

APPROVALS AND RELATED REFORMS (NO. 2) (MINING) BILL 2009

Second Reading

Resumed from 21 April.

MR M. McGOWAN (Rockingham) [11.10 am]: We are here today to talk about the Approvals and Related Reforms (No. 2) (Mining) Bill 2009, which the opposition supports. This bill will provide some additional compliance requirements for mine operators when they close a mine. They will be required to ensure that the closure plan for the mine site is kept up to date. The opposition does not have any difficulty with that as a level of compliance for mine operators. It will ensure that mine operators do the right thing to the mine site that they used. We do not have a difficulty with that. However, it is an additional compliance burden on the mining industry. While the opposition thinks that it is a reasonable one, it shows that additional burdens are being imposed on the mining industry by the government despite its rhetoric. The opposition thinks that it is a reasonable thing to do. It will make it easier for the lodgement of documents and so forth through the use of online technology.

Around Australia today there is a lot of debate about the mining industry and various things that both commonwealth and state governments on either side of the political fence are doing that concern that industry. This issue is raised daily on the front pages of state and national newspapers. Indeed, we have seen columns and articles in journals about the Australian mining industry and what governments, particularly the commonwealth government, are doing that concern that industry.

I want to put a little bit of context around this subject in the context of this bill, of course. The mining industry in Western Australia is the backbone of this state's economy. Prior to 1960 that was not the case. At that time this state's economy relied on the agriculture industry and a prominent manufacturing industry, particularly in the south west. Predominantly Western Australia was, at that time, an agriculture state. In the 1960s and onwards the gold industry turned into a plethora of other industries—oil, gas and so forth. Western Australia is a significant mining economy in both the Australian and the world context. Perth, as a city, and the state's economy rely very heavily on the mining industry.

I want to talk about what the state and commonwealth governments have been doing and the resource rent tax. I might say a few things about that that might be unexpected. Throughout the course of this year there has been considerable disquiet in the mining industry about what the state government is planning for that industry. There has been considerable disquiet about a lift in royalty rates, in particular, but more importantly about a change to state agreement acts that were negotiated between the state—involving former governments and passed by the Parliament—and individual mine operators. Those state agreement acts have always been regarded as sacrosanct and cannot be changed without negotiation. There has been a level of rhetoric and belligerence on the part of the Premier towards those agreements and changing the fundamental basis of those agreements. This afternoon we may well see in the budget a change to those agreements. The budget might well include an estimation of the royalty revenue from certain mines that are subject to state agreement acts without negotiations having taken place to change those agreements.

The opposition has always been supportive of changing the royalty rates for the concessional iron ore mines to take it up to the Mining Act level. However, if the Premier changes those acts without agreement it will become a significant sovereign risk issue. It has always been agreed by all sides of Parliament that these acts cannot be changed without both parties agreeing. If the Premier includes in the budget papers income assumed on the basis of the state agreements being changed without those agreements being negotiated, it will be a major sovereign risk for this state. I think he will do that this afternoon. All his rhetoric has been along those lines. His rhetoric has been at the edge and somewhat dangerous. I have spoken to a number of mining companies that are quite concerned about that.

In light of the earlier commentary in which the Premier said the government will secure stamp duty from a Rio-BHP agreement irrespective of whether that stamp duty is liable, that is also a significant sovereign risk issue. The Premier has backed off from that rhetoric. The Treasury documents I got through freedom of information indicate that what is called a premium payment was factored into the discussions and negotiations. The companies are very nervous about a requirement that if the law is changed to ensure that both companies can change their arrangements they must pay the government a lump sum of money up-front. That is not a tax. It is a payment for changing the law, which is most dangerous in the context of this state, bearing in mind that we are not a country where the troops take over the mines. It is a very dangerous thing to be talking about a payment from Rio-BHP of \$1 billion if we, as a state Parliament, change the law. That is what was being considered. Both those issues—changing state agreement acts without negotiation and a premium payment—are very significant sovereign risk issues.

That brings me to the debate surrounding the federal government's resource rent tax. I will put that in some context. In the various discussions and debates in this Parliament about where the mining companies are at, the Premier has said words to the effect that the mining companies are getting away with murder. What he meant by that is that they are reaping massive profits, while at the same time the state—the people—are getting a smaller return for that. There is a general view on the conservative side of politics—of the Premier in particular—that the mining companies are getting away with murder. In the case of iron ore, when there is talk about a doubling in the price of the commodity being sold overseas—I think it has been negotiated—any government would think that while there is a significant benefit going to a company via this negotiated price, which I suppose one would call a windfall, the taxpayers should receive a benefit from that. The view that the Premier has taken is that taxpayers should receive a greater benefit from the mining wealth of the state. It is obvious from his public commentary. It is a widespread view among people around Australia. Here in Western Australia it is probably coloured a little bit because with so many people working in the mining industry there is a greater reluctance to mess with it.

The former government was always accused of not securing enough from the boom. That was the prevailing philosophy among some commentators. I can see how, even in this state, there would be a view that we might want to secure more from the mining industry. We are constantly reminded by the Premier that the mineral wealth of the state is the property of the people. It is not the property of the companies; they have a right to mine it on certain occasions but it is the property of the people. I think there is probably some scope to secure more revenue for the state from the industry than we have in the past. As I have said numerous times, we supported by negotiation the removal of the concessional arrangements for the iron ore industry in the Pilbara. However, there is probably more scope for securing more of the value of the mineral wealth for taxpayers than has been the case in the past, remembering that everyone has to pay taxes and charges. If we can secure the money from elsewhere, there will naturally be a benefit for ordinary people who pay taxes, charges and fees in the broader community. There are also some people in the mining industry who do not help themselves. Clive Palmer is a classic example. He does not help the mining industry's image; he does not help his own image. The sort of inflammatory language that Clive Palmer uses and the very partisan way in which he goes about his business is not helpful to the industry at all. I suspect that the industry would prefer him to keep his mouth closed. However, he is an Australian and he has the right to speak, but he is a person who does not help with the arguments, in my view, for stability in the mining sector.

We had a meeting during the week with a large group of Western Australia-based miners who put to us their case on the commonwealth's resource rent tax proposal, and they made some good points. People who invest in this country do so on the basis that it is a stable environment in which to invest. It is a place known for very low levels of sovereign risk. We have a highly trained and skilled workforce. We have good mineral prospectivity, and the quality and purity of our mineral wealth is very good. Therefore, it is a very good place for investors to invest in exploiting our mineral wealth. The mining industry is a great benefit to this country, predominantly through the jobs that it creates, a lot of which is through these investors who invest in our country. Our meeting with the miners of the state was very amicable and very reasonable. I think they made some very good points and I agree with a number of the points that they made.

I still believe that there is greater scope to capture some of the mining industry's wealth for the taxpayers of this state and this country. I do. But I do think that the current resource rent tax proposal has not been structured modestly enough. I think it could have been more modest. The principle of a resource rent tax makes some sense. It is a way of securing benefits from the mining industry for the people in a way that taxes the profits of the companies, rather than taxing their turnover. If we just tax their turnover, which is what the royalties regime does, it does not matter whether they make a minuscule profit, a huge profit or no profit; in fact, if they make a loss, the state still secures roughly the same amount of money. The profits tax, of course, only kicks in if miners are making money. Therefore, if miners are not making money, the tax does not kick in. That to me makes sense and I think that most of us would agree with that principle, which, in fact, is the whole basis of our existing tax system. It is a fairer, more reasonable way to secure income for the state to tax profits rather than impose a flat fee irrespective of whether a company makes money.

The fundamental basis, the principle, of the tax is probably sound. The problem is that the tax rate of 40 per cent, which kicks in when a company makes more than a six per cent return, is incorrect; it should kick in when a company reaches a threshold higher than the proposed six per cent threshold. I think that is obvious. There is a range of figures at which it could kick in, but obviously six per cent is too low. The resource rent tax on the petroleum and gas industry kicks in at 11 per cent. For the terrestrial mining industry, 11 per cent is probably still too low. I say that for a few reasons. One is that the profit return on minerals is often lower than it is on oil and gas. Oil and gas are high-profit industries; once a company has its capital in place, they are easy to extract and companies can make some big money, although the return is often not until the later years of production. However, a lot of mining ventures, in this state in particular, are small operations. Most of them are small

operations and small companies with small capitalisation—some investors took a risk and went out and opened a mine. They are not all Rio Tinto, BHP Billiton, Barrick Gold, AngloGold or Alcoa—in fact, those large companies are the minority, even though they probably account for the majority of the production. Therefore, the resource rent tax as it is currently proposed would treat mineral wealth largely the same as it treats offshore oil and gas, with a difference in the level at which it kicks in. In my view, 11 per cent for the mining industry is too low; I would go higher than that. Somewhere between 15 and 20 per cent I think would be far fairer and that would be a much more sensible way of going about it.

Dr M.D. Nahan: Currently, for petroleum exploration the upper limit is 15 per cent, so they have their five per cent long-term bond rate, plus a 15 per cent uplift factor. That is to recognise the higher risk associated with exploration. Therefore, under the petroleum resource rent tax, it is actually 20 per cent for exploration and predevelopment work.

Mr M. McGOWAN: That sounds reasonable to me. Federal opposition members, government members' colleagues, have put themselves in the position of saying that there will never be any tax like this if they are elected. I strongly suspect that if they were elected, there would be a watered-down version of the resource rent tax, which basically would probably go along the lines of what I am saying today. If they were going to impose such a tax, they would probably do it modestly, up-front, and see how it goes.

Mr J.C. Kobelke: Has the federal opposition actually put that in writing or is the Leader of the Opposition just saying that?

Mr M. McGOWAN: I think that is a very good point, and I am not sure whether it is the gospel truth! However, I do know that if members of the federal opposition were elected, they would have revenue pressures like everyone else—like every other government. We have an ageing population that we have to deal with at some point, and there are problems of carbon emissions and enormous pressures for spending, as everyone knows, on the government of a country like ours, where people expect government to play a major role. We are not the United States, or other countries where governments are not expected to play a major role; we are a country where people see government as a force for good, and I agree with that. It is one of the things that make our country great. There are spending pressures on government. However, this tax should kick in at a modest level; as I said, somewhere between 15 to 20 per cent should be considered. The government would raise far less revenue but at least it would not have the jitters, the scare campaigns and the Clive Palmers of this world saying the sorts of things that they are saying. I do not think that the government would see the sovereign risk issues being raised in the way that they are today because most people would say that a 15 to 20 per cent return before a tax of this nature kicks in is quite reasonable. I think most people would accept that. Therefore, I would say: make the tax more modest.

The second thing I would say is that the tax need only apply at the point of extraction; otherwise, the government will damage the downstream processing industry of this country. Therefore, when Alcoa mines its bauxite, the tax would apply at the point it mines its bauxite. When Swan Gold mines its gold, the tax would apply to the point at which it mines gold. It would not apply at the point at which the product is transformed into something more valuable, which is the downstream processing industry of this state. We need to make the rate more modest by lifting the base significantly and making sure it only applies at the point of extraction. The third thing I would say is that it needs to be more complex than a flat rate. There are a number of minerals out there that are less profitable than others. During the recent downturn, nickel went from being \$50 000 a tonne to \$10 000 a tonne. We know that some minerals are more profitable than others. I do not profess to have the solution to this, but I think it should be a little more complex in the way that it is applied, depending on the mineral and the profitability of the mineral. I think that that is a fair way of looking at it. I do not have a solution as to how that could be put into practice, but I think there could be a fairer way of doing it.

Those are the three points I want to make. We have a diverse mining industry—400-plus mines—in this state. We cannot apply the same regime to small operators as we do to offshore oil and gas, for a few reasons. One reason is the profitability of oil and gas, and a second is the fact that the companies that are generally in the oil and gas industry are massive multinationals with huge capitalisations. They are very successful major companies, ordinarily based in Europe or the United States, with one major exception. There is greater scope there for them, but in the case of onshore mines, as I said, probably three-quarters are small operators. I think that needs to be taken into account. The rate should be applied at the point of extraction and the rate at which it kicks in should be lifted. We should try to differentiate between the more profitable minerals and the less profitable minerals. I think that would be a fair thing to do. Tony Abbott and the federal opposition see what this is; they see the pressures that will be applied to the commonwealth government in due course.

Another pressure is our defence expenditure. If we are going to build 12 submarines for \$35 billion—that is just for submarines—then the tax system —

Mr I.C. Blayney interjected.

Mr M. McGOWAN: No, I do not. The key to the successful defence of any country is to have a home-grown defence industry, and that is the fundamental strength of the United States and China.

The ACTING SPEAKER (Mrs L.M. Harvey): Members, as interesting as this is, we are debating the Approvals and Related Reforms (No 2) (Mining) Bill 2009. I request the member for Rockingham to address his remarks to the matter on the notice paper.

Mr M. McGOWAN: As the title says, “mining”!

In any event, the commonwealth government has huge expenditure pressures. If Mr Abbott becomes Prime Minister, he will do something of this nature; it will just be more modest than what Mr Rudd is currently proposing.

There are some benefits for the industry, and we raised this at the meeting on Monday. If a mine goes broke or does not operate, there will be some payback of the tax it might have paid. There are some major exploration incentives, and there is a major capital works fund. I will address each of those in turn.

There will be payback to a company on what it might have invested if it goes belly up. For instance, Ravensthorpe might have received back all the tax it paid. The companies are actually of the view that that would never happen. What government is ever going to pay BHP hundreds of millions of dollars? It would be a difficult thing for any government to do, and I agree. That is one way —

Dr M.D. Nahan interjected.

Mr M. McGOWAN: It did go ahead.

Dr M.D. Nahan interjected.

Mr M. McGOWAN: I appreciate that; I will continue talking about mining.

The way to lift the threshold that would kick in would be by abolishing that return. The mining industry does not seem to care much about the exploration incentives contained within the current proposal. My view is that if it does not care and does not want it, take it away, and that might help the government afford what it is proposing to do. There is a capital works fund of somewhere in the region of \$6 billion or thereabouts; \$700 million a year. There are two options there, in my view. That fund should be returned to the states that produce the tax stream, in accordance with what they produce. If we provide 60 per cent of the contribution, we should receive 60 per cent of the capital works fund, because the capital works fund is said to be put there to assist the ongoing growth of the industry. If we are producing that amount, that amount should come back to Western Australia; I think that is fair. If Queensland is producing 30 per cent, 30 per cent should go back to Queensland, and the other states should share the remaining 10 per cent. If the commonwealth government is not prepared to do that, we should drop the fund. In that way, the government might be able to afford what I am proposing, which is to lift the threshold at which the tax kicks in. There are three saving measures right there through which the government could fund the lifting of the threshold. The one I am not so sure about is the capital works fund, depending on whether it is returned to each state according to their contributions. If it is, I would say keep it, because assisting Western Australian capital works is a worthwhile thing to do, particularly if it is assisting the mining industry. Anyone who meets with the mining industry will know that there is constant demand for roads, ports, electricity infrastructure and so forth. If the commonwealth government does not do that—I do not think it will—the fund should be dropped. Those are three ways of saving the revenue that would be needed.

If my proposal were accepted, there would be less revenue raised; there is no doubt about that. I do not have the figures, but probably between one-third and one-half of the revenue would be raised, if all the things I have suggested were put in place. That would be a good start for something like this. I think it would be broadly accepted in that case as well. If that is what happens, the government should trial it and see how it goes for five years. That would be a reasonable way of starting a system like this, and it would be the best thing to do. The alternative is to lift royalties in this state; that is going to happen. We do not know whether that will be taken into account in respect of receipts being given back to the companies, which would also contribute to some nervousness amongst some of the iron ore miners in particular. That is the alternative; we know there will be an increase in costs to the mining industry by the state government in its budget.

I return to my original point: one has to be very careful about sovereign risk in this country; it has always been one of our strengths. We have a high standard of living in this country, based upon the fact that we are a responsible country in the way we go about business. We are a welcoming environment for both local and international investors. There has been some commentary by some senior people in the mining industry to the effect that this will mean more foreign investment and less Australian investment. That sort of talk implies some sort of xenophobia and that somehow overseas investment is not to be welcomed. I think some of the prominent

people who are saying that should perhaps change their language around it because we need to be careful about the messages we send on both sovereign risk and our willingness to accept investment from elsewhere. Some of the miners in this country have been saying that. The minister might have heard that; I do not know whether it has been commented on but that is a significant issue. Our standard of living is based upon the fact that our country is a worthwhile and welcoming place for people to invest in. I think we all need to take account of that in the decisions we make in government.

I have proposed what I think are some worthwhile changes to the federal proposal and to the state's proposal on changing state agreement acts without agreement. That is what they are: state agreement acts. In my mind that sends perhaps a stronger message to overseas investors than the message about a resources rent tax because they are state agreement acts. I do not think the Premier should countenance changing them or even putting money into the budget that is not already negotiated and agreed to. Otherwise, the government will be saying that it is changing the agreement without agreement. I think the Premier needs to be very careful with what he says about that this afternoon.

The bill is minor; I am impressed by its unimpressiveness. If this is the great reform agenda of the government, it is not much of a reform agenda.

Mr W.R. Marmion: It is important.

Mr M. McGOWAN: Everything is important; it is just a matter of degree. This is at the lesser end of importance because it is putting online some approval processes. The minister might indicate during his reply to the second reading debate whether it might prevent some of the Cazaly Resources-style issues that took place. In any event, I will conclude my remarks.

MR C.J. TALLENTIRE (Gosnells) [11.42 am]: I rise to make short comments about this Approvals and Related Reforms (No. 2) (Mining) Bill 2010, particularly in relation to mine closure plans. At the moment mine closure plans are not required to be tabled when people put forward a mining proposal. This amendment bill will change that situation, and I think that is much needed. It is important that good quality mine closure plans are presented as part of mining proposals. The reason for that is that a number of problems emerge when mine closures are not properly done. One of the issues we often face across the state is acid mine drainage. This occurs when areas are opened up and a particular rock type is exposed to the air. With the oxygenation of the rock, acid forms and when water comes through, the acid runs off into creek systems in the natural environment. The potential for acidic run-off to leach all sorts of toxic nasties such as heavy metals and so forth into groundwater systems poses quite a risk. We therefore need to make sure that planning is in place from the outset so that people who stand to make significant amounts of money from a mining operation have thought through the long-term consequences of their mining operation. I support the notion that proper mine closure plans be in place.

Other things that come about if mines are not properly closed are the effects of tailings dams. When mining occurs we are left with large volumes of fine mineral material that is put into tailings dams. Tailings dams have to be properly designed to do their job, otherwise there is huge leakage into the natural environment. When we consider the sorts of chemicals used in the different processes for separating the ore from the rest of the dirt in a mine, it is quite frightening. For example, cyanide is used to separate gold from the rest of the material that the gold is found in. As a result, there are huge volumes of cyanide across the goldfields in tailings dams. If these dams are not properly designed, leakages will occur of nasty things such as cyanide into the natural environment. I have figures that suggest there are 600 hectares of tailings dams across the goldfields. If they are not properly monitored, there will be significant environmental consequences. It is extremely important that these amendments are made and that this requirement goes ahead.

I touched earlier on the issue of acid mine drainage. To put that into some context, it is important to say that that problem arises in an area in the Pilbara called the Pilbara black shale area. It is also in our mineral sands mines due to particular geological layers being exposed, causing different acids to leach into the natural environment. Submitting mine closure plans with mine proposals is vital. Those aspects of this legislation are welcome.

Another part of this legislation, which the leader of the opposition business touched on, is the issue of electronic payments so that ambiguities do not arise over who is first to get their mining tenement documents in. The proposed system will improve how the mining registrar is able to conduct operations, and that will lead to a better outcome. It seems that for a long time the mining industry has been operating on a fairly old-fashioned regime under which the person who physically goes through the door and lodges the paperwork first gets the nod for a particular tenement. Clearly, there is a need for that to be brought into the twenty-first century with electronic lodgement procedures.

This legislation is welcome. I want to emphasise again the need for proper mine closure plans. I note that this legislation provides also for mine closure plans to be reviewed. I think there is some room for greater clarity on

that. The minister might be able to clarify the frequency with which mine closures will be reviewed. Obviously, over the lifetime of a mine we will be learning more about the issues around the closure as we go. There may be a need to tighten the review process, which is vital, to conduct them more frequently.

As I say, the scale of these problems is sometimes quite horrendous. There is a famous example in the Northern Territory where the lack of a decent mine closure plan for the uranium mine known as Rum Jungle was estimated by the Northern Territory government to cost the Australian taxpayer \$100 million. When mine closure plans are not properly designed, these often very significant environmental problems can occur, putting human health at risk and costing the community very heavily. I look forward to hearing about the frequency with which mine closure plans will be reviewed and welcome the legislation as it is presented.

MR W.R. MARMION (Nedlands — Minister for Commerce) [11.49 am] — in reply: I thank the member for Rockingham and the member for Gosnells for their contributions. I thank, firstly, the member for Rockingham for supporting the legislation. He mentioned the importance of maintaining closure plans and highlighted that, although it is a small additional compliance burden for miners, it is a welcome one for Western Australia. The member for Rockingham's other comments related mainly to the resource rent tax. It is not appropriate for me to comment on that during debate on the Approvals and Related Reforms (No. 2) (Mining) Bill 2009. I thank the member for Rockingham for those comments, which I found very interesting.

The member for Gosnells said that he supports the lodging of mine closure plans at the same time that mine proposals are lodged. As a former engineer with Main Roads, I know that that is often one of the last things people think about when they are doing a development. Attention must be drawn to mining closure plans. People doing a development do not think about them until later on. It is important that they are lodged up-front. The member for Gosnells mentioned the acidic run-off and tailing dams as being an important part of the lodgement of a mining closure plan. The bill will strengthen that area. The member supports the mining tenement lodgement system which, as he said, will bring it into the twenty-first century. The mining closure plans will have to be reviewed every three years, as was mentioned in the second reading speech. As the member for Rockingham suggested, that will place a slight additional burden on mining companies. This bill will hopefully avoid the catastrophe of Rum Jungle, which does not have a proper closure plan.

The bill does four things. First, it ensures that a mine closure plan is developed when a mining plan is lodged. Secondly, it ensures that the mine closure plan is updated every three years. Thirdly, it allows mining tenements to be lodged with the nearest registrar with a view to being forwarded to the appropriate registrar. Finally, it allows people to lodge a mining tenement through an electronic online portal from anywhere in the state.

I commend the bill to the house.

Question put and passed.

Bill read a second time.

Consideration in Detail

Clause 1: Short title —

Mr M. McGOWAN: This legislation is designed to provide for a more extensive process of dealing with mine closure plans and to enable the lodging of some documents, approvals and so forth online. I assume that developers can currently lodge their documents at the various Department of Mines and Petroleum offices around the state. Often the timing of a lodgement for a certain piece of land is disputed between two prospectors or miners. That has been a significant issue in the past. As we know, there have been major contests between companies over those issues. I assume that the ability to lodge online will help avoid that problem. I am referring to the Cazaly Resources Ltd issue, which was not exactly a timing issue but a paper-trail issue. Will the process that is set out in the bill avoid the particular problem that was experienced by Cazaly? I asked this question during the second reading debate. It was the only question I wanted the minister to specifically answer, but he did not do so.

Mr W.R. MARMION: I do not know much about Cazaly because I was not a member of Parliament at the time. I know only what I read in the newspapers. I do not have my advisers with me. From what my advisers have told me, a document that is lodged electronically is deemed lodged at the start of the next business day. I take the member's point. If 10 people lodge a tenement after-hours, they are all deemed—the way I read the bill and from what my advisers have told me—lodged at the same time the next working day. I have asked my advisers what would happen in that situation. It would be up to the Minister for Mines to sort it out. My understanding is that this bill will not resolve that situation unless it is put in the regulations that underpin the bill. I understand that in the situation of Cazaly a coin was tossed to sort out the stalemate.

Mr M. McGowan: I think the minister had to make the decision in the Cazaly situation.

Mr W.R. MARMION: From what I was told by my advisers, who are not in the chamber, if a tenement is lodged at exactly the same time, there has to be a system to unravel the situation.

Mr M. McGowan: But that would only be the case if documents were lodged on a weekend or after-hours on a working day. If they are lodged during working hours there is no problem.

Mr W.R. MARMION: That is correct. That is what I got from reading the bill. The probability of two people lodging a tenement at exactly the same time from two different spots is quite remote. If that were to happen, the minister would have to make a determination. It falls back on the Minister for Mines to sort it out.

Clause put and passed.

Clauses 2 to 5 put and passed.

Clause 6: Section 63AA amended —

Mr C.J. TALLENTIRE: This clause relates to exploration licences. I seek the minister's clarification on the extent to which a mine closure plan will relate to an exploration licence.

Debate adjourned, on motion by **Mr R.F. Johnson (Leader of the House)**.