Legislative Assembly

31/10/2002

Coal Industry Amendment (Fees For Rescue Services) Bill Hansard Extract

Second Reading

Mr WHELAN (Strathfield—Parliamentary Secretary), on behalf of Mr Amery [5.07 p.m.]: I move:

That this bill be now read a second time.

Pursuant to the resolution the second reading speech was incorporated.

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Since 1 January 2002 the Coal Industry Act 2001 has provided for altered arrangements in the NSW coal industry in respect of the delivery of occupational health and safety, workers compensation and mines rescue services.

Honourable members will recall that those services are now performed by private corporations approved by the Minister for Industrial Relations who, apart from exercising an appointment power in relation to the companies' boards of industry-representative directors, retains a reserve monitoring and regulatory role under the Act in relation to the companies' performance of their approved statutory functions.

The mines rescue functions specified in the Act are undertaken by Mines Rescue Proprietary Limited.

Section 22 of the Coal Industry Act presently prohibits the charging of fees by Mines Rescue Pty Limited in the exercise of its principal underground coal mine rescue services as listed in the Act's section 14.

The funding of these services is intended to be accommodated under the Act by the company's annual monetary levying of owners of all coal mines (being both underground and open cut operations) according to the mine's size, rescue training needs, accident risk assessment and likely cost of rescue services.

It is the case that Mines Rescue Pty Limited is not an instrumentality or agent of the New South Wales Crown and the new statutory arrangements are designed to allow the coal industry parties (Construction, Forestry, Mining and Energy Union and the NSW Minerals Council Limited) to be responsible for the overall administration of the industry's functioning, including mine rescue activities.

In this capacity, the board of directors of Mines Rescue Pty Limited has informed the Government of its unanimous view (corresponding with the common stance of their backing bodies) that the present section 22 fee-charging prohibition is unsustainable in terms of the future financial standing of the company. The Government accepts the case presented by the company.

Accordingly, the Coal Industry Amendment (Fees for Rescue Services) Bill proposes that there should be permissible fee-charging by the approved mines rescue company for the provision of rescue services after the first eight hours (or greater prescribed period) of an emergency at an underground coal mine.

The Mines Rescue Pty Limited board advises that the likely cost of its rescue services in an emergency are as much as $0.2 million per day. The company points out that it is unable to accumulate adequate reserves under the present levy system to cope with a prolonged emergency such as the 1979 Appin explosion when Mines Rescue Service personnel and brigades were involved at that mine for approximately six weeks.

The board emphasises that to simply increase the current statutory levy could result in the more economically marginal mines being forced to close. This alternative form of action by the company is also not amenable to the Government.

I am further advised by the company that the former Mines Rescue Board which Mines Rescue Pty Limited replaced apparently acted in ignorance of the equivalent section 22 fees prohibition under the repealed Mines Rescue Act 1994.

Whenever the established Mines Rescue Service attended an emergency, the cost for the first shift (or 8 hours) in respect of both underground and open cut coal mines was met as a charge against the statutory levy which the former board made on the industry. All operating and labour costs for employees and brigades after that first shift were then to be charged to the colliery (and its insurer).

Since 1994 there have fortunately been no emergencies extending beyond eight hours involving risk to life.

The system of charging all collieries after the first eight hours apparently dates from the 1970s.

Prior to the adoption of the fee-charging system some mine managers used the Mines Rescue Service as a

source of free labour. For example, with spontaneous combustion at mines, heating might advance to a point where breathing apparatus and mines rescue teams were required to make the mine safe. Additionally, the initially free service over the first 8 hours for open cut mines was introduced so as not to discourage those mine managers from activating the service if they were in any doubt that the service was really required to be used.

Clearly, there is established industry acceptance of the present common fee-charging system for rescue work at both underground and open cut coal mines despite former and current Act provisions.

Moreover, the responsible coal industry parties charged with performing mine rescue services are of the firm view that the alternative of differential economic treatment according to mine type would be financially unsustainable for Mines Rescue Pty Limited and the industry at large in the event of a major emergency or a series of emergencies.

For these reasons, the Government is convinced that the Coal Industry Act requires appropriate amendment.

To this end, the bill which I introduce today establishes a threshold of 8 hours (being the accepted industry standard) before fee-charging will be permitted by the mines rescue company in the actual provision of rescue services in dealing with an emergency at an underground coal mine in New South Wales.

The term "emergency" has a specific meaning under the Coal Industry Act. It is defined to relate to an actual or imminent occurrence (such as fire, explosion, accident or flooding) that has resulted in a person's death or injury or is endangering or threatening to endanger a person's life or physical well-being.

Fee-charging will not apply at any stage to the mines rescue company's exercise of its more general or non-emergency section 14 principal functions at underground coal mines—for example, functions relating to the training and equipping of brigades.

Concerning the intended non-entrenchment of the eight hours mark as the threshold point for mines rescue fee-charging, it is to be noted that the proposed variant regulation-making power will be limited only to possibly increasing the allowable fees-free period. The eight hours (or first shift) mark is the industry's recommended and currently applicable fees threshold, but the Government is of the view that the Act should contain some regulatory flexibility to perhaps afford lessened mines emergency rescue costs to mine owners over time as a result of, say, enhanced rescue operations.

The regulatory power is not so variant as to permit a period of less than eight hours as this would be both contrary to the present industry standard and potentially cost disadvantageous to mine owners at some future time.

Honourable members may be assured that the bill is acceptable to Mines Rescue Pty Limited, the Minerals Council and the Construction Forestry Mining and Energy Union whose key officers were made aware of the bill's contents in the drafting process.

The recognition of the Government in its coal industry structural arrangements reform of last year was that the industry parties are in the best position themselves to know how their industry can optimally function.

Confirmation of the correctness of the Government's Coal Industry Act approach lies in this bill's genesis in the approved company's early analysis of the currently inadequate mines rescue funding arrangements and the industry's resultant reform call.

I commend the board of directors of Mines Rescue Pty Limited for bringing this matter to the Government's attention as I also now commend the bill to the House.