MINING LEGISLATION AMENDMENT BILL 2015

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 46: Part IVAA inserted —

Debate was interrupted after the clause had been partly considered.

Mr W.J. JOHNSTON: Before the interruption for members' statements, we had been discussing proposed section 103AP(7)—the Norman Moore provision—and I had been asking some questions about that provision. I understand that the Leader of the House wants to deal with some other things at four o'clock and that we will conclude consideration in detail at that time. Therefore, we will need to rush through some of this stuff. I understand also that we will not be doing the third reading of this bill today; we will do that at another time. We are being very kind to the minister, because this is exceptionally complex legislation and there are a lot of things to make comment on. I know also that my colleague the member for Gosnells wants to move an amendment. So, we will deal with this proposed section, and with the amendment, and we will then see what we go to next.

The minister has confirmed that people other than the proponent of a mining proposal can write to the director general of the Department of Mines and Petroleum to draw to the attention of the DG that there are social, economic and cultural attributes of the land that the DG should consider in making his decision. I would imagine that if a person or an organisation wrote to the DG in those terms, the DG would not make a decision on those social, economic and cultural attributes of the land without giving the proponent the opportunity to speak on those things. Therefore, I would imagine, minister, that the DG would write back to the proponent and ask them to comment on those issues. Is that the way things will occur?

Mr W.R. MARMION: Yes. The director general, or someone on behalf of the director general, would get in touch with the proponent.

Mr W.J. JOHNSTON: Earlier in the debate, my good friend the member for Gosnells had a discussion with the minister about why the minister did not simply pick up the same definition that is in the Environmental Protection Act, and the minister explained that he wanted to narrow it down. Therefore, despite the fact that, as the minister explained to the member for Gosnells, we are using this other definition in order to exclude the question of the social, economic and cultural attributes of the land, it is probable that the proponent will still need to deal with those issues, because the director general will nonetheless be including those issues in the decision-making process.

W.R. MARMION: This is a "just in case" sort of clause—just in case there is an obvious structural impediment to the community as a result of a mining lease, the director general will be able to request more information. It will avoid the director general having to approve something that obviously the community would not agree to approve. That would be a rare occasion. The clause states "may". This is basically to make sure that we have covered for any obvious flaw in terms of a non-ecological environmental issue.

Mr W.J. JOHNSTON: Thank you very much, minister. As I have said, this is the Norman Moore provision. This is to allow the banning of coalmining in Margaret River. Clearly, no government is ever going to approve a coalmine in Margaret River. Nobody would ever do that, because it would be completely unacceptable to the community. All those people who drive their BMW, Mercedes or Porsche Cayenne —

Mr S.K. L'Estrange: Where is your property down there?

Mr W.J. JOHNSTON: I do not have one. All those people who drive to Margaret River along the $450 million Forrest Highway, which is empty every day of the week—except for long weekends; it will be crowded tomorrow!—do not want to have a coalmine next to their holiday home.

Mr P. Papalia: That would be unacceptable!

Mr W.J. JOHNSTON: Clearly that would be unacceptable. There is no way the director general would approve a coalmine in Margaret River, because he would not be able to go into a coffee shop in Margaret River without somebody having a go at him! I am not talking about the current director general. No director general would do that, because they would not want to be interrupted while they were drinking their coffee at a cafe in Margaret River. Clearly there is never going to be a coalmine in Margaret River. But the problem is that the proponent will not know until the end of the process what they will have to talk about in respect of the social, economic and cultural attributes of the land. Therefore, this has to be in the bill, because, as the minister has said, we would not want to do something as silly as approve a coalmine in Margaret River. We also would not want to approve an iron ore mine in the most important aspect of the banded iron formations, and neither would we want

to approve a bauxite mine in Mitchell Plateau, which we dealt with last week. These are things that we just would not do, so of course we need to have this provision.

However, that highlights the problem when we take this out of the definitions. The reason these things are in the definitions elsewhere is that it is obvious that we will need to take account of these things. No-one will ever not be able to take account of them. The only difference is that the minister has been able to pretend that these things have disappeared, when in fact they are still there. Not only is that the case, but also the minister is effectively allowing third-party interventions in the process, because the minister has acknowledged that people are going to lobby the director general separately from the company's mining proposal and say, "Don't forget when you look at that coalmine in Margaret River that there will be all these social, economic and cultural impacts from the coalmine." Therefore, those things will still need to be covered off. We are not saving one single cent for proponents. It is just that the time at which they will have to start dealing with these matters will be delayed and will now be right at the very end of the procedure. As I have said, it could come from a third party. The minister is saying that the director general "may have regard to other matters". I reckon that those words will entertain lawyers for years. I reckon that lawyers will be giving advice to community groups, businesses, interested parties, people with alternative mine proposals and traditional owner groups about what is meant by the words "may have regard to other matters". I will bet the minister $100 that we could find a lawyer who will say that the director general "will" have to look at those things because he "can" look at those things; otherwise, we will end up with a nightmare. As I have said, obviously this is the Norman Moore provision. Norman Moore did not want to approve a coalmine in Margaret River, and nor should he; and, frankly, the director general is not going to approve a coalmine in Margaret River either, and neither is he going to approve a bauxite mine in the Mitchell Plateau or an iron ore mine in the highest conservation value areas of the banded iron formations, because those things are clearly unacceptable to the community.

It does not matter how many times they write it on a piece of paper; it is not going to happen. But people will come in right at the end of the process to have the argument about it. The government has been able to sell the idea to the mining sector that it has moved away from these things, but the government has actually put it in this legislation, which it had to, but it should have been up-front. The government should have been more honest with people about this legislation in that it actually changes nothing and does not get rid of any outside influences.

Mr W.R. MARMION: I strongly disagree. All the examples the member brought up would go to the Environmental Protection Authority, because they are high-level issues. This provision is for when someone puts in a mining proposal and there might be a historical digging in the area, and it allows us to ask that person to move the mining proposal a bit further away because we would like to keep the historical digging. Those are the sorts of things envisaged in this legislation.

Getting back to the big picture, I might explain why the definition of "environment" is as it is. The definition is the result of significant discussion during consultation with industry and, importantly, which I mentioned before, the EPA, the Department of Environment Regulation and the Department of Parks and Wildlife. The Environmental Protection Act definition of "environment" includes social surroundings, which includes man-made structures and heritage-related matters. I have a copy of this definition. It is appropriate for the EPA to consider a wider range of matters when undertaking assessments, because it is looking at things such as coalmines in Margaret River. It is not necessary for the Department of Mines and Petroleum to duplicate the work of other agencies—for example, the Department of Aboriginal Affairs—by considering social impacts and other matters. We do not want to duplicate work, but we have left this clause in for obvious, little things that the department will be looking at. If it becomes a big thing, it will end up going to the EPA. The director general may consider other matters, including social impacts when making a decision regarding the approval of mining proposals and programs of work. The provision has been included so the director general can do that. I wanted to read that advice into *Hansard*.

Mr C.J. TALLENTIRE: I move —

> Page 34, after line 15 — To insert —
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> (4) The Director General of Mines must ensure that a table is published at the end of each financial year showing:
>
> (a) total area of native vegetation disturbed or destroyed (in hectares); and
>
> (b) total area of native vegetation disturbed or destroyed that has been described as 'low impact' (in hectares); and
>
> (c) area of native vegetation disturbed or destroyed (in hectares) by vegetation type and by interim biogeographical region.

This amendment is important because proposed section 103AM, "Guidelines", which is on page 32 of the Mining Legislation Amendment Bill 2015, has quite a comprehensive list of items that the director general of the

Department of Mines and Petroleum may approve guidelines for the presentation of. It is a comprehensive and useful list that can be referred to whenever someone submits an application for a mining tenement. The list includes —

(i) clearing proposed to be done on land the subject of a mining tenement;

(ii) each type of native vegetation proposed to be cleared;

(iii) the condition of the native vegetation proposed to be cleared;

(iv) the biological significance …

(iv) the likely environmental impacts …

(v) the amount of land …

I assume that that means hectares —

(vi) the manner of the proposed clearing;

And on it goes; it is a comprehensive list. It is good that the director general of the Department of Mines and Petroleum will be required to receive that information and that it is held, but we need to have that information as a global total summarised in various ways and presented to the general public. That is very important, because otherwise someone who does not want to collate this information themselves will not know the extent of environmental damage on a year-by-year basis. I think it is essential that not only the public knows that information, but also we have certain commitments under various national and international agreements. I am thinking of the National Strategy for the Conservation of Australia's Biological Diversity. There have been successive documents on that strategy, but in 1996 a document was signed by the then Premier, Hon Richard Court, and all the other state Premiers. A key point in that document was a commitment to reversing the net loss of native vegetation, and that commitment still holds today. It is only by presenting figures in the manner that I have suggested in the amendment that we would be able to track how well we are progressing towards that objective.

I think it is only reasonable that we continue the tradition of providing global figures, so when we are asked how many hectares of a particular vegetation type were destroyed in 2015, we have a neat presentation of that information. Previously, that job was done by the environmental agency, but now the Department of Mines and Petroleum is taking on the job of authorising, it follows that it must also be the holder of the final figures—the keeper of the records—and that those records are made fully available. That is why I am proposing this amendment. The minister might have suggestions.

Mr W.J. JOHNSTON: I am interested in hearing further from the member for Gosnells.

Mr C.J. TALLENTIRE: I suggest that the provision of this important information is a requirement and it is a guideline that the director general has to be aware of when he considers the design of the format of the program of work application form. When the various online versions of the program of work document are designed, we need to be mindful that eventually the information gathered in the program of work will filter through to a publicly available collated set of figures that will give us year-on-year records of environmental losses. I suggest that that requirement be inserted into proposed section 103AM, because I think that is logically where it should go, as it follows what will be in the program of work and suggests what will be one of the final outcomes of the program of work. I think it is very important that when a department takes on an extra area of responsibility, it takes on an extra area of accountability. I find it extraordinary that we have gone down this road of saying that the Minister for Mines and Petroleum is ultimately responsible for the environmental aspects of so-called low-impact mining, because the minister is responsible to the Australian people to declare how much has been lost. The minister must require the director general of the Department of Mines and Petroleum to design a process so that that information is readily available and we can have full transparency about how much has been lost. It is critical that we are up-front with people and explain the extent of environmental loss and destruction. I commend the amendment and look forward to the minister's comments.

Mr W.R. MARMION: I understand what the member for Gosnells is trying to achieve, and it would be good data to get, but there are a number of flaws in the member's amendment. The first flaw is that proposed section 103AM provides for guidelines for proponents putting in a program of works—that is, when putting in a program of works, these are the guidelines. By the way, it does not fit that somehow the director general will collate all the data. The government agrees with the sentiments of what the member is trying to achieve in the amendment—that is, transparency over what is being cleared. Under the provisions of the mining rehabilitation fund, how much and what vegetation has been cleared in the operation of a tenement must be reported on annually, and that information will be available on the website so that everyone can see how much land has been cleared and rehabilitated and how much is open. That will occur for every single tenement; that will be made available to everybody.

The member for Gosnells' amendment goes to another level of detail. The information that the member wants on that bit of cleared land will not fit under proposed section 103AM, but I understand what the amendment is seeking to achieve. The member wants to get to the next level down—that is, for every single tenement, what types of vegetation have been cleared, and to collate that and to have a program that adds up all of that under the different categories for the types of vegetation and then inputs that information relating to mining clearing under the Department of Mines and Petroleum. That data might be useful, but it would be more useful if it covered the whole of government or the whole of the state, and even other areas—so, planning and transport. A lot of clearing is done across the board, and that data would be useful; it would probably be useful if it was collated in another way. Indeed, it is possible to specify that in regulations. If it was assessed, we would probably know what type of vegetation was cleared anyway. We would have that information per tenement, and if we wanted to, by regulation, we could strengthen it if possible. That is where it is. That is how it should be done, not by having a prescriptive amendment to this bill.

Mr C.J. TALLENTIRE: I take the minister's response in two ways. Firstly, the minister is suggesting that perhaps this is not the right spot for the amendment. If there is a better place in the bill for this sort of requirement to be located, I am happy to hear advice on that. However, the minister is also saying that he does not think we really need this amendment. That concerns me. The minister's justification is that perhaps it is something that should be done on a whole-of-government scale. I would say that the Minister for Environment should be doing that for all approvals under the Environmental Protection Act. The Minister for Mines and Petroleum is now taking responsibility for a subset of all clearing, so the minister's responsibility needs to extend to exposing that much that he is responsible for. In one way or another, it has to be done. The minister is now saying that that can be done through the regulations, or the requirement can be made through the regulations. I think this is a significant enough issue to merit it being in the act so that we have it right up there that it has to be done. We all know that regulations and amendments to regulations pass through this place with relatively little scrutiny, so there is no opportunity for us to be involved in the design and consideration of them. Therefore, I think it is important that something as significant as this amendment, when the minister is taking on a whole new lot of responsibility that he did not have before, should be in the act. It is questionable whether this should be the responsibility of a Minister for Mines and Petroleum. Many would argue that it would be better off if it was left as the responsibility of the Minister for Environment. That argument has been had. It is going to be the Minister for Mines and Petroleum's responsibility. Therefore, it is essential that there is a requirement in the act that the figures involved are properly presented. It sounds as though all the information will be available. That is good. So it is not going to be that hard a job to require the department to do it. In fact, it is possible that on an unofficial basis the department would be tracking those things and would have a spreadsheet with all these figures. I am happy for the minister to advise where else in the bill we could make the point that there is going to be a presentation. I do not think that reliance on the mine site rehabilitation fund data cuts it, because, as the minister said, it does not go down to the level of detail that we need. It is important that we look at the detail here, because, inevitably, some vegetation types will be particularly hard hit and others will be in abundance and further clearing will not be an issue. But we need that public transparency so that red lights come on when there is, say, less than 10 per cent of a particular vegetation complex yet more mining clearing is going on in that area. We need to know about that stuff, and it is only by having that transparency and having it required in the act that we will ever achieve that.

Mr W.J. JOHNSTON: I want to emphasise that the opposition will persist with this amendment unless the government gives an indication that it will accommodate the desire of this amendment somewhere else in the bill, or some other commitment, because it is completely obvious to everybody on this side of the chamber that there needs to be proper accountability back to the community about the total amount of land cleared. We make the point, too, that, through this amendment, we will not be putting any obligation on the industry; we will be putting an obligation on the agency, so that there will be no cost to the industry for it. However, it is absolutely essential that the community has proper information.

Mr W.R. MARMION: I do not support the amendment being in the bill, but I support the possibility of looking at how we can improve transparency through the regulations. However, we are doing that anyway, because we are updating all our online assessments. For anything that goes online, we are trying to get more information, but that costs money. That is the other issue. I do not know the cost of doing a regulatory impact statement. The other thing is that with the way the amendment is worded, it does not fit into the clause. There are flaws in the wording of the amendment. Even if we were to suggest amending the wording, the quick advice I have received here is that that would be dangerous without parliamentary counsel looking at the wording. For example, in the wording of the amendment in proposed subclause (4)(b), after the word "destroyed", it would have to state "by an activity that has been described as 'low impact'", otherwise it will not make sense.

The amendment also brings in definitions that are not in the bill, such as "biogeographical region". There would have to be a definition of that term in the bill. In simply looking at the amendment for one second, we can pick up a lot of complexities, let alone whether parliamentary counsel would consider it. Nevertheless, what the

member is chasing is worth looking at, and what we can do, within the framework of our existing resources and our computer systems, is look at transparency. That is what we are endeavouring to do—that is, to make available on the DMP website for all Western Australians information on the submissions about vegetation clearing. We are heading towards what this amendment is seeking to do, and going down to the next level, which may be available if we look at each one. But for someone to go through and pull it all apart and work out that little bit here and measure that bit there, and then put it all together under the different classifications of vegetation, may be an onerous task at the moment. In the future, when systems are more sophisticated and some smart and innovative young people develop some clever technology, it may be easier to achieve what the member is seeking in his amendment.

Mr W.J. JOHNSTON: Minister, we are not quite satisfied with the words used. Could the minister give us an indication? My friend the member for Gosnells and I do not have the phalanx of advisers that the minister has. I think there are 96 000 public servants, but we do not have access to that many people to assist us, so we are trying to do this in the best way we can. We would expect that there might be some improvement in the wording, and that is fine. The minister has given us a commitment that he will look at the word "agent" in clause 6 between the houses. We are after some sort of commitment that he is happy to accept that there needs to be a provision requiring this sort of statistical information. Remember, each of the applications will have the information; it is about collating that information into a report that is made available to the community once a year by the agency, not by the applicants. If the minister gives a commitment that there will be a provision to deal with that matter, we will not insist on the amendment; otherwise, we will divide on it because we want to get things on the record.

Mr W.R. MARMION: In a brief brainstorming session with people who manage this area, I have been told that they already have "biogeographical region", so that is easy. We can certainly look at the intent of what the member is seeking. It would be in the regulations anyway, because it would fit in the regulations quite nicely. We are seeking to have regulations to provide more information and more transparency. When someone puts in a program of works and a clearing plan, we have overlays that have the different vegetation types. I have been told that it is feasible to do, so we will certainly look at it and see whether we can put that in the regulations. It may be a work in progress. Is the member asking me to commit to ensuring that when someone puts in a plan for clearing, they submit in their plan the different types of vegetation?

Mr W.J. Johnston: No.

Mr W.R. MARMION: What is he asking?

Mr W.J. JOHNSTON: I am not asking for any change to the applications. The Labor Party is asking that the agency collate in a statistical return the information that is presented to it by the proponents—they will say that they will clear this much vegetation and that they will do these things—so that the community can understand the cumulative impact of these approvals. We are not trying to place any obligation on the applicants. We are simply trying to place an obligation on the agency to tell the community what is happening. The member for Gosnells and I had a couple of discussions about exactly where to put this provision. We were not quite sure, but this is where we thought it should go because this proposed section is about the obligations on the director general, not the obligations on the applicant. We accept that we might not have this provision in the right place. We are asking for a commitment from the government that the agency will report on an annual basis statistical information along the lines set out in our amendment.

Mr W.R. MARMION: If the member is not asking the proponents to do any more than they are doing now, we can collate what they put forward; that is not hard. However, if he wanted to go into the different types of vegetation, we would have to ask the proponents to provide more information. Certainly, we should be able to collate that. That is a task for the director general. It could be something that I, as minister, ask the director general to put in his annual report every year.

Mr W.J. Johnston: Just give a commitment that it will be included in the information published and then we'll be happy.

Mr W.R. MARMION: It could be published in the annual report or whatever, and it may not fit into the specific regulations. Is the member happy with that?

Mr W.J. Johnston: No. Just sit down and we'll divide.

Division

Amendment put and a division taken, the Acting Speaker (Ms L.L. Baker) casting her vote with the ayes, with the following result —

Ayes (17)

Ms L.L. Baker	Mr F.M. Logan	Ms M.M. Quirk	Mr P.B. Watson
Dr A.D. Buti	Mr M. McGowan	Mrs M.H. Roberts	Mr D.A. Templeman *(Teller)*
Mr R.H. Cook	Ms S.F. McGurk	Ms R. Saffioti	
Mr W.J. Johnston	Mr M.P. Murray	Mr C.J. Tallentire	
Mr D.J. Kelly	Mr P. Papalia	Mr P.C. Tinley	

Noes (31)

Mr P. Abetz	Mr J.H.D. Day	Mr R.F. Johnson	Mr D.C. Nalder
Mr F.A. Alban	Mr J.M. Francis	Mr S.K. L'Estrange	Mr J. Norberger
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr R.S. Love	Mr D.T. Redman
Mr I.M. Britza	Dr K.D. Hames	Mr W.R. Marmion	Mr A.J. Simpson
Mr G.M. Castrilli	Mrs L.M. Harvey	Mr J.E. McGrath	Mr M.H. Taylor
Mr V.A. Catania	Mr C.D. Hatton	Ms L. Mettam	Mr T.K. Waldron
Mr M.J. Cowper	Mr A.P. Jacob	Mr P.T. Miles	Ms A.R. Mitchell *(Teller)*
Ms M.J. Davies	Dr G.G. Jacobs	Mr N.W. Morton	

Pairs

Ms J.M. Freeman	Ms W.M. Duncan
Mr J.R. Quigley	Dr M.D. Nahan
Ms J. Farrer	Ms E. Evangel
Mr B.S. Wyatt	Mr A. Krsticevic

Amendment thus negatived.

Mr F.M. LOGAN: I have a very short question. It is one that I mentioned in my contribution to the second reading. I refer to the term "reasonable" in proposed section 103AW(1) in "Division 6—Other Conditions". If it is correct that the wording is identical to the wording that the minister said is in the Environmental Protection Act, the term "reasonable" might have already been interpreted as it is used in the EP act. That might be the case. I am asking the minister: to whom is it reasonable? Is it to the "reasonable" person? Is "reasonable" as it is defined in *Black's Law Dictionary*: "fair, proper or moderate under the circumstances"? Is it black-letter law? Is it a legal term as in "fair, proper or moderate under the circumstances" as per a legal dictionary? Is it reasonable as in to the reasonable person; reasonable to you as the minister; reasonable to the director general; or to whom?

Mr W.R. MARMION: I will read out my advice. The statutory requirement to act reasonably is satisfied if the decision meets an objective standard of reasonableness. That is as per the Supreme Court of New South Wales in the case of Greiner v ICAC (1992). That is the objective definition of what "reasonableness" means.

Mr F.M. LOGAN: I thank the minister. In the Greiner case, what was the definition of "reasonable" reached by that court?

Mr W.R. MARMION: Whether or not the standard is met depends on the specific circumstances of the case. We will have to get back to the member on that question. However, a reasonable environmental condition under proposed section 103AW, as the member has raised, is one that imposes appropriate controls in the context of the type of matter that the condition seeks to regulate. Reasonable conditions will be responsive to the degree of risk associated with the matter in question. That gives the member a bit of context on how it will be determined.

Mr F.M. LOGAN: In terms of finding a definition for any future court proceedings, is it correct that the authority quoted by the minister today would be the classified definition?

Mr W.R. MARMION: That is correct. Greiner v ICAC (1992) in the Supreme Court of New South Wales is where people will go to get the definition.

Mr C.J. TALLENTIRE: Moving right towards the end of clause 46, I refer to proposed section 103AZB, "Security for compliance with conditions for preventing, reducing or remediating environmental harm", on page 44. It is the bit that relates to securities. I am not clear about that proposed section and perhaps the minister can explain a little more about how it will work. With whom will the security be lodged? What will be the terms of the security? How long will the security be held for? How will it be deemed that the security is no longer required?

Mr W.R. MARMION: This preserves the existing provisions requiring an environmental bond. We have not removed those provisions. Although we brought in the mining rehabilitation fund, we still have the power to put an unconditional environmental bond on a mining proposal. If we are not confident or we have some concern due to previous history—the applicant might have form—we can still use this power. This retains the current provision to maintain an environmental bond, which I think is really important.

Mr C.J. TALLENTIRE: I thank the minister for that. Can the minister bring in that bond provision at some stage during the operations of a mine or only when considering an approval?

Mr W.R. MARMION: That is a good question. This provision does allow a bond to be imposed at any time, which is rather useful.

Mr W.J. JOHNSTON: I refer to the guidelines in proposed section 103AM on page 32 of the bill. I understand that these will continue the existing arrangements from the EP act over into the Mining Act. What is the level of enforceability of the guidelines? What is that movie? In the *Pirates of the Caribbean* when the pirates breach any part of the code, they say, "The code is more what you'd call guidelines". I just wonder whether we are here as pirates again and these are just guidelines. Are they just suggestions or are they in fact enforceable? I appreciate that under proposed subsection (3) the director general of Mines has to make them publicly available—I assume that is on the net. However, proposed subsection (2)(b) states that the guidelines may "require a programme of work, or a mining proposal, to identify the following" and then there is a list of things. We would hope that the application would identify all those things, but if it is a guideline, it might not. I just want some sort of assurance on the level of enforceability of guidelines.

Mr W.R. MARMION: The guidelines set up what we want in the provision of information. The next proposed section, 103AN, begins

> (1) A programme of work must —
>
> (a) be in the form required by the guidelines; and

Once the guidelines have been set up, when a program of works is to be assessed, it must be presented in that way.

Mr W.J. JOHNSTON: Even though the word "guidelines" is being used, effectively we are allowing the director general to have flexibility about enforceable conditions. Rather than doing this with a regulation, which would then require parliamentary action, we are setting up a procedure that allows the director general to set the standards. I am not saying that is a bad thing; I am just making clear that that is what we are doing. Even though we are using the word "guidelines", these are actually enforceable standards, and the procedure is that the applications will have to address the set of standards that have been set by the director general, and that is how we can all be confident that the standards will be met by applicants.

Mr W.R. MARMION: To some extent, the member is right, but the guidelines just set out the sort of information that the director general expects someone to provide. It is quite extensive, as the member can see. It controls the director general to some extent, because by having it in the legislation, a piece of paper with one sentence on cannot be approved, because it will not comply with the legislation. It also gives some security for the proponent, because they know they have to do this anyway, and from the other point of view, the director general and the department are making sure they are going to assess someone based on providing information in all these different areas.

Mr W.J. JOHNSTON: I said I would get this all finished by four o'clock, but I am running out of time. I am not quite sure that is a satisfactory answer from the minister, but I will not pursue it much further. I understand what the minister is saying, but he drew attention to proposed section 103AN, in which "must" appears, so a program of works, mine proposal or a mine closure plan must all comply with the guidelines. That is what I was trying to drive at—that there was an expectation that, even though they are guidelines, that is not really the idea. It is stronger than a guideline, so we will actually rescue people who fall behind, or whatever.

I will move on now to my last question on this clause, unless my colleague has any further questions, and then we will move on to clause 47, because I have some questions there and I know the minister wants to move his amendment to clause 57. I want to discuss the mine closure plans, if I can just find where it is.

The ACTING SPEAKER (Ms L.L. Baker): Are you still on clause 46?

Mr W.J. JOHNSTON: Yes, we are still on clause 46. I am sorry; it is very long.

The ACTING SPEAKER: I know, I was temporarily distracted.

Mr W.R. Marmion: It is a bit like the tax act.

Mr W.J. JOHNSTON: Yes, and the minister is responsible for those as well.

Mr W.R. Marmion: I am talking about the federal tax act.

Mr W.J. JOHNSTON: I thought the minister was talking about his own tax acts!

Every three years the proponent needs to review their mine closure plan. We had a bit of discussion about this in the second reading debate, because this is potentially an issue that is highlighted by the Kimberley Diamonds matter. It has been drawn to my attention by people in the industry that there is a risk that a good operator of

a mine could have a detailed mine closure plan; it is a 20-year mine, and every three years the company is reviewing it and keeping it up to date. Then, five years before the end of the mine life, the company will have provisioned in its accounts for the cost of the mine closure, and then XYZ company buys the company. Obviously the provisions in the accounts take into account the potential liability, but now the company pays a special dividend. It was not the operator of the mine. Good Mining Ltd has the mine, and then XYZ NL comes along and buys the mine with five years to go, pays out a big special dividend, and suddenly the provisions for the mine closure have gone to the shareholders. The company still exists, the mine closure plan is in place, but now no resources are available to close the mine at the end of those five years. The directors all get on their yacht and sail back to the Bahamas, and there is nothing left behind for taxpayers to look at. Will there be an opportunity to look inside the mine closure plan to make sure that resources are actually available? We do not want to have a Kimberley Diamonds mine situation happening in the future.

Mr W.R. MARMION: This is obviously an important issue. Under the guidelines for mine closure plans, there is a requirement for the company to assess its liability provision, so there is a window. I will raise that point. It is obviously a bit complex, but if there was a concern, inquiries could be made down that line. The member has highlighted another useful thing—directors' responsibility and the corporations law. There are probably serious consequences if someone knowingly does something dodgy when they have a liability and they have reported this environmental liability to everybody, and then they squirrel it away. The other thing that the member for Gosnells highlighted previously is that we can always put in the environmental bond. If there were still five years life left in the mine, and it had been worked out that the liability provision had disintegrated, we could put the environmental bond back on, for which the company would then have to find the money. If it could not find the money by doing a new issue or something, we could take the tenement off it, because the company would not be meeting its obligations. There would still be some mining life left, and someone else might buy it. It gets messy, but there are ways and means. I think we will find that this Kimberley Diamonds thing has a few years left to play out. It will probably cover every single possible thing that someone has done wrong in managing it, so it will probably be a really good case study to look at afterwards. We are in a situation on that one, because royalties are involved, as well as the extent of rehabilitation and how that might be staged in a worst-case scenario, if there is still an asset worth something for someone to take over. It would probably be a really good case study, and we will probably end up writing many chapters on different aspects of it.

Clause put and passed.

Clause 47: Sections 103AZC and 103AZD inserted —

Mr W.J. JOHNSTON: We could go on about a lot of different clauses. I know the minister wants to move an amendment to clause 57, so I will just ask one question. This provision is still part of the proposed part IVAA and it will come into effect two years after the other parts of part IVAA. It provides for environmental management systems and setting up the conditions of the mining lease. A company must maintain an environmental management system for its operations, which will be reviewed, and the guidelines have been set up to require how these things will happen. This is, again, a critical part of the bill. The duty in proposed section 103AZD states that a lessee must, in carrying out the mining operations, take all reasonable and practicable measures to avoid or minimise the risk of environmental harm. I note that proposed section 103AA on page 21 of the bill, which is part of the previous clause, deals with the term "practicable". "Reasonable" is not defined and I assume we had a discussion about that a minute ago. I understand from proposed section 103AZD(2)—I would like this confirmed—that if I am operating a mine in the manner that the department approved and something goes wrong that that is enough. Have I complied with conditions if I have done them —

Mr W.R. Marmion: As per the EMS.

Mr W.J. JOHNSTON: Yes. Proposed section 103AZD(2) states —

> A lessee is taken to have complied with the condition referred to in subsection (1) in respect of mining operations carried out in accordance with an environmental management system —

That relates to the conditions of the mining lease being kept and reviewed. The other point is that the environmental management system is scaled to the operation; for a big operation we would expect a big plan, and for a little operation, we would expect a little plan. Given that, so long as a mining company has complied with its plan, even if something goes wrong and environmental harm is actually caused that will obviously have to be dealt with, is it not a breach of the conditions because it has done what it said it was going to do? Every three years we will review the environmental management plan as we gain more knowledge and there will potentially be increased expectations. So long as it sticks to its system, is a mining company protected from being prosecuted?

Mr W.R. MARMION: Yes and no. The member is correct; under our act, yes, it is covered, but it can still do environmental harm under the Environmental Protection Act, so the company could still be prosecuted or found to have committed some sort of offence under that act.

Clause put and passed.

Clauses 48 to 56 put and passed.

Clause 57: Schedule 6 amended —

Mr W.R. MARMION: I move —

> Page 60, lines 9 to 11 — To delete "proposal, within the meaning of the *Mining Act 1978*, and approved under Part IVAA of that Act; and" and substitute —
>
> > proposal approved under the *Mining Act 1978* Part IVAA after the coming into operation of the *Mining Legislation Amendment Act 2015* section 46; and

Mr C.J. TALLENTIRE: I am seeking clarification on this: does the approval applying to all types of mining operations apply to exploration operations as well? Can the minister also clarify that we are talking about an approval? I get that part IVAA is the part that provides a mechanism by which an approval is granted, but I am just not clear on how that will work for some types of activity.

Mr W.R. MARMION: The answer to the member's first question is yes, but I will read the following explanation into *Hansard*. After the bill was drafted and introduced, a possible loophole in this section was identified. Transitional provisions to be inserted by clause 53 of the bill retain the validity of previously approved mining proposals and programs of works. Some historic mining proposals are still enforced that were granted before the native vegetation clearing permit process was introduced but the EMP has identified that a holder of such an approval could, under the authority of the approval, carry out vegetation clearing without the need for environmental assessment or approval under either the Environment Protection Act process or the new mining act approvals arrangements. This was not my intention. It would be inconsistent with industry practice, good regulatory practice or community expectations; therefore I move that this amendment be included in the bill.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 58 to 61 put and passed.

Title put and passed.