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**THE LEGISLATIVE HISTORY OF THE MINES  
REGULATION ACT 1946**

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# **THE LEGISLATIVE HISTORY OF THE MINES REGULATION ACT 1946**

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## **ABSTRACT**

An examination of the legislative history of the Mines Regulation Act 1946 in Western Australia. It examines the early Mines Regulation Act of 1895 and the repeal of the 1946 legislation by the Mines Safety and Inspection Act 1994. It provides an analysis of the legislative changes that were made to mine health and safety during the period 1895 to 1994 and identifies some of the political debates about the legislation during that period.

# THE LEGISLATIVE HISTORY OF THE MINES REGULATION ACT 1946

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Legislation dealing with health and safety in mines was first introduced into in Western Australia in 1895,<sup>1</sup> as it was perceived that there was a need to increase the protection of a worker's health and safety in the mines. The Minister for Mines summarised the conditions mines were operating under in 1895:

At present there is no supervision, and the consequence is that we do not know whether the mines are opened up properly; whether they are timbered properly; whether proper precautions are taken for the safety of the lives and the health of the workmen, or whether the machinery is good or bad.<sup>2</sup>

The Act was developed on similar lines to legislation that was in existence in Queensland<sup>3</sup> and its main focus was on covering miners working underground in the goldfields, as there was extensive development in this area.<sup>4</sup> The Act as passed contained one part applicable to all mines and another part only to collieries.<sup>5</sup> The *Mines Regulation Act 1895* was assented to on the 12th October 1895.

The first amendment was in 1899. The amendment was to enable coverage of all mines in Western Australia and not only those employing five men or more. The

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<sup>1</sup>*Mines Regulation Act, 1895.*

<sup>2</sup>*Western Australian Parliamentary Debates*, Vol 18, 4 June 1895 - 12 Oct 1895, p456.

<sup>3</sup>*Western Australian Parliamentary Debates*, Vol 18, 4 June 1895 - 12 Oct 1895, p540.

<sup>4</sup>*Western Australian Parliamentary Debates*, Vol 18, 4 June 1895 - 12 Oct 1895, p1150.

<sup>5</sup>A separate *Coal Mines Regulation Act 1902* was passed in 1902.

amendment was considered to be in the interests of everyone employed in mines.<sup>6</sup> This amendment also enabled the government to make regulations in conjunction with the Act, where previously there was no power to do so.<sup>7</sup>

In the same year, the *Sunday Labour in Mines Act 1899* was passed by parliament. This legislation proposed that no person should work unnecessarily in mines on a Sunday, as it was damaging physically to the workers.<sup>8</sup> Debate on weekend working hours in mines has continued throughout the history of the West legislation relating to mine safety.<sup>9</sup>

In 1906, the legislation relating to mine safety was consolidated to allow for easier application and to create better health and safety conditions for miners. The *Mines Regulation Act 1895*; the 1899 and 1904<sup>10</sup> amendments; and the *Sunday Labour in Mines Act 1899* were combined into one Act known as the *Mines Regulation Act 1906*.<sup>11</sup>

The 1906 Act was amended again in 1915,<sup>12</sup> 1938<sup>13</sup> and 1945,<sup>14</sup> though none of these amendments dealt with any major changes. The Act was consolidated again in

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<sup>6</sup>*Western Australian Parliamentary Debates*, Vol 14, 21 June 1899 - 28 Sept 1899, p1285.

<sup>7</sup>*Western Australian Parliamentary Debates*, Vol 14, 21 June 1899 - 28 Sept 1899, p1285.

<sup>8</sup>See *Western Australian Parliamentary Debates*, Vol 15, 3 Oct 1899 - 16 Dec 1899, pp2785-2799; 3029-3030, for arguments for and against working on a Sunday.

<sup>9</sup>Amendments to the Act in 1968 and 1969 focused on weekend working hours and it had developed as a contentious issue in 1992 (See *Western Australian Parliamentary Debates*, 3,4,5 June 1992 pp3528-3537.

<sup>10</sup>These amendments dealt with giving power to inspectors, to request a manager of a mine to alter a drive shaft that the inspector perceived as dangerous, and to increase the frequency of wage payments in a month. See *Western Australian Parliamentary Debates*, Vol 25, 28 July 1904 - 10 Nov 1904, pp326-337; 580-586; 746-747; 846-847. *Western Australian Parliamentary Debates*, Vol 26, 10 Nov 1904 - 24 Dec 1904, pp1194-1196.

<sup>11</sup>No. 36 of 1906

<sup>12</sup>No. 53 of 1915. This amendment dealt with changes to classifications of inspectors and their appointment. See *Western Australian Parliamentary Debates*, Vol 51, 29 Jul 1915 - 7 Oct 1915, pp613-624; 779-787; 864-875; 899-929. *Western Australian Parliamentary Debates*, Vol 52, 12 Oct 1915 - 26 Nov 1915, pp1525-1530.

1946, to incorporate these small amendments.<sup>15</sup> Further minor amendments were made in 1954,<sup>16</sup> 1956,<sup>17</sup> 1961<sup>18</sup> and 1965.<sup>19</sup>

In 1968, there was considerable debate concerning the hours worked on weekends.<sup>20</sup> The Minister for Lands moved that due to updated changes to mining operations, it was no longer necessary to include open cast mining, quarrying, sluicing and dredging in the definition of "underground mining" in the Act.<sup>21</sup> By amending that definition it removed restrictions preventing those types of operations from undertaking work on weekends. The Minister for Lands stated:

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<sup>13</sup>No. 42 of 1938. Wages were paid on the 3rd and the 18th of every month under 1906 Mines Regulation Act. This was amended to every second Friday of every month, to bring the miners in line with the rest of the community. See *Western Australian Parliamentary Debates*, Vol 101, 4 Aug 1938 - 26 Oct 1938, pp1193-1194; 1229-1230; 1283-1290. *Western Australian Parliamentary Debates*, Vol 102, 26 Oct 1938 - 15 Dec 1938, pp1657-1662; 1774-1778; 1828-1831; 1878-1887; 1937; 3046-3048.

<sup>14</sup>No. 2 of 1945. The Act was amended to give the Minister for Mines the power to make regulations regarding the treatment of the disease, silicosis. See *Western Australian Parliamentary Debates*, Vol 115, 26 Jul 1945 - 31 Oct 1945, pp494-497; 542-552; 786.

<sup>15</sup>*Mines Regulation Act 1946 (No. 54 of 1946)*.

<sup>16</sup>No. 24 of 1954 and No. 49 of 1954. Minor amendments were made regarding working hours, notification of loss time accidents, powers of inspectors, information to unions and appointment of a temporary manager. See *Western Australian Parliamentary Debates*, Vol 139, 24 Aug 1954 - 21 Oct 1954, pp1269; 1310-1312; 1644.

<sup>17</sup>No. 54 of 1956. Requirements to vote in an election for a workman's inspector were changed. See *Western Australian Parliamentary Debates*, Vol 145, 21 Nov 1956 - 22 Dec 1956, pp3204-3206; 3249-3250.

<sup>18</sup>No. 75 of 1961. The qualifications for inspectors and underground managers of mines were dealt with. See *Western Australian Parliamentary Debates*, Vol 158, 3 Aug 1961 - 4 Sept 1961, pp594-595; 928-929. *Western Australian Parliamentary Debates*, Vol 160, 25 Oct 1961-15 Nov 1961, pp2629-2630; 2719-2726. Sunday labour in the Yampi Sound area was allowed, subject to the consent of the Minister. See *Western Australian Parliamentary Debates*, Vol 158 3 Aug 1961 - 4 Sept 1961, pp595; 928-929.

<sup>19</sup>No. 6 of 1965. Penalties were increased from 55 to 100 pounds for an owner, agent or manager of a mine and from 10 to 20 pounds for any other person. Penalties were increased as a deterrent to prevent people from 'firing faces' in mines outside the prescribed times. See *Western Australian Parliamentary Debates*, Vol 170, 29 Jul 1965 - 26 Nov 1965, pp368; 607; 710-711; 717.

<sup>20</sup>See *Western Australian Parliamentary Debates*, Vol 181, 30 Oct 1968 - 9 Apr 1969, pp2090-2093; 2261-2274; 2472-2474, 2707-2728.

<sup>21</sup>See *Western Australian Parliamentary Debates*, Vol 181, 30 Oct 1968 - 9 Apr 1969, pp2472-2474 for discussion.

Whilst it is necessary and desirable to restrict the days worked underground for health and safety reasons, there is not normally the same need for placing similar restrictions on quarrying ... nor, it is submitted, are restrictions required on general surface on mines.<sup>22</sup>

The Act was amended to allow for these operations to undertake work seven days a week, only when the necessity arises.<sup>23</sup>

The debate continued in the following year, when it was discovered the 1968 amendments could be interpreted to allow workers to work more than the prescribed 7 1/2 hours underground. The 1969 amendments restricted any day to 7 1/2 hours<sup>24</sup> and covered other minor amendments.<sup>25</sup>

In 1974, the Act was revised considerably to "bring it up to modern standards".<sup>26</sup> In 1976 the Mines Regulation Act Regulations 1976 were published to support the revisions made by the Act. Further amendments were made to the Act in 1984,<sup>27</sup>

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<sup>22</sup>*Western Australian Parliamentary Debates*, Vol 181, Oct 1968 - Apr 1969, p2473.

<sup>23</sup>No. 68 of 1968.

<sup>24</sup>See *Western Australian Parliamentary Debates*, Vol 184, 18 Sept 1969 - 30 Oct 1969, pp1972, 2155.

<sup>25</sup>No. 100 of 1969. Changes were made to update the regulations of the Act and to alter the mine manager's certificate of competency requirements. See *Western Australian Parliamentary Debates*, Vol 184, 18 Sept 1969 - 30 Oct 1969, pp1970-1973.

<sup>26</sup>No. 63 of 1974. Member for Clontarf *Western Australian Parliamentary Debates*, Vol 206, 12 Nov 1974 - 29 Nov 1974, p3100. Many small amendments to the Act were made covering the definition of "mine", power of inspectors, functions of the Mines Ventilation Board and increases in penalties. *Western Australian Parliamentary Debates*, Vol 205, 2 Oct 1974 - 12 Nov 1974, pp2286-2289. *Western Australian Parliamentary Debates*, Vol 206, 12 Nov 1974 - 29 Nov 1974, pp3100-3129.

<sup>27</sup>No. 28 of 1984 and No. 88 of 1984. Representation on the Ventilation Board amended to include the Australian Workers Union. *Western Australian Parliamentary Debates*, Vol 250, 19 Sept 1984 - 23 Oct 1984, pp2306-2307. *Western Australian Parliamentary Debates*, Vol 251, 25 Jul 1984 - 13 Sept 1984, p2791.

1985,<sup>28</sup> 1986<sup>29</sup> and 1987,<sup>30</sup> though none of these changes raised controversial parliamentary debate.

In 1990, a considerable change was made to the *Mines Regulation Act 1946*, by including parts III and IV of the *Occupational Health, Safety and Welfare Act 1984*. This amendment was in accordance with a recommendation made by the 1990 inquiry into safety in underground gold mines<sup>31</sup>. These parts covered general duties of care; and health and safety representatives and committees.<sup>32</sup> The Minister for Mines stated the purpose behind implementing these provisions to the *Mines Regulation Act 1946* was that it:

... effectively brings mine safety legislation provisions into line with those of the Occupational Health, Safety and Welfare Act which is fundamental to Government policy.<sup>33</sup>

These amendments took some time to be proclaimed. The delay was due to changes to the regulations being finalised<sup>34</sup>. These changes were not made until the

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<sup>28</sup>No. 5 of 1985 and No. 41 of 1985. All discriminatory practices were removed from the Act, such as the employment of women underground. *Western Australian Parliamentary Debates*, Vol 253, 19 Feb 1985 - 27 Mar 1985, pp188-189.

<sup>29</sup>No. 77 of 1986.

<sup>30</sup>No. 64 of 1987. This amendment established a Mines Radiation Safety Board; covered the regulation of winding engines and winding engine drivers; increases in penalties to bring them into line with the *Occupational Health, Safety and Welfare Act 1984*; and altered the constitution of the Ventilation Board. *Western Australian Parliamentary Debates*, Vol 266, 16 Sept 1987 - 27 Oct 1987, pp3851-3852.

<sup>31</sup>Kelly, E.R., (1991), *Enquiry into Occupational, Health and Safety in the Mining Industry in Western Australia*, Vol 1, p24.

<sup>32</sup>*Western Australian Parliamentary Debates*, Vol 288, 22 Nov - 27 Dec 1990, pp8763-8764. Parts III and IV of the Occupational Health and Safety Act 1988 are a direct reflection of the principles that arose out of the 1972 Robens Report on "Safety and Health at Work" in the United Kingdom [Kelly, E.R., (1991), *Enquiry into Occupational Health and Safety in the Mining Industry in Western Australia*, Vol 1, p24.

<sup>33</sup>No. 85 of 1990. *Western Australian Parliamentary Debates*, Vol 288, 22 Nov - 27 Dec 1990, pp8763-8764.

<sup>34</sup>Kelly, E.R., (1991), *Enquiry into Occupational Health and Safety in the Mining Industry in Western Australia*, Vol 1, p6.

beginning of 1993. Meanwhile there were calls by certain union officials for the occupational health and safety provisions to be administered by the Department of Occupational Health and Safety rather than the Department of Mines.

In November 1991<sup>35</sup> the opposition introduced into the Legislative Assembly an amendment to the *Mines Regulation Act 1946* dealing with continuous mining in underground mines. The opposition then appears to have changed its strategy and introduced the same bill in the Legislative Council in 1992. Presumably this first bill lapsed. The bill sought to amend the *Mines Regulation Act 1946* to enable underground mines to undertake continuous operations, without the need for special exemptions. This bill was introduced into the Legislative Council and it was passed. The Labour government made some significant amendments to the proposed legislation. These were made in the Legislative Assembly and these amendments were passed in that House.<sup>36</sup> The Legislative Council sitting as a committee then voted to disagree with the amendments made by the Legislative Assembly.<sup>37</sup> As a result of this process the bill was not passed.

The debates involved in this process were very vigorous and centred around attempts to introduce continuous mining at Western Mining's Kambalda nickel and goldmines.<sup>38</sup> The Australian Workers Union (AWU) eventually agreed to continuous mining provided the shifts underground were limited to seven and a half-hours.<sup>39</sup> The opposition attempted to introduce legislation to remove restrictions on all working hours, however, government blocked this.<sup>40</sup> Western Mining reacted to this by refusing to undertake a \$105 million upgrade plan unless

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<sup>35</sup>*Western Australian Parliamentary Debates*, Vol 294, 22 Oct - 26 Nov 1991, pp6633-6634.

<sup>36</sup>*Western Australian Parliamentary Debates*, 12, 13 and 14 May 1992, p2271. *Western Australian Parliamentary Debates*, 2, 3 and 4 June 1992, pp3528-3542.

<sup>37</sup>*Western Australian Parliamentary Debates*, 2, 3 and 4 June 1992, pp3408-3417.

<sup>38</sup>*Western Australian Parliamentary Debates*, 5, 6 and 7 May 1992, pp1779-1790. *Western Australian Parliamentary Debates*, 12, 13 and 14 May 1992, p2271. *Western Australian Parliamentary Debates*, 2, 3 and 4 June 1992, pp3408-3415; 3528-3542.

<sup>39</sup>Menegola, S., (6 Oct 1992), "New Row Flares on Non-Stop Mining", *The West Australian*, p8.



the government passed the legislation.<sup>41</sup> The issue continued to be one of considerable public debate throughout 1992.<sup>42</sup>

The 1990 amendments were proclaimed to come into effect on the 1<sup>st</sup> January 1993.<sup>43</sup> At the same time extensive changes were made to the *Mines Regulation Act Regulations 1976*, to reflect the changes in the Act. The major effect of these changes were to introduce the general duty obligations and employee identification of health and safety issues as previously identified by the Robens Report in the United Kingdom, and as already reflected in the *Occupational Safety and Health Act 1984* (WA) in non-mining workplaces.

In 1993 the *Mines Regulation Amendment Act 1993* was passed and was assented to on 16 December 1993.<sup>44</sup> This amendment deleted sections 23A-23N dealing with Mines Medical Officers, the Ventilation Board and the Mines Radiation Safety Board. It also deleted sections 36-45. These sections had dealt with employment issues such as hours of employment in underground mines, a minimum age of 18 to work underground and the ability of underground workers to speak and read English. The deleted provisions also dealt with various issues concerning working underground on Sundays. The changes reflected the governments desire to assist mining companies introduce continuous shift operations. At the same time the Act was amended to give power to make regulations dealing with such issues as number

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<sup>40</sup>McGlue, J., (6 June 1992), "Mine Work Rule Change Attacked", *The West Australian*, p22.

<sup>41</sup>Quekett, M., (8 June 1992), "Anger Rises Over Mine Bill Delay", *The West Australian*.

<sup>42</sup>For further discussion see the following articles. Menegola, S. (30 April 1992), "Ageing Mine Laws Head for Change", *The West Australian*, p22. Menegola, S. (30 April 1992), "Deal Offered Months Ago", *The West Australian*, p22. "AWU Seeks Watch on 24 Hour Mining", *The West Australian*, 1 May 1992. Dixon, M., (6 June 1992), "Mining Industry Outraged Over 'Bungled' Bill Failure", *The West Australian*, p51. Poprzeczny, J., (7 June 1992), "Words Fly Over Mining Changes", *The West Australian*, p25. Menegola, S., (8 Oct 1992), "State Plans Limits on Miners' Hours", *The West Australian*, p27. Menegola, S., (19 Nov 1992), "Bogged Bill Threatens Seven-Day Mining", *The West Australian*, p14. Quekett, M., (2 Dec 1992), "WMC Knocks Back Offer on Kambalda", *The West Australian*, p40.

<sup>43</sup> GG 31/12/92 p6796.

<sup>44</sup> No 85 of 1995, GG 24/12/93 p6796.

of hours that person may use a winding machine, the literacy and reading requirements of underground workers and radiation safety.

In 1994 some consequential changes were made to the Act, as a result of the introduction of the *Public Sector Management Act 1994*.<sup>45</sup> Later on in the same year, the *Mines Safety and Inspection Act 1994* was introduced and passed by the parliament. Many of the provisions were similar to the *Mines Regulation Act 1946* (as amended to 1994). It repealed the *Mines Regulation Act 1946* and the *Coals Mines Regulation Act 1946* and brought the administration of mine safety in all types of mines under one administrative body and one piece of legislation.

This legislation was proclaimed to come into effect on 9<sup>th</sup> December 1995 and had the effect of bringing to an end the *Mines Regulation Act 1946*.

The only significant sequel to this legislation was an appeal by an employer in the gold mining industry against a successful prosecution brought against that employer under the 1946 Act. In the initial appeal in the Supreme Court, legal argument was raised whether the general duty obligation imposed upon the employer in s 30B of the Act, created more than one offence.<sup>46</sup> In both this appeal case and a subsequent appeal to the full court of the Supreme Court of WA<sup>47</sup> it was decided that there is only one offence, in those situations where a statute penalises one act, even if it possesses one or more characteristics that are forbidden.

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<sup>45</sup> *Acts Amendment (Public Sector Management) Act 1994*, No 32 of 1994.

<sup>46</sup> *Meiklejohn v Central Norseman Gold Corp Ltd* [1997] ACL Rep 170 WA 1.

<sup>47</sup> *Meiklejohn v Central Norseman Gold Corp Ltd* SC(WA), Walsh, Anderson and Owen JJ, No 980236, 5 May 1998, unreported.