

CLAUSE NOTES

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

Clause 1 **Short title**

Provides for the proposed Act, once passed, to be cited as the *Mines Work Health and Safety (Supplementary Requirements) Amendment Act 2019*.

Clause 2 **Commencement**

Provides for the Act to commence on the 30th day after the day on which it receives Royal Assent.

Clause 3 **Principal Act**

The Principal Act to which the amendments apply is the *Mines Work Health and Safety (Supplementary Requirements) Act 2012*.

Clause 4 **Section 3 amended (Object of Act)**

Makes a minor amendment to the object of the Principal Act to ensure consistency with other amendments proposed within this Bill.

The object of the Principal Act is 'to assist in securing the health and safety of mine workers, ... through the implementation of health and safety measures, specific to mines and mining operations, that are in addition to the measures imposed under the *Work Health and Safety Act 2012*' (the WHS Act).

Clause 4 of the Bill proposes replacing 'addition to' with 'addition to, or in substitution of', to allow for any provisions of the Principal Act that modify the application of the WHS Act with respect to mines and mining operations. Specifically, the proposed amendment in Clause 34 of the Bill substitutes a different process for the process set out in section 274(2) of the WHS Act. This substitution applies specifically (and only) in relation to the approval of codes of practice for mines or mining operations. In short, Clause 34 proposes replacing a national consultation process, on codes of practice for mines or mining operations, with local consultation, which is more appropriate because mine safety laws are not nationally harmonised.

Amendment of section 3 of the Principal Act will maintain consistency of the object of the Act with the rest of the Act once amended. Of itself, it will not authorise the substitution of provisions of the WHS Act with respect to mines and mining operations. Any proposed substitutions must be specifically set out in an Amendment Bill (as in the case of Clause 34 of this Bill) and passed by the Parliament.

Clause 5 Section 4 amended (Incorporation of Act into *Work Health and Safety Act 2012*)

Provides clarification on how the Principal Act operates in conjunction with the WHS Act.

Section 4 of the Principal Act provides that the two Acts operate together (at mines) as if they were a single Act. The section specifies that terms such as 'this Act' and 'the Act', when they appear in the WHS Act and its regulations, also refer to the *Mines Work Health and Safety (Supplementary Requirements) Act* and its regulations, unless the contrary intention appears.

Clause 5 of the Bill adds additional explanation that references to 'these regulations', in any regulations made under the WHS Act, includes reference to any regulations made under the *Mines Work Health and Safety (Supplementary Requirements) Act 2012*. This clarifies that the two sets of regulations are to be read together as if they were a single set of regulations.

In making the proposed clarification, this clause clarifies that any reference to 'these regulations' in regulations made under the Principal Act is not to be taken to be a reference to regulations made under the WHS Act.

This clause also provides a practical example, for inclusion in the Principal Act, by setting out how the two Acts operate together to allow an improvement notice to be issued in respect to the *Mines Work Health and Safety (Supplementary Requirements) Act 2012*.

Clause 6 Section 5 amended (Interpretation)

Amends the definition of a mine, and adds a new definition, that of a 'mines inspector'.

This clause adds the phrase: 'and includes any fixtures, fittings, plant or structures at such a place that are used for, or in connection with, mining operations' at the end of the existing definition of a mine. The additional phrase clarifies that something at the mine that is used in connection with mining operations is part of the mine.

This inclusion is to avoid any doubt or confusion that could potentially arise without the clarification such as to whether or not large plant at the mine is part of the mine.

The clause also refers to the additional definition of a mines inspector is set out in, and discussed in these Clause Notes under, Clause 11 of the Bill.

Clause 7 Section 6 amended (Meaning of mining operations)

Clarifies the definition of 'mining operations'.

Although it is intended that the mine safety laws should apply during the entire life cycle of a mine there is ambiguity over when mining operations commence.

Clause 7(a) inserts a new paragraph explicitly stating that mining operations include the preparation, development, construction or maintenance of the site where mining will occur, including the construction of infrastructure to be used in mining activities.

This addresses current ambiguity about the point in the life of a mine at which mining operations commence.

Clause 7(b) inserts the word 'security' to clarify that security activities are included. Although security is another activity where people may be exposed to mining hazards, it is currently unclear whether or not it is covered when a mine is not in production and no other work is being undertaken.

Clause 8

Section 7A inserted

Inserts a clarification, for the avoidance of doubt, that unless otherwise specified in the Principal Act, examples and notes at the foot of provisions of the Act form part of the Act.

Section 9 of the *Work Health and Safety Act 2012* provides that a note to the foot of a provision and an example at the foot of a provision form part of that Act. By extension (through the application of section 4 of the Principal Act) a note or example at the foot of a provision of the Principal Act forms part of the Act.

It is unusual in Tasmania for notes and examples to form part of an Act, therefore to avoid any confusion or doubt, it is important to restate the status of notes and examples, under the Principal Act, within the Act itself.

Clause 9

Section 8 amended (Chief Inspector of Mines)

Inserts new provisions specifying the qualifications, knowledge, skills and experience required of an inspector who is designated as the Chief Inspector of Mines.

The clause inserts section 8(1A) into the Principal Act that requires the regulator to be satisfied that the inspector holds a relevant degree or equivalent qualification, as specified in subsection (1B), and the knowledge, skills and experience, relevant to mining operations to enable the person to exercise the powers and perform the functions of the Chief Inspector of Mines.

An additional requirement of new section 8(1A) is for the inspector to hold any other qualifications or have other knowledge, skills or experience as may be prescribed for the purpose. This provision provides the flexibility to prescribe additional requirements by regulation, should a need to do so be identified.

Subsection (1B) establishes a means of determining what constitutes a relevant degree. A relevant degree is considered to be a bachelor degree with a major or honours in the field of mining engineering. Nevertheless, it is necessary to

be clearer about the standard of mining engineering education that the degree delivers, particularly given that this is an international field where overseas qualifications may need to be considered.

Internationally, there is an accord between professional engineers' bodies that accredit or recognise tertiary educational programs that meet the standard for engineers at a professional level. Signatories to the accord, including Australia's relevant body (currently known as Engineers Australia), recognise programs identified by the other signatories (each in their own jurisdiction) as meeting the required standard.

The Bill cites the 'Washington Accord', which is the international accord that provides the framework for the accreditation of tertiary educational programs for engineers, at the professional level sought for the position of the Chief Inspector of Mines.

Proposed subsection (1B) provides for an equivalent qualification, being one that the regulator is satisfied, on reasonable grounds, is equal to or exceeds the requirements delivered through the Washington Accord. This provides flexibility, in recognition that the completion of a bachelor degree course recognised in accordance with the Washington Accord is not the only way to achieve the necessary standard of education.

Clause 10 Section 9 amended (Chief Inspector of Mines may issue directions to mine operator and site senior officers)

Provides proposed new penalties for an offence against section 9 of the Act. The new penalty is better aligned to the penalties under the *Work Health and Safety Act 2012* (the WHS Act).

The proposed maximum penalty of \$250,000 for a body corporate and \$50,000 for an individual, for failure to comply with the notice issued under section 9, has been aligned with the offence of failing to comply with an improvement notice (section 193) under the WHS Act.

Clause 11 Part 3, Division 1A inserted

Inserts proposed new Division 1A, section 10A, which provides for mines inspectors who have appropriate knowledge, skills and experience.

Proposed section 10A comprises of two parts. Paragraph (a) requires the knowledge, skills and experience specified by the regulator and the Chief Inspector of Mines, as relevant to mining operations, to enable the person to effectively exercise the powers and perform the functions of a mines inspector under the Act.

There is no appointment process for mines inspectors, other than being appointed as an inspector under the WHS Act. Technically any inspector so

appointed may exercise the functions of an inspector under the Principal Act, whether or not that inspector has any background relevant to mining.

Under the proposed amendment, mines inspectors will be those inspectors who meet the requirements of section 10A. Any powers or functions of a mines inspector under the Principal Act or its regulations will have to be exercised or undertaken by a mines inspector. Any powers or functions of an inspector under the WHS Act, the WHS Regulations, the Principal Act or its regulations may be conducted by an inspector appointed under the WHS Act. A mines inspector will still be an inspector and have all the powers and functions of inspectors.

Proposed new section 10A fulfils the need for some specific expertise for the exercise or performance of certain powers and functions under the Principal Act, while also retaining the flexibility to allow more generalist inspectors to exercise functions and powers at mines under the WHS laws and any less specialised functions under the mine safety laws.

Clause 12

Section 11 amended (Appointment of mine operators)

Provides proposed new penalties for offences against section 11 of the Principal Act. The new penalties are better aligned to the penalties under the WHS Act.

The maximum penalty for proposed for an offence under section (11)(7) is one of the equal highest in the Bill, at \$500,000 for a body corporate, and \$100,000 for an individual. It involves a failure to exercise 'due diligence' in meeting a requirement established for the purpose of ensuring a mine operator has the capacity and resources to ensure the work can be carried out safely. The element of failure to exercise due diligence is what distinguishes it from, and causes it to be regarded as more serious than, an offence under section 11(1) of the Principal Act.

Clause 13

Section 12 amended (Advice of appointment, &c., to be given to Chief Inspector of Mines)

Provides for new maximum penalties of \$50,000 for a body corporate and \$10,000 for an individual, in each case.

Clause 14

Section 13 amended (Chief Inspector of Mines may approve multiple persons to have responsibility for certain mining operations)

Provides for new maximum penalties for offences under sections 13(3) and 13(4) of \$500,000 for a body corporate and \$100,000 for an individual.

The penalties are aligned with the penalty for a failure to provide information under Part 2 of the WHS Act.

- Clause 15 Section 14 amended (Site senior officers)**
- Clause 15 makes three types of changes to section 14 of the Principal Act.
- Clauses (a), (e) and (f) replace the penalties with amounts that are better aligned with the penalties under the WHS Act.
- Clauses (b), (c) and (d) replace the term 'a natural person' with 'an individual'. This removes a current inconsistency in terminology whereby both terms are currently used interchangeably in the Principal Act.
- Clause 15 also adds a note to the foot of the provisions of section 14 of the Principal Act. For the avoidance of doubt, the note clarifies an action of a site senior officer is a prohibited reason for discriminatory conduct as per Part 6 of the WHS Act (Discriminatory, Coercive or Misleading Conduct). This is the case by virtue of the operation of the two Acts together as set out in section 4 of the Principal Act.
- Clause 16 Section 15 amended (site senior officer to maintain presence at mine)**
- Amends the penalty under section 15 of the Principal Act to better align with penalties under the WHS Act.
- Clause 17 Section 16 amended (Additional requirements if site senior officer is not mine operator)**
- Amends the penalties under section 16 of the Principal Act to better align with penalties under the WHS Act.
- Clause 18 Section 17 amended (Duties of site senior officers)**
- Amends the penalties under section 17 of the Principal Act to better align with penalties under the WHS Act. Note that the duties of section 17 apply to individuals (i.e. site senior officers) so there are no penalties for bodies corporate.
- Clause 19 Section 18 amended (Absence of site senior officer)**
- Amends the penalties under section 18 of the Principal Act to better align with penalties under the WHS Act.
- Clause 20 Section 19 amended (Compliance with directions of mine operator or site senior officer)**
- Amends the penalty under section 19 of the Principal Act to better align with penalties under the WHS Act.
- The penalty for a failure by a person who conducts a business or undertaking at a mine to comply with the directions of the mine operator or site senior officer has been aligned with a failure to coordinate and cooperate with other duty

holders under the WHS laws - \$500,000 for a body corporate and \$100,000 for an individual.

Clause 21 Section 20 amended (Health and safety management system)

Section 20(1) is amended by clause (a) to introduce the concept that a health and safety management system must be effective.

Clause (b) aligns the penalty with penalties under the WHS Act.

Clause (c) amends section 20(2) because, although the section currently has a penalty clause, it does not specify a duty holder to which the penalty applies. Subsection (2) is replaced by a provision that specifies the mine operator as the duty holder. The penalty is replaced with one that is better aligned with those under the WHS Act.

Clauses (d) and (f) delete redundant clauses pertaining to commencement dates that have now passed.

Clause (e) replaces the word 'systemically', which should be 'systematically'.

Clause 22 Section 21 amended (Workers to be consulted in preparation and amendment of system)

Amends the penalty under section 21 of the Principal Act to better align with penalties under the WHS Act.

Clause 23 Section 22 amended (Work to be carried out in accordance with system)

Amends the penalty under section 19 of the Principal Act to better align with penalties under the WHS Act.

Clause 24 Section 23 amended (Audit and review of system by mines inspector)

Consequential to Clause 11 of the Bill, which inserts a definition of mines inspectors, Clause 24 amends references to an inspector in section 23 to a mines inspector. It also better aligns the penalty with the penalties under the WHS Act.

Clause 25 Section 24 amended (Inadequate health and safety management system)

Consequential to Clause 11 of the Bill, which inserts a definition of mines inspectors, Clause 25 amends references to an inspector in section 24 to a mines inspector. It also better aligns the penalty with the penalties under the WHS Act.

Clause 26 Section 25 amended (Chief Inspector of Mines may require independent audit)

Amends the penalty under section 25 of the Principal Act to better align with penalties under the WHS Act.

Clause 27

Section 26 amended (Exemptions)

Makes some simple amendments to improve the operation of section 26 of the Principal Act.

Existing section 26 allows the Chief Inspector of Mines to grant a full or partial exemption from the provisions of Part 4 of the Principal Act with respect to the requirements for a health and safety management system for a mine.

Some provisions of the WHS laws, which have similar, but slightly different, requirements to those of Part 4, have the potential to apply at mines. For example, a mine, or part thereof, may also be a major hazard facility, which requires a safety case under the WHS Regulations. Section 26 allows an exemption from Part 4 to be granted if, for example, the safety case delivers an equivalent standard to Part 4.

Clause (a) replaces the applicant of 'An occupier of land on which a mine is situated' to the mine operator. It is the mine operator who has the duty to comply with the requirements of Part 4, therefore it is the mine operator who should apply for the exemption.

Clauses (b) and (c) introduce a requirement for the application for, and the granting of, an exemption to be in writing. This allows records to be kept of the decision making trail, allowing future reference to it, especially should some doubt arise as to what was granted.

Clause (d) removes the reference to the WHS Act from subsection (3). Subsection (3) may be read, currently, as requiring the system under the WHS Act to deliver an equivalent standard to the entirety of Part 4. Yet if a partial exemption were to be granted, as is allowed for in subsection (2), there would be no need to require the system under the WHS Act to deliver the a standard equivalent to the entirety of Part 4. The requirement is too stringent for a partial exemption and, in practice, it would not affect mine safety whether the WHS laws delivered the equivalent standard, another law delivered it, or it is delivered through another means or a combination of means.

Clause (d) allows a full or partial exemption to be granted, based on whether or not an equivalent standard is achieved, rather than specifying the legislative mechanism for achieving it.

Clause 28

Section 27 amended (Notification of commencement of operations)

Amends the penalties under section 27 of the Principal Act to better align with the penalty under the WHS Act.

- Clause 29 Section 28 amended (Persons conduction operations to consult about work health and safety)**
- Amends the penalty under section 28 to better align with the penalties under the WHS Act.
- Clause 30 Section 29 amended (Visitors to comply with health and safety requirements)**
- Amends the penalty under section 29 of the Principal Act to better align with the penalties under the WHS Act.
- The penalty applies only to an individual.
- Clause 31 Section 30 amended (Record book)**
- Amends the penalties under section 30 of the Principal Act to better align with the penalties under the WHS Act.
- Clause 32 Section 31 amended (Management structure to be maintained)**
- Amends the penalty under section 31 of the Principal Act to better align with the penalties under the WHS Act.
- Clause 33 Section 32 amended (Mine layout, design and construction)**
- Amends the penalty under section 32 of the Principal Act to better align with the penalties under the WHS Act. At \$500,000 for a body corporate, and \$100,000 for an individual, this penalty is another of the most serious offences with the highest penalties under the Principal Act.
- Clause 34 Section 33A inserted**
- Provides that the Minister may approve a code of practice with respect to mines or mining operations, without the necessity for the development of the code of practice to comply with section 274(2) of the WHS Act, if the development involved consultation, as specified in new Section 33A of the Principal Act.
- In essence, section 33A allows the replacement of national consultation on mine safety codes of practice with a process of local consultation.
- Section 274(2) of the WHS Act provides that the Minister may only approve, vary or revoke a code of practice if the code of practice, variation or revocation was developed by a process that involved consultation between the Governments of the Commonwealth and each State and Territory; and unions and employer organisations.
- Proposed section 33A of the Principal Act allows consultation to occur between the unions and organisations that are prescribed for the purpose. If none are prescribed then consultation must occur between unions and employer and industry organisations, representing, respectively, workers in mines in Tasmania

and the interests of mine operators in Tasmania, that the Minister considers relevant to the code of practice being developed.

Clause 35 Section 35 amended (Transitional and savings provisions)

Removes three redundant savings provisions. The instruments and decisions referred to subsections (3), (6) and (9) had a finite life and no longer require recognising under the Principal Act.

Clause 36 Section 37 amended (Regulations)

Replaces the maximum penalty for an offence under the regulations, as specified under section 27(4)(b) of the Principal Act, with a fine not exceeding \$30,000 (which is the maximum penalty specified for the WHS regulations under Section 276(3)(h) of the WHS Act).

This will allow penalties for offences under the regulations to be aligned with those for similar types of offences under the WHS regulations.

Clause 37 Repeal of Act

Provides for the automatic repeal of the amending Act on the first anniversary of the day on which it commenced. This allows for the removal of the shell of the Act from Tasmania's 'in force' legislation. The amendments will have been incorporated into the Principal Act, and the amendment Act will no longer have any work to do.