MINING LEGISLATION AMENDMENT BILL 2013

Second Reading

Resumed from 4 December.

MR W.J. JOHNSTON (Cannington) [11.21 am]: I will conclude my remarks on the Mining Legislation Amendment Bill 2013. I would have done so last night but I was so rudely interrupted by the minister with his constant and inane interjections. We look forward to having a brief conversation about a couple of aspects of the bill in consideration in detail and we support the legislation. It will make important improvements, but we want to make sure that the information continues to flow to the public in the way that it should. The member for Gosnells, in his capacity as shadow Minister for Environment, has a few remarks to make.

MR C.J. TALLENTIRE (Gosnells) [11.22 am]: I rise to speak to the Mining Legislation Amendment Bill 2013 and note that much of its intent is around improving the degree of transparency with which information prepared and gathered for mining proposals is made available to the public. That is a worthy objective and I am pleased to hear about it. However, in this legislation I see a reliance on the transparency measures being in regulations rather than the legislation itself. In fact, the bill before us has provision that delete some of the existing transparency arrangements in the legislation. We are being asked to accept that the new transparency arrangements will go into the regulations, which are then susceptible to change without scrutiny of this Parliament. We saw that this week with changes to very important regulations on the protection of native vegetation published in the *Government Gazette* on Tuesday. Those provisions have now come into effect and people are able to destroy many more hectares of native vegetation than they were prior to the gazettal of those changes. There was no debate in this Parliament about those measures and I think that is unfortunate. This issue of putting important provisions, in this case transparency arrangements, into regulations gives me cause for concern. Furthermore, we had an excellent briefing from the minister's advisers and I understand from them that the regulations are some way off, and I will look to the minister to clarify this. There is a group known as the Reforming Environmental Regulation Advisory Panel and I understand it is the key group working on the preparation of the new regulations that will include these transparency measures. A number of people on the panel are industry people who have a pecuniary interest. It is probably fair to say that the only person on the panel who does not have a pecuniary interest is Dr Nic Dunlop from the Conservation Council, who is a former colleague of mine and certainly an excellent person to have on the panel. However, the minister needs to respond to just how far off the conclusion of that panel's work is and what shape it will take. It is all very well for the government to say it will take the transparency provisions out of the current legislation and put them into regulations, but those regulations are some way off. I note that the measures contained in this amendment bill do not come into effect until the regulations are in place, but nevertheless we need to know what the content of those regulations will be. That is my main concern.

There are a number of things we will look at in consideration in detail, especially the proposed deletion of sections 74(5) and 74(6) of the Mining Act in clause 6 of the bill. There are also some deletions in clause 7 and there are some issues with the director general's decision-making capacities. The director general can decide, and probably will in most instances, to make information presented as part of a program of works or a proposal publicly available. However, the director general has discretion and I am concerned that that discretion will generally surround issues of things being commercial-in-confidence. I always worry about that because I think it is wrong when commercial confidentiality prevails over public interest. If a director general is in a position to refuse the release of information, his or her reasoning for that failure to release information should be publicly available as well. That needs to be more than just some bland statement about not wanting to jeopardise the commercial interest of the company. The case for commercial interest can be on all kinds of grounds, but the fact is that many people in the mining sector benefit from the sharing of information. I understand that is another part of this bill. It is about encouraging the sharing of information; for example, techniques employed by one company. We could be talking about techniques to do with the separation of ore from overburden or other mining techniques or the rehabilitation of a site. Those techniques need to be shared. If the technology a company has particular access to is simply hidden away and if the sharing of that information would lead to a better outcome for all, we should make sure that public interest prevails over commercial interest. There are so many other reasons that one company can be more profitable than another than just the application of its particular technology.

There are many other reasons that companies like to mine in Western Australia, not least of all the high degree of political stability in this jurisdiction, and we are inclined to undersell that. We often hear people say that if we do not watch out, we will lose a proposal or a company will simply invest elsewhere overseas. The fact is that not many jurisdictions around have our mineral wealth combined with our political stability. It is often a little far-fetched for people to suggest that if we do not make it easier for investors to put money towards resources projects in this state, we will lose them to places such as West Africa or South America. There is no way that

those jurisdictions have a comparable level of political stability to ours. We invest a lot in our political stability. We have an expensive democratic process. I touched on the cost of having a good healthy democracy when we were debating local government. We should look upon that as a very wise investment that brings us all kinds of business benefits. In this case it is for the mining sector to be able to feel safe when it goes ahead with investments here. Of course, the biggest unknown for the mining sector will always be commodity prices. The fact is people choose to go into a commodity sector in which inevitably there is a global price. If someone is a price-taker that is the game they have accepted to go into. If someone is in another business, perhaps they could choose to be a price-setter and then they have a totally different business marketing–pricing dynamic. But if they are in the commodity sector, through the mining or resources sectors, they are doomed to the whims of the market. That is the way of things. It is a very profitable sector, so people are, nevertheless, doing very well with the situation that the market price delivers to them.

I go now to some of the other aspects of the Mining Legislation Amendment Bill 2013 that relate to the memorandum of understanding that exists between the Department of Mines and Petroleum and the Environmental Protection Authority. There are many, many proposals and programs of work that are deemed to be of environmental significance, but not such that there is a need for an environmental assessment through the Environmental Protection Authority. All that decision-making around which way a project should go—should it go to the EPA or can it be given a good environmental assessment through the Department of Mines and Petroleum—is decided through the terms of the memorandum of understanding. I have concerns about that. I think there is a need for a very careful review of that arrangement at some stage, especially as it often depends on officers in the Department of Mines and Petroleum to determine whether a proposal is at odds with the objectives of the Environmental Protection Act. I worry that we have officers whose main legislation is the Mining Act and related acts and I am not certain that they have a full understanding of the referral mechanisms or triggers that may exist under the Environmental Protection Act. That is a further concern of mine, but it is probably an issue for another day.

I also note that parts of this bill, in particular part 3, are about the operations of the mining rehabilitation fund. These amendments will enable rehabilitation works to be undertaken regardless of the status of the company involved. If the company has disappeared but rehabilitation works need to be done, they can be done, and then it is at the department's leisure to pursue those shareholders or company directors who may have disappeared but are, nevertheless, responsible for the rehabilitation work. That seems like a sensible arrangement and I welcome it.

I come back to the point about the discretion vested in the chief executive officer and I also note the variation between the use of the terms "director general" and "CEO" in the bill and the act. The act currently refers to the director general, but some of the amendments for insertions refer to the CEO. Proposed section 13(2) in clause 12 of the bill states that the CEO may make available to the public certain information. Likewise, proposed section 15(3) in clause 13 also has the term "the CEO may make available to the public". I look to the minister for clarification about the issue of the CEO's discretion and the extent of that discretion. I am also interested in the process that the CEO or director general will use and the information that would then be available to the public to know why the CEO determined that a particular matter may be commercial-in-confidence or something else.

The conclusion reached with this legislation is that we are really dependent on the quality of the regulations that come out to know how satisfactory it will all be. I hope that the minister will be able to update the house about that, but my understanding from the briefing is that those regulations are some way off. A committee has been formed that is probably working very hard on this matter. Although, it has to be said that the committee is heavily skewed towards those who have a strong pecuniary interest in this, so naturally they will be pushing the case of the organisations that they represent and not necessarily those of the public interest. I conclude my remarks and I look forward to discussing some of the finer points of this bill with the minister, if he cannot answer my questions about them in his second reading reply.

MR M.P. MURRAY (Collie–Preston) [11.35 am]: I rise to give my reserved support to the Mining Legislation Amendment Bill 2013. It is reserved because there is still a long way to go, but any red tape that can be taken out of the mining industry, no matter which type, is certainly a help. Some of the environmental issues still give me great concern. How are we going to go forward? I think facilitating data release is a major step in the right direction, but I am concerned about how that data is released and accessed and whether it will be very costly for people on the street who wish to access that data. That is one of the most common requests I receive in my office; people want to know what is happening, especially about coalmines, in the future, what environmental assessments have been done and how they can access them. There are still some problems there; of course, the regulations will allow people to have the data in their hands instead of having to go to meetings to hear what has been done here and there, while not being aware that a lot of the environmental stuff has already been fulfilled

under the requirements. That, minister, is certainly one of the areas in which I would like to see the costings for accessing that data to know whether it is accessible to the person on the street.

The simplifying of the environmental approval authorisation process gives me some heartache, if it is too simple and is just a "tick box" situation. On the one hand I welcome it, but I am a bit concerned that it will go through too quickly without receiving the due respect that should be given to any environmental approvals for the mining industry. We do not want to see it tied down, but we do not want to see it tied up either. If we can get a midstream process in which all people are happy, not just the mining side, that will be better for our state and certainly better for the industry.

Another issue that concerns me is the recovery of mining rehabilitation fund money. If that is not being done and money in the fund is handed out for rehabilitation, but the company goes broke, I do not see how it is possible to recover the funds. The cost of litigation and other ways to recover the sum of money that was handed out could be considerable. I see that as being one of the major problems, understanding that many mines go broke to say the least, or become financially unviable. If they have accessed money, how they will be able to give it back? Previously, there was a bond system, but with that gone, so is the money if these mining companies have already accessed it. That is a major concern to me.

The final amendments in the bill allow for minor changes to the way notices are issued under the Mining Rehabilitation Fund Act. The key line is that the department will step in and perform works when a miner fails to do so.

Mr W.R. Marmion: I am sorry, I missed that.

Mr M.P. MURRAY: The department can step in and do works. We have talked once previously about this old chestnut of mine; that is, Lake Kepwari down my way. We said that if the mining company would not do the work, it was possible under the act for the department to do it and then claim back the cost from the company. There was certainly a rush by companies for about 10 minutes, until the minister said he would not do that. However, the companies got on their high horse and said that they would do some work. In my time in the mining industry I have not seen any case anywhere of the department doing the work and then claiming back the cost. That is just a flow-on. The minister well knows that we have been trying for seven or eight years to get Lake Kepwari up and open for waterskiing, for utilisation by the public and also for some economic benefit to the Collie region. That is not happening. There seem to be more hurdles put in front of that project than anywhere else. When it comes to risk, I do not see any way of mitigating the risk and allowing projects to go forward into the future, as the crux of the matter is probably that the government does not want to pick up the risk when the mining leases are handed back, and the company does not want to do any work to make sure that the mine is in an acceptable state to be handed back. Where does the department sit on that issue? That happens not only in the coal industry, but also in the gold industry where no rehabilitation work has been done. However, there is no urgency from the department or pressure put on to make sure that rehab work is done. In the meantime the communities miss out.

Getting back to Lake Kepwari, that project should have been absolutely up and running. However, there is no way that the department will take on even the minor risk of a sublease. If in 20 years that area has been accessed and a risk is found to be there, liability for that risk should go back to the company. In the meantime, those areas should not be sterilised for 20-odd years. There is probably more of a risk in the more densely populated areas. When an area is excluded from utilisation by people, whether it be for camping or whatever—it does not make any difference what the issue is—certainly there is a problem there that should be worked through. It will be interesting to see what happens when the department has the right under this bill to say that it will do it and claim back the cost. I doubt whether that right will ever be used, to be quite honest. I do not think the department will have the ability or the resources to say, "We will go in and rehab an area and then claim the money back." I do not know whether that money would come out of the fund or whether the claim would be made directly to the company. I do not think that will frighten a company into any sense of urgency about rehab.

In saying that to the minister, I would like to run through the Lake Kepwari issue again. A water-testing problem there is delaying what could be a major economic boost for not only the town of Collie, but also the whole area. In the meantime, in today's press there is an article about the government pushing forward to have waterskiing and ski boats on the Wellington Dam waters in Wellington National Park, while at the same time seeing no urgency for what should be a dedicated ski area, and all the associated safety issues that go with that. This government has not made one move forward, despite many questions asked and many speeches made about it in this place. With this bill, the government has the chance to make sure that that does happen. Admittedly, some parts of the bill come directly under environment, not just under mining. We are able to have a motorsports complex on a lease area, yet we are not allowed to have a waterskiing complex on a lease area. What is the difference? The difference is that the previous manager of the lease had a great interest in motorsports, so he was out there very quickly to facilitate his personal interest, but not necessarily the community interest. The

motorsports complex on a lease has been a great community boost, so why can we not superimpose that onto the water area at Lake Kepwari, the former Western Five mine. For those who have not heard me say it enough, it is two kilometres long, a kilometre wide and 80 metres deep. The real rub is that during the week commercial divers are trained in that area, yet members of the general public are considered to be at risk if they go there.

Mr C.J. Barnett: Are commercial divers there on the weekend or just during the week?

Mr M.P. MURRAY: The divers are there during the week.

Mr C.J. Barnett: Are the divers being trained there just during the week or weekends?

Mr M.P. MURRAY: Sometimes they are there on weekends as well because they leave their unit there. Because the water is so blue and it is still, they have new divers in there and not out in the sea getting washed around. The irony is that a commercial enterprise can be there under the risk system but not recreational —

Mr C.J. Barnett: I agree with you.

Mr M.P. MURRAY: Something has to be done there very quickly. We have to look at Collie after coal. We are probably only 50 years away from running out of coal down there. I do not think I will be here to see it, but certainly we have to change the rules so that we can increase job prospects and economic benefits for a town that has to look at its future. I believe that in this case that area could be turned into a major ski area. Along with it there would be jobs for people selling pies, pasties and fuel, as well as jobs created through ski lessons and even the storage of ski boats. However, that is not the real issue. The issue is how we get it moving forward. I will be very interested to hear what the minister can do under this bill to help the community move it forward, because it has been done in one area. Certainly there are some environmental issues as well as water issues there, but if we do not trial that area with boats on the water, it will be a false trial. That is some of the frustration in the local community. We did have problems on a weekend when eight or nine boats were out in that area and people were pushing a road in and utilising it illegally. That causes problems because if someone gets hurt, the arguments will then be about who is responsible. Is it the mine?

Mr A.P. Jacob: Member, I came in a bit late; where exactly are you talking about?

Mr M.P. MURRAY: Lake Kepwari.

Mr A.P. Jacob: Are you talking about Wellington Dam?

Mr M.P. MURRAY: No, it is a different one. Lake Kepwari should be the focus. I would love the Minister for Environment to come down and have a look at it, seriously, to see exactly what I am talking about. I oppose boats being on Wellington Dam for several reasons, one being that it is a national park. Passive recreation has been at its best there; 4 000 people camp there over Christmas. We should be encouraging the people with the boats into this mine site. Lake Kepwari is two kilometres long and a kilometre wide. It is absolutely flat water, and we should be able to do that. I believe this bill could help to do that if the minister is willing.

Having said that, that is my main grizzle. All in all, I think that in any movement forward we have to be careful about how big a step we take. I would hate to think that the mining industry would be allowed to run rampant and disregard many environmental issues that are caused after a mine is closed, or even in clearing before a mine is opened.

There have been a lot of problems with noise in Collie recently, especially during the night shift. When we have an easterly, there is more noise in the town. Because it is a mining town, most people accept that, rightly or wrongly.

The other problem we have is a lack of rehabilitation around the dust problems in some areas. I pulled a ceiling out of my house just recently and thought I had been working underground because of the amount of coal that fell on top of me. I was absolutely covered with what had gone in under the tiles. I used to dismiss my wife's complaints, saying she was starting to grizzle, but when I pulled the ceiling out, I understood what she was saying. There was about an inch of coal dust in the ceiling.

Dr A.D. Buti: I'm sure she was happy you were doing some work in the house at last.

Mr M.P. MURRAY: The member's old house would probably have a foot and a half of coal dust in the ceiling. When I finished the job, it looked like I had done a shift underground.

If we go forward too quickly, how do we address those issues? We have said yes and halfway through we are going to try to stop them. The issue is about how we do it, making sure we do it properly, taking it out and shortening the periods we do it and making sure our companies and our mining industry are looked after as much as the community.

MR W.R. MARMION (Nedlands — Minister for Mines and Petroleum) [11.51 am] — in reply: I begin by thanking the three members opposite who spoke on the Mining Legislation Amendment Bill 2013—the members for Cannington, Gosnells and Collie–Preston. Perhaps I shall go in reverse order while the member for Collie–Preston's comments are freshly in my mind. They related to environmental data. Just to summarise, we are dealing with only four issues in these minor amendments to the mining legislation. One is to facilitate greater access to environmental data, which is the point the member was making. He wanted to know the cost of accessing that data. The plan is to make the whole system more transparent so that the data will be available for everybody. The important aspect is that a lot of environmental data is gathered for a particular project. Either people do not know about it or it is held by the company, which means that another company doing another project has to reinvent the wheel and gather that information again. It will be cheaper for industry to have this information available. It will lower the cost for industry. The plan is to make the information available online so that anyone can access it from their computer. That is one aspect of the Mining Legislation Amendment Bill 2013.

Another aspect of the bill is simplifying the environmental approval authorisation processes. The Mining Act 1978 specifies officers. We are removing that specificity around officers. The director general will be named as the authorising officer. Currently, if the department has a restructure or a particular officer is not available, approval cannot be granted. That part of the bill will streamline the simple process of getting approvals.

The third amendment in the bill relates to the streamlining of the issue of notices. If a tenement has joint or overlapping owners, a notice has to be sent to all of them. If it is a notice to pay the annual rental, it goes to everybody and there is a bit of confusion. To make it a bit simpler, this bill will designate one person to be sent the notice. One notice or invoice can be sent to one person. That person can then pay the rental rather than there being confusion around whether somebody else has paid it or whether more than one person is paying it. That is the third element of the bill.

The other element of the bill relates to enabling recovery for work done. The mining rehabilitation fund is in place if a mine does not do its job or it goes into liquidation. However, if there is an argument in the meantime about whether a mine is insolvent, that could go on for some time. In the meantime, it might be necessary for the rehabilitation to be done straightaway because of a safety or environmental issue. Rather than go into a legal debate, this section of the bill will allow the department to send a contractor in, clean it up and recover the costs after the issue has been sorted out down the track. If the mining company is genuinely insolvent, the fund has to bear it. If the company is not, there is still a liability. It just makes good commonsense.

Mr M.P. Murray: If the company is under receivership, will the bill be able to override the receivers?

Mr W.R. MARMION: This amendment bill allows the fund to step in and undertake important rehabilitation straightaway. Funds can be recovered. The way the act is set up at the moment, the levy that has accumulated and the interest on that can be used to rehabilitate a mine. That is why it is there, rather than a bond. If there is a dispute, a mining company wants the leverage. That company may not want to use that provision to go into liquidation or administration. That liability is still there. It may be that the mining company does not get it back. It is there but a company can get it back.

The member for Collie–Preston's second point related to that issue. I think he used Lake Kepwari as an example. I share his views. I look forward to Lake Kepwari being a great recreational retreat for the people of Collie. I think it has great potential. The advice I have been getting, although it does not relate to the bill, is that there is liability around the water quality. The member said that commercial divers are using it. They are probably well protected. Maybe they have insurance and things like that. I will certainly undertake to look into where we are at with that since we last had a grievance on it.

The member for Gosnells supports the legislation. His issue, which we could cover in consideration in detail, is about the deletion of sections 74(5) and (6) of the Mining Act. We are going to remove those specific requirements to supply the information. That information will be in the regulations. We thought it was sensible to not have two spots where people go to find out what information they need to provide. If we are going to expand or broaden, more information has to be provided. I can pretty well undertake that the wording in the regulations will be very similar to what is set out in sections 74(5) and (6). That same information will be required in the regulations.

Mr W.J. Johnston: Do you have the draft regs?

Mr W.R. MARMION: No, we do not have the regulations. The current act remains in force until the regulations come in. That is the safety net.

Mr C.J. Tallentire: Why was that decision made not to put the extra transparency provisions in the act? Then it would all be in the one place.

Mr W.R. MARMION: If we were to specify everything in an act, I do not know how many pages it might run to. If we want to change or add something, it has to be brought back into both houses of Parliament otherwise we would never have regulations. That same logic would apply; we would just put all the regulations into an act. It makes it a more workable arrangement. That is why we have regulations.

Dr A.D. Buti: It is also less transparent and accountable. That is why this government seems to be doing that more and more.

Mr W.R. MARMION: If people do not like the regulations, they can be disallowed. It is as simple as that.

The member for Gosnells also made a point about the power of the director general to decide when information will be made available. As the member said, there is a safety net around certain information. I do not anticipate that to involve a large amount of information, but it concerns sensitive information that might come to the department such as the latest drilling core releases which, under the Australian Stock Exchange rules, have to be dealt with carefully. There is a process where the Australian Stock Exchange needs to have that information before the general public. There is also the need for certain controls around very sensitive information because sometimes that information will have, for example, intellectual property value for a tenement holder for a certain period of time and it will stop everyone trying to peg everything around a major find. But at the end of the day, it is about making more information available.

The member for Gosnells also raised another point about the director general versus the chief executive officer. "CEO" is the terminology used in the Mining Rehabilitation Fund and "director general" is the terminology used in the Mining Act.

By working backwards, I am now back to the member for Cannington.

Mr C.J. Tallentire: I did ask how the work of the reforming of the regulation advisory panel was coming on and if you could update us on that.

Mr W.R. MARMION: I do not have an update. When the regulations are done, they will be done. They will be done in consultation with industry and other interested parties, and they will be subject to disallowance in the house.

Mr C.J. Tallentire: Do you know who the members of the group are—the panel?

Mr W.R. MARMION: I can get that advice during consideration in detail.

The Member for Cannington raised some matters.

Mr W.J. Johnston: I am happy for that to be done in consideration in detail.

Mr W.R. MARMION: I think I have covered most matters raised by members. With those comments, I commend the bill to the house and say that the government is seeking to streamline any barriers to administration, reduce red tape and build on its very good track record over the five years it has been in government to deal with a backlog of mining tenements. Although I was not the minister at the time, in 2007 there was a backlog of about 19 000 mining title approvals. There is still a backlog of about 5 000, but given that 3 000 to 4 000 applications are received every year, that is a big improvement already. The amendments in this bill will further enhance that process and hopefully reduce the approvals time due to administrative constraints.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr W.J. JOHNSTON: Would the minister give us an idea of the timeline for the implementation of the bill? Subclause (b) states —

> the rest of the Act — on a day fixed by proclamation and different days may be fixed for different provisions.

As was discussed in the second reading, there are three different parts to the bill. When does the minister expect each of the arrangements to come into force, because that will then lead to the question about when the minister expects to have draft regulations available in respect of matters that the member for Gosnells raised?

Mr W.R. MARMION: It will probably be in the first half of next year, and hopefully early in the first half of the year. There is some consultation to do, so I do not want to predict a month.

Mr C.J. TALLENTIRE: That time will depend on the availability of the members of the advisory panel, so who are the members of that panel? I would also like to know what remuneration they will receive. Will all members sitting around the table receive some acknowledgment for their time and effort or will there be some people from companies on mining sector salaries and other people who do not have any pecuniary interests and who will receive nothing at all? Is the minister able to tell us that there is a degree of equity around that table? It is obviously important work. There is a deadline to get the work done. Extremely complex matters are involved, and we have to hear from those in the sector and other broad community and public interest stakeholders. There should be a high degree of expertise around the table, but it would worry me if some people sitting around that table were receiving nothing, being there more or less out of the goodness of their hearts, while other people on this important panel were on enormous salaries. I am also interested in the composition of the panel and what arrangements will be put in place for voting rights and decision making, or will it operate on consensus? My key concern is about the level of remuneration that each of the panel members receives.

Mr W.R. MARMION: This is only an advisory panel, so it is there to give advice. I can take that advice or not.

Mr C.J. Tallentire: But they are essential —

Mr W.R. MARMION: The member for Gosnells has asked a very long question and I am trying to answer it. He has asked for the names of all of the members of that advisory panel and whether they are being remunerated and I have not even started answering the question. Please, let me answer the question.

The chairperson is Dr Phil Gorey. The panel members are: Simon Bennison, chief executive officer of the Association of Mining and Exploration Companies; Kevin Price, secretary of the Amalgamated Prospectors and Leaseholders Association; Damien Hills, the associate director of environment of the Australian Petroleum Production and Exploration Association; Kane Moyle, environment manager, Chamber of Minerals and Energy WA; Harry Backes, Western Australian state director of Cement Concrete & Aggregates Australia; Dr Nic Dunlop, as the member mentioned, represents the Conservation Council of Western Australia; Patrick Pearlman, principal solicitor of the Environmental Defender's Office of WA (Inc); Gary Peacock, chairman of the Private Property Rights & Natural Resources Management Committee, representing the Pastoralists and Graziers Association of Western Australia; Simon Skevington from the Department of Mines and Petroleum; Richard Riordan from the Department of State Development; Alan Sands, representing the Department of Environment Regulation; Anthony Sutton representing the Office of the Environmental Protection Authority; and John Connolly representing the Department of Water. It is a very large and informative group. None of the members are paid.

Mr C.J. TALLENTIRE: I would like to hear the minister's views on this. We are dependent on the work of that group for the delivery of these new regulations. The minister is saying that it is just an advisory panel, but I have heard from the minister's advisers, and I think the minister said this in the second reading debate, that that group is key to the delivery of these regulations. Its deliberations are critical, yet the minister is not concerned that there would be two people on that group who would be on either a low income or no income at all, as I believe is the case for Dr Nic Dunlop. There will be one person receiving nothing on a panel that the minister has appointed and is responsible for. The other people around that table will be on incomes well in excess of $150 000. That is well in excess of what we receive as opposition members. I think that is an important consideration. How can we have good quality information? I will come further to the point of the balance on the committee but, first of all, can the minister answer the question about the issue of remuneration?

Mr W.R. MARMION: It is irrelevant. The member is too confined to the process rather than the outcome, which will be the regulations. We will have extensive consultation with this very learned group. It is great to have Nic Dunlop on the group; he can be there or not be there, but it is great that he is on it and we can get his learned advice. We get learned advice from all the other learned people on the committee. Draft regulations can be made that we can send out to everybody for their input and, when we are happy, we can bring them into Parliament. If the member is not happy, he can raise his concerns and disallow them.

Mr C.J. TALLENTIRE: I can only take it from that response that the minister is happy to receive information for nothing when he can, but he is prepared to put people in a situation in which there is a complete imbalance. I tried to make a note of it as the minister went through the names, but I think there are about seven or eight people who, as I said, would be on very high incomes and represent the most wealthy sector in our community, then we have got two people —

The ACTING SPEAKER (Mr P. Abetz): Member, can I just draw your attention to the fact that we are dealing with clause 2, which is about the starting date of the legislation. I am wondering whether you are digressing a little too far, so perhaps just wrap it up.

Mr C.J. TALLENTIRE: Thanks for that guidance, Mr Acting Speaker. The starting date is dependent on the delivery of the work that is being undertaken by this particular panel. I am concerned that if the panel either lacks balance or has inadequate remuneration for a couple of members on the panel that will delay the delivery of the regulations.

Mr W.R. MARMION: There is no voting situation with the advisory panel. The advantage of having Dr Nic Dunlop on the panel is that his learned advice can be given. It may be that one person provides more input than the others if there is an imbalance. It is very convenient that Dr Nic Dunlop is on the panel because his information might be so valuable that it helps to frame some regulations. It is great that he is on the panel and I appreciate that he is on the panel. No voting is involved. If he was not on the panel, we would not have his input, so it is good that he is there. I cannot see a problem with the current process.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 58 amended —

Mr W.J. JOHNSTON: I have a very quick question. This clause deletes the words "programme of" and clause 5 does the same. The next word is "works", so instead of "programme of works" it will be just "works". I wonder whether the minister could put on the record the purpose of that change. The same thing applies in clause 5.

Mr W.R. MARMION: It is a good question because it is important. The problem with using the terminology "programme of work" is that it is confused with the official program of work that people have to provide before they do a mining project. The purpose of removing the words "programme of" before "work" is to stop that possible confusion with the official program of work. It is just the details of the work proposed for the exploration licence rather than the actual program of work.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Section 74 amended —

Mr C.J. TALLENTIRE: Clause 6 is key in terms of the draft regulations. I note the minister's comments in response to our contributions to the second reading debate and his assurance that until the new regulations come into effect, these particular provisions in section 74 of the act will not be deleted. My concern is that the deletion, when it occurs, will be in such a way that there will not be the same level of reference to the regulations. I think that we also need to refer to section 162, which makes specific reference to the powers under the act for the development of regulations. Section 74 does not refer to regulations, but we are taking those provisions out to put them in regulations, which I am concerned about. Does the minister take my point that —

Mr W.R. Marmion: Not quite. What is your concern?

Mr C.J. TALLENTIRE: We are removing subsections (5) and (6).

Mr W.R. Marmion: Correct.

Mr C.J. TALLENTIRE: We are putting them into regulations, but there will still be section 74 about the applications for a mining lease and that does not make any reference to aspects of the application for a mining lease being dependent on regulation.

Mr W.R. MARMION: If we jump to clause 7, which deals with section 162, where the regulations are made, we see that is where we are amending it to ensure that is covered in the act. Clause 7 of the amendment bill, which deals with section 162, "Regulations", of the Mining Act, has the changes that deal with making information available so that it is covered in that part of the act.

Mr C.J. TALLENTIRE: Is there not a risk though that people looking at a tenement would turn to section 74 of the Mining Act 1978 and think that that is where they will get all the information they need for an application for a mining lease without seeing any reference to the regulations with which they must comply?

Mr W.R. MARMION: The member is jumping ahead to clause 7. This provision will allow the department to make information available for public inspection. We are dealing with clause 7 as well as clause 6. It is in the Mining Act under section 162, but the bill seeks to amend section 162 to allow information to be made available to inspect. Currently the act does not allow for all information to be made public. After this provision, the director general can make public any information that he feels is okay to be made public. This amendment will broaden the provision incredibly.

Mr C.J. TALLENTIRE: Clause 7 will amend section 162 to give the director general the ability to make information public. I find it confusing that we are talking about a chief executive officer, and not a director general, but that is minor point. That is clear for whoever is head of the department. However, I do not know that it will help the situation from the point of view of a potential miner who would naturally refer to section 74 of the act, "Application for mining lease". He would seek to comply with section 74, but nothing in section 74 indicates that he must comply with the regulations that are in effect. The miner may feel that all the information that he must comply with is contained in section 74. Surely there should be a reference to the fact that the miner needs to be mindful that he has to comply with the regulations under section 162. Things are not clear enough. I accept the minister's point that the amendment will broaden the transparency powers.

Mr W.R. MARMION: Section 74 deals with applications for a mining lease and all the things that a person has to do, including what has to be in the mining proposal, a mineralisation report et cetera; subsections (5) and (6) refer to what the director general does. A person who is putting in an application for a mining lease does not need to know what the director general does. Those things will now be contained in the regulations. Section 74 will work better and be much clearer because it will refer to only what the person making the mining lease application has to do and will no longer list what the director general can do with the information that is provided for the mining lease application. That information will now be dealt with under the regulations.

Mr C.J. TALLENTIRE: That clears things up a bit. I refer to a confusing inconsistency, which is a minor point to me, but perhaps not a minor point for the directors general or CEOs.

Mr W.R. Marmion: Mr Acting Speaker, are we still dealing with clause 6?

Mr C.J. TALLENTIRE: We are still on clause 6.

Mr W.R. Marmion: This is to do with clause 5.

Mr C.J. TALLENTIRE: Clause 5 refers to the director general.

Mr W.R. Marmion: It will actually remove "director general".

Mr C.J. TALLENTIRE: Will that be consistent throughout? I am looking at section 74A(5), which still refers to a director general.

Mr W.R. Marmion: I am sorry, but I need a bit of clarity, Mr Acting Speaker.

The ACTING SPEAKER (Mr P. Abetz): We are dealing with clause 6.

Mr W.R. Marmion: What specifically in clause 6 is the member for Gosnells talking about?

Mr C.J. TALLENTIRE: Clause 6 seeks to delete the text that refers to the "Director General of Mines" and we will come to clauses that will insert in the text references to "CEO". It seems that the government is furthering an inconsistency in the act, because I can see other parts of the act that continue to refer to the "director general".

Mr W.R. MARMION: We are deviating from the clause. This amendment bill deals with more than one act. We are dealing with the Mining Act 1978. Later on, other amendments in the bill will deal with the Mining Rehabilitation Fund Act. The terminology used to describe the CEO in the Mining Act is "Director General of Mines" and the terminology that is being used in the Mining Rehabilitation Fund Act, which is a newer act, is "CEO".

Clause put and passed.

Clause 7: Section 162 amended —

Mr W.J. JOHNSTON: During the second reading debate, I said that the one issue we should deal with specifically during the consideration in detail stage is the assurance that there will be no reduction in the documentation that can be made publicly available. Clause 7, as the minister stated a moment ago, is corollary to clause 6, because it places the rights to publish in the regulations so that the regulations will come from this. Clause 7(2) will insert proposed section 162(3B), which defines a "mining tenement document". There is a long list of things that can be defined as a "mining tenement document". This is a critical issue for the opposition. I need an assurance from the minister that that definition encompasses everything that is currently obliged to be published and that there is no question that proposed new section 162(3B)(a), (b), (c) and (d) describes all the documents that are required to be published under sections 74, 75 and 76. Is the minister confident that he understands my question?

Mr W.R. MARMION: I think so. The member for Cannington can tell me if I do not. The member wants to be assured that we are expanding the scope of the information that is available. I have been assured that the definition of "mining tenement document" covers every conceivable piece of information that is available to the department.

Mr W.J. Johnston: So everything that is currently required to be published is included in the list and there is nothing that is currently required to be published that will not be required to be published in the future.

Mr W.R. MARMION: Obviously the regulations will be specific. This will allow us to open the pool for everybody. This change will mean that, under the regulations, the director general can release, if he approves, every bit of information in the Department of Mines and Petroleum.

Mr W.J. JOHNSTON: I do not intend to labour the point; the minister does not have to get to his feet again on this issue. This is key to our support. We support this legislation on the assurance, as we understand it, that nothing that is currently published will not be published in the future. If additional information is published, that is good; however, we want to make sure that there is absolutely no question that whatever is required to be published now continues to be required to be published.

Mr W.R. Marmion: That is my intention. I would be personally disappointed if that were not the case.

Mr W.J. JOHNSTON: If it turns out that something that is currently published is not published in the future, we will think that we have been tricked. I want to make that clear.

Mr W.R. Marmion: And I would feel the same as the minister. I am sure that is not the case.

Mr C.J. TALLENTIRE: I just want to check with the minister the nature of the information dissemination referred to. Bills have gone through this place that have been quite specific about information being placed on websites and suchlike. I seek clarity that it will not be a matter of people having to go into the Department of Mines and Petroleum to inspect documents, and that information will be readily available and without cost.

Mr W.R. MARMION: I think the member is asking about the availability of information. Obviously, there cannot be physical copies of information at every single Department of Mines and Petroleum site, but it can be available online. That is where we aim to put everything. Over time, we will do our best because there is a lot of information. Indeed, it is an election commitment of ours to set up an environmental database so that information is easily available online. I understand the member will be pleased we are doing this. A lot of information is in hardcopy form at the moment, so that will have to be scanned and put online. That is the intention over time.

Mr C.J. TALLENTIRE: Is it fair to say that the virtual environmental data library will be critical or central to the release of this information? If that is the case, given that funding for the virtual library was in the budget, how much longer will we have to wait for it to be a reality?

Mr W.R. MARMION: The member is right. One reason we are amending this legislation is so that the virtual environmental library can be done. Without this amendment, we cannot do that. Indeed, the member might be aware that the Department of Mines and Petroleum has a very good database that documents a lot of mining information on a geographic basis. We intend to use that as a platform. At the moment the Department of Mines and Petroleum is developing a draft version of that. My target is to see a version of it before Christmas that I can have a little play with.

Clause put and passed.

Clause 8: Various references to "a prescribed official" amended —

Mr W.J. JOHNSTON: We are moving through consideration in detail very quickly. I was told in the briefing that in the future there would be authorisations to officers from the director general of Mines. I want to understand how the authorisation process will work. What authority lets the director general make the authorisation? Clearly, it is a sensible idea and I am not arguing about it. However, what power allows the director general to do it, and what process would be used to make those authorisations?

Mr W.R. MARMION: There is no power. A legal principle called the Carltona principle relates to an English case. Lord Greene officiated in this case, not Lord Denning, whom the member is probably more familiar with, being a learned legal person.

Mr W.J. Johnston: Lord Denning made a great decision on unfair dismissals, which is a very widely quoted case.

Mr W.R. MARMION: I knew the member would be aware of Lord Denning. However, this case was officiated not by Lord Denning, but by Lord Greene, the Master of the Rolls.

Ms M.M. Quirk interjected.

Mr W.R. MARMION: I said he is a learned person in the law; I did not say he was a lawyer.

Ms M.M. Quirk: I see; that is a good distinction!

Mr W.R. MARMION: It is, is it not?

Ms M.M. Quirk: Many lawyers are not learned!

Mr W.R. MARMION: I will not go there, member, knowing too many lawyers and with Christmas approaching!

That English case of Carltona Ltd v Commissioner of Works [1943] actually established the principle of implied power. I will not read out the whole thing, but it allows the authorisation of someone in power—in this case it would be the director general of Mines—to authorise people below him. The legal principle is that while he remains accountable, he can authorise other people under him to do that, which basically—I agree with the member—streamlines processes.

Mr W.J. Johnston: How is he going to do that? Is he going to issue a letter? Will the letters be publicly available? Will people know who the authorised officers are?

Mr W.R. MARMION: It will be an internal process. Whether the internal process is in the form of a letter will be up to the director general. I do not tell him how to run his authorisations. A process will have to be in place so that the person does not overdo their authorisation. It will be the director general's bailiwick to work that out, because at the end of the day the director general, as it says in the legislation —

Mr W.J. Johnston: That is the point. People need to know who is exercising the authorisations and that those authorisations are being properly exercised, so there is some public accountability.

Mr W.R. MARMION: Correct. It is just that there is that distinction, as the member pointed out, between authorisation and delegation, and there is a principle of law.

Clause put and passed.

Clause 9: Act amended —

Dr G.G. JACOBS: We are on to the section of the bill that amends the Mining Rehabilitation Fund Act. This is a friendly question, minister! I want some clarification about the thresholds of eligibility as far as the levy is concerned. Is this the appropriate clause to ask about it, or is it the next clause, with the addition of proposed section 7(aa), which deals with "any amount paid or recovered"? I just seek a point of clarification on when I could make some points about the levy and who is eligible or not.

The ACTING SPEAKER (Mr P. Abetz): I think that would come under clause 10.

Clause put and passed.

Clause 10: Section 7 amended —

Dr G.G. JACOBS: There were some issues for the smaller prospectors, in particular, about how they would be caught up in the mining rehabilitation fund levy. I was in Coolgardie just the other day and I was approached by someone who congratulated me. I do not know whether this happens to the minister, but this person congratulated me about something that I could not recall having done! However, this person insisted that he was very positive and thankful for the fact that he and a lot of his small prospector colleagues were not going to be caught up in this levy because they maintained that their operation was fairly minimal. The soil-disturbing nature of the small prospector tenements and what was being done there was minimal. In fact, very small prospectors obviously have less ability to fund those levy payments. I believe we listened to the prospectors' concerns.

Mr W.R. Marmion: You did, member!

Dr G.G. JACOBS: I passed them onto the minister and he listened. I believe there are some thresholds that recognise where we have to create a rehabilitation fund, but that also recognise in a commonsense way those operations that are very minimal in their environmental impact and soil-disturbing nature—that is my terminology!

Mr C.J. Tallentire: Have you seen how much damage they sometimes do?

Dr G.G. JACOBS: Hang on; as the member for Eyre and a representative of the jurisdiction of Yilgarn and Coolgardie, I have a lot of experience in on-the-ground observations of what actually happens. Could the minister talk to us a bit about the eligibility and the criteria? It would be very useful for my prospecting constituents.

Mr W.R. MARMION: That is a good question. I had not anticipated that question. Fortunately, I have an answer. Probably the best way to answer the member is to quote from the Mining Rehabilitation Fund Regulations, which specify how the levy is calculated. The good news is that clause 4(3) of the regulations state that if the rehabilitation liability estimate worked out under another subregulation is $50 000 or less, the amount of levy payable in respect of the mining authorisation in the year is nil. It is in regulations in black and white. A prospector may be doing some work and disturbing soil. If it is determined by my department that the cost of rehabilitating the soil that has been disturbed is less than $50 000, that prospector does not have to pay the levy.

This does away with a lot of red tape and lots of tiny prospectors having to pay $2.50, $5, $25 or whatever fee it is. We just draw the line at $50 000.

Clause put and passed.

Clause 11: Section 9A inserted —

Mr C.J. TALLENTIRE: Clause 11 deals with amendments to section 9 of the Mining Rehabilitation Fund Act 2012. The first question I have of the minister on this clause relates to the declaration day in relation to land declared to be an abandoned mine site. This picks up a little bit on the member for Eyre's comments. Under the act, the CEO must make a declaration in the *Government Gazette*. I am not sure how well read the *Government Gazette* is amongst those in the mining industry; nevertheless, that is the vehicle by which government wants to publish the declaration of an abandoned mine site that would then be subject to rehabilitation works. The CEO has to be sure that mining operations have been carried out in, on or under the land. Picking up on the member for Eyre's point, what happens if those mining operations were fairly minor? The minister has said that if less than $50 000 worth of rehabilitation work is required, there would be no pursuit of the offending miner. We would just be stuck with $50 000 or perhaps $49 999 worth of rehabilitation work. I am not sure what would happen. Perhaps that work would not be done and not be attended to at all. My second question relates to works that would perhaps be more accurately described as exploration—perhaps not exploration in the sense of the first testing of things, but exploration works or preliminary mining operations to see whether there is enough of a deposit for a bigger expansion to take place. Would they meet the necessary definition to trigger this declaration day section that we are seeking to insert into the act?

Mr W.R. MARMION: I will try to answer, although I am not quite sure of the question. However, to provide a bit of clarity around clause 11, we are allowing the department to go in and rehabilitate the land, but we are also keeping a liability against the person who is responsible or may have been responsible—namely, the last miner. If we can recover money, we will recover money. It is as simple as that. To deal with what the member is talking about, though, I will go back to how this money can be used. It can be used only on an abandoned mine site under the Mining Rehabilitation Fund Act. That is a site that has been declared abandoned by the CEO. It has to be gazetted. It cannot be used on a piecemeal basis with all mines. However, once an abandoned mine site is declared, it can be rehabilitated. This clause is about making sure that if there is a possibility of recovering some money from someone who has had a mining site and abandoned it—they may have legally set up another mining company that is still solvent; it can be done under this provision. When that money is recovered, it can go back into the fund. That is all we are trying to do. We are just tidying up the provisions. Given the current act does not allow us to recover money—it just assumes we have lost it and will have to rehabilitate the land—we want to make sure that we keep the possibility of having to pay hanging over the head of someone, because we do not want to have a serial offender. In fact, if that were the case, we would have to ensure that they paid a bond as well. However, we want to make sure that if we can recover the money, we do recover the money. It is triggered by the declaration day; that is when it has been declared to be an abandoned mine site. We can deal only with sites that are abandoned.

Mr C.J. TALLENTIRE: The minister states that he does not want a serial offender. However, given that there is a process for the declaration day relating to whether or not mining operations have been carried out, it must be site specific; is that right?

Mr W.R. Marmion: I don't know what you are talking about.

Mr C.J. TALLENTIRE: When a site is declared an abandoned mine site, is it fairly site specific?

Mr W.R. MARMION: It is site specific, and also the company or person is specific as to who the last person was.

Mr C.J. TALLENTIRE: If we have a serial offender who is perhaps doing damage to the tune of $49 000 each time on a number of sites, would the minister have the same power to pursue them?

Mr W.R. MARMION: If that was hanging over them, there would be a problem about them getting a new tenement. Indeed, if we gave them a new tenement, we would put a bond on it as well. We can still put on a bond. I do not want to necessarily use the expression "dodgy" mining company, but if we had concerns about a mining company, whilst our assessment might be that they have to make a payment into the mining rehabilitation fund, we might also require them to pay a bond. We have not removed the ability to do that with someone who may have form.

Mr W.J. JOHNSTON: Proposed section 9A(3) sets out the procedure for the CEO to determine what the expenses are and subsection (4) sets out the recovery action procedure. Firstly, how will the person to whom the CEO issues the liability be notified of the liability; and, secondly, are the procedures under proposed subsection (3) for the CEO to make the determination about the liabilities subject to challenge? Is there a procedure? Are there rules? All I am trying to do is make sure that we are not giving people an out to argue about what the

government spent. Let us say there is an abandoned mine site. There is leakage or something is happening that is affecting the environment immediately nearby. The government may take action to fix that up. The fly-by-nighter who is despoiling the state of Western Australia and damaging the image of the resource sector may then say, "If I'd done it, I would've done it like this. Therefore—blah, blah blah—it's going to be cheaper, and I'll have a debate with you about how much to recover." Therefore, instead of recovering the full amount owed, the department effectively ends up in negotiation and recovers a lesser amount.

Mr W.R. MARMION: Before we got to that stage, we would be in contact with the person, and they would have the opportunity to speak about it. I would think that if they have not done it, too bad. A summons would be served on that person, and that would be at our cost. We would have to accept the magistrate's decision, I suppose, but I hope that we would get our costs back. We would probably have a competent barrister to argue our case, and hopefully we would get the full amount back.

Mr W.J. Johnston: You would expect that on a very rare occasion you are not going to settle them before you get to prosecution.

Mr W.R. MARMION: I do not know that. That will be done on a case-by-case basis.

Clause put and passed.

Clause 12: Section 13 amended —

Mr C.J. TALLENTIRE: I will foreshadow my question, which is about making information available to the public. When would this information not be made available to the public?

Debate interrupted, pursuant to standing orders.

[Continued on page 7476.]