

House of Representatives
Supplementary Order Paper

Thursday, 24 October 2013

**Health and Safety (Pike River Implementation)
Bill**

Proposed amendments

Hon Simon Bridges, in Committee, to move the following amendments:

Clause 1

In *clause 1*, replace “Heath” (line 3 on page 7) with “Health”.

Clause 2

In *clause 2*, replace “**1 December 2013**” (line 6 on page 7) with “**16 December 2013**”.

Clause 12

Replace *clause 12* (lines 32 to 37 on page 11) with:

12 Employment of transferred employee to be treated as continuous employment

The employment of a transferred employee by WorkSafe New Zealand is to be treated as continuous employment for the purposes of any enactment.

Clause 13

In *clause 13(2)(a)*, replace “Worksafte” (line 9 on page 12) with “WorkSafe”.

Clause 15

In the heading to *clause 15*, replace “**Worksafte**” (line 34 on page 12) with “**WorkSafe**”.

New clause 15A

After *clause 15* (after line 14 on page 13), insert:

15A Transfer of other documents to WorkSafe New Zealand

- (1) This section applies to a document that is issued by the chief executive or MBIE and that relates solely to a function or

power of the chief executive under the relevant health and safety legislation before the commencement of this **Part** that becomes a function or power of WorkSafe New Zealand on that commencement.

- (2) On and after the commencement of this **Part**,—
 - (a) the document must be treated as if it were issued by WorkSafe New Zealand instead of the chief executive or MBIE; and
 - (b) unless the context otherwise requires, every reference in the document to the chief executive or MBIE is to be read as a reference to WorkSafe New Zealand.

Clause 25

In *clause 25*, new *section 13AA*, replace “a mine” (lines 15 and 16 on page 20) with “a mining operation”.

New clause 39A

After the *Part 3 heading* (after line 22 on page 54), insert:

39A Purpose

- (1) The purpose of **subpart 1** is to provide for the Mines Rescue Trust Board and its role in responding to, and in ensuring capacity and readiness to respond to, emergencies at certain mining operations.
- (2) The purpose of **subpart 2** is to provide for an effective and co-ordinated response in the event of an emergency at an underground mining operation.

Clause 40

In *clause 40*, after the definition of **department** (after line 2 on page 55), insert:
emergency response protocol means the protocol issued by WorkSafe under **section 54A**

In *clause 40*, after the definition of **GST** (after line 6 on page 55), insert:
incident controller means an incident controller appointed under **section 54B(1)**

In *clause 40*, delete the definition of **mining operation** (lines 27 to 37 on page 56).

In *clause 40*, delete the definition of **tunnelling operation** (lines 11 to 15 on page 57).

In *clause 40*, after the definition of **WorkSafe** (after line 18 on page 57), insert as *subclauses (2) and (3)*:

- (2) In **subpart 1, mining operation**—
 - (a) means a mining operation (within the meaning of **section 19M** of the Health and Safety in Employment Act 1992) but only to the extent that the mining operation is—
 - (i) associated with the extraction of coal; or

- (ii) associated with the extraction of minerals and where any person works below ground; but
 - (b) only includes a tunnelling operation (within the meaning of **section 190** of that Act) to the extent that the tunnelling operation relates to a tunnel or shaft that is, or is intended to be, at least 150 metres long; and
 - (c) does not include a tourist mining operation.
- (3) In **subpart 2**,—
- emergency** means an incident at a mining operation that has resulted, or may result, in the death of any person
- mining operation**—
- (a) means a mining operation (within the meaning of **section 19M** of the Health and Safety in Employment Act 1992) where any person works below ground; but
 - (b) only includes a tunnelling operation (within the meaning of **section 190** of that Act) to the extent that the tunnelling operation relates to a tunnel or shaft that is, or is intended to be, at least 150 metres long; and
 - (c) does not include a tourist mining operation.

Cross-heading above clause 43

Replace the cross-heading above *clause 43* (line 27 on page 57) with:

Subpart 1—Mines Rescue Trust Board

Clause 46

After *clause 46(2)* (after line 20 on page 59), insert:

- (2A) The regulations may specify how the levy rate or rates are calculated by specifying a formula for the calculation of the levy rate or rates (a **levy formula**).
- (2B) The levy formula may include a variable or variables based on the direct and indirect costs that the board expects to incur in performing the functions specified in **section 44(a), (b), and (d)** (the **expected costs**).
- (2C) If the regulations specify a levy formula that includes a variable or variables based on the expected costs, the board must, before the start of each financial year,—
 - (a) determine the expected costs for that financial year; and
 - (b) notify the expected costs—
 - (i) in the *Gazette*; and
 - (ii) on an Internet site free of charge; and
 - (iii) directly to each mine operator known to the board (together with the levy rate payable by the mine operator for that financial year).

After *clause 46(3)* (after line 6 on page 60), insert:

- (3A) If, for a financial year, the amount of levy that has been paid to the board exceeds the board's direct and indirect costs in per-

forming the functions specified in **section 44(a), (b), and (d)**, the surplus may be held by the board as a reserve to enable it to meet any immediate costs it incurs in performing the function specified in **section 44(c)**.

After *clause 46(4)* (after line 9 on page 60), insert:

- (5) Before determining the expected costs under **subsection (2C)(a)**, the board must consult the persons responsible for paying the levy.
- (6) A notice under **subsection (2C)(b)** is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.

Clause 47

In *clause 47(1)(b)*, after “in the year” (line 18 on page 60), insert “, including any reserve held under **section 46(3A)**”.

In *clause 47(1)(c)*, after “in the year” (line 20 on page 60), insert “, including expenditure of any reserve held under **section 46(3A)**”.

After *clause 47(1)* (after line 28 on page 60), insert:

- (1A) If, under **section 46(2C)(a)**, the board is required to determine the expected costs for the financial year following the financial year to which the statements relate, the board must include, with the statements, all information necessary to show how the expected costs have been calculated.

New subpart 2 of Part 3

In *Part 3*, after *clause 54* (after line 19 on page 64), insert:

Subpart 2—Emergency response

54A Emergency response protocol

- (1) WorkSafe must issue an emergency response protocol that describes—
 - (a) the persons and agencies that will respond to an emergency at a mining operation; and
 - (b) key functions, duties, and roles under the protocol.
- (2) WorkSafe may issue amendments to the emergency response protocol, following consultation with the persons and agencies that will have functions and duties under the protocol.
- (3) WorkSafe must ensure that the emergency response protocol is, at all reasonable times, made available to the public for inspection free of charge on an Internet site maintained by, or on behalf of, WorkSafe.

54B Appointment of incident controller

- (1) If an emergency occurs at a mining operation, WorkSafe may appoint an incident controller.

- (2) The incident controller may be any person that WorkSafe considers, having regard to the nature of the emergency, is capable of performing the functions described in **subsection (3)**.
- (3) The functions of the incident controller are,—
 - (a) in accordance with the emergency response protocol, to lead decision making about the emergency response, including decision making about—
 - (i) whether any rescue operation should be undertaken and how the rescue operation should be undertaken;
 - (ii) whether any recovery operation should be undertaken and how the recovery operation should be undertaken;
 - (iii) the resources to be deployed to support rescue or recovery operations; and
 - (b) to give directions to persons and agencies in order to give effect to decisions made in accordance with the emergency response protocol about the emergency response; and
 - (c) in accordance with the emergency response protocol, to co-ordinate the activities of—
 - (i) persons and agencies undertaking or supporting any rescue or response operation;
 - (ii) other agencies providing emergency services, including, if relevant, fire and ambulance services, the New Zealand Police, and the board.
- (4) In performing his or her functions, the incident controller must consult other relevant persons or agencies, including the persons and agencies described in **subsection (3)(c)**.

54C Mine operator, site senior executive, and mine worker must comply with incident controller's directions

- (1) The following persons must comply with any reasonable direction of the incident controller:
 - (a) a mine operator;
 - (b) a site senior executive;
 - (c) a mine worker.
- (2) Any person described in **subsection (1)** who, without reasonable excuse, fails or refuses to comply with a reasonable direction of the incident controller commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

54D Resisting or obstructing incident controller

Any person who wilfully obstructs or resists the incident controller in the performance of the functions specified in **section 54B(3)** commits an offence and is liable on conviction,—

- (a) in the case of an individual, to a term of imprisonment not exceeding 3 months or to a fine not exceeding \$5,000;
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

54E Functions, duties, and powers of emergency services not affected

- (1) **Subsection (2)** applies to the following agencies and services:
 - (a) fire and ambulance services;
 - (b) the New Zealand Police;
 - (c) the board;
 - (d) WorkSafe.
- (2) Nothing in this **subpart** affects the functions, duties, or powers of an agency or service, or any person acting for or on behalf of an agency or service.

54F Protection from civil and criminal liability

- (1) This section applies to the following persons:
 - (a) the incident controller;
 - (b) any person advising the incident controller;
 - (c) any person acting under the direction of the incident controller.
- (2) The person is protected from civil and criminal liability for any act done in good faith that the person does or omits to do in the course of responding to an emergency at a mining operation.

Schedule 1

In *Schedule 1*, item relating to the Health and Safety in Employment Act 1992, replace “*departmental*” (line 1 on page 76) with “*Departmental*”.

In *Schedule 1*, item relating to the Health and Safety in Employment Act 1992, replace “*health*” (line 2 on page 76) with “*Health*”.

In *Schedule 1*, item relating to Machinery Act 1950, replace “1 December 2013” (line 25 on page 77) with “16 December 2013”.

In *Schedule 1*, item relating to Machinery Act 1950, replace “1 December 2013” (lines 26 and 27 on page 77) with “16 December 2013”.

In *Schedule 1*, item relating to Health and Safety in Employment (Adventure Activities) Regulations 2011, replace “1 December 2013” (line 10 on page 81) with “16 December 2013”.

In *Schedule 1*, item relating to Health and Safety in Employment (Adventure Activities) Regulations 2011, delete “In regulation 9(3)(c), replace ‘the Secretary’ with ‘WorkSafe’ .” (line 29 on page 81).

Schedule 2

In *Schedule 2*, new *Schedule 1AA*, replace *clause 1* (lines 9 to 20 on page 84) with:

1 Existing mining operations

- (1) This clause applies to any mining operation that was in operation immediately before the date on which **Part 2** of the **Health and Safety (Pike River Implementation) Act 2013** came into force.
- (2) Nothing in **sections 12A, 13AA, 39A, or 41A** of the principal Act, as inserted by **Part 2** of the **Health and Safety (Pike River Implementation) Act 2013**, applies in respect of the mining operation until 1 January 2015.
- (3) The mine operator, may, but is not required to, comply with **section 19Q(1)** of the principal Act, as inserted by **Part 2** of the **Health and Safety (Pike River Implementation) Act 2013**, before 1 January 2015.
- (4) **Section 19J** of the principal Act, as inserted by **Part 2** of the **Health and Safety (Pike River Implementation) Act 2013**, applies in respect of the mining operation from the earlier of—
 - (a) the date on which the mine operator complies with **section 19Q(1)** of the principal Act, as inserted by **Part 2** of the **Health and Safety (Pike River Implementation) Act 2013**; and
 - (b) 1 January 2015.
- (5) If, on 1 January 2015, the mining operation does not have a documented worker participation system referred to in **section 19Q(1)** of the principal Act, as inserted by **Part 2** of the **Health and Safety (Pike River Implementation) Act 2013**, the prescribed provisions referred to in **section 19T(1)** of the principal Act, as inserted by **Part 2** of the **Health and Safety (Pike River Implementation) Act 2013**, apply.
- (6) Nothing in **subclause (3)** limits the application of **sections 19ZP to 19ZU** of the principal Act, as inserted by **Part 2** of the **Health and Safety (Pike River Implementation) Act 2013**, in respect of the mining operation.

2 Notices, etc, before site senior executive appointed for existing mining operation

- (1) This clause applies to any mining operation to which **clause 1** applies before the mine operator has appointed a site senior ex-

ecutive for the first time in accordance with regulations made under section 21 of the principal Act.

- (2) Any notice required or enabled by the Act to be given to the site senior executive of the mining operation may be given to the mine operator or a representative of the mine operator.
- (3) **Sections 19ZD, 19ZE, 19ZF, and 19ZI**, as inserted by **Part 2 of the Health and Safety (Pike River Implementation) Act 2013**, apply, with any necessary modifications, as if references to the site senior executive were references to the mine operator or a representative of the mine operator.

3 Exemptions of mining operations from regulations for limited period

- (1) Regulations made under **section 21(1)(b)** of the principal Act may provide for the granting by WorkSafe of an exemption (unconditionally or subject to conditions) in respect of any particular mining operation (whether or not it is one to which **clause 1** applies) from one or more obligations or requirements under the regulations for any specified period, or periods, of up to a total of 36 months and ending not later than 31 December 2017.
- (2) The regulations must—
 - (a) specify the reasons for which exemptions may be granted; and
 - (b) require WorkSafe to specify in an exemption the reasons for which the exemption is granted.
- (3) An exemption granted under the regulations is not a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.
- (4) Nothing in this clause limits section 23(1)(k) of the principal Act.

Schedule 4

In *Schedule 4, clause 1*, definition of **appointed day**, replace “**section 41**” (line 7 on page 86) with “**section 43**”.

In *Schedule 4*, after the heading to *clause 3* (after line 21 on page 86), insert:

- (1AA) Despite the repeal of the Mines Rescue Trust Act 1992 by **section 56**, sections 7, 8, and 9 of that Act are to be treated as continuing in force until the appointed day.

In *Schedule 4, clause 3(2)*, after “for the period” (line 31 on page 86), insert “beginning on the occurrence of 1 April immediately preceding the repeal of that Act and”.

Explanatory note

This Supplementary Order Paper (the **SOP**) makes various amendments to the Health and Safety (Pike River Implementation) Bill. These include minor or technical changes, consisting of general drafting refinements or improvements, and clarifications of transitional matters. In terms of substantive changes to the Bill, the SOP inserts a new subpart into *Part 3* of the Bill, which provides for a co-ordinated response to emergencies at underground mining operations, and amends some aspects of *Part 3* that relate to the levy that will fund the Mines Rescue Trust Board (the **board**). The effect of the amendments to the Bill, apart from minor or technical changes, is outlined below.

Clause 2 is amended to provide that the Bill comes into force on 16 December 2013 (rather than 1 December 2013).

Clause 12 is replaced with a new provision that clarifies that a transferred employee's employment by WorkSafe New Zealand is to be treated as continuous employment for the purposes of any enactment.

New clause 15A is a transitional provision relating to documents issued by the chief executive or the Ministry of Business, Innovation, and Employment (**MBIE**) in respect of the functions or powers of the chief executive under the relevant health and safety legislation that will become functions or powers of WorkSafe New Zealand. *New clause 15A* provides that, on and after the commencement of *Part 1*, such documents must be treated as if they were issued by WorkSafe New Zealand and references in the documents to the chief executive or MBIE must be read as references to WorkSafe New Zealand.

New clause 39A provides that—

- the purpose of *subpart 1 of Part 3* is to provide for the board and its role in responding to, and in ensuring capacity and readiness to respond to, emergencies at certain mining operations:
- the purpose of *subpart 2 of Part 3* is to provide for an effective and co-ordinated response in the event of an emergency at an underground mining operation.

Clause 40 is amended to include new definitions of emergency, emergency response protocol, and incident controller, which relate to *new subpart 2 of Part 3*, and to provide separate definitions of mining operation for *subparts 1 and 2 of Part 3* to reflect the different scope of each subpart. The definition of mining operation for *subpart 1* includes coal mining operations (underground and above ground) and underground mineral mining operations. The definition of mining operation for *subpart 2* includes any underground mining operation (whether it relates to coal or minerals). *Part 3* does not apply to tourist mining operations. The SOP inserts a new subpart heading above *clause 43*, creating a new subpart comprising *clauses 43 to 54*.

Clause 46 provides for the making of regulations that impose a levy on mine operators to meet certain costs of the board (the **expected costs**). The effect of *new clause 46(2A) to (2C), (5), and (6)* is to—

- provide that the regulations may specify a formula for calculating the levy rate or rates and that the formula may include a variable or variables based on the expected costs:
- provide that, if the regulations do specify a formula that includes a variable or variables based on the expected costs, the board must,—
 - after consultation, determine the expected costs; and
 - notify the expected costs, including by notice in the *Gazette*, and notify each mine operator of the levy rate that will apply to the mine operator for the upcoming financial year:
- provide that the notice of expected costs is not a disallowable instrument for the purposes of the Legislation Act 2012.

New clause 46(3A) provides that, if the amount of levy that has been paid to the board for a financial year exceeds the board's direct and indirect costs in performing the functions specified in *clauses 44(a), (b), and (d)*, the board may hold the surplus as a reserve to enable the board to meet any immediate costs it incurs in performing the function specified in *clause 44(c)*.

Clause 47(1) is amended to require the board to include details of any reserve held under *clause 46(3A)* in its annual financial statements.

The effect of *new clause 47(1A)* is to provide that, if the board is required under *clause 46* to determine the expected costs for the year following the year to which the board's annual financial statements relate, the board must include, with the statements, all information necessary to show how the expected costs have been determined.

The SOP inserts a *new subpart 2 of Part 3*, which deals with the response to an emergency at an underground mining operation and inserts the following provisions:

- *new clause 54A*, which provides that WorkSafe must issue an emergency response protocol. The protocol must describe the persons and agencies that will respond to an emergency at a mining operation and the key functions, duties, and roles under the protocol. *Clause 54A* provides that WorkSafe may amend the protocol (after consultation) and that WorkSafe must make the protocol available on an Internet site:
- *new clause 54B*, which provides that, if an emergency occurs at a mining operation, WorkSafe may appoint an incident controller. The functions of the incident controller are—
 - to lead decision making about the emergency response, including decision making about whether any rescue or recovery operation should be undertaken and the resources to be deployed in any rescue or recovery operation:
 - to give directions in order to give effect to decisions made about the emergency response:

- to co-ordinate the activities of persons and agencies undertaking or supporting rescue or recovery operations and any other agencies providing emergency services:
- *new clause 54C*, which provides that mine operators, site senior executives, and mine workers must comply with any reasonable direction of the incident controller and that failure or refusal to comply is an offence:
- *new clause 54D*, which provides that it is an offence for any person to wilfully obstruct or resist the incident controller in the performance of the incident controller's functions:
- *new clause 54E*, which clarifies that this subpart does not affect the functions, duties, or powers of fire and ambulance services, the New Zealand Police, the board, or WorkSafe or any person acting for or on behalf of any of those agencies or services:
- *new clause 54F*, which provides protection from civil and criminal liability for the good faith actions and omissions of the incident controller, any person advising the incident controller, and any person acting under the direction of the incident controller.

The SOP amends *new Schedule 1AA*, inserted by *Schedule 2*, by replacing *clause 1* with—

- *new clause 1*, which sets out transitional arrangements in relation to the application of the amendments to the Health and Safety in Employment Act 1992 made by Part 2 of the Bill to mining operations that are in operation at the commencement date of the Bill.
- *new clause 2*, which deals with references in the new provisions of the Health and Safety in Employment Act 1992 to a site senior executive before existing mining operations appoint their first site senior executives.
- *new clause 3*, which provides that regulations under the Health and Safety in Employment Act 1992 may allow WorkSafe to exempt any mining operation from one or more obligations or requirements under the regulations for a period of up to 36 months during the period beginning on the commencement date of the Bill and ending on 31 December 2017. *Sub-clause (3)* clarifies the status of the exemptions (providing that an exemption is not a disallowable instrument for the purposes of the Legislation Act 2012).

The SOP amends *clause 3 of Schedule 4* to provide that sections 7, 8, and 9 of the Mines Rescue Trust Act 1992 (those sections relating to the payment and recovery of a levy under that Act) are to be treated as continuing in force until the appointed day, being the day that the Mines Rescue Trust Board is recognised for the purposes of *Part 3*.

Departmental disclosure statement

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to

the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2013&no=374> (if it has been provided for publication).
