

MINING LEGISLATION AMENDMENT AND VALIDATION BILL 2007

Second Reading

Resumed from 1 April.

HON KEN BASTON (Mining and Pastoral) [9.01 pm]: The Mining Legislation Amendment and Validation Bill 2007 is a bill for —

An Act to —

- **amend the *Mining Amendment Act 2004*; and**
- **validate the extension of the term of certain exploration licences under the *Mining Act 1978*; and**
- **validate the grant of certain miscellaneous licences under that Act, and to make related provisions.**

This bill, although small, is very important. It is an administrative bill that deals with a situation that arose due to a decision on the BHP tailings case, after which the Mining Warden brought into question regulation 42B of the Mining Regulations 1981, which gives the Director General of the Department of Industry and Resources the power to issue miscellaneous licences. The Mining Warden thought that the powers were ultra vires, given that the Governor is the only person who has those powers and given that they cannot be devolved to any other person. That being the case, the act had to be amended to ensure that issued licences were not challenged and were legal.

The problem regulation was first put in place in 1991, and some 450 miscellaneous licences have been granted under it. The amendment bill ensures that those 450 licences will become valid. Those licences were for infrastructure associated with the mining industry, but I do not think they cover the oil and gas industries —

Hon Kim Chance interjected.

Hon KEN BASTON: The infrastructure incorporates bridges, roads, railways, transmission lines, pipelines, corridors, and corridors of land for roads. This bill is important as it enables the affirmation of the legality of many resources projects.

The second part of the bill validates the extension of the term of exploration licences that had been lodged and granted at the offices of the Department of Industry and Resources. The amendments to the Mining Act 1978 by the Mining Act Amendment Bill 2004 to extend those exploration licences did not actually occur. That did not occur because they were put into the Department of Industry and Resources instead of at the regional office of the mining registrar. This did not have the required effect of the exploration licences granted before the Mining Amendment Act 2004 because, and I quote from the second reading speech —

This intention was not given effect to in respect of the exploration licences granted before the commencement of the amendment act because the preserving effect of the transitional and savings provisions contained in section 19 of that amendment act was overlooked.

This, of course, was an error and it has to be rectified, and this Mining Legislation Amendment and Validation Bill 2007 will rectify that. What it will actually do is rectify the Mining Amendment Act 2004 part 4, section 19, and that will then rectify the Mining Act 1978.

Although this is a simple bill, it is very important and I believe that consultation took place, with various amendments, between the State Solicitor's Office and the Mining Industry Liaison Committee. That committee comprised representatives from the Chamber of Minerals and Energy, the Association of Mining and Exploration Companies, the Australian Mining and Petroleum Law Association, the Amalgamated Prospectors and Leaseholders' Association and the Department of Industry and Resources.

We support the bill and recognise the importance of it. An exploration licence that is not valid is certainly going to put the brakes on this state in the resource boom that we are having. It is all very well to have the industries that are up and running, but as we all know, exploration for the years to come is of utmost importance.

Leader, I do not believe it is necessary for us to go to committee. However, in looking at the bill, there is a part that I do have a query on and it may be very simply understood. Under "Part 2 — Provisions relating to exploration licences", proposed section 19(7)(b) states —

. . . shall be lodged at an office of the Department on or before the last day of the third or fourth year, as the case requires, of the term for which it is lodged.

I believe that an exploration licence goes for five years with an option of the minister renewing that exploration licence for another five years, with an option to go for another two years. I am not sure what the third and fourth years apply to or whether that is applied from the Mining Amendment Act 2004 in regards to exploration licences. If the Leader of the House were able to clarify that for me, I do not believe there is any necessity for us to take this bill to committee. I do not think I have to reiterate any further the importance of this bill. I see it was delivered to this house in April and I believe to have it brought so quickly onto the notice paper shows its importance.

HON PAUL LLEWELLYN (South West) [9.09 pm]: The Greens (WA) will be supporting the Mining Legislation Amendment and Validation Bill. However, we want to raise a few issues about the way in which approvals have been granted under the Mining Act for fairly substantial works.

The purpose of this bill is to validate miscellaneous licences approvals that were made under the Mining Act. Those approvals were made not only in good faith, but also in accordance with the laws and procedures that were thought to be valid at the time. My understanding is that the advice that was given at the time was that it was possible to delegate to a third party the power to validate miscellaneous licences. However, that particular regulation under the Mining Act—regulation 42B(n)—was ruled to be ultra vires, because that power was not able to be delegated. The power that has been conferred on the Director General of Mines to issue licences for activities associated with mining operations is not insubstantial. As a matter of due diligence, I thought I should ask for a list of the kinds of approvals that were granted during this period. I will go through this list very briefly so that I can give members some sense of what the scope of the works was. I need to make the point that this bill relates to past approvals. It does not resolve the question of the purpose for which miscellaneous licences should be granted in the future. That matter will need to be addressed by amendments to the mining regulations. Even though the purpose of this bill is to rectify some mistakes that have been made in the past, some assessment should also be made of the current regulations and the boundaries that are set under those regulations. I hope that in developing the necessary amendments to the mining regulations, which will be the next step in this process, the government will consider whether miscellaneous licences are the appropriate regulatory mechanism to deal with very large purposes connected with mining operations. Some of those purposes are railway lines, road networks, and power transmission and distribution networks. Some of these ancillary purposes in the mining industry have an extraordinarily large impact. We know about the railway line that transacts Hamersley Range National Park. However, these kinds of approvals were granted by the Director General of Mines, with no scrutiny by the Parliament. I think that is the reason that this bill is now before the Parliament.

The need for this bill has arisen because of a fairly simple anomaly that was exposed when a test case was taken to the courts. However, that has raised some other issues that we believe also need to be dealt with. One of those issues is whether the public consultation requirements that were attached to the granting of these licences are sufficient. Another issue is whether sufficient power exists to impose conditions on the proponents, given that these operations are not small but are very large. Another issue is that given that these are fairly substantial provisions, were adequate bonds put in place and were the environmental risks assessed? Was consideration given to the powers relating to third party access to infrastructure for railways, which is an obvious contentious issue regarding Fortescue Metals? They are the types of decisions that were made under this provision, and they are not at all insubstantial. I understand that in the order of 400 applications have been made—I cannot remember the actual number but it is not necessary for me to state the exact number—and that 200 applications are outstanding.

I will read some of the approvals that were given. They are not in any order of importance; it is just a list that was provided to me in the past couple of days. Some of the approvals were for simple facilities such as a rubbish dump for the Aztec Mining Company Ltd and a camp site for PMA Australia. Kalgoorlie Consolidated Gold Mines required a facility to manufacture chemicals, sulfur dioxide and feedstock and was given approval on 14 December 1992. That was a fairly substantial approval. I assume that all the environmental approvals that were required were met. We do not know whether there was a trigger to refer some of these proposals to the Environmental Protection Authority, simply because this decision was made by the Director General of the Department of Industry and Resources. That was the normal course of business and it was conducted in-house. Were all these fairly substantial projects adequately assessed at the time and were they given due diligence to assess their financial liabilities and the possible impact they might have downstream on the environment? On 27 October 1998 Robe River Ltd approved the construction and operation of a railway line specific to the Iron Ore (Robe River) Agreement Act. That sounds like a fairly large operation but there is no sense of the scope of it. I cannot imagine that it was a Tonka-toy exercise if it involved Robe River. Another approval was granted on 4 June 1999 for a bore field for a water management facility. We do not have any sense of the size of the bore field. It could have been just two bores but equally it could have been a bore field that stretched over hundreds of kilometres of groundwater aquifers; we do not know. That is a fairly substantial approval to be given under regulation 42B9(n), which was found to be ultra vires. That is a fairly substantial operation. I am reading from a

random selection. Hunt and Humphrey, whatever it is, was given approval under the regulations for an application for accommodation, sporting facilities, a mess, wash-down areas, rubbish collection, storage facilities and sewerage disposal. That is almost a small town that was given approval by the Director General of the Department of Industry and Resources. It is as if someone was given approval by the head of the department to build a small town outside of Perth to put in place a sewerage farm and whatever. That is the type of approval that was given but because it was out of sight, out of mind, it did not seem to get the type of scrutiny it deserved.

A BHP railway extension was approved on 25 November 2000 specific to the Iron Ore (Mount Goldsworthy) Agreement Act 1964. I imagine that is a fairly substantial approval. Who knows what kind of environmental scrutiny that went through. On 16 August 2001 BHP Billiton made a submission to construct and maintain a railway and associated infrastructure under the Iron Ore (Mount Goldsworthy) Agreement Act. That seems like another fairly substantial operation. If I am not mistaken, from the briefing I got, I think another 200 of these are outstanding. Our interest is in due diligence and whether we are simply passing on a legacy of poor approval processes. Another submission approved four years ago on 16 April 2004, during the term of this government, was for BHP Billiton to conduct all necessary activities for the design, planning, construction, operation and maintenance of a railway and all the associated infrastructure in connection with mining operations pursuant to the Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972, and to conduct all necessary activities for the design, planning, construction and maintenance of a railway and all associated infrastructure in connection with the mining operation pursuant to the Iron Ore (Mount Newman) Agreement Act 1964. I think we are getting the drift here. Koolan iron ore jetty, storage and transport facility for mineral product was approved on 7 September 2004. Perhaps the Leader of the House, who I think will be dealing with this, could tell us what level of environmental assessment and what level of environmental bonds, for example, were applied —

Hon Kim Chance: No, I cannot because it is not relevant to this legislation. I will not waste the time of the house canvassing a subject that has no bearing on this legislation. You can do what you like, but I am not going to.

Hon PAUL LLEWELLYN: I see. I have a long list here. I could waste the house's time all night if the Leader of the House wishes to take it to those lengths.

Hon Kim Chance: That is your problem, not mine.

Hon PAUL LLEWELLYN: Would the Leader of the House like to hear the next 400 I have here?

Hon Kim Chance: I just do not want to waste our time.

Hon PAUL LLEWELLYN: It is interesting that this is ruled to be a waste of time.

Hon Kim Chance: You might just consider whether the issues that you are raising have any bearing on the legislation before us, which is to correct an administrative oversight. You might be raising perfectly legitimate matters. I am not being critical of you, but it is just not relevant to this legislation.

Hon PAUL LLEWELLYN: I am sorry that the Leader of the House seems to be so perturbed and impatient tonight. We have all had a very long week, but I am entitled to raise any issues that relate to this legislation. In fact, the people from the department who briefed me on this supplied me with the information. I suggest that they had this information in their possession when they came to brief me. I did not ask them for it although they did expand on it slightly. They quite clearly came to the briefing with some sense that this was relevant information for the briefing. Perhaps the Leader of the House should take his grievance to the people who briefed us and to the department but not to me. Now I have lost my way through the papers; it is going to take even more time! I will have to find the paper. Here is a piece of paper. I will read all this out.

The DEPUTY PRESIDENT (Hon George Cash): We are dealing with a bill that is said to validate the extension of the term of certain exploration licences under the Mining Act, to validate the grant of certain miscellaneous licences under that act and to amend the Mining Amendment Act generally. I presume that the documentation that the member is reading relates to instances in which these exploration licences or miscellaneous licences have been issued in the past and that these are subject to validation.

Hon PAUL LLEWELLYN: These are precisely the instruments that relate to these validations. This is a small snapshot of the kinds of licences that we are talking about.

The DEPUTY PRESIDENT: Certainly, it is relevant to the debate. Whether or not the Leader of the House is in a position to give the member advice on the extent of environmental impact statements is another matter, but that can be addressed in due course when the member has completed his remarks.

Hon PAUL LLEWELLYN: Precisely. Thank you, Mr Deputy President, for that very clear ruling. I will continue to look at my long list of approvals and licences that were issued across the —

The DEPUTY PRESIDENT: I do not wish to interfere in the debate, but it would be possible for the member to give a copy of that document to the Leader of the House.

Hon PAUL LLEWELLYN: I could.

The DEPUTY PRESIDENT: The member might just consider it.

Hon PAUL LLEWELLYN: I might just put an asterisk next to all the approvals that we need to find out about, except that there are quite a few of them. Far be it for me to waste anybody's time!

BHP Billiton Ltd was granted approval to conduct all activities necessary for the planning, design, construction, commissioning and maintenance of a railway line. Hamersley Iron was granted approval on 14 October to conduct all activities necessary for the planning, design, construction, commissioning and maintenance of a railway line. That is a very large project. Here is something completely different! Hamersley Iron was granted approval on 22 June 2005 to conduct all activities necessary for the planning, design, construction, commissioning, operation and maintenance of a road, including the taking of borrow for the purposes of construction and maintenance of a road in connection with the operations under the Iron Ore (Hamersley Range) Agreement Act 1963. That is like saying that we are going to bore a haulage road from Pemberton to Bunbury. Hamersley Iron writes a letter, saying that it would like to bore a road from Manjimup to Bunbury and the Director General of Mines says, "Under regulation 42B(n), that's a reasonable request; we'll give you that right." If we are to validate all of these tonight, it is not unreasonable to outline precisely which due diligence measures were taken to approve these extraordinarily large proposals. They might well have all been approved hunky-dory. It could all be fabulous. It could all have been totally above board. However, it is worth knowing that this was not a casual oversight; this was a fairly substantial oversight. Members should listen to this one. It involves a casual request from Dampier Salt Ltd to conduct all activities necessary for the design, planning, construction, operation and maintenance of a seawater inlet or outlet channel and all associated infrastructure in connection with mining operations pursuant to the provisions of the Dampier Solar Salt Industry Agreement Act. I do not know whether it was a minor operation, but it does not sound like it to me.

I have provided a snapshot of the 400 licence approvals that were issued in good faith, but nevertheless were ultra vires the act. The Greens (WA) have every intention of getting proper answers to these questions and some acknowledgement that in validating these arrangements, there was appropriate due diligence. With that, I will end my remarks only 22 minutes and 15 seconds into my time.

HON KIM CHANCE (Agricultural — Leader of the House) [9.31 pm] — in reply: I have lost my file. I was trying to chase down regulation 42B of the Mining Act 1978 that would have enabled me to provide the information that Hon Paul Llewellyn sought. I believe he was seeking information on the kind of miscellaneous licences that can be made for the purposes described in regulation 42B.

Hon Paul Llewellyn: I already know that. I do my homework.

Hon KIM CHANCE: The member already knows that? I was trying to find the list to give me that information. The question that Hon Paul Llewellyn was asking me to go through was, in fact, whether Environmental Protection Authority approval was given to these matters. It has absolutely nothing to do with the bill.

I go back to the second reading speech, which will give us some guidance. The Mining Legislation Amendment and Validation Bill 2007 is necessary to validate licences that were made wholly for infrastructure purposes and which were pursuant to regulation 42B. A problem occurred. The Warden's Court raised the question about whether the use of that regulation was in fact ultra vires the act. Later investigation found that it was. This bill is simply correcting that situation. The only difference is that the matter the warden raised was whether they were matters that should have been signed off by the Governor. The only difference is whether they were or were not signed off by the Governor. It has nothing to do with the quality of the application made under that clause.

Although the issues that Hon Paul Llewellyn raised may have been entirely valid and supportable, I do not disagree with that. If the honourable member wants to know the answers to those questions, we will do our best to find them for him, but they are not relevant to this legislation.

One of the things we need to do when we are dealing with legislation is to try as far as possible—I am probably the worst offender in this regard—to keep within the scope of the legislation.

Hon Ken Baston asked me a profoundly interesting question. I am trying to find my way through that as well, but I had my mind on other things. He asked what was the effect of clause 5(3)(b), which states —

Shall be lodged at an office of the Department on or before the last day of the third or fourth year, as the case requires, of the term for which it is lodged;

My understanding is that that entirely turns on section 65(1)(c)(b) of the act, which is what I was trying to track down. I think it relates to the office in which the lodgement must be made. That is my understanding, but I think that the question Hon Ken Baston asked related to the question of the third or fourth years. I think that is actually unaffected by these words, because whether it is the third or fourth year is dependent upon the licence itself, not the legislation, because the next few words are “, as the case requires, of the term for which it is lodged.” Those are the key words there, and the variation between the third year and the fourth year is dependent on the licence itself. I do not have an adviser present, but if I am wrong in my summation, I will make sure that the honourable member and the house are advised.

I thank honourable members for their support of this legislation. I appreciate that they have seen that, although the legislation is very short and administrative in its nature, it is important, because things done in good faith that are critical to the success and continuation of our mining industry have been found to be ultra vires to the act, and this matter needs to be corrected as soon as possible. I appreciate the support of the house.

Question put and passed.

Bill read a second time.