

**WORKPLACE HEALTH AND SAFETY  
AMENDMENT (MINE SAFETY) BILL 2010  
SECOND READING SPEECH**

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

Mr Speaker, the purpose of this Bill is to amend the *Workplace Health and Safety Act 1995*, to include provisions applying specifically to mines and mining operations.

Mine safety is an important issue in Tasmania. When it fails, the results can be tragic. From 2000 to 2006 there were a total of five mining fatalities in four separate mining accidents in Tasmania.

This tragic loss of life has raised questions about the mine safety legislative regime in Tasmania – as it should.

The Workplace Health and Safety Act applies to mines in the same way that it applies to workplaces in other industries. The Act places broad general duties of care on a range of people who influence safety and health at work, especially employers. However, the Act and its supporting regulations currently contain very few provisions targeted specifically to the hazards and operations of mines.

This lack of specific provisions has been found to be inadequate for the potentially highly dangerous activity of mining.

Three Coronial reports released since 2008 have urged legislative change. In particular, the first of the three, by Coroner Jones, made numerous specific recommendations for inclusion in new mine safety laws. Another report, the Legislative Council Select Committee Report on Mining

Industry Regulation, tabled in the Legislative Council in March 2009, also recommended specific legislative changes.

The reports of the first two inquests and that of the Legislative Council Select Committee, were taken into account in the development of both the Bill and draft regulations that are intended to support the provisions in the Bill.

The final inquest reported in August this year, at a time when drafting of the Bill was being finalised. It calls for urgent action in enacting the proposed new laws.

This Bill is the outcome of the extensive consultations and development work that went into developing mine safety proposals for Tasmania.

These consultations commenced in 2008 with a mine safety workshop in Hobart, where a range of stakeholder, expert and

regulator views were expressed. The Government then established two tripartite groups, a Reference Group and a Steering Committee on Mine Safety Legislation, with a view to producing a model for mine safety that best suits Tasmania.

Proposals for the content of new legislation were developed by the Reference Group, which included representatives of:

- the Tasmanian Minerals Council;
- Cement Concrete and Aggregates Australia;
- the Australian Workers Union;
- the Construction, Forestry, Mining and Energy Union, Mining and Energy Division and;
- Workplace Standards Tasmania;

The tripartite Steering Committee agreed the Reference Group's detailed proposals, and recommended that they form the basis of drafting instructions for the new legislation.

Both groups considered the recommendations of the first two inquiries and the Legislative Council Select Committee report.

The Bill also takes into account the feedback provided during public comment on a detailed Regulatory Impact Statement and an Information Paper released in late 2009.

The Regulatory Impact Statement concluded that the benefits of the proposals outweighed the costs. Nevertheless the document, and public comment, identified that some of the proposals would have a significant impact on small mines. A consistent message was that requirements should not be 'over the top' for small mines.

This is addressed by some of the requirements of the Bill being ‘commensurate with the nature, size and complexity of the mine and mining operations and the associated risks’. The Government has also responded with a proposed phased introduction, which will allow small mines a longer period to implement particular requirements.

The provisions of the Bill will be supported by a package of mine safety regulations to be inserted into the *Workplace Health and Safety Regulations 1998*. These provisions are also based on the proposals of the Reference Group. Like the Bill, the regulations will also include key provisions that take account of the differences between small and large mines.

It is proposed that the provisions in the Bill and those in the proposed new regulations will come into effect on the same day, early next year.

There has been some criticism about the length of time it has taken to bring this Bill to Parliament. The Government, too, would have preferred to have had this Bill available earlier, but it was important to get it right. The complexity of the issues, the need to develop and release a regulatory impact statement for public comment, and the length of time required for drafting have all impacted on the time to have a well considered Bill to present to the House.

In recognition of the time it takes to develop legislation, some of Coroner Jones' recommendations were introduced by way of a code of practice approved in September 2008. Further, to allow partial implementation, one of the initiatives proposed by the Reference Group in its proposed package of reforms,

specifically the right of union officials to enter workplaces for occupational health and safety purposes, was separated from the package and introduced into, and passed by, Parliament in 2009.

In the longer term, mine safety provisions are likely to be covered by the outcomes of two National projects. The first is the National Mine Safety Framework, the NMSF, which comes under the auspices of the Ministerial Council on Mineral and Petroleum Resources. It aims to deliver a nationally consistent occupational health and safety regime for mining in Australia. The second is the development of National model work health and safety legislation, under the auspices of the Workplace Relations Ministers' Council.

The two processes came together in 2010, and core material from the NMSF process will be included as nationally uniform mine safety regulations under proposed national Model Work



Health and Safety Regulations. The target date for the adoption of the model work health and safety laws is the first of January 2012.

Although it might be argued that Tasmania should wait for the outcome of these projects, Tasmania is ahead of the national processes and requires new mine safety laws sooner than can be delivered nationally. A delay until 2012 would be widely viewed as unacceptable. Local stakeholders have supported introduction of these provisions, notwithstanding the developments at the national level.

In any event, there remains a large amount of work to be done at the national level, especially with respect to mining. Until proposed national Model Work Health and Safety Regulations for mining are further progressed, their adequacy for Tasmania cannot be fully assessed. The Government's view on these National processes is that they should be not lead to any

diminution of standards in mine safety in Tasmania. After expending considerable time and resources on developing and delivering provisions that have broad support in our State, we will be watching the National processes closely, and pressing our views, to ensure our improved standards can be maintained.

The Reference Group took into account the National developments during its deliberations, to ensure as much consistency as possible with the expected national approach. In particular, core concepts such as the requirements for a health and safety management system at a mine are similar.

The Bill's provisions will apply to mines and mining operations. A mine includes any place at, in, on or under which mining operations are carried out. This definition replaces the existing definition which is restricted to places subject to a mining lease under Part IV of the *Mineral Resources Development Act 1995*.

Mining operations are defined in the Bill in terms of the nature of activities. They include exploration for minerals and the extraction or excavation of minerals from the ground. Mining operations also include preparation or processing of extracted material, but only so far as such processing occurs on the same or adjacent site as part of a continuous process of extraction.

There is capacity in the proposed provisions for the Director of Industry Safety, a statutory position holder under the Workplace Health and Safety Act, to declare that additional activities or operations are mining operations. This will enable work activities that are the same as mining, but are not for the purpose of obtaining minerals, to be covered by the mining requirements. An example might be tunnelling for road construction. The provision will also provide the flexibility to capture any activities that may be covered in future proposed national provisions that are not already picked up by the definitions in the Bill.

At a mine, there may be any number of employers, as well as contractors, self employed persons and in some cases labour hire workers. At a different mine there may be a single employer and that employer's workforce. Mine safety provisions have to take into account the various potential work arrangements, and ensure that mining operations are carried out in a coordinated, safe manner.

The Bill identifies the key players with respect to health and safety at a mine, placing appropriate general duties on these parties. These duties are supported by key requirements regarding management structures, to clarify who is in charge and who is responsible for what. Together these provisions will implement a number of the recommendations of Coroner Jones.

The person who holds the relevant mining lease or mineral tenement, if one exists, or otherwise the person for whose

benefit the mining operations are carried out, is referred to in the Bill as the mine holder.

The provisions require the mine holder to appoint a mine operator to carry out mining operations, and 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.

The mine holder may be the mine operator, or may appoint a person conducting a business or undertaking with respect to mining operations as the mine operator.

The mine operator is the key duty holder under the provisions. This strong focus on the mine operator implements another of the recommendations 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.

At most mines, apart from some small mines, there is usually an individual such as a mine manager or responsible officer who is in charge. Past problems experienced with these arrangements include lack of clarity about who has the final say on a health and safety matter; and lack of control where a responsible officer is located at an overseas office rather than close to site.

To provide for greater clarity and responsibility, the Bill's proposals require the mine operator to appoint a natural person to be the site senior officer for the mine, except where the mine is operated by a natural person and there are no

employees. The mine operator must ensure that the site senior officer:

- is the most senior officer employed or engaged by the operator at the mine, unless otherwise approved by the Chief Inspector of Mines;
- is based in Tasmania; and
- maintains a presence at the mine commensurate with the nature, size and complexity of the mine and mining operations and the associated risks.

The mine operator is also required to ensure that the site senior officer:

- has sufficient authority to close or suspend operations at the mine where there is an unreasonable risk to health and safety;

- has appropriate background and experience 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; and
  
- has any requirements any requirements specified in the regulations, including qualifications, training, background, experience, knowledge and understanding.

These requirements go towards implementing further recommendations of Coroner Jones, with some others to be implemented by the proposed supporting regulations.

Another key means of providing for health and safety at a mine is the requirement for the mine operator to develop, implement, maintain and review a documented health and safety management system that systemically protects, so far as



is reasonably practicable, the health and safety of mine workers and other persons who may be exposed to risks arising from mining operations.

The mine operator must ensure that work is carried out in compliance with the health and safety management system. Employers, employees, self employed persons, contractors, workers and visitors are required to comply with the system.

The provisions regarding health and safety management systems will come into effect two months after the commencement of the changes. Small mines will be allowed a longer period, at least until 1 January 2012. This will allow for an appropriate adjustment period, especially for small operators who may be less familiar with operating with such systems.

During the preparation or amendment of any relevant part of the health and safety management system, a mine operator must consult, so far as is reasonably practicable, with workers

who may be exposed to risk to their health or safety arising from the mining operations.

Further detail on the contents of the health and safety management system will be included in the supporting regulations.

The Bill has additional provisions designed to support its key requirements. These include audit and review of the health and safety management system; appeals; requirements to keep a record book for a mine; notifications; revised functions of the Chief Inspector of Mines, including the capacity to issue guidance material; protections against liability; and other matters to give effect to, support or enhance the approach.

This Bill in combination with the supporting regulations, which are yet to be finalised, provides a considered approach that combines the elements of good health and safety management

practice into a package of reforms that was developed by and has the support of key stakeholders in the industry.

I commend this Bill to the House.