

**MINES SAFETY AND INSPECTION AMENDMENT BILL 2001**

*Second Reading*

Resumed from 24 October.

**MR DAY** (Darling Range) [12.40 pm]: This Bill deals with an important subject, although the impact of the amendments might not be considered as great. In a State such as Western Australia, mine safety needs a high level of attention at all times from whoever is in government and the appropriate agencies that have responsibility for administering this legislation. The amendments that the House is considering relate to the definition of a manager under the Mines Safety and Inspection Act 1994. They also relate to the charges that needed to be withdrawn with regard to a proposed prosecution a couple of years ago when there was a lack of clarity and certainty about the definition of a manager and what his or her responsibilities were. The proposed changes clearly specify the responsibilities of both an underground manager, who is responsible for underground mining operations, and a quarry manager, who is responsible for the management of above-ground operations.

In a State such as Western Australia, which has a substantial history of mining activity and an economy that depends on mining and related activities, it is absolutely crucial that no stone be left unturned - to use a pun - and to ensure that those working in the mining industry are provided with the maximum level of safety that can be achieved. We do not have to go back very far in news reports in Western Australia, unfortunately, to read about the continuing history of tragedies within our mining industry. Earlier this month an employee was tragically killed when a semitrailer rolled over on the Murrin Murrin nickel mine site near Laverton. In 2000, three miners were tragically killed at the Bronzewing gold mine about 80 kilometres north of Leinster. According to the coroner's finding, it was an accident. Whether those deaths occurred as a result of an accident or something that was entirely preventable, there is an equal amount of tragedy involved and a loss for the miners' families, loved ones, friends and relatives. In July this year nine miners employed by Kalgoorlie Consolidated Gold Mine were trapped 500 metres underground by a rock fall at the site of the Strzelecki mine, 25 kilometres north west of Kalgoorlie-Boulder. Fortunately, all miners were rescued without injury. All these examples bring into sharp focus the substantial level of risk that exists for anybody working in the mining industry, whether it be in a below-ground or above-ground operation in Western Australia.

The proposed amendments are entirely supported by the Opposition. They are appropriate and we support any action that is taken to ensure that mine managers are accountable, in an appropriate way, for the management of their areas in mining operations and to ensure that the maximum level of protection can be provided to employees, and, for that matter, anybody who visits a mining site.

A couple of other issues, not directly related to the proposed amendments in this Bill, are also important in relation to mining safety and activities within the mining industry generally. First, I am aware of a degree of concern within the mining industry about the possibility of occupational safety and health issues in the mining industry being moved from the responsibility of the Department of Minerals and Petroleum Resources - the former Department of Minerals and Energy - to that of WorkSafe. The industry has concerns because it feels that the Department of Minerals and Petroleum Resources has a greater level of expertise with regard to mining safety, and that perhaps the same level of expertise does not exist within WorkSafe. I am not qualified to comment on that view but, given that the concern has been raised by the industry, I would be interested to hear any comments by the minister responding to the debate on this issue. If it is intended to transfer responsibility from DMPR to WorkSafe, what are the likely implications and how will the issue be managed?

The second pertinent issue relates to the length of working shifts within the mining industry. In recent years substantial changes have occurred in mining practices to improve productivity. This has been necessary, given the low profit margins in many mining activities within the State and the competition between mining operations in Western Australia, interstate, to some extent, and other countries. Productivity has had to improve but it has needed to be done in a safe manner. I am not suggesting for one moment that the Opposition supports some of the concerns that have been expressed about the number of hours per day in a working week, but I am aware of concerns from the union movement. I am interested to know whether the minister shares these concerns and, if so, whether the Government proposes to take any action. On the other hand, these issues may have been considered by the Government which may feel that they are not valid. Alternatively it may hold the view that the increased productivity that has been achieved needs to be maintained so that Western Australian operations are competitive with mining operations in other countries.

The Opposition supports the Bill and the proposed amendments, and we are keen to see a high level of attention given to ensuring safe mining practices in Western Australia.

**MR BIRNEY** (Kalgoorlie) [12.48 pm]: Members will be aware that, as the member for Kalgoorlie, I frequently have occasion to discuss issues with the mining industry and some of the people involved in the management of

that industry. It is important that we, as legislators, strike the right balance between mine safety and the rights of a mining company to mine. In the past we have seen a number of tragic fatalities, particularly in my electorate of Kalgoorlie-Boulder, and there is some conjecture about whether those fatalities occurred as a result of human error or a tragic and unfortunate accident. It is important that we strike the right balance and protect the rights of the people involved as workers in the mining industry and those of the companies involved in the business of mining.

I want to place on record my support for the Mines Safety and Inspection Amendment Bill. This Bill goes some way towards striking the right balance, and after reading the Bill it is my understanding that the purpose of the Bill is twofold: first, it seeks to amend the definition of mine manager - as it is referred to in the Act - and, secondly, it seeks to confer certain duties upon the people who are considered to be the underground manager, the quarry manager and the pit manager. I have long held the concern that the mine manager would find it very difficult to be across all aspects of the operations of a mine, particularly if the mine site was a large concern that involved, on the one hand, an open pit, and, on the other, an underground seam. I have long held the concern also that the mine manager, who is at the very top of the tree, is ultimately responsible or personally liable for any tragic accidents that may occur at his mine. After reading the Bill, it is my understanding that some of the mine manager's duties and responsibilities will be transferred to the underground manager and to the quarry manager. That is a definite step in the right direction, because it is very difficult for a mine manager at the top of the tree to be completely across all aspects of safety in his mine. One of the reasons for appointing an underground manager and a quarry manager is so that they can look after their area of the mine.

The member for Darling Range mentioned working hours, and this issue continues to be a considerable problem in Kalgoorlie-Boulder. The introduction of the 12-hour shift has caused some problems, although I recognise and accept that some participants in the mining industry are keen to continue working 12-hour shifts. However, there is a social cost involved in a 12-hour shift. This social cost involves businesses and groups, such as sporting groups, who would like the time of some of those who work in the mining industry. When a person works 12 hours a day, and when it takes between 30 and 40 minutes to get to work and another 30 to 40 minutes to get home again, it could well be that he or she is working a 13 or 14 hour day. Consequently, it is very difficult to get out and spend money and to contribute to the economy on a regular basis. As a result of 12-hour shifts, there has been a downturn in the towns associated with the mining industry. More importantly, I also harvest the concern that 12-hour shifts are contributing to the downgrading of mine safety. I am sure we would all agree that after travelling 30 or 40 minutes to work and then working 12 hours, a person's judgment would be somewhat impaired in the last few hours of work. That would impact upon the overall issue of mine safety in different mining sites.

As I said, I support this Bill, and the Opposition supports the Bill. It is about time that some of the mine manager's duties were conferred upon other managers. This will set up a chain of command, and it will allow a future court hearing to work from the bottom to the top of the managerial tree in an attempt to determine who is ultimately responsible for what might be a tragic accident.

**MR SWEETMAN** (Ningaloo) [12.54 pm]: I support the Bill. Acts that deal with the issue of safety must constantly be refined, and it must be done expeditiously. When the minister responds, I want him to reassure me about the way in which this Bill will be used. I am certain that this legislation has come about because of failings in the current Act in the area of litigation and in the settlement of claims and disputes that have come before the courts. That is a sufficient reason to legislate. However, all too often we go looking for someone to blame. This Bill seeks to reclassify the term "manager" to the specific references of registered manager, underground manager and quarry manager of a mine. I am certain that this reclassification of terms in the Bill will not mean that these people are personally responsible. However, it will allow the court to make a ruling and to link - as the member for Kalgoorlie stated - the chain of command. That is required by the courts to settle a workers compensation claim that has been brought in by an insurer or an action launched by WorkSafe WA over unsafe practices. These things need to be taken care of, but we must ensure that we are not setting out to penalise people when there is no demonstrated neglect on a mine site. That must be borne in mind; these amendments are needed, but I would hate to see them used - not necessarily in a malicious way - outside the spirit in which they have been couched in this Bill.

I have long been interested in the mining industry. I have watched its development and evolution over time. I believe that there has been a reduction in the amount of time that miners are spending on site. Very few miners are working six weeks on and one week off - most go out for 12-hour shifts and work three weeks on and one week off. I accept that the 12-hour shift has required some adjustment. The worker must be disciplined and, more than ever, greater responsibility has been placed on the worker, particularly with the morning random drug testing that is taking place in mines. In some mines, most workers are put through this process every day. I have watched people with whom I have had dinner or a beer at a barbecue or a social function. They will not have the last couple of beers because they want to ensure that they clear the process the following morning. This testing

process has certainly had an influence and resulted in a safer workplace for most miners, even though there was some contention initially that this testing would have an impact on miners' lives and civil liberties. I believe that most workers now accept that they have a responsibility and a part to play in bringing about greater safety in the workplace.

For all that, we still have not picked up on some of the other problems. A miner might be having a problem at home. For example, a miner may have rung home before starting a shift only to learn that his son, daughter or wife has fallen sick. It may be that the miner and his wife are having problems and going through a difficult patch at a time when he has had to go back to the mine. There are a whole range of issues that play on a person's mind that affect his or her ability to work with the required level of concentration for an extended period. I have a son who works at Sunrise Dam, and on his shift the other night the person in front of him was coming back down into the pit and rolled the Haulpak truck. Given that I am saying this in Parliament, it was alleged that he went to sleep although I do not think there was any doubt that he did. He hit the surveyor's station and that saved his life. He rolled the truck over but, had he hit the embankment on any other part of that pit, it would have been a 50 meter drop into the pit, and he certainly would not have survived. That was a significant incident, which no doubt triggered a rigorous process to get to the bottom of what happened. This would not necessarily have happened only on a 12-hour shift; it could well have been an eight-hour shift. People working at a mine site are removed from their family environment and familiar surroundings, and that in itself is a stressful situation because they are almost cocooned for three or four weeks. Even though there is company at the mines, to some extent these people have to deal with the stress of isolation because it is not familiar company. These are the things that must be toiled through.

I believe there will continue to be a natural evolution of adopting the best practices in safety issues on mine sites. To some extent this is just Parliament playing its part in trying to bring about better and safer work practices. I do not think this smacks of big stick because it has been demonstrated over time that, regardless of how aggressively we want to impose safety regulations or new safety regimes, unless we have willing participants from the mining company and the workers, we will not achieve the desired result. As legislators, we must usher in better and safer work practices. If this legislation can in some way bring that about, it is double reason to support it. I commend the minister for bringing the Bill to the House.

**MR KOBELKE** (Nollamara - Leader of the House) [1.00 pm]: My response is on behalf of the Minister for State Development who has responsibility for this Bill. As I am the minister responsible for WorkSafe WA, which is a section of the Department of Consumer and Employment Protection, I have taken a particular interest in this issue. I thank members for their contribution to the debate. I will answer their questions and respond to some comments.

Before doing so, I recognise that children from the Mirrabooka Primary School, which is in my electorate, are in the public gallery. I welcome them to the House and I hope they are enjoying the experience. I also recognise Mr Arthur Tonkin who, as a volunteer, has promoted chess at the school. Members may be aware that Mr Tonkin was Leader of the House during the Burke Government in the early 1980s. He has some familiarity with the proceedings of the House.

The member for Darling Range asked whether it was the Government's policy to bring mine safety under the control of WorkSafe WA. It has been a contentious matter for many years. My personal position, which I have stated publicly to people on both sides of the argument, is that I am not in favour of it. Special issues exist with regard to the management of safety in mines. Officers with a very specialised knowledge of the mining industry are needed. It is not to say that we could not come to an arrangement in which there was a much closer working relationship between WorkSafe WA and safety aspects covered by the Department of Mineral and Petroleum Resources. I am not in favour of giving WorkSafe total coverage of management in that area. Ex-commissioner Laing is undertaking a statutory review of the Acts that cover WorkSafe and mine safety. His reports will be available some time in 2002. It is a matter on which many people have made representations to him. I will be interested to see whether he recommends that things stay as they are or be changed. The matter will be considered in the light of any recommendations made by the review.

The member for Darling Range raised the issue of long working shifts in the mining industry. It is a matter of considerable concern in the industry and in the communities tied to the industry. With respect to the Bill before us, it is not appropriate to enter into lengthy debate as it is a complex issue that has many aspects. Prior to the last election, the Labor Party made a clear commitment that it would establish a major review of long working shifts. It is my intention to initiate it some time next year. I will briefly explain that. I am not opposed to 12-hour shifts as such. Of themselves, they are not a major safety issue. When people work 12-hour shifts for extended periods it becomes a major issue. When people work 12-hour shifts but have to drive two hours each way to get to work, it creates a major safety issue. Because there are so many different mining operations and because people do different jobs within a mining operation - which adds to the fatigue of working long hours -

we need a flexible way of handling the problem. My personal preference is to opt for a code of conduct that could be varied for different types of mines and for different jobs within the same mine. We must establish acceptable criteria to rule out the extremes.

A small contractor working out of Kalgoorlie - the member for Kalgoorlie may know of it - had people work 12-hour shifts for 13 weeks at a time, with only one week off. That is absolutely ludicrous and unsafe. How is that to be governed and how can such extremes be stopped? How far do extreme circumstances go? Is it six weeks on with one week off, or is it four weeks on with one week off? I do not know. The Government will look at all issues affecting long shifts to see how it can establish codes of conduct to ensure people do not work at extreme limits. This is not only to protect workers, it is also very much in the interest of the mining companies. The mining companies do not want to be hit with major civil litigation in one, three or five years' time because their practices led to the ill health of employees or to accidents. If there were an accident that could in some way be attributed to work practices, it would be a defence for a mining company to say that it put in place best practice according to the Government's code of conduct. It would guarantee the companies that their rostering practices were acceptable on the best evidence available. It is very much in the interests of mining companies to have a proper scientific review that establishes standards and is used to develop a code of conduct.

Mr Sweetman: Where does the responsibility end? When companies fly a worker home, he is likely to have just come off night shift. He is likely to have just completed a 12-hour shift. He may have flown in from Port Hedland or Geraldton. He may then have a two or three hour drive to get home. Is it the worker's responsibility to work that out or is the company, to some extent, still responsible for the worker until he gets home?

Mr KOBELKE: I will come back to that later, as I want to cover a number of points. It is an important issue. The member for Kalgoorlie suggested that there must be a balance between mine safety and a company's right to mine. That is getting it totally wrong. For the sake of good debate, I will assume that the member's use of the words was ill-advised. Companies should not be tied up in red tape that reduces productivity and causes job losses without addressing safety in a more efficient way. Those issues are very real. There must never be a trade-off between the right of a person to work safely and not be killed and the profits of a company. That is not the way we do things in Western Australia. It is not acceptable. I can name a number of companies that do things very well. Their approach encompasses the entire issue.

I have been very impressed by the approach of the Kanowna Bell mine in Kalgoorlie. Its workers do not have to drive very far to get home because the site is on the edge of Kalgoorlie. Letters were sent to the spouses of the workers to get the spouses involved in safety issues. They were advised that the company had an officer they could talk to if there were upsets in the family. If his family is having problems, a worker will take his problems to work and it could become a safety issue. If workers were returning home saying that they found their work stressful, the company advised that a process could be put in place to handle the problem. The company includes families and the community as part of improving health and safety practices. The company is all-encompassing in its approach.

Mr Birney: I said it is important that we do not adopt a knee-jerk reaction and tie up companies in unnecessary red tape. I certainly do not propose that safety conditions should be traded off against the right of the company to mine. We need to be careful that we do not go overboard with red tape.

Mr KOBELKE: Red tape is an aspect. Sometimes we do need to go overboard because any threat to the lives of workers must be removed. If a company tries to mine in an area in which the geophysical characteristics are so bad that there is a high chance workers may be killed, and the only solution is to put in place a control system that is too expensive for the mine to operate, in my view that mine should not operate. We will not send people to their deaths to make a small profit. That does not happen very often; it is an extreme case and I am not aware of any such cases. We understand that companies need to make a profit. Good companies make a profit by looking after their workers. Some companies do not do that and they need to be brought into line. Mine managers may not be aware of all the details of an operation, but that is not the issue. Mine managers are responsible. Chris Renwick is the head of Rio Tinto Ltd, one of the biggest mining companies in the State. His pay and bonuses are tied to lost-time injuries. Responsibility starts at the top. He does not get his full remuneration if the incident rate goes the wrong way. He has to make sure that his managers, mine managers, foremen and leading hands are part of a team that puts health and safety first. By doing that, everyone knows that health and safety is important to the company. I had a number of dinners with mining industry people as the Labor Party was developing its industrial relations policy in opposition. They were taking me to lunch to find out what the Labor Party position would be. Those people were not drinking. They could not drink when they came from their offices on the Terrace because mine safety is about fitness for work, and a person with any blood-alcohol content cannot work in a mine. That becomes company policy, from the mine workers right through to the top management in St Georges Terrace. They do not drink when they are at work.

Mr Birney: Did the minister have a drink?

Mr KOBELKE: No, I did not. That is what good companies are doing to ensure the fullest possible consideration of issues impacting on health and safety in the workplace.

The other issue that was raised by a couple of people was that of “unfortunate accidents”. That is not the way health and safety should be talked about. Every accident is avoidable. There is no such thing as an unfortunate accident. There is obviously a big chance factor, and some accidents might be 90 per cent chance, and 10 per cent management could have prevented them. Other accidents might be the result of 90 per cent mismanagement and only a 10 per cent chance factor. They range across the spectrum, but an incident cannot be dismissed simply as a chance accident about which nothing could have been done.

Mr Birney: There must be an allowance for human error.

Mr KOBELKE: No - the approach to health and safety practised by many mining companies in the electorate of the member for Kalgoorlie is to record near misses as well as accidents. If something happens that could possibly have caused an accident, it is recorded. The teams are consulted about preventing another near miss, because one in every 10 or one in every 100 near misses will be an accident, and they do not want any accidents. That is the approach taken by leading companies in this State and internationally. Leading companies in Western Australia have achieved world’s best practice. They do it very well. The Government will not excuse the companies that are doing it poorly from coming up to the mark. Some companies are doing it very well, and the Government wants to try to help every company to come up to that standard. This is getting a bit away from the Bill, but these are important issues. I am trying to address the concerns raised, quite rightly, by members, but they do not relate specifically to the Bill before the House.

The member for Ningaloo asked about the implications of the provisions in the amending Bill, suggesting that perhaps a case existed. I do not have the details on that, but I understand that consideration of one case became difficult because of the uncertainty in the Act. The issue was to get rid of that uncertainty. The amendment does not extend the coverage of the Act or, to use the words of the member for Ningaloo, move outside the spirit of the Act; it is designed to uphold the clear spirit of the Act by giving certainty about who has that management role. If there were a prosecution under the Act, it would become much easier to designate who has those responsibilities. My understanding is that it is really about removing any uncertainty. That fits in with the whole approach of ensuring that proper health and safety is part of mine management.

As I have already said, Western Australia has many companies that put in a huge effort, and do it very well. They are fully supportive of this measure. Quite extensive consultation has taken place, so the mining industry, its representatives and its key performers in health and safety are supportive of these amendments. Some people who may be a bit shoddy and not really up to scratch might have a difficulty with the legislation, but the Government wants to get those people on board. We try to get them on board in a positive way first, by pointing out the advantages to them of putting effort into health and safety. Accidents cost them, in not only increased workers compensation premiums, but also the lost time and all the effort and energy they must put in when an inspection takes place as a result of an accident or a fatality. There are huge costs to the company in a whole range of ways.

What is paramount for the Government is that the individual workers should have the right to work in a safe environment, and that the whole process of work should be as safe as possible. That comes back to the issue of the duty of care. The duty of care ranges from the mine manager right through to each individual worker. They all have a responsibility to make sure that their own work practices and those of the people they are working with, are safe. The team approach of looking after each other and putting in place the best practice will ensure that incidents are reduced to a minimum. The objective of many companies - and of WorkSafe in this State - is zero accidents. That obviously is a long-term goal and some may say it is unachievable, but my view is that the very highest standard should be set, and the progress towards that standard should be benchmarked. It is not a matter of saying that the goal is still far away; movement towards the goal of no accidents can be benchmarked. That is the approach good companies take. They do not say they can get by with the odd accident or the odd chance mishap. If the whole process is planned, the training and equipment is in place and people have the right attitude - which is crucial - a safe workplace is possible. Some companies around this State have incredible records of going hundreds of days without incidents. That is what the Government wants to see, and this amendment will ensure that certainty exists in the Act. Certainty is always a good basis for any process to ensure that we have the best possible level of health and safety in Western Australian workplaces, particularly in the mining and resources sector.

Mr Sweetman: I would like some clarification in response to my interjection about the duty of care. Where does the duty of care start and finish? When I was an employer, it was from when the person left home, to when he returned home that night, as long as he was travelling between home and work. In this case, does it stop at the airport?

Mr KOBELKE: I cannot give the member for Ningaloo a definitive answer on that issue, and I am not sure if even the experts in the area could do so, because a whole range of issues need to be judged. I suspect it may come down to a court case about whether travel is included. For most people who live in close proximity to a work site, travelling to and from that work site is normally not part of their work; there would be a case only if that were a standard process. When a person is transported by a company, however, there is a different issue. When the distance from home to the workplace is considerable, and travel becomes part of the contract of employment, there is a different legal position on the responsibilities of management. There is the case of that most tragic incident of the miners whose aeroplane flew on and crashed in north Queensland. The mining industry would argue that that case did not relate to work. I beg to differ. If a company is running a fly in, fly out operation, it does accept some responsibility from the time the employees board the plane until the time they arrive at the mine site. That is my personal view. The health and safety responsibilities of a company like BP, a big international company, are not confined to its oil refinery. When there is a hold-up at a service station, which causes trauma or potential or actual injury, that is a health and safety issue. BP accepts the need to look after the safety of its workers knowing that a hold-up is a possibility.

Good companies accept the full range of responsibilities. In some areas that is very difficult, but they must be mindful of it and should sit down with their employees and the experts in the area to work out ways of looking at the workplace and its operations to ensure the highest level of safety. There are some real problems.

The member for Ningaloo alluded to what might happen if a person is drinking in his own time and then comes to work. That is a fitness for work issue. It may relate to drugs or alcohol, or the worker may have another part-time job. If a person engages in activities that leave him unfit for work, that is a health and safety issue.

I was at Murrin Murrin last week, discussing the workers' fitness for work. I was there because the mine site has a very good program for training Aboriginal people and getting them into its operations and those of other companies in the area, but obviously I was interested in health and safety. All these issues came up, and the company was aware of them and was managing them. It had put in place a workplace support regime, so that a worker will say to another worker, "You are on tomorrow - one more beer and you will be unfit for work." There is no failsafe method, but, if the culture is developed under which the employees know what the rules are and look after each other, that flows from when they are off duty to when they are on duty. That all contributes to ensuring that workplace safety is as high as possible.

Many companies in Western Australia are doing very well, but there is still a long way to go, and the Government is hoping that this minor change, which will create certainty, will be just one of all the things that need to be put in place to ensure that workers in Western Australia go to work knowing they are working in a safe environment, and come home safe from work to their families and spare themselves, their families and the community the trauma and cost of unnecessary accidents in the workplace. I commend the Bill to the House and thank members for their contributions.

Mr Day: Did you cover the occupational safety and health issue?

Mr KOBELKE: Yes, I did.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and transmitted to the Council.