

Tabled by
Hon. D. Parkinson, M.L.A.

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Government Response

to the



Report



of the

Legislative Council Select Committee

on

Mining Industry Regulation

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1. Introduction

The Government thanks the members of the Legislative Council Select Committee on Mining Industry Regulation (the Select Committee) for their report on this important subject.

The tragedy of a number of mining fatalities in Tasmania in recent years has rightly caused the Government to consider how mine safety in this State could be better regulated.

On 5 March 2008, a little over a month before the Legislative Council's decision to establish a Select Committee to inquire into mining industry regulation, the Government held a workshop in Hobart on the future regulation of mine safety for Tasmania. Workshop participants included key industry and union stakeholders, and local and national experts from industry, government, unions and academia.

The workshop provided a forum where ideas about regulatory models and stakeholder views could be considered and discussed. It was the beginning of a consultative process that included the formation of two tripartite consultative groups, the Reference Group on Mine Safety Legislation (the Reference Group) and a higher level body, the Steering Committee on Mine Safety Legislation (the Steering Committee), with a view to advising on the content of new mine safety legislation for Tasmania.

The Reference Group presented its detailed proposals to the Steering Committee, which agreed to them on 1 May 2009, for submission to the Minister for Workplace Relations. The package of proposals has the agreement of union and industry representatives and Government officers, and it presents a way forward for improving mine safety regulation in Tasmania.

The Reference Group and the Steering Committee deliberations were informed by the recommendations arising from two Coronial inquests, the first by Coroner Donald Jones into the death of two workers in 2001 and one in 2003 at the Renison Bell Tin Mine, and the second by Coroner Rod Chandler into the 2006 death of a worker at the Beaconsfield Gold Mine. The Reference Group and Steering Committee also considered the recommendations of the Select Committee.

The tripartite consultations also took into account developments at the national level. Tasmania is participating in a national project to develop a nationally consistent occupational health and safety regime for mining. Called the National Mine Safety Framework (NMSF), the project comes under the auspices of the Ministerial Council on Mineral and Petroleum Resources, reporting to the Council of Australian

Governments. The NMSF focuses on seven strategies, on areas where consistency across jurisdictions would be most beneficial. Of key interest to Tasmania in the development of new mine safety legislation is the NMSF Legislative Framework, a strategy which establishes principles for the development of nationally consistent mine safety legislation. To translate these principles into legislative change, work has commenced on the preparation of proposed drafting instructions.

A second key national development is the National Review into Model Occupational Health and Safety Laws (the National OHS Review). Established by the Federal Minister for Employment and Workplace Relations on 4 April 2008, the Review was charged with making recommendations on the optimal structure and content of a model OHS Act capable of being adopted by all jurisdictions. The Review's first report was considered by the Workplace Relations Ministerial Council on 5 November 2008 and the second (and final) report on 12 February 2009.

Although the Select Committee did not refer to the National OHS Review in its report, it is the Government's view that the Review cannot be ignored. The NMSF will take the National OHS Review outcomes into account in finalising its drafting instructions to ensure the NMSF is consistent with the model OHS legislation to be developed. It is the Tasmanian Government's view that new mine safety legislation for Tasmania should also take the findings of the National OHS Review into account.

The Government response to the Select Committee's report is informed by the work of the Reference Group and the Steering Committee, as well as the developments at a national level.

In many instances the Select Committee's report recommends an approach consistent with that being pursued by the Government in consultation with stakeholders. It is confirmation of the appropriateness of Tasmania's proposed reforms.

2. Recommendations of the Select Committee and the Government Response

Recommendation 1

The existing duty of care framework, the Workplace Health and Safety Act (WHS) 1995, continues to apply to all workplaces.

Government Response

The WHS Act, which applies to all industries including mining, is based on broad general duty of care responsibilities, supported by both generic and hazard specific regulations, specified in the *Workplace Health and Safety Regulations 1998* (the WHS Regulations).

This existing model places wide ranging duties for work related health and safety on key participants at all workplaces. Notwithstanding the need for specific provisions for the mining industry, the Government considers the general duty of care approach remains valid, especially as an overarching framework under which more specific requirements can be included.

The Government intends to retain coverage of the mining industry under the WHS Act and Regulations and introduce new mining specific requirements under this general framework.

The Government supports this recommendation.

Recommendation 2

The key objective of the WHS Act, to ensure the health and safety of employees, should be stated explicitly in a preamble to the legislation but should not form part of the duty. The duty of care must be expressed in terms of reasonable practicability.

Government Response

This recommendation is consistent with the provisions of the NMSF Legislative Framework, supported by Tasmania, requiring nationally consistent mine safety legislation to state its objectives, one of which includes securing the safety and health of all persons at the mine site.

The second report of the National OHS Review supports the articulation of the legislation's underlying objectives in the National model OHS Act, including the protection of all persons from work-related harm.

With respect to the expression of the duty of care in terms of reasonable practicability, this is the approach taken under the WHS Act.

The Government intends to introduce new mine safety legislation, under the auspices of the WHS Act, expressing objectives broadly consistent with the NMSF Legislative Framework.

The Government supports the recommendation in principle, noting that the protection from harm provided under the WHS Act is not limited to employees and the articulated objectives therefore also ought not be limited to employees.

Recommendation 3

Industry specific regulations be enacted for mining and other hazardous workplaces.

Government Response

The Government intends introducing new mining specific safety regulations under the WHS Act, with some complementary changes to the Act.

Considerable progress has been made in this regard with the tripartite Reference Group and Steering Committee having agreed to the approach and detail of the proposed new requirements.

The Government supports this recommendation, noting that the development of further industry specific regulations beyond mining and associated operations is not contemplated at this time.

Recommendation 4

The Workplace Health and Safety Act 1995 be amended to provide adequate guidance on risk management processes and hazard controls across all workplaces.

Government Response

Hazard identification, risk assessment and risk control processes (all part of risk management) are currently mandated under regulations 17, 18 and 19 of the WHS Regulations.

The NMSF Legislative Framework and the reports of Coroners Jones and Chandler all refer to risk management.

Given the importance of this area, the tripartite Reference Group and Steering Committee have recommended an approach for mining that enhances the existing provisions dealing with risk management under the WHS Regulations.

The National OHS Review recommended including broad requirements for hazard identification, risk assessment and risk control in the general duties, and went on to conclude that the regulation making power should provide for specific processes to be required by regulations, and for guidance provided through codes.

It is intended that enhanced risk management requirements will be part of the new mine safety legislative package for Tasmania.

The Government supports the intent of this recommendation in so far as it suggests providing further guidance on risk management processes in mining, noting that amendment to the WHS Act in this regard should focus on providing the enabling framework for more detailed provisions in regulations.

Recommendation 5

The Workplace Health and Safety Act 1995 be amended to mandate the development and implementation of auditable safety management plans.

Government Response

Consistent with the NMSF Legislative Framework, the Government intends to develop legislation for mine safety in Tasmania that includes a requirement for all mine operators to develop, implement and maintain a documented health and safety management system for the mine, to ensure health and safety in relation to work at the mine. There will be a requirement for the health and safety management system for a mine to be supported by other key documents such as major hazard management plans.

Although the language used by the Select Committee (safety management plans) is different to that proposed by the Government, the Government considers that the intent is consistent.

The Government supports the intent of this recommendation in so far as it relates to mining and associated operations, such as mineral processing.

Recommendation 6

The work and recommendations of the National Mine Safety Taskforce be considered in any legislative or regulatory change and a nationally consistent approach be adopted.

Government Response

The Government intends to implement new mine safety legislation for Tasmania that takes into account the NMSF Legislative Framework. The NMSF process will in due course deliver agreed drafting instructions for nationally consistent legislation, however such drafting instructions have not yet been completed and agreed. Rather than wait for these to be finalised, in the interests of the safety of mine workers, Tasmania has decided to proceed with its own legislation which is broadly consistent with the national approach.

The Government supports this recommendation in principle.

Recommendation 7

Further research be conducted into the use of safety case regimes.

Government Response

The Government notes that the Select Committee's report concludes that safety case regimes are not an appropriate model for dynamic mining operations in Tasmania, then suggests that further research may be required.

The NMSF Legislative Framework and the proposed approach for Tasmania both adopt a safety management systems approach.

There is considerable commonality between a safety management systems approach and a safety case. In fact, a safety management system forms an essential component of the safety case approach.

The consultative workshop held in March 2008 gave a good airing to various approaches especially the safety case approach. The Reference Group also examined different approaches and, in particular, compared the elements of a safety management systems approach against that of a safety case, before identifying the provisions it considered appropriate for adoption in Tasmania.

Although not proposed for mining at this time, the safety case type of approach will apply to major hazard facilities under the *Dangerous Substances (Safe Handling) Act 2005* which is expected to come into effect this year.

Given the work that has already been undertaken, the Government does not consider further research into the safety case approach is necessary at this time. Nevertheless, the need to keep abreast of developments is accepted. Operation of the regime under the *Dangerous Substances (Safe Handling) Act* should inform future considerations of appropriate legislative approaches.

The Government supports this recommendation only so far as keeping a watching brief.

Recommendation 8

Continued vigilance within the mining industry regarding fatigue and external work levels is required. Mine Operators should consider testing for fatigue as a part of the 'fitness for work' assessment.

Government Response

The NMSF Legislative Framework requires the mine safety management system to identify and manage the hazards associated with fitness for work issues, including fatigue. The Government proposes to include such a requirement in the proposed new mine safety legislation.

The Government notes that fatigue is a multifaceted issue and suggests that a focus on external work may be somewhat limiting. It should be approached from all angles. Similarly the concept of testing for fatigue might be limiting if that is the extent of the approach.

Rather than supporting the recommendation, the Government supports a broader focus, being continued vigilance within the mining industry regarding fatigue and that operators should address fatigue as part of a fitness for work program.

Recommendation 9

Legislation mandate the reporting and investigation of near misses.

Government Response

Section 47 of the WHS Act, in conjunction with the regulation 62 of the WHS Regulations, already mandates the reporting of particular dangerous incidents.

The Government proposes expanding the abovementioned requirements in relation to mines to require the reporting of a wider range of incidents, particularly relevant to mines.

Regulation 63(a) of the WHS Regulations requires the investigation of an accident or incident that causes or has the potential to cause serious injury or damage at a workplace, to attempt to discover its cause.

The Government is satisfied that the existing provisions, together with the proposed expansion of incidents at mines that must be reported, adequately capture the intent of this recommendation.

The Government supports the intent of the recommendation, noting that its purpose is captured by existing provisions and the Government's proposed enhancements.

Recommendation 10

Consistency of data collection according to a uniform national standard be implemented, including definitions relating to injuries.

Government Response

One of the NMSF's strategies is 'consistent and reliable data collection and analysis' and as part of this strategy jurisdictions have agreed a National Data Set which identifies the statistical information to be collected by jurisdictions to ensure consistency. It is intended that coding options will be based on standard classification systems.

Tasmania has agreed to the National Data Set. The Government intends to include the data requirements in the new legislative package for mine safety.

The Government supports the recommendation, noting the agreement already given to the National Data Set.

Recommendation 11

Workplace Standards Tasmania at all times be provided with appropriate resources to properly oversee the mining industry.

Government Response

While acknowledging that there were resourcing difficulties in the past, the Government is satisfied that the mines inspectorate is currently adequately resourced and skilled to respond to most occupational health and safety issues facing the industry today.

The Government supports the recommendation.

Recommendation 12

Inspectors provide appropriate advice to all mine operators with regard to the application of safety systems.

Government Response

The Government considers there is a role for inspectors to provide advice to persons for the purpose of facilitating compliance with the legislation. Although the Government doesn't consider that inspectors are precluded from giving of such advice, the Government intends to draft an amendment to the WHS Act to expressly include provision of such advice under the powers and functions of inspectors. As with other powers and functions, use of the power will be discretionary according to the circumstances of the case.

The Government does not consider the provision of advice should be limited to the application of safety systems. It is implicit that the provision of advice by an inspector is to be in good faith and within his or her area of knowledge or expertise.

The Government supports the recommendation, without limiting it to the application of safety systems.

Recommendation 13

Expertise and specific skills, not available within WST and required to ensure a comprehensive regulatory and inspection role, be acquired on a contractual basis.

Government Response

The Government notes that from time to time the Workplace Standards Tasmania (WST) inspectorate may require particular expertise that may be best acquired on a short term contractual basis. By way of example, a coal mine expert has been engaged by Workplace Standards to carry out compliance inspections of Tasmania's coal mining operations. Nevertheless, the Government considers that the in-house core skill base should be sufficient to cover most day to day circumstances.

The Government supports the recommendation in so far as it relates to specialist skills that it would not be necessary or efficient to maintain in-house.

Recommendation 14

Resource sharing, including human resources, related to accessing qualified and experienced mines inspectors and regulators between state jurisdictions, be considered and investigated.

Government Response

The Government supports the concept of resource sharing, while noting that there are a number of practical considerations, such as the willingness of jurisdictions and individuals to participate, legislative differences, local demands and liability issues that can impact on the ability to deliver such arrangements.

The Government supports the recommendation in principle.

Recommendation 15

Unions do not have a role in the inspectorate as regulators and conducting mine site inspections.

Government Response

The Reference Group has provided advice, through the Steering Committee, to the Minister for Workplace Relations, on an agreed proposed model for union involvement in workplace health and safety. The proposed model supports a more proactive role than is currently the case with respect to appropriately authorised union officials having the capacity to inquire into and seek to resolve issues, and to consult with and engage members on health and safety matters.

The model does not propose that union officials would have the enforcement powers of inspectors. Nor does it propose that officials would be able to issue notices or prohibit work.

The Government supports the recommendation in that union officials should not take on the role a mines safety regulator.

Recommendation 16

Unions maintain their important role in mine safety, particularly in the promotion of workplace safety, engaging and empowering their members and the general workforce, and liaising with management on members' behalf.

Government Response

The Government agrees that unions play an important role in ensuring a safe workplace.

The Government supports this recommendation.

Recommendation 17

Government assess road infrastructure where ore and minerals are transported by road and commit to upgrades to address issues of all road user safety.

Recommendation 18

Government assess options for expanding rail transport on the West Coast.

Responses to both Recommendations 17 and 18 were provided by the Minister for Infrastructure

Mining industry growth on the West Coast was forecast to nearly double to over 1.5 million tonnes by 2010, based on anticipated higher commodity prices, the development of new mines and continued mineral exploration.

However, recent events in the global economy have reduced market demand for minerals and as a result, the forecast growth has not materialised, with the current task declining slightly from 2008 levels. Based on the current global economic situation, mining freight is unlikely to increase significantly in the near future.

The current mining task is split between road and rail. In 2007/08 0.37 million tonnes of mining freight was transported by rail which accounted for 47 per cent of the total mining freight task on the West Coast.

The West Coast is serviced by the Emu Bay - Melba line which is considered to be in reasonable condition. Further analysis is required to determine if the line has additional capacity to accommodate significantly higher freight volumes.

With the opening of new mines in locations distant from rail infrastructure, and increased productivity of road transport, new mines may choose to use road transport over rail. However, rail should continue to maintain a significant share of the mining freight task under the current climate.

The Government is committed to continue monitoring changes in the West Coast freight task to ensure the best road/rail transport outcome.

The Tasmanian Government has also secured \$11.75 million in Australian Government funding for future rail upgrades on the West Coast.