

CLAUSE NOTES

MINES WORK HEALTH AND SAFETY (SUPPLEMENTARY REQUIREMENTS) BILL 2011

PART I PRELIMINARY

Clause 1 Short title

This is formal provision specifying the title of the proposed Act as the *Mines Work Health and Safety (Supplementary Requirements) Act 2011*.

The need for this Act is a consequence of the national harmonisation of work health and safety laws through the adoption by Tasmania of the national Model Work Health and Safety Act and Regulations (by the development of mirror legislation).

The proposed mine safety chapter of the Model Work Health and Safety Regulations has been delayed and is not expected to be finalised in sufficient time for consideration by Tasmania before the proposed commencement date of the rest of the package on 1 January 2012.

This Bill will supplement the provisions of the proposed new work health and safety laws (based on the national Model Laws, without a chapter on mine safety).

The provisions of this Bill drawn from existing *Workplace Health and Safety Act 1995*, largely Part 5A on mine safety, supplemented and modified where necessary to allow for operation in conjunction with the proposed new *Work Health and Safety Act 2011* (the new WHS Act).

Penalty levels have been kept the same as those which currently applies (except where a penalty was inadvertently omitted) and converted to dollar amounts for consistency with the new WHS Act with which this Act will operate.

Clause 2 Commencement

The Act will commence on the day on which the new WHS Act commences.

Clause 3 Object of Act

The object states the purpose of the Act in broad terms. It comes from the mine safety Part 5A of the Workplace Health and Safety Act, slightly modified to reference the new WHS Act.

The existing mine safety laws were influenced by the recommendations of a number of investigations and reports, including, in particular, two Coronial reports one of which was a report by Coroner Jones, published in 2008, on the inquest into three mining fatalities in two separate incidents at Renison Tin Mine.

The object 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.

Clause 4 Incorporation of Act into *Work Health and Safety Act 2011*

It is intended that the new WHS Act will apply to all workplaces, including mines, as does the current Workplace Health and Safety Act. It is further intended that the provisions of this proposed supplementary Act dealing with mine safety, will operate alongside and in conjunction with the new WHS Act a mines.

To enable the two Acts to work seamlessly at mines, and to avoid unnecessary duplication of provisions, especially with respect to definitions and enforcement provisions, this clause technically incorporates this Act into the new WHS Act.

This means that, although there are two Acts, duty holders at mines can read this Act, in effect as if it were a chapter of the new WHS Act.

PART 2 – INTERPRETATIVE PROVISIONS

The provisions of this part are largely based on the equivalent provisions of the Workplace Health and Safety Act.

Clause 5 Interpretation

This clause defines key terms used in this Bill. The provisions are largely drawn from the existing provisions of the Workplace Health and Safety Act. The term “regulator” is an exception and refers to the regulator under the proposed new WHS Act.

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. The definitions are based on current definitions and are intended to retain the status quo as much as possible in terms of coverage of the mining laws, notwithstanding the new work health and safety legislative scheme.

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

A mine is therefore determined by the activities carried out rather than any rights over the minerals present.

The definition of **mineral** is needed in the definition of “mining operations” in Clause 6. The definition is broad and captures all things that might be mined at what is considered to be a mine in Tasmania.

Terms used in the WHS Act have the same meanings under this Bill, and therefore do not need to be defined here.

Clause 6 Meaning of “mining operations”

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 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.

Subclause (3) allows regulator, having regard to the nature of the work, risks or hazards involved, to declare any other activity or operation as a mining operation. This retains the 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).

Clause 7 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.

PART 3 – HEALTH AND SAFETY IN MINES

The provisions of this part are largely based on the equivalent provisions of the Workplace Health and Safety Act.

Division 1 – Chief Inspector of Mines

Clause 8 Chief Inspector of mines

This provision is a simplification of the current provision providing for the appointment and functions of the chief inspector of mines. It also includes updates the appointment process and functions to better align with the role of the regulator under new WHS Act.

Clause 9 Chief Inspector of Mines may issue directions to mine operator and site senior officers

In accordance with the intent to retain the status quo, as much as possible, for mines, this clause incorporates a modified version of the power of the Director of Industry Safety to issue a notice under section 39 of the current Act to prevent injuries to and risks to the health of workers.

The preventative purpose of such notices has made them a useful tool in the mining industry and such notices are not replicated in the new WHS Act. Currently they are issued in the mining industry by the Chief Inspector of Mines under the delegated authority of the Director of Industry Safety. This provision enables the Chief Inspector of Mines to issue such notices in his or her own right.

Given the scope of this Act, the scope of such notices has been limited to the protection of persons at a mine.

Clause 10 Protection from liability

This clause provides protection from liability for the Chief Inspector of Mines for the performance of his or her functions in good faith.

Division 2 – Mine operators

Clause 11 Appointment of mine operators

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

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.

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

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.

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.

Subclause (7) provides that 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.

Clause 12 Advice of appointment, &c., to be given to Chief Inspector of Mines

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.

Subclause (2) sets a time within which the notification of the mine operator must be made, i.e. within 14 days after making the appointment.

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.

Clause 13 Chief Inspector of Mines may approve multiple persons to have responsibility for certain mining operations

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.

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.

Subclause (3) applies where the mine holder and mine operator are different persons, and 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.

Subclause (4) 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.

Division 3 – Site senior officers

Clause 14 Site senior officers

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.

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.

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 subclause (4). This is a reflection of the importance of the role.

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.

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. To provide flexibility, the regulations allow the appointment of an assistant with the requisite qualifications, if the site senior officer does not have them.

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.

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.

Clause 15 Site senior 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.

Clause 16 Additional requirements if site senior officer is not mine operator

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.

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 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.

Subclause (5) 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.

The site senior is 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.

Clause 17 Duties of site senior officers

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.

Subclause (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.

Clause 18 Absence of site senior officer

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 to 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.

Subclause (2) 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.

Division 4 – Compliance with directions

Clause 19 Compliance with directions of mine operator or site senior officer

To ensure health and safety at a mine, all persons working at a mine need to recognise the authority of the mine operator and the site senior officer. This provision places a duty on persons who conduct a business or undertaking at a mine (e.g. contractors) and other workers to comply with reasonable directions of the mine operator or site senior officer in relation to health or safety.

This provision is based on similar provisions under the existing Workplace Health and Safety Act, modified to take into account the changes to duty holders that will be brought in under the new WHS Act. These changes have made it possible to categorise the duty holders for this provision into two groups – persons who conduct a business or undertaking a mine, and other mine workers.

PART 4 HEALTH AND SAFETY MANAGEMENT SYSTEMS

The provisions of this part are based on the equivalent provisions of the Workplace Health and Safety Act.

Clause 20 Health and safety management system

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.

Subclause (3) provides that at a smaller mine, i.e. where the number of hours worked is less than 3 000 per month, implementation is required by 1 July 2012 or such later date as the regulator 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). This is an extension (by six months) of the current proposed implementation date for small mines. The intent is that small mines should not be required to comply with this provision until the national approach to health and safety management systems at small mines is determined.

Clause 21 Workers to be consulted in preparation and amendment of system

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.

Clause 22 Work to be carried out in accordance with 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.

Clause 23 Audit and review of system

This clause 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.

An inspector may request the mine operator to provide the pertinent documentation at any time.

Subclause (4) makes it clear that an audit and review is not limited to an audit of the documentation.

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.

Clause 24 Inadequate health and safety management system

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.

Subclause (3) 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.

Clause 25 Chief Inspector of Mines may require independent audit

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. (Such a direction may be reviewed.)

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.

The clause 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.

The mine operator may appoint a bipartite team 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.

The 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.

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. The protection from liability 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 protection.

Clause 26 Exemptions

If a mine operator is required to prepare a safety management system under the new WHS Act, 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 situation may arise where the mine operator is required to develop a health and safety management system for

the mine as a major hazard facility under the proposed WHS regulations.

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

PART 5 MISCELLANEOUS

The provisions of this part are largely based on the equivalent provisions of the Workplace Health and Safety Act.

Clause 27 Notification of commencement of operations

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 operator:

- 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.

An exception is provided 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.

Clause 28 Persons conducting operations to consult about work health and safety

A person who conducts a business or undertaking at a mine and who is not the mine operator must facilitate consultation between the workers and the mine operator on matters affecting the workers' health and safety.

This provision recognises the need for the mine operator to consult with all workers regardless of whether or not the mine operator directly employs or engages those workers.

Clause 29 Visitors to comply with health and safety requirements

In the same way that other persons at a mine have duties, 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.

Clause 30 Record book

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.

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 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.

Clause 31 Management structure to be maintained

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.

Clause 32 Mine layout, design and construction

This provision currently sits in the Workplace Health and Safety Regulations. However, because it is in the nature of a general duty, it has been imported into the Bill, given this is more consistent with the new WHS Act.

Clause 33 Guidance material

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).

The clause makes it clear that the requirements of the *Rules Publication Act 1953* do not apply to a declaration made under this section.

Clause 34 Certain decisions to be reviewable under Work Health and Safety Act 2011

This clause and the table that follows it provides for the provisions of the proposed new WHS Act that allow for the review of particular decisions made under that Act to also be used for the review of decisions under this Act.

Clause 35 Transitional and savings provisions

These provisions preserve existing appointments and notifications, so that they do not need to be done again when the provisions of this Act come into effect.

This clause also preserves directions, exemptions and specifications.

The preservation of notices issued under section 14A, 38, 39 or 40 of the Workplace Health and Safety Act are covered under the provisions of the *Work Health and Safety (Transitional and Consequential Provisions) Bill 2011*, and will apply equally to notices issued with respect to mining operations as to other work.

PART 6 – CONCLUDING PROVISIONS

Clause 36 Administration of Act

Until administration is assigned under the *Administrative Arrangements Act 1990*, it will rest with the Minister for Workplace Relations and the department responsible to the Minister will be the Department of Justice.

Clause 37 Regulations

The regulation making powers covers matters expected to be needed, including transitional provisions, to enable the existing mine safety regulations under the Workplace Health and Safety Regulations 1998 to be repackaged as mine safety regulations under this Act.

It is intended to retain the status quo as much as possible with respect to the mine safety regulations, subject to suitable modification to enable them to operate under this Act and together with the proposed new WHS Act and regulations.