

PETROLEUM AND ENERGY LEGISLATION AMENDMENT BILL 2009

Second Reading

Resumed from 10 August.

MR M. McGOWAN (Rockingham) [4.35 pm]: I rise to make a few comments in relation to the Petroleum and Energy Legislation Amendment Bill. As I understand it this legislation has been dealt with by the upper house and has come here consequent to being dealt with there, because the minister responsible is Hon Norman Moore, who is the Minister for Mines and Petroleum, and he has been handling the legislation. The opposition's shadow minister Hon Jon Ford has dealt with the legislation in the upper house. It has therefore been significantly debated in the upper house prior to now. It has arrived here for its second reading consideration. As I understand it, it is not quite an omnibus bill but it is a series of amendments to a range of legislation dealing with the petroleum industry in Western Australia. As such, due to my very cursory examination of the legislation, it is, as I understand it, quite uncontroversial at this point in time.

Mr W.R. Marmion: The Standing Committee on Uniform Legislation and Statutes Review report analyses it in much detail, you might be pleased to know.

Mr M. McGOWAN: What did it find?

Mr W.R. Marmion: It made a number of amendments that were all adopted.

Mr M. McGOWAN: That was a bipartisan outcome, was it?

Mr W.R. Marmion: Yes.

Mr M. McGOWAN: I am pleased to report to the house that the Standing Committee on Uniform Legislation and Statutes Review examined this legislation and, on a bipartisan basis, reached the decision that it was acceptable to all sides of the Parliament.

Mr W.R. Marmion: That was the good news, member. The bad news is that they missed two amendments.

Mr M. McGOWAN: There are two amendments on the notice paper.

Mr R.F. Johnson: They are not actually on the notice paper. They need to be moved in this house. They forgot to do it.

Mr M. McGOWAN: That is the woeful performance of the government, the woeful performance of the minister, the woeful performance of the minister representing the minister in this house, the woeful cabinet process, the woeful consideration by all elected members, but the quite good efforts by the public servants. I would say that there is a requirement for two further amendments. Although I am unaware of what those amendments are, I expect that we will give them full and proper consideration when they are dealt with in this house, because, as we know, this legislation is —

Mr R.F. Johnson: Woeful?

Mr M. McGOWAN: No, as I said, the public servants involved in the drafting of this legislation have done an excellent job. It is the cabinet that has let the side down, woefully, in relation to this legislation, because of the failure to identify those two amendments that were necessary in relation to the legislation.

As members know, the oil, gas and petroleum industries have played a very important role in the economic success of this state, and they will be very important to the economic future of Western Australia. Therefore, legislating for proper and decent regulation of the industry is an important role for the Parliament inasmuch as it is able to, considering that most of the petroleum industry lies outside of Western Australian waters. It is an offshore industry that is regulated largely, as I understand it, by the commonwealth; however, it is important that we have good and decent regulation of the state-regulated component of that industry.

I freely admit that I am not as familiar with the Petroleum and Energy Legislation Amendment Bill 2009 as I am with most of the legislation that I deal with in this place, but I am, at present, awaiting the advice of one of my colleagues.

Mr W.R. Marmion: I've got a map with me! Would you like to borrow the map?

Mr M. McGOWAN: Ordinarily, as members know, I am well across the detail of the legislation I am required to deal with—I see members opposite nodding—and there has been a great deal of it; however, on this occasion I cannot say that I am an expert on this piece of legislation. In fact, I cannot say I have ever seen it before!

Mr R.F. Johnson: That is woeful!

Mr J.M. Francis: That is absolutely woeful!

Mr R.F. Johnson: That is a woeful admission!

Mr M. McGOWAN: It is a woeful performance.

Mr R.F. Johnson: Have faith in your upper house colleagues!

Mr M. McGOWAN: I am reluctant to sit down until one of my colleagues who is perhaps a little better informed on this legislation comes into the house to say a few words about it, just so that I have a full understanding of our position.

Mr R.F. Johnson: Which member is that?

Mr M. McGOWAN: The member for Cannington.

Several members interjected.

Mr M. McGOWAN: I really do not intend to filibuster.

Mr J.M. Francis: I reckon you can go for another minute!

Mr M. McGOWAN: I am merely awaiting the arrival of the member for Cannington, who will provide me with full and proper advice on the complete opposition position on this legislation. I am a little embarrassed because the good and decent public servants, whose work I respect, are in this place.

Several members interjected.

Mr M. McGOWAN: I am reliably informed that the legislation is good.

Several members interjected.

Mr M. McGOWAN: As I said, members know that I am always across the legislation I am required to deal with as leader of opposition business and shadow minister for a range of portfolios—except for now. It is Thursday of a week in which I will admit that I was not at my best on Sunday, Monday or Tuesday, and on Tuesday I was feeling slightly woeful! But as I understand it, we support this legislation. It is good legislation, but the only problem is that there need to be some minor amendments to it, for which I do not blame the department involved. The petroleum industry has the support of the opposition, and the opposition supports the industry being appropriately and properly regulated. I will now resume my seat; the opposition will not take too long on this legislation.

MR C.J. TALLENTIRE (Gosnells) [4.45 pm]: I had the opportunity of receiving a briefing on the Petroleum and Energy Legislation Amendment Bill 2009.

Several members interjected.

Mr C.J. TALLENTIRE: As the member for Rockingham said, the opposition supports this bill, and some good work has obviously been done by the public servants involved in its drafting.

Following on from that briefing, I still have a couple of questions that I would like the minister representing the Minister for Mines and Petroleum to address. Those questions relate to the royalty that will be applied to tight gas; at the moment we are talking about a possible range of five per cent to 12.5 per cent. I am keen to hear from the minister how that determination will be made, and whether we are talking about a project that is at the five per cent end or the 12.5 per cent end of the spectrum.

I am interested to hear from the minister a little more about his understanding of the contribution that tight gas could make to our future energy supply. I understand that tight gas is becoming an increasingly important source of energy in the United States of America, and is alleviating energy supply problems that the United States would otherwise be experiencing. I look forward to hearing a bit more information about that.

This bill obviously relates to offshore areas in state waters and the release of onshore acreage, about which I have some questions. If the minister is taking note, I have some questions about the selection process that will be used for the allocation of acreage. I understand that, usually, acreage is handed out through a bidding process.

Mr W.R. Marmion: Sorry, member, can you just repeat that? I missed the first bit.

Mr C.J. TALLENTIRE: I am interested in knowing how acreage will be allocated, and whether it will be done through a bidding process, or whether a system will be implemented that will look at the actual capabilities of proponent companies—I think most Western Australians would expect us to have that in place. In recent times we have seen some very, very serious problems caused by oil release in the Gulf of Mexico, and there was the Montara oil rig disaster in Australian waters, in which the release of oil was a very serious issue. The company involved in that was the Thailand-based PTTEP; will that company be allowed to operate in Australia again?

Mr W.R. Marmion: Will you ask all these questions in consideration in detail when I have more experts with me? I am not an expert on how the capability of someone is judged when they apply for an exploration permit.

Mr C.J. TALLENTIRE: I am happy to do that.

Mr W.R. Marmion: I am sure you will ask these questions again.

Mr C.J. TALLENTIRE: I foreshadow that we will ask the minister these questions, but it should also be part of the general debate at this stage. The opposition is supportive of the legislation, but it wants to know how acreage will be handed out; what sort of selection process will be used; and whether it will just be on price or whether it will be more broadly judged on the capability of proponent companies.

I will not detain the house further on this, because, as the member for Rockingham said, we are supportive of the legislation and the amendments, and I look forward to hearing responses to the issues I have raised.

MR W.J. JOHNSTON (Cannington) [4.49 pm]: I will speak only briefly on the Petroleum and Energy Legislation Amendment Bill 2009.

Energy policy in this state is absolutely fundamental to our future. I have recently spoken during debate on a number of bills about how the model for development for the future of Western Australia needs to be significantly different from the model that has been used in the past. I will not go into it any great length, but we used to use what I call the “Sir Charles Court” model, whereby our mineral resources were processed to become end-user products—that is, turning iron ore into steel and that sort of thing.

Mr W.R. Marmion: Do you mean value-adding?

Mr W.J. JOHNSTON: Yes, but value-adding in a particular way because the point I make is that I think we now need to use our resources to value-add on the thinking side, rather than simply on the production side. Therefore, in dealing with the energy industry in this state—I make these comments from my own perspective and not any other—we need to see how we can use our energy industry policy to get more of the thinking part of projects done here in Western Australia. We should look to every opportunity to have more decision makers based in Perth and more engineering design work done in Perth. Quite frankly, in my view, if we did that, we would actually get more of the so-called metal bashing done here as well because if that thinking process is being done in Western Australia, it will drag through other parts of the process too. I have talked at length before about the question of the value of the dollar, so I will not talk about it this afternoon, but I do think that it is very critical to our opportunities to be involved in these industries.

I understand that part of this bill will allow access to acreage for geosequestration. I think that is a very important issue. There are many problems with carbon capture and storage, and if we can advance a bit further along that line with this proposal, that will be a good thing.

I also understand that this bill deals with the question of access to land that is licensed for use by one company for infrastructure for a different company. Again, that is a very critical issue for the development of energy opportunities in this state. It will be a good idea to give that sort of access to the ground, and if that makes investment in energy opportunities in the state more attractive for everybody, it will benefit the state.

I do not want to keep the house long; I know the hour of the day and how people behave on Thursday afternoon, so I do not want to go too far down that track. However, I will finish by commenting on the bill’s involvement with tight gas and that it provides the minister with the opportunity to grant concessional royalties. The minister’s second reading speech stated —

... amendments defining “tight gas” will result in a possible range of between five per cent and 12.5 per cent for royalties on projects that meet this definition.

I must say that I think that the government should have taken this opportunity to look at a profit-based royalty rather than a production-based royalty. I know one of the people who looked at that Whicher Range tight-gas proposal. I am not sure, but the minister might know the firm Amity Oil that looked at that project.

Mr W.R. Marmion: Yes, Amity Oil.

Mr W.J. JOHNSTON: Amity Oil ended up producing gas in Turkey of all places, but it also had a proposal at Whicher Range. The problem is that everybody knows the gas is there, they just cannot get it out. I think Chevron, or someone like that, originally found the site. A number of companies have looked at it, including Amity Oil, which spent a lot of money trying to get the gas out and it could not do it. That is fair enough. Technology changes and in the future someone might be able to get gas out. The point I make is that if we continue to have a royalty based on production, a company might get some gas out and have to pay a royalty, yet still make no money itself. I do not know whether that is actually the best approach to the royalty regime. Another problem with production-based royalties is that a company might get a lot of gas out and make a bucketload—I was about to use a different word!—of money and get a huge benefit that does not flow back to the state because we have given the concession. I am not criticising the government because I do not imagine that it was contemplated and if we were still in government it probably would not have been contemplated either, but this is a classic example whereby a profit-based royalty would have been, in my view, a much better option

than the production-based royalty. I commend the government for giving an incentive, but I think that a profit-based royalty would have been a better proposal.

There we go, minister, I raised some serious issues and in fewer than five minutes!

MR W.R. MARMION (Nedlands — Minister for Commerce) [4.55 pm] — in reply: I thank the members for Rockingham, Gosnells and Cannington for their support of the Petroleum and Energy Legislation Amendment Bill 2009. Going backwards, the member for Cannington raised a number of good issues that are all addressed in the bill. I take the member's point about profit-based versus production-based royalties. I imagine that the member for Gosnells' point will come up in consideration in detail, but the five per cent is actually "no less than five per cent" so that is the best concession a company can get. One would assume that if it is difficult to get the gas out, based on expert advice, and lots of blasting is needed to break the rock up to get the gas out, the royalty would be near the five per cent mark. If only a few explosions are needed to get the gas out, it would probably be closer to a 12.5 per cent royalty. That is my off the top of my head guess to answer the member's question. I am pleased that members support the bill. There were other questions about how the acreage will be handed out. Acreage will be handed out as it is now, so it is not really related to the bill. This bill is basically, as the manager of opposition business suggested, an omnibus bill that will make our legislation conform with the commonwealth legislation. Therefore, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 4 put and passed.

Clause 5: Section 6A inserted —

Mr C.J. TALLENTIRE: I note that clause 5 deals with the alteration of the inshore area. I wonder whether this might be an opportunity for the minister to advise the house of how the inshore area will be expanded. This may also be the opportunity to talk about the allocation of acreage and the selection process that will be used for particular companies. If this is not the appropriate point to discuss that matter, I am happy to be guided to another clause.

Mr W.R. MARMION: I will answer the first part of the question about how the line can change. The baseline can change with better cadastral information, so I imagine that it would change only at the margins, really. We need that ability to adjust the boundary when we have better information. The other question related to allocation of acreage. There are two areas for assessing capability—financial capability and technical capability. When we are looking at technical capability, we look at personnel and technology, and how they will do it. Obviously, past history is another area that will be looked at. That is how the awarding of an exploration or tenement will be judged.

Mr C.J. TALLENTIRE: Can the Western Australian public be reassured that, should a company have a questionable track record and serious past failings, it would be eliminated from the process that would allow it to obtain acreage?

Mr W.R. MARMION: Obviously, that would be given serious consideration, but we could not lock a company out because it might have a bad past record based on someone's opinion. If such an opinion were true, obviously that would have to be taken into account, but if another company was going for the same tenement and it did not have a bad track record, obviously the first company would be behind the eight ball. We cannot categorically guarantee that that would happen, because things can change. The company may be the same but with different personnel; we cannot categorically say that.

Mr C.J. TALLENTIRE: I would like to point out to the minister that in many other spheres of activity or human endeavour in general in our society, if someone's track record is not up to standard, it will rule that person out of eligibility for certain roles. I fail to see why we should not apply the same principle to companies that are, after all, looking to extract our gas and oil resource. If a company is found wanting or has actually been found guilty of not respecting our environment by causing, for example, leakage of oil into the natural environment, why should we ever have to consider allowing that company to operate in Australian waters or on mainland Western Australia? I think it is very reasonable for Western Australians to expect that companies with a doubtful past would be excluded from the acreage acquisition process. The minister says that it might be perhaps unfair to exclude a company on that basis because there may have been a change in personnel. However, there could be ways in which a company with a doubtful past might manipulate that. It would, of course, put up different people; in fact, one would assume that the people who were guilty of the past errors would be replaced. The fact is that we need to send a message to companies that if they fail in their responsibilities, they will pay the

price of penalties under state or federal environmental legislation. However, there is a further price, and that is the licence to operate. Why is it that we cannot be rigorous about the way in which we apply the licence to operate when it comes to oil and gas companies?

Mr W.R. MARMION: I take the member's point, although it is not part of this bill. We cannot write that sort of thing into a bill. It could be part of the guidelines for how a department operates or for advice to the minister, but one would assume that if a company has a record as seriously bad as is suggested by the member for Gosnells, to the extent that it is responsible for oil spilling into the ocean, that is a pretty bad track record. I would not want to refer to a specific company by name, although the member has referred to such a company with a very bad track record. That history would obviously be taken into account.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Section 32A inserted —

Ms R. SAFFIOTI: I am reading the section of the explanatory memorandum that deals with clause 7, which states, in part —

This clause provides for the Minister to grant a permit to the most deserving application where two or more applications are received for the same block or blocks.

Could the minister outline the process by which he determines the most deserving application?

Mr W.R. MARMION: Following on from my answer to the question from the member for Gosnells, there is one other additional factor that we look at, and that is a work program. As well as looking at technical capability, which relates to personnel and technological capability, a work program also has to be provided. The work program will need to show a better outcome in terms of what the company is going to explore and what benefits might accrue to Western Australia; it will need to show where the company is actually going to work. Some companies may have a bigger rather than a smaller work program. That will be assessed by the experts—the members beside me and at the back of the chamber—and if the quality of the various companies' personnel, technological expertise, track record and past results cannot be separated, the decision will be made on the work program.

Ms R. SAFFIOTI: The minister is to make the decision. Is advice given by the department, or is there some sort of independent board? Are there rights of appeal? Are there rights to provide information to the proponents?

Mr W.R. MARMION: The department provides advice to the minister, and the minister makes a decision based on the advice provided by the department.

Clause put and passed.

Clauses 8 to 60 put and passed.

Clause 61: Schedule 2 inserted —

Mr W.R. MARMION: I move —

Page 46, line 22 to page 47, line 3 — To delete the lines.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 62 to 67 put and passed.

Clause 68: Section 6 amended —

Mr C.J. TALLENTIRE: I understand that clause 68 relates to the renewal of pipeline licences. I believe that the renewal of a licence should be done in a transparent manner, and, as I indicated when speaking to a previous clause, there should be some degree of assessment of the suitability of a licence holder to continue to hold that licence. I am a little concerned that under clause 68 it is proposed that a licence be granted for an indefinite term. I would like the minister to please give an explanation of how we can justify granting a licence to operate a pipeline for an indefinite term.

Mr W.R. MARMION: We are following the commonwealth's example. We proposed to align the licence on the pipe to the licence life of the gas lease, which could be a long time, to remove any shadow of doubt or uncertainty over someone developing the gas resource. If they think that they will have only a 20-year licence for the pipeline, and we say, "Bad luck; go away", they would have a blocked up resource of gas that they could not get out because we would only give them a 20-year licence on the pipe. We are aligning the life the permit that has been granted to extract the gas out of the ground with the term of the pipeline.

Mr C.J. TALLENTIRE: I seek the minister's confirmation. The house has been told that should a pipeline's operations be problematic, the Western Australian community could be greatly dissatisfied with the way a particular pipeline operator is carrying out its activities. There would not be a means for us to remove that pipeline licence from that operator.

Mr W.R. MARMION: The member has raised another issue but it can be addressed. There is a safety aspect. This is about giving an operator with a pipeline a licence so that it has the certainty of getting gas from A to B. If it is getting the gas from A to B in an unsafe manner, there are mechanisms for the department to approve what the operator is doing during a five-year cycle. I presume the department can shut down the operations if it is not complying with the safety standards.

Mr C.J. TALLENTIRE: I am somewhat reassured on the safety aspect of the operations of a pipeline but I think there could be many other aspects to pipeline operations. For instance, perhaps a pipeline operator is using its easement as a way of impeding development in an area. There could be any number of reasons why people could be dissatisfied with the way a pipeline operator is running its activities. In those circumstances, I think there should be a mechanism by which we can remove that licence. While the granting of a licence for an indefinite term might provide incredible business security, it is almost inconceivable that a company has the right to use the pipeline from now to infinity. It seems to be excessively generous to grant a company the security that it might need for business planning. Surely there is a better way of managing the situation, especially when it comes to those other issues. Safety is one thing but what about all the other aspects that relate to the way someone operates a pipeline?

Mr W.R. MARMION: I acknowledge the member's commentary on this. As I said before, all it does is it gives the operator the right to move its gas from point A to point B. This relates to offshore operations.

Mr C.J. Tallentire: The fishing industry could be greatly inconvenienced and we would have no way of stopping —

Mr W.R. MARMION: How would the fishing industry be inconvenienced by a pipe on the bottom of the ocean, 200 metres down?

Mr C.J. Tallentire: It depends on the depth of the water. It might be that the fishing industry is not allowed to go into an area because of the presence of the pipeline.

Mr W.R. MARMION: Would the member like to suggest an amendment to the bill?

Mr C.J. Tallentire: I am hoping for reassurance that all these issues are being considered. I am weighing this up against this indefinite term. Why would we be giving licences for an indefinite term?

Mr W.R. MARMION: Members of the upper house forensically analysed this bill in a standing committee. Some amendments were recommended that were agreed to by us. Clause 68 is purely about getting gas from A to B and giving someone a licence to put a pipe on the ground to get it there.

Clause put and passed.

Clauses 69 to 76 put and passed.

Clause 77: Section 22A inserted —

Ms R. SAFFIOTI: My question relates to appeals by, for instance, the unsuccessful applicant. What rights does the unsuccessful party have if it is seen as the least deserving and is not successful in receiving access to the blocks?

Mr W.R. MARMION: The answer is that it is bad luck. The criteria are published, so it is a transparent process. The loser loses. The criteria is set out so that the losing bidder would see why it lost and why the winning bidder got the job.

Clause put and passed.

Clauses 78 to 168 put and passed.

Clause 169: Schedules 3 and 4 replaced —

Mr W.R. MARMION: I move —

Page 129, lines 6 to 16 — To delete the lines.

Ms R. SAFFIOTI: Why do we have this change to the legislation? Is this something that came out of the report? Can the minister explain what this amendment will do compared with the proposed legislation?

Mr W.R. MARMION: We were going down the path of following the commonwealth model, which was to reduce the review of leases from two to one in the five-year period. We have chosen to keep the number of

reviews at two. This is a more onerous provision than the commonwealth's. The review is to do with the commercial viability of the lease.

Ms R. Saffioti: We are going to retain two reviews within five years but the proposal was to go to one review every five years.

Mr W.R. MARMION: That is correct.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 170 to 174 put and passed.

Clause 175: Section 11 deleted —

Mr C.J. TALLENTIRE: Again, this clause appears to relate to the granting of the use of a pipeline, this time for petroleum rather than gas, for an indefinite period, whereas, to date, the term has been for 21 years. I seek the minister's explanation. In passing, I feel that it needs to be on the record that we are dealing with an industry that has an amazing amount of power, if it can gain indefinite access whenever it wants! This raises some questions about the lobbying power of the oil and gas industry in Western Australia.

Mr W.R. MARMION: I acknowledge the member's point. The same answer that I gave to the last question prevails. This is in alignment with the commonwealth model code, and it is to get oil and gas from point A to point B.

Clause put and passed.

Clauses 176 to 186 put and passed.

Title put and passed.