

MINES SAFETY AND INSPECTION AMENDMENT BILL 2007

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Minister for Child Protection)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan - Minister for Child Protection) [10.01 pm]: I move -

That the bill be now read a second time.

The Mines Safety and Inspection Act 1994, known as the MSI act, contains the laws relating to safety of mines and mining operations and the inspection and regulation of mines, mining operations and plant. A statutory review of the MSI act conducted by Robert Laing, a former commissioner of the Australian Industrial Relations Commission, resulted in extensive amendments to the MSI act that came into effect on 4 April 2005. A review was simultaneously conducted into the Occupational Safety and Health Act 1984 - the OSH act. This bill amends a number of errors and clarifies provisions to reflect the intended outcome of the amendments that came into effect on 4 April 2005.

Review of the Mines Safety and Inspection Act 1994: The statutory review of the MSI act involved extensive consultation with a wide range of stakeholders. Consultation on this bill has occurred through the tripartite Mining Industry Advisory Committee.

Key elements of the bill: For the most part, the changes to the Mines Safety and Inspection Act 1994 represent a strengthening and improvement of existing provisions. The amendments in the bill cover the following broad areas: alternative labour hire arrangements; the Occupational Safety and Health Tribunal; correction of typographical errors; safety and health representatives; review of notices; penalties in line with the general penalty provisions; and clarification of the definition of exploration manager.

Alternative labour arrangements: The bill clarifies provisions that deal with alternative labour hire arrangements. The MSI act contains three sections dealing with alternative labour arrangements; namely, principal-contractor arrangements, arrangements that mirror a contract of employment, and labour hire arrangements. The “deeming” provisions in those sections make no reference to the offence provisions that apply to the cited duties of employers and employees. Because the offence provisions are in different sections of the MSI act, there was an argument that, while the deemed duties apply to the parties concerned, a failure to fulfil the duty would not constitute a breach. Although there is an alternative view, there is a risk that a court would decide in favour of the view that no offence provision is created. Should this occur, a key purpose of the government’s reforms would be defeated.

Reference of matters under the Mines Safety and Inspection Regulations 1996 to the tribunal: The bill clarifies provisions that deal with the Occupational Safety and Health Tribunal. These provisions cite relevant matters that may be dealt with by the tribunal, by reference to a particular section of the act. Due to an oversight, no reference was made to the relevant regulations. Such a reference to the relevant regulations is required to give full effect to the government’s policy intent that certain matters previously dealt with by a safety and health magistrate would instead be dealt with by the Occupational Safety and Health Tribunal.

Typographical errors: Reference is also made to a subsection of the MSI act that no longer exists in the amended act.

Safety and health representatives have been given power to issue provisional improvement notices, known as PINs, requiring the employer to address specified safety and health matters at the mine. Those provisions were placed in a part of the act dealing with notices, rather than the part of the act dealing with the functions of safety and health representatives. Concerns were raised whether the provisions of the act on the functions of safety and health representatives apply when they issue PINs; for example, whether the safety and health representatives are protected from civil liability when performing their functions, and whether the functions dealing with disqualification of safety and health representatives extend to the issuance of PINs. The changes referring to “Act” rather than “Part” will ensure that safety and health representatives are protected from civil liability arising from the performance of any of their functions under the MSI act. The PIN provisions are an important reform, and the amendments will ensure that all parties have confidence that the rights and responsibilities of safety and health representatives in exercising their functions are protected.

Penalties: The amendments that came into effect on 4 April 2005 introduced a new penalty regime. The changes introduced four levels of penalty reflecting the severity of the offence. This included a general penalty for minor offences. It also provided for different penalties for employees, individuals and corporations. There

were, however, a number of provisions that referred to the old general penalty, and these have been brought into line with the new general penalty provisions.

Exploration manager: The bill clarifies provisions that deal with the duties of exploration managers. The amendments will ensure that the exploration manager has duties and that exploration operations are carried out in accordance with the applicable provisions of the act. There were concerns that the definition of “manager” could be interpreted to exclude any manager who was not a registered manager. These amendments address this issue.

In conclusion, the bill corrects errors and clarifies provisions to reflect the intended outcome of amendments to the act that came into effect on 4 April 2005. These matters are aimed at improving occupational safety and health in the mining industry. The mining industry employs over 56 000 people and makes a significant contribution to the Western Australian economy. The total value of production of minerals in 2006 was about \$32.8 billion. These changes will assist in improving the effectiveness of the operation of the Mines Safety and Inspection Act 1994. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.