

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

*Consideration in Detail*

Resumed from 20 May.

**Clause 6: Section 63AA amended —**

Debate was adjourned after the clause had been partly considered.

**Mr C.J. TALLENTIRE:** When this debate was adjourned, I was seeking clarification from the minister representing the Minister for Mines and Petroleum on the impact of clause 6 on exploration licences. I was keen to know whether the wording in the explanatory memorandum was accurate, as it makes it clear that conditions may be imposed on the holder of an exploration licence. I am keen to know if the holder of an exploration licence would be required to conform to the requirements of a mine closure plan.

**Mr W.R. MARMION:** I have been advised that this is a technical change to the bill. It allows conditions to be imposed on the holder of an exploration licence to make it clear that it relates to conditions below the ground as well as on the surface. It ensures that the conditions of the exploration licence, which may be to rehabilitate, include conditions below the ground as well as on the surface.

**Mr C.J. TALLENTIRE:** I thank the minister for that clarification. I seek further information. We are talking about the process of a mine closure plan being fully applied to those who engage not in the operation of a mine but simply in the exploration for minerals.

**Mr W.R. MARMION:** This is different from a mining proposal. I am advised that under an exploration licence, exploration activity is subject to a program of works. This is considered and approved with conditions, including rehabilitation. Failure to comply with conditions renders the exploration licence liable for forfeiture.

**Mr C.J. Tallentire:** Are those conditions that go with a program of works the same conditions that would be required for someone who has a mine closure plan? Is the same process used?

**Mr W.R. MARMION:** No, they are two different processes.

**Mr C.J. Tallentire:** Is it fair to say that the explanatory memorandum is a bit misleading because someone reading that would quite legitimately expect that exploration licences will come under the same regime as an operating mine?

**Mr W.R. MARMION:** This part of the bill relates to mine closure plans and other measures to minimise the damage to land.

**Mr C.J. Tallentire:** To finish this point off, the explanatory memorandum does say that the conditions may be imposed on the holder of an exploration licence. I think that gives any member of the community or any member of Parliament reading this document a reasonable expectation that the same standards would be applied to exploration licences as we see applied to operating mines.

**Mr W.R. MARMION:** Proposed section 63AA already says that. It is proposed that it will now apply to anything below the ground as well as above the ground. That is already in there. It is actually clarifying that conditions can be imposed below and above ground. That is the only add-on to the existing act.

**Mr C.J. TALLENTIRE:** I have a concern that we are seeing a continuation of the confusion that is sometimes nurtured by the industry. There is confusion about what is exploration and what is actual mining. While I can understand that this legislation is perhaps presented as being fundamentally about operational mines and the closure plans that would apply to them, it is through either poor drafting or a poor presentation of information that we are seeing this suggestion that the holder of an exploration licence—I am paraphrasing the explanatory memorandum—would be obliged to respect the terms of a mine closure plan.

**Mr W.R. MARMION:** I note the member's comment.

**Clause put and passed.**

**Clause 7 put and passed.**

**Clause 8: Section 70O amended —**

**Mr C.J. TALLENTIRE:** One of the proposed amendments in this clause is to provide a definition of “mine closure plan”. I seek assurance from the minister that a mine closure plan also applies to a general-purpose lease, as presented in division 4.

**Mr W.R. MARMION:** The answer is yes.

**Mr C.J. TALLENTIRE:** I thank the minister for that clarification. We are talking about some very extensive areas of land in the state. For instance, we are talking about huge areas of tailings dams, often requiring very, very expensive rehabilitation works. We need to be given some information on what sort of arrangements are in place to ensure that a company would have the financial means to rehabilitate land and to then also provide information on what would happen should a mining company no longer exist; it might be on-sold or it might go into bankruptcy. What would happen then with the payment for those very complicated mine rehabilitation works that would be required? I guess I am referring to the whole bond structure. I am seeking an assurance that there is some linkage between those mine closure plans and a bond system that is not just a system of putting a nominated amount of money in a balance sheet but a system that gives the state of Western Australia access to funds that can be used to undertake important rehabilitation works.

**Mr W.R. MARMION:** The member is correct; there is a bond system in place. The interesting thing about bonds is that rehabilitation can be sequential. Sizeable bonds are put in place already. Sections of the bond can be released if the department is comfortable that they are sequentially rehabilitating. There is a process in place at the moment, and the member can be assured that that will continue.

**Clause put and passed.**

**Clause 9 put and passed.**

**Clause 10: Section 84AA inserted —**

**Mr M. McGOWAN:** We have heard a lot of talk in recent weeks about cost impositions on the mining industry. I am wondering whether, under this proposal and the additional requirements for mine closure plans, any analysis has been done on what the cost to the mining industry may be in the global sense, and what it might mean for mining operations.

**Mr W.R. MARMION:** There has been no global analysis; each mine will be considered on a case-by-case basis. I have been advised that no analysis has been done on the actual costs. The Chamber of Minerals and Energy has been consulted, and it is supportive.

**Mr C.J. TALLENTIRE:** I support this clause; its intent is excellent. It provides for the review of mine closure plans, and that is vital, because it is so often the case that new information becomes available or there is a realisation that the methodology for a closure is in need of change that takes into account a better understanding of the circumstances of the natural environment in which the mine is situated, or perhaps a new technology has been developed that can help speed things or improve rehabilitation. With that in mind, I think it is important that we are sure about the process that is used for reviewing mine closure plans. I accept the minister's brief summary of how the mine closure plan review process would work. I am particularly interested to know whether it is a process that will allow for community comment. I ask that because we so often hear that corporate knowledge on particular issues no longer exists within a government agency or within a company. We have great employment fluidity in the resources sector, with people constantly moving from one job to another, and, before we know it, people are working on a project without any knowledge of the history of the project. When there is that lack of corporate or technical knowledge about a mine in a government agency or a mining company, we need to be sure that we have access to that knowledge—invariably it is only to be found in the general community. I am hoping that the minister will be able to reassure me that we have a good mine closure review process in place that allows for extensive community comment and allows the community to put information forward and know that it will be taken on board in the reviewed mine closure plan.

**Mr W.R. MARMION:** The mine closure plan, which is part of the mining plan, is a public document. It will be transparent to all the communities involved. When the mining plan is approved, they will be able to see what the department has approved for the rehabilitation process. I am assuming the updated plans will also be available for public comment. That is the process. If the community is not happy, it can buy into the process.

**Mr C.J. TALLENTIRE:** Are there appeal opportunities? If the reviewed mine closure plan has not taken on board important bits of information that have been put forward by people, can they appeal to have the mine closure plan improved?

**Mr W.R. MARMION:** There is no appeal process, but if they do not meet the conditions, they will lose their bond.

**Mr C.J. TALLENTIRE:** Can members of the community who have been actively engaged in helping the review of a closure plan appeal, should they find that the latest version of the closure plan is not to the standards they believe should be met?

**Mr W.R. MARMION:** My advice is that if that is the case, they should write to the minister and involve the minister in taking action, if they are unhappy.

**Mr C.J. Tallentire:** But you're saying there's not a formal appeal process?

**Mr W.R. MARMION:** No.

**Mr M. McGOWAN:** I want to reiterate the cost issue. I am concerned about costs in the mining industry. Does the minister envisage that mining companies will need to employ additional staff or additional staff hours to satisfy the requirements of this legislation? Does the minister envisage that the relevant department will need to employ additional staff or additional staff hours to meet the requirements of this legislation?

**Mr W.R. MARMION:** It is really just a natural progression. They should be doing this anyway, so the same people who are producing the mining plan will make sure that they have a rehabilitation plan as part of the overall plan. It will be the same people.

**Mr M. McGowan:** But if they are doing additional work —

**Mr W.R. MARMION:** It will be additional work that they should have been doing anyway. It will involve extra hours, but not extra people.

**Mr C.J. TALLENTIRE:** This might be my final question on this clause. Will the review of mine closure plans apply to mines that are covered by state agreement acts?

**Mr W.R. MARMION:** No.

**Clause put and passed.**

**Clauses 11 to 43 put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to third reading.

*Third Reading*

**MR W.R. MARMION (Nedlands — Minister for Commerce)** [4.16 pm]: I move —

That the bill be now read a third time.

**MR M. McGOWAN (Rockingham)** [4.16 pm]: The opposition has been supportive and cooperative with this legislation. We sought the opportunity to examine some of the provisions during consideration in detail of the legislation, which is our right. At no point did we advise the government that we would not seek that opportunity. We therefore sought that opportunity, as is our right, and some sensible questions were asked by the member for Gosnells and me of the minister on this legislation. That is the way this Parliament should work. Consideration in detail is an opportunity for details to be teased out about legislation that might be relevant and interesting to the public of Western Australia and useful to the future interpretation of the legislation. I am pleased that that opportunity came about; I was able to raise the issue of additional costs to the mining industry. Despite the minister's short answers, I think it is plain that there will be additional costs for some players in the mining industry under this legislation. Notwithstanding that, we think the legislation is worthwhile and should be supported. On occasions, there should be impositions on business, and if business can afford to pay, it should pay additional money for worthwhile purposes. On this occasion, as I understand it, the mining industry is agreeable. There was other recent legislation that the opposition supported to ensure that there were more mine site inspectors, which created quite a large imposition on the mining industry.

It brings to mind the debate on the resource rent tax. I have a feeling that if I were to try to debate that—I would like to raise some issues in that respect—the Leader of the House might object. I spoke on it during the second reading debate, and I would like to speak on it further. I have said things that are contrary to the commonwealth government's proposal. I think what I have said is a reasonable way forward for the commonwealth government. Were it to adopt what I have suggested, I think most people in Australia would find it to be fair and reasonable. Some ideas have been thrown up and tossed around since I made that speech last week. Some are furphies and some are correct. I heard the Premier say today that he thinks the 40 per cent reimbursement of companies when a mining project fails is not the way to go. I agree with him. In fact, I said that last week. Perhaps we had different reasoning in getting to that point, but I said exactly the same thing last week. I am pleased that he agrees with me and that I agree with him; the offset for losses is not necessary. I suspect that the commonwealth government will dump that proposition in the near future.

I have gone further than that. The industry does not particularly want all the spending requirements, demands or initiatives under the resource rent tax proposal. If the commonwealth government wants to make the tax more affordable for industry, it should drop them. I probably go a little further than the Premier on that. I do not agree with him in his arguments around company tax. Company tax is a flat rate on profits of 30 per cent. If that rate were lifted by a flat amount, it would penalise companies irrespective of their capacity to pay. At least a profits-based tax, as proposed, would take account of a company's capacity to pay, more than an impositional surcharge on the company tax rate would. That is obvious. It all depends on the rate of the surcharge the Premier is

proposing. If the rate were small, I am sure industry would agree, but if the rate were large, I am sure it would not agree. The principle behind what he is saying is that it should be a flat tax rate as opposed to one based on the ability to pay. I make that minor but significant point. The argument that industry is somehow not paying if a tax is applied is nonsensical to me, because if that were the case, industry would be supporting it. Industry is obviously paying it. What he is saying is that they get their minerals for free because a tax is applied and their royalties are reimbursed. If that were the case and the industry was getting minerals for free, it would totally support it, but it is not saying that, so there must be a slight flaw in what the Premier is proposing.

The Premier said that lifting the threshold would make no difference. That is blatantly incorrect. If the threshold were lifted—I suggested 15 per cent—industry would obviously benefit. I cannot understand how the Premier could say that lifting the threshold would make no difference. I think I heard Mitch Hook use words to the same effect today. Lifting the threshold would make a difference, particularly as the companies that are more profitable would be paying and the companies that are less profitable would not be paying. I would have thought that that would be a sensible proposition so that we take account of those companies that make the very large profits. As we saw in the budget papers, it is envisaged that the price of iron ore will double. If it is profitable now, we can see how much more profitable it will be if the price doubles, so there is some capacity. The Premier agrees with that—there is additional capacity for the industry to pay. The bulk commodity miners, of course, have a greater capacity to pay, but there should be huge changes to the current proposal. If we start from the principle that they can afford to pay more, it is a matter of how that system is put in place.

Lastly, the Henry tax inquiry has been around since 2008. Submissions were called for over a long period. I would be interested to know whether the state government made a submission to that inquiry. If it is so concerned about what is being proposed, did it make a submission to the Henry tax inquiry, which was the biggest tax inquiry in this country of the past 10 years? If it did not, it must answer why it did not.

**Mr R.F. Johnson:** Did you?

**Mr M. McGOWAN:** We were not in office.

**Mr R.F. Johnson:** You are still a political party; you are in opposition.

**Mr M. McGOWAN:** Yes, we are in opposition. The government has 100 000 people working for it; we have about 10.

**Mr R.F. Johnson:** You have more than that.

**Mr M. McGOWAN:** Well, there are 10 or 11 in the Leader of the Opposition's office. The government has agency after agency. As members opposite know, it is a reasonable thing to ask: did the government make a submission to the Henry tax inquiry; and, if it did not, why not? All these arguments have been out there for a long time. If the government was so concerned, attempting to address the matter after the horse has bolted is not the right way to go; it should have addressed it when it was out there to be addressed.

Question put and passed.

Bill read a third time and passed.