

MINES SAFETY AND INSPECTION AMENDMENT BILL 2007

EXPLANATORY MEMORANDUM

INTRODUCTION

Clarifying amendments to the *Mines Safety and Inspection Act 1994*

1. The attached *Mines Safety and Inspection Amendment Bill 2007* (the Bill) has been developed to strengthen and improve the existing provisions of the *Mines Safety and Inspection Act 1994* (the MSI Act).
2. The Bill amends errors and clarifies provisions in relation to extensive amendments to the *Mines Safety and Inspection Act 1994* (MSI Act) that came into effect on 4 April 2005. The 2005 amendments arose from the Government's decision to implement recommendations made by Robert Laing in his statutory review of the MSI Act. The review was carried out concurrently with a review of the *Occupational Safety and Health Act 1984* (OSH Act).
4. The mining environment, operations and culture are significantly different from industry generally. Mines are often located in distant and sometimes remote geographic locations. The lifestyles of mine workers can be very different from other workers. Mines sites often have fly-in/fly-out arrangements with accommodation and messing associated with and attached to the workplace because of isolation.
5. The changes in the current Bill are in the following broad areas:
 - the Occupational Safety and Health Tribunal;
 - typographical errors;
 - safety and health representatives;
 - review of notices;
 - penalties in line with general penalty provisions;
 - alternative labour hire arrangements; and
 - clarification of the definition of exploration manager.

Clauses 1 to 3

6. The proposed Act will be cited as the *Mines Safety and Inspection Amendment Act 2007*.
7. The proposed Act will come into operation on a day after the day it receives Royal Assent.
8. The amendments are to the *Mines Safety and Inspection Act 1994*.

Clause 4 – Section 4 amended

9. The Bill amends the Interpretation provision of the Act by inserting a definition of “exploration manager” and amending the definition of “principal employer” to accommodate mining operations where only exploration activities are carried out.

Clauses 5, 6 and 7 – Sections 15A, 15B and 15C amended

10. The Bill amends the three sections dealing with alternative labour arrangements. The “deeming” provisions in sections 15A, 15B and 15C made no reference to the offence provisions that apply to the cited duties of employers and employees. The changes ensure that the deemed provisions apply to the parties concerned and a failure to fulfil the duty constitutes a breach.

Clause 8 – Section 31AY amended

11. The Bill removes the requirement for a notification for a review of a notice to be made on a prescribed form. This allows more flexibility on what information is provided.

Clause 9 – Section 31BA amended

12. The Bill removes the requirement for the referral of a decision to the Tribunal for review to be made on a prescribed form under the MSI Act. This will allow for Industrial Relations Commission procedures to apply in relation to matters referred to the Tribunal.

Clauses 10, 11, 12, 13, 14, 15, 16, 17 – Sections 34, 35, 37, 37A, 40, 41, 43 43A amended

13. 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. However, a number of provisions, due to a drafting oversight, still referred to the old general penalty. These provisions have now been brought into line with the new general penalty provisions.

Clause 18 – Section 43A inserted

14. The amendments ensure that the exploration manager appointed in relation to exploration operations is subject to provisions of the Act.

Clause 19 – Section 47 amended

15. The amendments ensure that the exploration manager appointed in relation to exploration operations is subject to provisions of the Act.
16. The penalty provisions are amended to bring them in line with the general penalty provisions in the Act.

Clause 20 – Section 47A inserted

17. The provision provides for the appointment of the exploration manager to be treated as a manager for the purposes of the Act.

Clause 21 – Section 51 amended

18. 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 of for minor offences. It also provided for different penalties for employees, individuals and corporations. However, a number of provisions, due to a drafting oversight, still referred to the old general penalty. These provisions have now been brought into line with the new general penalty provisions.

Clause 22 – Section 53 amended

19. Safety and Health Representatives (SHRs) have been given power to issue Provisional Improvement Notices (PINs). This is dealt with in a part of the Act that deals with notices, rather than the part of the Act dealing with functions of SHRs. This change referring to “Act” rather than “Part” ensures that SHRs are protected from civil liability arising from the performance of any of their functions.

Clause 23 – Section 55 amended

20. This amends a typographical error. Section 55(4)(b) refers to section 56(8)(c), however subsection (8)(c) no longer exists in the Act.

Clause 24 – Section 56 amended

21. This amends a typographical error. Also the requirement to notify the results of and election of safety and health representatives on a prescribed form is removed. This provides more flexibility in relation to the form.

Clause 25 – Section 60 amended

22. Safety and Health Representatives (SHRs) have been given power to issue Provisional Improvement Notices (PINs). This is dealt with in a part of the Act that deals with notices, rather than the part of the Act dealing with functions of SHRs. This change referring to “Act” rather than “Part” ensures that SHRs are protected from civil liability arising from the performance of any of their functions.

Clauses 26, 27, 28, 29, 30 – Sections 77, 78, 81, 85, 89 amended

23. 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 of for minor offences. It also provided for different penalties for employees, individuals and corporations. However, a number of provisions, due to a drafting oversight, still referred to the old general penalty. These provisions have now been brought into line with the new general penalty provisions.

Clause 31 – Section 102 amended

24. Allows for decisions made by the State mining engineer under the MSI regulations to be review by the Occupational Safety and Health Tribunal (OSH Tribunal). It also amends a typographical error.

Clause 32 – Section 102AA inserted

25. Inserts a provision to allow for decisions made by the State mining engineer under MSI regulations to be reviewed by the OSH Tribunal. Defines “reviewable decisions” as decisions of the State mining engineer to include the decisions of a delegate.

Clause 33 – Section 104 amended

26. Provides for regulations to be made by the Governor to provide for decisions made by the State mining engineer or his delegates, under the MSI regulations to be reviewed.

Clause 34 – Section 105 amended

27. 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 of for minor offences. It also provided for different penalties for employees, individuals and corporations. However, a number of provisions, due to a drafting oversight, still referred to the old general penalty. These provisions have now been brought into line with the new general penalty provisions.