 penalty units for a body corporate and 20 penalty units for a natural person) is similar to those of other notification requirements in the Bill.

23N *Guidance material in relation to appropriate presence and qualifications*

This provision supports the earlier provisions dealing with appropriate presence at a mine by the site senior officer, by providing for the Chief Inspector of Mines to publish guidance material on the subject. Guidance material will enable a range of scenarios to be discussed, enabling mine operators to assess their own situation.

Division 4 – Health and Safety

32O *Employees, workers and self-employed persons to comply with health and safety requirements*

- (1) Existing general duties of care for employees do not take into account the provisions established for mines and the Principal Act is therefore silent on complying with the health and safety management system and the directions of mine operators or site senior officers. Similarly there are no relevant

requirements for workers.

This provisions ensures that both workers and employees comply, so far as they are reasonably able, with:

- any reasonable health and safety direction issued by the mine operator or site senior officer; and
- any health and safety management system for the mine.

The proposed penalty of a fine not exceeding 100 penalty units is aligned with a failure to comply with the duty comply with a direction of the responsible officer under section 16 of the Principal Act.

- (2) Similarly a self-employed person does not have current duties specifically in relation to a mine and the provision requires that he or she, so far as is reasonably practicable, must comply with:
- any reasonable health and safety direction issued by the mine operator or site senior officer; and
 - any health and safety management system for the mine.

The proposed penalty of fine not exceeding 250 penalty units is set on the basis that it needs to be significant for an individual, but is not of the same status as a breach of the duty to others under section 13 of the Principal Act.

32P Contractor to comply with health and safety requirements

- (1) A specific general duty of a contractor at a mine has been to require that he, she or it ensures, so far as is

reasonably practicable, that a person is not exposed to a risk to his or her health and safety arising from the mining operations of the contractor.

Coroner Jones identified a need to place duties on contractors, amongst others.

The penalty (not exceeding - 1500 penalty units for a body corporate and 500 penalty units for a natural person) reflects the status of this provision as a fundamental general duty of a person, other than an employee, directed towards safety.

- (2) More specific duties for contractors have been added in relation to the health and safety management system.

A contractor must comply, so far as is reasonably practicable, with:

- any health and safety management system for the mine; and
- any reasonable health and safety direction issued by the mine operator or site senior officer.

The penalty (not exceeding - 750 penalty units for a body corporate and 250 penalty units for a natural person) is lower than for a general duty directed towards others, but is nevertheless significant because of the importance of compliance.

32Q Visitors to comply with health and safety requirements

In the same way that other persons at a mine have duties, the Bill proposes that visitors also need to comply, so far as reasonably able, with the reasonable

health and safety directions by the mine operator or site senior officer, any health and safety management system for the mine [so far as the provisions are relevant to the visitor]; and any other health and safety requirements relevant to him or her.

The penalty of a fine not exceeding 100 penalty units is set at a significant level for an individual.

32R Management structure to be maintained

- (1) The operator of a mine must establish and maintain an appropriate management structure of competent persons for the mine which includes having others acting in, and the timely filling of, vacant positions in the structure (including the position of site senior officer at the mine).

An appropriate management structure at a mine covering the above requirements can be expected to contribute strongly to improved health and safety outcomes.

The penalty (not exceeding - 250 penalty units for a body corporate and 50 penalty units for a natural person) aligns with other provisions of moderate importance.

- (2) This provision requires the management structure to include competent persons with appropriate technical or engineering competence commensurate with the nature, size and complexity of the mine and mining operations and the associated risks.

The provision clearly points to the importance of technical competence while recognising that different mines will have different requirements in this regard.

The provision is flexible, because it requires the mine operator to decide what expertise is appropriate for the mine concerned.

- (3) This provision provides for the documentation of the management structure, with nomination of persons by position, and outlines areas of responsibilities. Such a requirement is important for clarity of roles and responsibilities.

It is expected that the documented management structure would vary in complexity according to the type of mine. Lower risk small mines would be expected to require only a simple document.

The penalty for this provision (not exceeding - 250 penalty units for a body corporate and 50 penalty units for a natural person) is aligned with the requirement to establish and maintain a management structure because the requirements go hand in hand.

32S Health and safety management system

- (1) A key focus of the Bill and the proposed supporting regulations is the requirement for a health and safety management system, which is intended to be the central means of managing health and safety at a mine.

This provision requires a mine operator to develop, implement, maintain and review an auditable, documented health and safety management system in accordance with the requirements in the regulations and commensurate with the nature, size and complexity of the mine and mining operations, and the associated risks. This establishes the basic requirement to have a health and safety management

system, with the detail of the requirements for that system to be in supporting regulations.

It is expected that the health and safety management system will specify how occupational health and safety is to be dealt with at the mine, and will incorporate a risk management approach. Regulations will require the health and safety management system for a mine to be supported by other key documents including major hazard management plans (dealing with particular major hazards at the mine).

The implementation of a health and safety management system for a mine is a well recognised approach to addressing mine safety at a mine. The requirement for a health and safety management system forms a central component of proposals for future nationally consistent mine safety legislation in Australia.

The level of detail to be provided in a health and safety management system will vary according to the nature, size and complexity of the mine and mining operations, and the associated risks. Small mines of lower risk will require less detail than larger, more complex and higher risk mines.

The penalty (not exceeding - 750 penalty units for a body corporate and 50 penalty units for a natural person) reflects the status of this provision as an important duty but nevertheless not at the same level as the mine operator's primary general duty for safety.

- (2) This provision describes a health and safety management system further, as, in part, an auditable,

documented system that systematically protects the health and safety of mine workers and other people who may be exposed to risks arising from mining operations.

The system will require a number of component elements, to be specified in the regulations.

32T Consultation with workers

Consultation with workers who may be exposed to risk to their health or safety arising from the mining operations is a key requirement during the preparation or amendment of any part of the health and safety management system relevant to their activities. This duty of a mine operator applies “so far as is reasonably practicable” in recognition that there may be times, such as prior to starting mining operations, when it may not be possible to consult with relevant workers. Nevertheless the provision reflects the principal that the people who work with and may be affected by the risks have much to offer in consultations on how to address the risks.

The penalty (not exceeding - 100 penalty units for a body corporate and 20 penalty units for a natural person) is aligned with other duties of similar importance, such as the appointment of a site senior officer.

32U Timing of implementation of health and safety management system

- (1) This provision establishes the transition arrangements for the application of the new provisions requiring a health and safety management system. It therefore only applies only to mine

operators at a mine that is in operation on or before commencement day. Such a mine operator is given a period of time to implement the health and safety management system.

At a smaller mine, i.e. where the number of hours worked is less than 3 000 per month, implementation is required by 1 January 2012 or such later date as the Director may specify in a notice published in the *Gazette*. (Three thousand hours per month equates to approximately 20 workers, assuming a 38 hour week and 48 week year for each worker).

All other mines are required to implement the health and safety management system by two months after the commencement date.

Although larger mines require more complex health and safety management systems, industry consultation indicates that the larger mines are better placed to comply with the requirements in this regard than smaller mines. Many larger mines that have a health and safety management system that either comply or could readily be revised to enable compliance. Given this, this provision allows larger mines a relatively short time to comply.

Many small mines do not have health and safety management systems, and some operators may not be familiar with them. The implementation date of 1 January 2012 puts such mines on notice that such systems will be required in future. The date coincides with the proposed introduction of national model work health and safety legislation, which is likely to contain mine safety requirements. Allowing flexibility, through the potential to impose a later date of effect, enables adjustments to be made if the

national model legislation is slightly delayed. There is also the flexibility to proceed with the proposed introduction date if national provisions are lengthily delayed or do not cover mine safety.

At this point in time there is no suggestion that small mines would be exempted from such requirements under nationally consistent or harmonised mine safety laws.

The penalty (not exceeding - 750 penalty units for a body corporate and 50 penalty units for a natural person) is set at the same level as a failure to develop, implement, maintain and review a compliant, auditable, documented health and safety management system.

- (2) Subject to subsection (1), mining operations must not be commenced at a mine unless a health and safety management system that complies with this Act is in place at the mine.

The penalty (not exceeding - 750 penalty units for a body corporate and 50 penalty units for a natural person) is set at the same level as a failure to develop, implement, maintain and review a compliant, auditable, documented health and safety management system.

- (3) A declaration under subsection (1)(a) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

By stating this provision, the Bill makes it clear that the requirements of the *Rules Publication Act 1953* do not apply to such a declaration made by the Director under subsection (1)(a).

32V Work to be in accordance with health and safety management system

This provision supports the requirements for a health and safety management system at a mine by requiring the mine operator to ensure that work at the mine is carried out in compliance with the health and safety management system for the mine (where there is one, given that there is a phase-in provision). This includes work undertaken by contractors and their workers. Specification of contractors and their workers draws attention to the need to cover such workers in the system and to require compliance by these persons.

The penalty (not exceeding - 250 penalty units for a body corporate and 50 penalty units for a natural person) has been set at the same level as penalties dealing with requirements in relation to site senior officers and management structures.

32W Audit and review of health and safety management system

- (1) This proposed subsection provides for the audit and review of part or all of the health and safety management system by an inspector. It also provides that the review may include any of the elements or other requirements specified in the regulations.
- (2) This provision allows an inspector to request the mine operator the pertinent documentation at any time.
- (3) This provision further expands on the times such an audit and review may occur, being periodically, after

the occurrence of an event prescribed by the regulations or at any other time that the inspector thinks is appropriate.

- (4) Subsection 4 makes it clear that an audit and review is not limited to an audit of the documentation.
- (5) An inspector may do whatever is necessary (within the scope of his or her powers) to assess the relevant matters. This might involve an inspection of parts of the mining operations to ensure that the provisions of the system as document is reflected by the practices and procedures at the workplace.
- (6) This provision provides for compliance with an inspector's request under this section.

The penalty (not exceeding - 500 penalty units for a body corporate and 100 penalty units for a natural person) is substantial enough to act as an incentive for compliance with the request.

32X Inadequate health and safety management System

- (1) Having the power to audit and review the health and safety management system at a mine requires the inspector to be able to do something about any identified shortcomings. This provision allows for the inspector to require the mine operator to amend the health and safety management system or any of its components as directed, or to review and revise the system or any of its components to address the inadequacy.

The two options for action enable an inspector to

tell the operator how to fix the problem, when known, alternatively have the mine operator determine how the matter should be fixed. Such flexibility enables the inspector to take the circumstances into account. For instance, if the inspector considers there is only one appropriate means of addressing the inadequacy it is more efficient to tell the operator what that means is. Where there might be a range of means appropriate, or where the means require consideration of, say, production issues, or consultation with workers, it is likely to be more appropriate to require the mine operator to review and revise the system to address the inadequacy.

- (2) This provision sets out the requirements for a direction to review or amend the health and safety management system. The requirements are intended to provide clarity and transparency and indicate the basis of the inspector's concerns. A direction must:
 - be in writing;
 - state why and what is inadequate about the health and safety management system;
 - specify the date by which a reviewed and revised health and safety management system is to be implemented; and
 - provide for the system to be reassessed by the inspector prior to the required date for implementation.

- (3) This subsection allows the inspector to specify the focus of a directed review of the health and safety management system. This is intended to simplify the review and revision process, should there be only part of the health and safety management system that requires attention.

- (4) This subsection requires compliance with such a direction.

The penalty (not exceeding - 500 penalty units for a body corporate and 100 penalty units for a natural person) is aligned with the requirement to comply with an inspector's request under the previous section.

- (5) A direction may be appealed in accordance with the provisions for appeal in section 41.

Section 41 of the Act deals with appeals. It specifies matters that may be appealed and provides for appeal to the Secretary in the first instance, then the Magistrates Court (Administrative Appeals Division). (Section 41 will be modified by a later clause in this Bill to allow appeal against a direction issued under this section.)

32Y Chief Inspector of Mines may require independent audit

- (1) It is expected that circumstances may arise where there is a need for a more technical, specialised or complex audit of the health and safety management system than could be appropriately undertaken by an inspector. This proposed subsection therefore provides that the Chief Inspector of Mines may direct the mine operator to obtain an independent audit of the health and safety management system, either in general or in relation to one or more specific aspects.

It is intended that there would be a particular reason for such an audit. This requirement is not intended to replace an inspector's role with respect to an

audit.

The provision therefore states the preconditions for such a direction, being that the risks arising from the operation of a mine have the potential to give rise to the serious injury or death of a person, an emergency, or a dangerous situation, and the Chief Inspector of Mines is not satisfied that the health and safety management system for the mine adequately manages the risk.

Subsection (9) provides for a mechanism for appeal against such a direction.

- (2) Subsection (2) requires the mine operator to obtain the audit and provide the outcome to the Chief Inspector of Mines.

The penalty (not exceeding - 500 penalty units for a body corporate and 100 penalty units for a natural person) aligns with other penalties regarding the review and audit of health and safety management systems.

- (3) For clarity and transparency a direction under (1) must state:
- the reasons for requiring the audit to be carried out and its objectives; and
 - that the person who carries out the audit must be a person approved by the Chief Inspector of Mines; and
 - the date by which the outcome of the audit is to be provided to the Chief Inspector of Mines.
- (4) This provision provides for the approval of the independent auditor by the Chief Inspector of mines

only if the person or group has the necessary qualifications or experience to carry out the audit; and the Chief Inspector of Mines is satisfied that the person or group is able to provide an independent audit.

This provision allows for a group to be approved to undertake the required audit. This recognises that the appropriate mix of skills may rest in a group of individuals rather than a single individual.

- (5) The mine operator may appoint a bipartite team (see subsection (10)) to assist in carrying out the audit, subject to the approval of the Chief Inspector of Mines. This provision recognizes that that relevant skills may reside outside the usual providers of such services. Unions, employer bodies and other mining companies could equally employ people with suitable skills. This provision therefore enables a mine operator to propose a bipartite team for the audit, including people from industry and unions. Establishment of such a group is likely to have benefits that extend beyond the audit itself, such as the cooperation and trust engendered by such an approach.

This provision is enabling only. Nothing in the legislation requires a mine operator to appoint such a group or the Chief Inspector to approve it if it is not appropriate to the circumstances. It would require all parties to agree before such an approach would be viable.

- (6) This provision provides that the Crown is not liable to pay for, or contribute to, the costs of the independent audit.

- (7) A member of a bipartite team incurs no civil liability arising from anything done or omitted to be done in good faith in relation to the audit.

This provision has been included to remove a potential disincentive to participating in a bipartite audit.

- (8) Subsection (7) does not apply to a person who operates as, or is employed by, an entity whose line of work includes the provision of consultancy services for payment in an area relevant to the audit concerned.

Such persons, or the companies for which they work, are likely to have their own insurance against civil liability, because the provision of such audits is a normal part of their work. Other persons likely to participate in a bipartite team, however, are not likely to have such insurance for this type of work, and require the protection given by subsection (7).

- (9) This subsection provides an appeal mechanism against the Chief Inspector's Direction at (1), under section 41.

- (10) This provision defines a bipartite team as a team of persons with appropriate expertise of whom:
- at least one is employed by, or is a member of, a union representing mine workers; and
 - at least one is a mine operator from another mine or is employed –
 - (i) in undertaking, or providing services to, mining; or
 - (ii) by a mining industry organisation.

Division 5 – Miscellaneous

32Z Notification of commencements and suspension of mining operations

- (1) In order to know when and where mining operations are undertaken in Tasmania, this provision requires the Chief Inspector of Mines to be notified by the mine operation:
- before mining operations are commenced at the mine;
 - if mining operations are under way at the time this provision comes into effect, within 14 days after the date of effect;
 - before mining operations are resumed after their suspension;
 - before mining operations are abandoned; and
 - before mining operations are suspended.
- (2) This provision provides an exception for exploration to the notification requirements except where the activity involves drilling (except post hole drilling or drilling using only hand-held instruments).

This provision reflects the mine inspectorate's experience that it is important to be notified about the high hazard activity of drilling.

32ZA Record book to be kept

- (1) A record book is currently required at a mine under existing laws, because of a mine's status as a designated workplace. It is unlikely that such status will be required once these provisions come into place so the requirement to keep a record book has been included in this Bill.

A mine operator must keep a record book in a form

approved by the Chief Inspector of Mines to record the inspections made by inspectors, together with instructions given by those inspectors, and other information specified in writing by the Chief Inspector of Mines.

A record book is not required at a mine where the only mining operation taking place is exploration.

- (2) The mine operator must ensure that the required record book is made available for inspection by employees, contractors and self-employed persons at the mine.

A record book is expected to become an important means of communication with workers regarding the activities of inspectors at the mine, an inspector's identification of any issues, and other matters required to be recorded by the Chief Inspector.

The penalty (not exceeding - 25 penalty units for a body corporate and 10 penalty units for a natural person) reflects the administrative nature of this provision.

32ZB Exemption from safety management system in respect of major hazardous facilities, &c.

- (1) Proposed section 32ZB deals with the potential overlap of the mine safety requirements with the *Dangerous Substances (Safe Handling Act) 2005*. The former requires a health and safety management system and the latter requires a safety management system, in relation to certain places. It is possible that some mines will be required to comply with both, and this section provides a means of dealing with the overlap.

In short, if a mine operator is required to prepare a safety management system as a major hazard facility, a possible major hazard facility or a dangerous substances location, under the *Dangerous Substances (Safe Handling Act) 2005*, and if the operator considers it likely that the system proposed will cover all mining operations to a level at least equivalent to the standard of this act, the mine operator may request an exemption from the relevant provisions of this Act.

This allows a mine operator to apply a single safety management system to the entire mine, subject to meeting the requirements of both Acts.

- (2) This provision enables the Chief Inspector of Mines to grant a full or partial exemption from the relevant provisions, with or without conditions, subject to being satisfied that the equivalent standard will be delivered.
- (3) The Chief Inspector may temporarily exempt the applicant from compliance until the application is determined.
- (4) This provision enables the Chief Inspector to request further information.
- (5) This provision applies to a possible major hazard facility, and allows for an application to be made for a temporary exemption until it is determined whether or not the applicant is a major hazard facility.
- (6) If the applicant is determined to be a major hazard facility, the applicant may apply for a further exemption until the safety management system is

required to be developed and implemented under the *Dangerous Substances (Safe Handling Act) 2005*.

32ZC Certain information declared to be guidance Material

- (1) As a means of providing further guidance, and informing the decision making process at a mine this provision allows the Chief Inspector of Mines to declare as guidance material all or specified parts of any code, standard, rule, specification, provision or document relating to occupational health or safety, whether prepared or published by the Department or any other body or authority.

Such guidance may incorporate by reference any other such document either as it is in force at the time the guidance material is approved or as amended from time to time.

This provision enables guidance to be issued to assist in the development of a mine's health and safety management system, without imposing prescriptive requirements. It provides a means of directing mine operators to appropriate material, such as relevant Australian Standards, without mandating the requirements of the Standard (noting that Australian Standards undertake extensive cross-referencing that can become unwieldy and out-dated in a mandated scheme).

- (2) This provision requires a declaration under (1) to specify the scope of the application of the guidance material, which may be to all mines or to all mines of a certain size, type or characteristic.
- (3) This is a machinery provision that allows the Chief

Inspector of Mines to revoke or amend a declaration made under subsection (1).

- (4) This is a machinery provision requiring a declaration or the revocation or amendment of a declaration under section 32ZC to be published in the *Gazette* and on the World Wide Web.
- (5) This provision makes it clear that the requirements of the *Rules Publication Act 1953* do not apply to a declaration made under this section.

32ZD Appeals

A person may appeal, in accordance with section 41 of the Principal Act, against any decision made by the Chief Inspector of Mines under proposed Part 5A.

Clause 10 of the Bill makes the necessary changes to section 41.

Section 8

Section 35 amended (Chief Inspector of Mines)

Section 35 of the Principle Act provides for the appointment and functions of the Chief Inspector of Mines. Subsection (2) of section 35 states:

“The Chief Inspector of Mines is, subject to the direction of the Director, responsible for ensuring that the duties and obligations relating to mines, and such other classes of related workplaces as are specified by the Director, imposed by or under this Act are complied with.”

The above approach is inconsistent with the philosophy that underpins modern occupational

health and safety legislation that the responsibility for addressing occupational health and safety issues rests with the duty holders at the workplace.

Government's role is to oversee compliance, provide information, detect non-compliance, and so on.

This provision deletes the text above from subsection 35(2), replacing it with the following subsections:

- “(2) The Chief Inspector of Mines is, subject to the direction of the Director, responsible for –*
 - (a) the administration of this Act and the regulations in relation to mines; and*
 - (b) the oversight and direction of inspectors assigned primarily to mines; and*
 - (c) any other functions conferred on the Chief Inspector of Mines by this Act or the regulations.*

- (3) The Chief Inspector of Mines may declare any material relevant to occupational health and safety at mines to be guidance material for the purposes of this Act.”*

Section 9

Section 36 amended (Powers and functions of inspectors)

This provision expands the inspectors' powers and functions under the WHS Act to include the provision of information and advice for the purpose of facilitating compliance with the Act.

This function is appropriate for all inspectors and is therefore not limited to inspectors of mines.

Section 10 **Section 41 amended (Right of appeal)**

Section 41(1) of the Principal Act deals with the kind of matters that may be appealed by an aggrieved person. This clause inserts specific additions for the purposes of allowing a right to appeal by a person aggrieved by:

- a direction by an inspector where it is specified in this Act that the direction is appealable; and
- a decision made by the Chief Inspector of Mines.

These new appeal rights are required to cover new activities of inspectors and the Chief Inspector of Mines provided for in the Bill.

Section 11 **Section 44 amended (Protection from liability)**

This provision expands section 44 of the Principal Act, dealing with protection of liability for specific people, including inspectors, to include the Chief Inspector of Mines.

The Bill introduces a number of new functions of the Chief Inspector of Mines that go beyond the functions of an inspector. In order to avoid doubt as to whether these new functions are covered by the protection provided by section 44, these amendments will make explicit reference to the Chief Inspector of Mines.

Section 12 **Section 47 amended (Notice of serious accidents and dangerous incidents to be given)**

Section 47 of the Act provides for a person having control or management of a workplace to report fatalities and certain injuries, illness and incidents to

an inspector.

It is intended that regulations supporting the proposed mine safety provisions will require additional matters occurring at a mine to be reported. At present section 47 is too narrow to allow some of the matters identified for reporting to be prescribed.

This provision inserts additional text, particularly “and incident of a kind prescribed for the purposes of this section occurs” to enable the specific mine safety reporting requirements to be prescribed in the regulations. It will also allow additional non-mining-specific provisions to be prescribed to apply more generally.

Section 13 **Section 57 amended (Regulations)**

Section 57 deals with the making of regulations under the Principal Act. This clause proposes some specific amendments to section 57 to give effect to the inclusion of:

- the Chief Inspector of Mines as one of the persons listed in the subsection as being capable of being authorised by the regulations to determine a matter from time to time.
- a provision allowing the regulations to exempt a person, thing or activity or a class of persons, things or activities from the operation of this Act or the regulations or any provision of the Act or the regulations. (This provision is included largely to enable any adjustment to the coverage of the provisions, should it be necessary to align coverage closer to likely national arrangements for mine safety.)
- a provision allowing regulations made in respect

of mines and mining operations to apply to all mines or to only those mines meeting such criteria as may be set out in the regulations, such as size, product, nature of the work or location above or below ground. (This provision is intended to provide the flexibility needed to make requirements specific to a particular type of mine or to adjust requirements according to the size of mine.)

Section 14 **14. Schedule I amended (Regulations)**

Schedule I to the Principal Act (listing potential matters for regulations) is amended by inserting after item 6 the following items:

- 6A The making of major hazard management plans.

- 6B The circumstances in which, and the terms on which, a mine operator may appoint a person or persons with particular expertise to assist a site senior officer to perform his or functions or discharge his or her duties at a mine or part of a mine.

Section 15 **15. Repeal of Act**

This is a standard repeal provision to remove the empty shell of the Bill after all its provisions have come into effect (on the ninetieth day from the day on which it commences),