

Short-Form Departmental Disclosure Statement

Health and Safety (Pike River Implementation) Bill
--

Supplementary Order Paper 374

A short form disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

There was no original disclosure statement for this Bill.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

25 October 2013

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The emergency response protocol sets out how agencies will work together in response to a major mining emergency, and the incident controller (IC) is the key decision maker at the mine site during an emergency. The SOP, in new clauses 54C and 54E, creates two new offences of:</p> <ul style="list-style-type: none"> (1) failing to comply, without reasonable excuse, with the reasonable directions of the IC where one has been appointed in accordance with the emergency response protocol, and (2) resisting, or intentionally obstructing the IC in the performance of his or her functions. <p>Both offences have the same penalty of up to 3 months imprisonment or a fine not exceeding \$5000 for an individual, and a fine not exceeding \$50,000 for a body corporate.</p>	

1.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>A meeting was held on 8 October 2013 with officials from the Ministry of Justice. The officials were broadly supportive of the offence provision, including the reason for it and the proposed level of penalty. However, they requested that we clarify how the offence relates to the functions of the IC listed in the SOP, in order that it is clearer when and offence occurs.</p> <p>We have addressed this issue in clause 54B(3)(b) by clarifying that the functions of the IC include giving directions to give effect to the decisions made about the emergency response. It is the failure to comply with these directions that constitutes the offence.</p>	

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO

Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
<p>The SOP, in clause 54B, provides statutory recognition of the functions of the IC under the inter-agency protocol for dealing with a major mining emergency. A key role of the IC is to make decisions regarding rescue and recovery following a mining emergency. These decisions may involve the use of property of the mine operator to carry out the decisions of the IC, but this does not amount to the transfer of property rights.</p>	

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
--	------------

The Bill, in clause 46, currently provides for the making of regulations imposing a levy on certain mine operators to cover the direct and indirect costs of the Mines Rescue Service (MRS) carrying out the functions listed in clause 44 (a), (b) and (d). These functions related to assisting mine operators with emergency preparedness and preparation for an emergency response. The function in clause 44 (c) relates to the response to an emergency, and the costs associated with this are recovered from the mine operator. In order to be able to respond quickly, the MRS maintains a reserve fund so that it has funds upfront ready for emergency response.

The SOP makes two amendments to the levy provisions in clause 46:

- (1) It provides that any surplus levy collected can be put towards the reserve fund, rather than returned to levy payers, and
- (2) It enables the levy to be set by a formula based on the 'expected costs' of the MRS providing its core functions, and provides that the board of the Mines Rescue Trust can determine, following consultation with levy payers, the expected costs each year which the board must then publish in a *Gazette* notice. The Board is also required to then notify levy payers of this amount and of the levy that each of them will have to pay.

The second amendment ensures that the board of the Mines Rescue Trust can effectively respond to what is a volatile market by reassessing each year what its projected costs will be for the year ahead. The MRS is a self-regulating system. It is a service run by industry for industry with the majority of board members also being levy payers. The system therefore has a natural check and balance in it as those responsible for determining the expected costs on which the levy will be based are also those that (a) are levy-payers, and (b) may require the service and thus need it to be well-functioning. The board also has a member of WorkSafe and a union representative sitting on it.

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO
Clause 54C(2) creates a strict liability offence for persons who fail to comply with any reasonable direction of an incident controller, without reasonable excuse. The directions must be reasonable, and there is a reasonable excuse defence.	

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	YES
---	------------

The SOP, in clause 54F, includes a provision protecting the IC, and any person advising the IC or acting under the direction of the IC, from civil and criminal liability for anything the person does, or omits to do, in good faith in the course of responding to an emergency at a mining operation

The provision is necessary to enable the IC, and advisors to the IC, to be able to act, in good faith, quickly to respond to an emergency without fear of liability. This is consistent with the protections that others, for example from the emergency services, already have in this kind of situation. Furthermore, without this provision, WorkSafe might find it hard to find candidates for the list of potential ICs that it is required to maintain under the emergency protocol.

Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The SOP amends Schedule 2 of the Bill. New clause 3 of Schedule 2 provides that regulations made under the principal Act that relate to mining operations may provide for WorkSafe to grant any particular mining operation an exemption from one or more of the obligations or requirements in the regulations for a period no longer than 36 months and ending not later than 31 December 2017.</p> <p>The new regulatory regime for mining being put in place following the Royal Commission on the Pike River Coal Mine Tragedy will increase compliance costs on mining operations and require them to comply with more stringent hazard management processes than they were subject to previously. This exemption gives WorkSafe the discretion to consider requests for exemptions from specific provisions of the regulation from mine operators.</p> <p>The regulations will also be required to specify the reasons for which exemptions may be granted and will require WorkSafe to specify the reasons for an exemption when granting one.</p>	

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	YES
<p>The SOP amends the regulation making power for the mines rescue levy, as described above. Clause 3, in schedule 2, provides for regulations to allow WorkSafe to grant exemptions to particular mining operations from one or more obligations under the regulations.</p>	

Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO