

MINING AND OTHER LEGISLATION AMENDMENT BILL 2000

EXPLANATORY NOTES

SHORT TITLE

The Bill may be cited as the *Mining and Other Legislation Amendment Bill 2000*.

POLICY OBJECTIVES

The major policy objectives of the Bill are:

- To amend the *Coal and Oil Shale Mine Workers' Superannuation Act 1989*, to provide a statutory basis for an existing administrative arrangement whereby the obligation on both coal employers and employees to pay superannuation contributions does not apply in respect of periods when an employee is on unpaid leave;
- To amend the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*, to correct minor inconsistencies and omissions that had arisen during the passage of the legislation; and
- To amend the *Explosives Act 1999*, to extend the automatic expiry of the existing *Explosives Regulation 1955*.

RATIONALE FOR THE BILL AND WAYS IN WHICH THE OBJECTIVES ARE TO BE ACHIEVED

The *Coal and Oil Shale Mine Workers' Superannuation Act 1989* requires that employees and employers in the coal industry make contributions to the Queensland Coal and Oil Shale Mining Industry Superannuation Fund.

The Act is silent as regards the requirement for employers and employees to make contributions to the Superannuation Fund while an

employee is absent from work on unpaid leave. Administratively to this date, the Trustees of the Superannuation Fund have **not** required compulsory contributions from either the employer or employee in relation to that period an employee is on unpaid leave.

However, the Trustees received private legal advice that this administrative arrangement does not have a legislative basis.

To require employers and employees to make compulsory superannuation contributions during unpaid leave would be contrary to normal superannuation practice. The Department of Mines and Energy has been informed that this would also be contrary to the understanding of the coal industry superannuation arrangements previously held by both employers and unions in the coal mining industry.

Additionally, the requirement for employees to make compulsory contributions during unpaid leave would impose an unreasonable financial burden on women and parents, as these persons are more likely than other superannuation fund members to take unpaid leave. Accordingly, it is likely that such a requirement would contravene anti-discrimination laws by discriminating against pregnant women by imposing an unreasonable financial burden on them. However, members can make voluntary contributions during periods of unpaid leave.

The Queensland Mining Council, the coal employers' representative, and employees' representatives, namely the Construction, Forestry, Mining and Energy Union, the Communications Electrical Plumbing Union (Queensland Electrical Division), the Australian Metal Workers Union and the Australian Colliery Staff Association, all agree that employers and workers should not be required to make superannuation contributions during periods of unpaid leave.

The proposed amendments will provide a statutory basis for this existing administrative arrangement whereby the obligation on both coal employers and employees to pay superannuation contributions does not apply in respect of periods when an employee is on unpaid leave and will make it clear that any obligation to pay contributions in such circumstances was never a requirement.

Also, the long title of the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* is "An Act to provide for the transfer of funds from the Coal Mine Workers' Pensions Fund to the Queensland Coal and Oil Shale Mining Industry Superannuation Fund". When the Act was

amended by the *Coal Legislation Amendment Act 1997* the purpose of the Act changed significantly. The primary purpose of the Act is now to provide for superannuation fund contributions by employers and employees in the coal and oil shale mining industries. Accordingly, the Bill amends the long title of the Act to reflect this primary purpose.

The *Coal and Oil Shale Mine Workers' Superannuation Act 1989* contains a number of references to the *Coal and Oil Shale Mine Workers (Pensions) Act 1941*. While the 1941 Act was repealed in late 1997, under the *Acts Interpretation Act 1954* those provisions of the 1941 Act that still have relevance to the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* have savings arrangements. It is considered that the relevant provisions should be included in the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* for ease of reference. Accordingly, the Bill provides for the inclusion of these provisions in the existing Act.

The *Coal Mining Safety and Health Bill 1999* and the *Mining and Quarrying Safety and Health Bill 1999* were passed by Parliament on 19 August 1999. Because of their close similarity, the Bills were treated as cognate legislation during their passage through Parliament. In the interest of having the new mining safety and health legislation passed as soon as possible, it was decided that minor inconsistencies and omissions that had arisen during the passage of the legislation would be corrected at the first opportunity. Accordingly, the Bill corrects these inconsistencies and omissions. As a result of these amendments, the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* will be consistent with each other.

The *Explosives Act 1999* was proclaimed on 11 June 1999. To allow sufficient time for the new regulation to be drafted and made, the transitional provisions of the Act provide for the existing *Explosives Regulation 1955* to expire 12 months from the commencement of the Act (i.e. to expire on 10 June 2000). The Office of the Parliamentary Counsel has recently advised that it is unlikely that the new regulation will be drafted and made by 10 June 2000. Accordingly, the Bill provides for the existing *Explosives Regulation 1955* to now expire on 30 June 2001.

ALTERNATIVE WAYS OF ACHIEVING THE POLICY OBJECTIVES

There is no alternative way of achieving the policy objectives.

ADMINISTRATIVE COST TO GOVERNMENT

There is no cost to Government in implementing the Bill.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

While the transitional provision, which declares that any obligation to pay contributions in relation to a mine worker never applied when the mine worker was on unpaid leave, may appear to be retrospective, it merely provides a statutory basis for an administrative arrangement that has been in operation since 1989.

CONSULTATION

The Office of the Parliamentary Counsel has drafted the Bill.

Proposed amendments to the Coal and Oil Shale Mine Workers' Superannuation Act 1989

The Construction, Forestry, Mining and Energy Union, the Communications Electrical Plumbing Union (Queensland Electrical Division), the Australian Metal Workers' Union, the Australian Colliery Staff Association, the Queensland Mining Council (the coal mining employers' association) and the trustees of the Queensland Coal and Oil Shale Mining Industry Superannuation Fund have been consulted.

In addition, the following Government agencies have been consulted: Q SUPER; Business Regulation Reform Unit; Department of Employment, Training and Industry Relations; Crown Law Office; Office of Rural Communities; Treasury Department; and the Employment Task Force.

Proposed minor amendments to the Coal Mining Safety and Health Act 1999 and the Mining and Quarrying Safety and Health Act 1999

The Department of the Premier and Cabinet and the Treasury Department have been consulted.

Proposed minor amendment to the Explosives Act 1999

The Office of the Parliamentary Counsel has been consulted.

PURPOSE AND INTENDED OPERATION OF EACH CLAUSE

PART 1—PRELIMINARY

Clause 1—Short Title

Provides that the short title of the Amendment Act is the *Mining and Other Legislation Amendment Act 2000*.

PART 2—AMENDMENT OF *COAL AND OIL SHALE MINE WORKERS’ SUPERANNUATION ACT 1989*

Clause 2—Act amended in pt 2

Provides that the provisions in Part 2 of the Amendment Act will amend the *Coal and Oil Shale Mine Workers’ Superannuation Act 1989*.

Clause 3—Amendment of title

Provides that the long title of the *Coal and Oil Shale Mine Workers’ Superannuation Act 1989* be changed to “An Act to provide for superannuation fund contributions by employers and employees in the coal and oil shale mining industries”. This title will more accurately reflect the intent of the Act.

Clause 4—Insertion of new part heading

Provides that a new heading entitled “Part 1—Preliminary” is inserted immediately before section 1 of the *Coal and Oil Shale Mine Workers’ Superannuation Act*.

Clause 5—Amendment of s 2 (Definitions)

Provides that certain definitions that are no longer required be deleted.

Provides also that new definitions for a “mine”, “mine worker” and “owner of a mine” be inserted.

Clause 6—Replacement of ss 3-5

Provides that existing sections 3 to 5 be deleted and that they be replaced with new sections 3 to 5.

New section 3 (Meaning of “mine worker”) provides the meaning of mine worker. A mine worker can be any one of the following:

- a person employed on the mine site by the owner;
- a person employed by the owner to transport coal or oil shale from the mine to designated other areas;
- an elected union official;
- superintendent, manager or under manager;
- a person employed by the owner in a capacity only indirectly connected with the working of the mine or only on a part-time or casual basis subject to certain requirements;
- a coke worker;
- an employee of a mines rescue brigade;
- a member of a partnership subject to certain requirements; and
- an employee of a contractor or subcontractor subject to certain requirements.

New section 4 (Contributions to superannuation fund) provides for contributions to, and the amount of contributions by employees and employers, to the superannuation fund. The rate for employees is 2.5% of the award rate for a coalcutter machineman. The employer pays three times that rate. It also provides for a penalty of 20 penalty units for employers who are late in submitted contributions. A penalty unit is presently \$75 for an individual, and five times that amount for a corporation.

This new section also does not require contributions from employees and employers for periods an employee is on unpaid leave.

New section 5 (Declaration about repealed s 3) provides a transitional arrangement which makes it clear that existing section 3 of the *Coal and Oil Shale Mine Workers’ Superannuation Act* relating to compulsory contributions by employees and employers never applied to periods when a mine worker was on unpaid leave. This will provide a legislative basis for a long-standing industry practice.

PART 3—AMENDMENT OF COAL MINING SAFETY AND HEALTH ACT 1999

The following Clauses 7 to 13 will amend the *Coal Mining Safety and Health Act 1999* to make it consistent with the provisions of the *Mining and Quarrying Safety and Health Act 1999*.

Clause 7—Act amended in pt 3

Provides that provisions in Part 3 of the Amendment Act will amend the *Coal Mining Safety and Health Act 1999*.

Clause 8—Amendment of s 14 (Meaning of “standard operating procedure”)

Provides that a standard operating procedure at a coal mine must now be documented.

Clause 9—Amendment of s 149 (Return of things that have been seized)

Provides for evidence to be retained for longer than six months if a proceeding has commenced before a Board of Inquiry or Coroner.

Clause 10—Amendment of s 186 (Membership and conduct of board proceedings)

Provides for Industry Safety and Health Representatives to be members of the Board of Examiners. It also provides that the Governor in Council may appoint Members, including the Chairperson, for a term of not more than 5 years.

Clause 11—Amendment of s 201 (Action to be taken in relation to site of accident or incident)

Provides that the Site Senior Executive must forward an accident or incident report prescribed under regulation to the Inspector within one month of the event.

Clause 12—Amendment of s 258 (Court may order suspension or cancellation of certificate)

Provides an appeal mechanism to the Industrial Court for a person who is dissatisfied with a decision from the Industrial Magistrates Court in relation to the suspension or cancellation of a competency certificate.

Clause 13—Insertion of new s 275A

Provides that a new section 275A entitled “Disclosure of information” be inserted in the Act.

New section 275A offers protection for personal and commercially sensitive information obtained during the administration of the Act. However, the provisions of the *Freedom of Information Act 1992* are not restricted by new section 275A.

PART 4—AMENDMENT OF *EXPLOSIVES ACT 1999***Clause 14—Act amended in pt 4**

Provides that the provisions of Part 4 of the Amendment Act will amend the *Explosives Act 1999*.

Clause 15—Amendment of s 140 (Existing regulations)

Provides that the existing *Explosives Regulation 1955* will now expire on 30 June 2001 instead of 10 June 2000. This will allow time for the new regulation to be drafted and made.

PART 5—AMENDMENT OF *MINING AND QUARRYING SAFETY AND HEALTH ACT 1999*

The following Clauses 16 to 22 will amend the *Mining and Quarrying Safety and Health Act 1999* to make it consistent with the provisions of the *Coal Mining Safety and Health Act 1999*.

Clause 16—Act amended in pt 5

Provides that the provisions of Part 5 of the Amendment Act will amend the *Mining and Quarrying Safety and Health Act 1999*.

Clause 17—Amendment of s 72 (Duration of appointment)

Provides that the Members, including the Chairperson, of the Mining Safety and Health Advisory Council may be appointed for a term of not more than three years.

Clause 18—Amendment of s 183 (Membership and conduct of board proceedings)

Provides that the Members, including the Chairperson, of the Board of Examiners may be appointed for a term of not more than five years.

Clause 19—Amendment of s 197 (Site not to be interfered with without permission)

Provides that only the sites of high potential incidents of types prescribed by regulation must not be interfered with without the permission of the Inspector. The previous provision was too broad.

Clause 20—Amendment of s 198 (Action to be taken in relation to site of accident or incident)

Provides that accident or incident reports to be submitted to an Inspector are limited to those prescribed under regulation. It also increases the penalty for non-compliance from 40 to 100 penalty units. A penalty unit is currently \$75 for an individual and five times that amount for a corporation.

Clause 21—Insertion of new s 228A

Provides that new section 228A be inserted.

New section 228A provides that Part 14—Division 1 applies to a proceeding under this Act. This corrects an omission during drafting of the legislation.

Clause 22—Amendment of s 229 (Proof of appointments and authority unnecessary)

Provides that a person is given an opportunity to challenge the appointment or authority of a person mentioned in existing section 229 provided reasonable notice of the challenge is provided.

