MINING REHABILITATION FUND BILL 2012

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Mr C.J. TALLENTIRE: The commencement of this bill is a matter of interest, given that we have some major mining proposals of a very different nature to what our system has dealt with in the past. I want to hear from the Premier how the commencement process is going to work. I am thinking particularly of the Toro Energy Ltd Wiluna uranium mine, noting that we are edging closer to that uranium mine getting approval; it would, of course, be the first uranium mine in Western Australia. The commencement date is quite critical to the processes that we have in place. We know that the Minister for Mines and Petroleum, Hon Norman Moore, has made commitments; in fact, I think he has given people some hope that the assessment process would be of the utmost rigour and that it would be coupled with his commitment to the implementation of world's best practice when it comes to the actual management of that uranium mine. He also indicated that there would be mechanisms in place for isolating tailings from the environment for not less than 10 000 years. We need to know that we have before us a rehabilitation fund that would be able to deal with the commitment from Hon Norman Moore that tailings will be isolated from the environment for 10 000 years. We need to know that under this process, whether under the bonds regime—because I gather that could still be applied here—or under this levy system, we would have the capacity to ensure that tailings from a uranium mine would be isolated for 10 000 years. We know, as well, that Hon Norman Moore commissioned a panel to investigate uranium mining regulations and to benchmark them against world's best practice, and one of the key components of that is making sure that closure plans are in place. We know that the standard practice in the Western Australian mining industry is that closure plans are always presented as a part of a mining approval. Yet it seems that no mine closure plan was presented through the approvals process for the Toro proposal. On the one hand, the minister says that there is a commitment to isolate tailings for 10 000 years, yet we do not have the full presentation of Toro's mine closure plan.

Given that serious inconsistency and failure to honour the commitment to world's best practice for the uranium industry, I think there is a very real concern that we are putting in place a system that is not going to be able to pick up the pieces of what is probably a failed assessment process. Perhaps that is where the Premier can reassure me that, with the commencement of the act, we would see the application of a bond system to the Toro Energy Ltd Wiluna mine and we would also see the application of a levy system. I need to know, through this consideration in detail process, just how much bond or levy will be imposed on Toro Energy to ensure that it does meet these commitments, which it is happy to sign up to, for things like very toxic tailings. I can go into further detail on the nature of these tailings and look at some of the past measures that have failed us so badly when it comes to isolating tailings. In the past we have used such things as clay layers over tailings areas, and that has been assumed to attenuate the release of radon and thoron into the environment. Those sorts of concerns have to be dealt with now. Will we have enough money from the proponent, Toro Energy, to ensure there will be no release of things like radon and thoron into the atmosphere? Will we be sure that a closure plan is in place before the final approval is given; and how much money through the bond and levy system will be applied?

Mr C.J. BARNETT: The Minister for Mines and Petroleum has already made the decision that Toro Energy will be required to have a 100 per cent performance bond for mine rehabilitation. That is obviously seen as a higher risk mining activity compared with others; and therefore that will apply. Ultimately, it may come under the levy system, but at this stage it will be under a 100 per cent bond.

Mr C.J. TALLENTIRE: I thank the Premier for that response. It is good to hear a percentage figure, with a 100 per cent performance bond. But we need to know the dollar figure as well so that the Western Australian public can be reassured that money has been set aside for this project in dollars. We need to know the exact amount in dollars—just how much there will be—and how that money will be put aside, and what sorts of guarantees we will have. I stress again this 10 000-year bond that we need in place. In the history of humanity we have never managed to do such a thing. We have barely had civilisations that last 1 000 years; a notable exception being our own Indigenous culture as a civilisation that has lasted for at least 30 000 years. But, in general, human constructs do not last for 10 000 years—certainly not our financial system. How are we going to be sure that the money that Toro puts aside today will last for the extent of these tailings, what amount will be put aside and where will it be put aside? Also, are these time frames actually being spoken of in the bond process? Is the government being honest with people when it involves a potential risk to the state of Western Australia, to human life and to the environment that lasts for such an extended period of time? How are we going to be absolutely sure that that bond will be there should we find in a couple of hundred years or, for that matter, a couple of thousand years that we need to draw on those funds? How will the government give people confidence that such a system can be developed?

Mr C.J. BARNETT: We have to deal with the reality and practicality. Obviously when Toro Energy Ltd's mine or any other uranium mine develops and ultimately closes, rehabilitation will be to the highest world standard at that point in time. Tailings ponds will contain some contaminated material, as is the case in the alumina and mineral sands industries; and, indeed, the state government and the commonwealth have entered into long-term responsibility for the geosequestration of carbon dioxide out of the Gorgon gas project, so there are examples. I think this is a realistic approach, and Toro, or any other uranium miner, will be required to rehabilitate the mine to the standards that apply when that mine closes and probably will have a responsibility, I imagine, for some time after that.

But ultimately, the responsibility falls back to the state. However, we have radioactive materials already in this state as a result of mining operations, and I do not see any unforeseen difficulty with this. A half-life, yes, goes on for thousands of years, but so it does also in other parts of the mining industry.

Mr C.J. TALLENTIRE: I have to say that I think the Premier is being somewhat dismissive there and has not answered my question on how much money is being put aside.

Mr C.J. Barnett: Just on that, if I could interrupt, I imagine that amount is not yet determined, but you would need to ask a question on notice of the mines minister. This is about the policy of the bill, not about a specific project.

Mr C.J. TALLENTIRE: Given the commitment to world's best practice that the government is making to people, which includes the full presentation of mine closure plans, the Premier at this stage saying that he cannot tell me how much money will be set aside suggests that in fact he is so far away from giving approval. There is a suggestion in the media that this Toro Energy Ltd Wiluna uranium mine is quite close to receiving its final approvals, but if the Premier is not in a position to tell me how much money will be set aside, I think he is sending the opposite message.

Mr C.J. Barnett: I just told you it is 100 per cent of the rehabilitation.

Mr C.J. TALLENTIRE: Yes, and I asked the Premier for the actual figure.

Mr C.J. Barnett: The actual amount may not yet be determined.

Mr C.J. TALLENTIRE: That gets to my point that we are close to this thing receiving its final approval and the Premier cannot tell me what the actual bond amount will be.

Mr C.J. Barnett: I just explained that it is project specific. This is a bill about a rehabilitation fund. If you want a project-specific answer, you will need to put a question on notice to the minister at the time the project is approved and the rehabilitation is determined, and he will answer it.

Mr C.J. TALLENTIRE: This is a totally new form of mining for Western Australia. It is one that needs to be covered by a mine rehabilitation fund of some sort; therefore, it is entirely appropriate that in the context of this debate we talk about rehabilitation funds, the processes that we are using and the transitional arrangements between a bond system and a levy system. It is entirely appropriate that we debate the specifics of this particular case given the potential, as the Premier indicated in an earlier response, that ultimately these costs would fall on Western Australian taxpayers. We do therefore need to know how much is involved. I am disappointed that the government is not being up-front about it. Western Australians should know how much money—not just a figure of a nice round 100 per cent—is involved so that they can be reassured that serious consideration has been given to uranium mining by the Western Australian government when it comes to mine closure. People would be quite within their rights to be concerned, given that this closure plan is not yet available to the public. Perhaps the Premier can confirm that as well. A mine of any description seeking approval is required to have a closure plan submitted, but somehow in this new form of mining we are not presenting a mine closure plan. What is going on there?

Mr C.J. BARNETT: I think the member is wrong. Mine closure plans are required under the Mining Act. That will continue and that will be required for every mine. With respect to uranium, Australia has been mining uranium since the 1930s. Australia is the second-largest uranium producer and exporter in the world. I would imagine that the conditions in central Western Australia are probably as safe as they can be for that industry, given water table issues and the like. Nevertheless, the standard will be the highest level. Although there has not been uranium mining in Western Australia, it is hardly a new industry for this country.

Mr C.J. TALLENTIRE: The timing of the commencement of this bill is absolutely critical. It is a real concern to me that the Premier, who so often points out that the way we do things in Western Australia is different from elsewhere and that in Western Australia we have different processes, suggests two things. One is the technologies that are used for uranium mining. Yes, of course, uranium has been mined elsewhere in Australia, but the Premier is confusing that technical issue with what is really being talked about here, which is a regulatory regime that has never been applied before. We are changing the regulatory regime. We are changing the

rehabilitation fund process in Western Australia. That is one thing. However, also we have had agreements and commitments from the government that there will be a regulatory regime in place that will deal with uranium mining. That is because it is not something that we have dealt with in Western Australia before. This is new for us; it is entirely new. We are therefore entitled to know that we have a regulatory regime in place that can deal with it. We cannot just allude to the technologies used elsewhere in the country and say that the regulatory process here in Western Australia will be able to deal with this technology that has not actually being used in Western Australia before. I therefore do not believe it is fair to respond in this place in a way that confuses technical processes with actual regulatory regimes. That is why the timing of the commencement of this legislation is so very critical. We want to know actually what regulatory regime is in place. I therefore ask again: where is the closure plan and where is the dollar amount that will indicate how much Toro Energy Ltd has to put up before it can get final approval?

Mr C.J. BARNETT: As I said before, this legislation ultimately will cover up to 600 mining sites around Western Australia. The minister has made it very clear that since there is an issue in parts of the community, Toro uranium will operate under a 100 per cent performance bond, and may continue under that indefinitely. Clearly, mine closure plans are part of the approval process. A regulatory regime, which will be established and be subject to environmental assessment, is being put in place. When the project proceeds—I presume it will get final approval and will proceed—a bond will be determined, and Toro will have to maintain that bond, presumably through bank guarantee. At that stage—we are not at that stage—ask a question on notice in this place and it will be answered. But no-one is in a position to give an answer to that. This bill, if passed, will come into operation, presumably, in July 2013.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Mining authorisation —

Mr W.J. JOHNSTON: I am seeking information about the tenements to which this arrangement will not apply. I understand from the briefing I received from the Department of Mines and Petroleum that under clause 4(2), state agreement act tenements will not be automatically covered by this new tax. There was an indication that there may be some discussions with state agreement tenements, and I am wondering whether the government has an idea of which state agreement operations it is intended to cover, or whether there is no intention at this stage to cover any. Has there been any discussion with any of the state agreement mining organisations? What is the picture with the state agreement act proponents at this stage?

Mr C.J. BARNETT: As the member is no doubt aware, state agreements can be altered only by agreement of all parties. That is sometimes complex, particularly when a number of joint venture partners are involved in a particular project. State agreements are with well-established, highly responsible groups, and we do not see that as a problem. However, as we go forward in time I can foresee that there will probably be provisions similar to this and maybe even in fact an agreement to pay into this fund. It does not apply retrospectively to state agreement companies or to their operations, but in the future it may well do and I would think that would be a responsible way to go forward.

Mr W.J. JOHNSTON: Obviously I understand that it will not apply to state agreements because they have been given regulatory certainty. I mentioned that in my contribution to the second reading debate. I am seeking to know whether it is the government's intention to try to negotiate with those parties to have this new tax applied to them. The reason I am asking is obviously that the interest earned on this fund will be available for the rehabilitation of already abandoned mine sites. It is actually a critical issue. If the amount of funds available to this new fund is maximised, that will also maximise the amount of interest available to deal with our legacy issues in this state. At some point in time, we need to deal with our legacy issues from former times when mining companies were not as responsible as modern mining organisations. The answer to that may be no, that is not really an issue. I am just trying to establish whether it is intended to negotiate with the existing state agreement parties so that we can maximise the income into this fund. That has two benefits: firstly, it will potentially reduce the size of the levy, because it is being spread over a larger number of operations; and, secondly, it will increase the availability of the interest on the fund so that the interest can then be used to deal with the legacy issues that the state confronts.

Mr C.J. BARNETT: There is no intention to seek to renegotiate existing state agreements, which the member is advocating. State agreement projects are also subject to environmental protection laws, as they should be. However, it may well be that in future state agreements, or maybe at times when amendments are made to state agreements, this may be considered and may be a negotiating point, but we are certainly not going to start negotiations to retrospectively change agreements.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Purpose of Fund —

Mr C.J. TALLENTIRE: The purpose of the fund is outlined in clause 6. It states that funds can be applied to "the rehabilitation of abandoned mine sites and other land affected by mining operations carried out in, on or under those sites". I am curious to know how far that really does extend. One can well imagine—most members will have seen this sort of thing—the access roads that go to a mine. When the mine is abandoned, there is a need for the rehabilitation of those access roads. Sometimes during the operation of the mine, damage is caused to the surrounding areas, through dust most notably. Can the rehabilitation funds be applied to rehabilitation works, say, on either side of a road where vegetation is now covered in dust and dying as a consequence? I can think of cases down near Beenup where I have seen exactly that sort of thing. I wait to hear the Premier's response to this. I think there are other dimensions, too, in the breadth of applicability of this fund. I think of things such as the clean-up that was required at Esperance. Can funds from the rehabilitation fund be applied to things that may not have been anticipated but are part of a mine's impact on an area and therefore could be considered as necessary to the rehabilitation resulting from that mine?

Mr C.J. BARNETT: How the money will be used and what are the boundaries and the level of environmental impact will be determined by the director general, obviously on the advice of that advisory panel. Members can imagine that if a tailings dam broke, there might be environmental damage outside a mining tenement. But this would not apply to something like the situation in Esperance in which the contamination occurred around the port through loading operations. That would not in any sense be declared an abandoned mine site. Yes, it could go outside the actual mining boundary if the contamination went beyond it, but not to some other purpose like that.

Roads also could well come into it—rehabilitating the land if roads are no longer required and are ripped up—as could the removal of buildings or whatever else. Obviously, it is on a case-by-case basis. At least this will give funds to deal with current mines as they close and, in particular, to go back historically and fix up some of the potentially hundreds of abandoned mines around the state.

Mr C.J. TALLENTIRE: I thank the Premier for that response. Bearing in mind that the director general is going to have to consider many, many mines for rehabilitation, I think it is putting an incredible weight on the director general's shoulders to actually make the decision. But that is what the Premier is telling me now—the director general is going to decide when the funds are applied and where they are applied. To me, that is a concern. I wonder whether there needs to be some guidance from this place and a commitment to some sort of regulatory framework or guidelines that would ensure that the director general and the advisory committee know exactly what the priorities should be and what recourse there would be should the director general find that there is not sufficient funds in the levy account to do urgent rehabilitation work that the director general has deemed necessary.

Mr C.J. BARNETT: I think it is well within the competence of the director general, on advice from within the department and from industry itself, to determine the priorities for the rehabilitation of historic mines. Bear in mind that these mines go back to the last century and in fact to the century before it—all the gold mines that developed through the 1890s all over the place. This is not going to be something that will be solved in the short term; this will take decades. But at least this is a start and will try to rehabilitate some of those old mines. It would obviously be done where the risk to the environment or to people could be greatest and probably closer to population centres if it is a dangerous situation, but it is for the long term and at least it is being tackled.

A situation such as the one in Esperance would not come under this fund. As happened in Esperance, the state government basically contributed $30 million to fix it. That was something that this government inherited and we fixed it very quickly—as quickly as it could be done. If there is a major issue like that, that is not going to come under this legislation. I think of a Wittenoom situation. If anyone decided they wanted to rehabilitate Wittenoom Gorge, they would not be able to do that out of this fund, and probably not out of any fund. I think those issues on a mega scale become issues for government, not for this fund.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Payments from Fund —

Mr W.J. JOHNSTON: Subclause (2)(b) on page 6 states —

> to fund programmes, or the provision of information, relating to the rehabilitation of abandoned mine sites, affected land and other land affected by mining operations;

I listened to the Premier's answer to the member for Gosnells on the previous clause. Is the Premier saying that land affected by the transport operations of a mine is not land affected by mining operations?

Mr C.J. Barnett: My understanding of the terms of this legislation is that that would be land within the mining tenement. There would be transport impacts; for example, if dust or material was built around the mine location, that would be included, but not transport at a port. That would be separate; it would not be the mine site.

Mr W.J. JOHNSTON: I understand that the bill intends to cover tailings spills that run off the land or other things that have happened when it is directly coming off the mine. The last phrase states "other land affected by mining operations". I just want to clarify, so it is on record, whether the Premier is saying that the transport operations of the mine are not part of the mining operation?

Mr C.J. Barnett: There is some scope, I am advised, to use some of these funds on educative programs on best practice across industry, which could relate to transport.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Power to enter abandoned mine sites and affected land for rehabilitation work —

Mr C.J. TALLENTIRE: Clause 10 contains a definition of rehabilitation work and reads in part —

> ***rehabilitation work*** means work to rehabilitate an abandoned mine site or affected land that is funded from money standing to the credit of the Fund.

When we talk about a mine site or affected land, how broad is the definition? Sometimes mines may start out in the pursuit of one particular resource but then another can become the priority. There is some confusion here when it comes to sites that are not necessarily for a resource defined under the Mining Act but may be for a basic raw material such as limestone or sand. Those kinds of quarries also require extensive rehabilitation work and are just as much a blight on the environment as mines abandoned by the goldmining sector or any other sector. I wonder what the breadth of the definition is when it comes to accepting what comes under the scope of potential rehabilitation work, especially in relation to quarries that may have been for basic raw materials and those that could include gravel pits. Can money from this fund be applied to the rehabilitation of those areas too?

Mr C.J. BARNETT: No; the funds collected under this levy can be applied only to mining projects to which they relate in terms of the principal sums. As we have discussed, interest can be applied back to other sites. Gravel and sand pits and the like are mostly approved under local government powers, so a levy will not be collected from those operations; therefore, funds collected under this could not be used to rehabilitate. Some larger quarries are often regulated under the Mining Act. If they are subject to the Mining Act, they will be included in this system, but most quarries and sand pits will not be.

Mr C.J. TALLENTIRE: I think that needs further clarification because there are occasions on which a mine has served multiple extractive resource functions, so it may have been used for some sort of mineral extraction but it may also have been used for basic raw materials. I am not sure what would be the response in terms of the availability of funds through this scheme. Likewise, there could have been extensive quarrying and dirt movement at a mine that was not directly related to the extraction of the resource but was necessary for the actual creation of the mine—the gravel required for the access roads and haul—truck roads and things like that. Often very extensive earthworks are the visual scars we see as a result of a mine, yet they are not directly related to the extraction of the ore as such. I am seeking clarification again on how broadly the funds can be applied.

Mr C.J. BARNETT: It is my understanding that the removal of overburden or the creation or levelling of laydown areas or whatever it might be will all be part of the mining operation; therefore, this fund could be applied to it. This fund applies to mines covered under the Mining Act. In a hypothetical situation, which I think this is, if mining had ceased at a goldmine and it was being used as a quarry, it would have been included initially under the Mining Act and, therefore, would be subject to this.

Clause put and passed.

Clause 11: Mining rehabilitation levy —

Mr W.J. JOHNSTON: This is really the key clause in the bill because it creates the levy. The only operation of the Mining Rehabilitation Fund Amendment Bill, which we will consider in a minute, is to amend this clause by inserting a provision to make the levy active. Can the government indicate how much it expects to raise each year from the levy and what is the expected charge, on an indicative basis, for mining operations?

Mr C.J. BARNETT: I am advised that in the initial year, at a one per cent levy rate, it is expected that somewhere in the range of $30 million to $40 million will be collected under this proposal. If we think about it, over time, that will accumulate very quickly.

Mr W.J. Johnston: What do you expect the charge to be? I understand it to be the area of a mining lease.

Mr C.J. BARNETT: No; the charge is a percentage of the estimated cost of rehabilitating the mine. It will start at one per cent of whatever that will be each year. The levy may go up or down over time. I imagine that if this

fund accumulates at $30 million to $40 million a year, it will accumulate fairly rapidly and if it is not drawn down—let us say that it gets to $1 billion at some stage or whatever the figure might be—there may be an argument to reduce the levy at that stage. But we are a long way from that. At that stage there will be substantial interest earnings to go back to the historic mine site. I guess that is why this will be a bit of a work in progress, but it will start at that one per cent and accumulate at around that rate.

Mr W.J. JOHNSTON: I appreciate that answer, Premier. Is there an envisaged target for the size of the fund? The Premier said $1 billion, but he did not mean that literally. Is there a thought in the mind of the minister or the department about what size the fund should be?

Mr C.J. BARNETT: I do not know what thought the minister might have—on a lot of issues. No specific target has been set, but we would not let the fund accumulate forever and run into billions of dollars. I guess that will be judged at the time. It is part of the role of the director general and his staff to see at what rate it is drawn down. In five or 10 years, I am sure whoever is in government will assess whether the rate should change or whether the fund is sufficient to guarantee rehabilitation. I think we are all very conscious that if we had a major environmental problem and a company went broke and did not rehabilitate its mine or fix whatever happened, a rehabilitation program could easily run into hundreds of millions of dollars.

Clause put and passed.

Clauses 12 to 17 put and passed.

Clause 18: Reassessment of levy —

Mr W.J. JOHNSTON: My particular compliments to the member for Mindarie!

When I was being briefed by the department officials, there was an indication that if a fund got to be quite large and was not needed, thought might be given to returning money to companies. Is this the clause under which that could be done? Can this clause be used to repay money from a former year? Obviously, we would want the mining companies that paid the money, and not some other company, to be the ones that receive the refund. A company might assess the level of contribution it makes each year to make sure it has enough resources available to it. That will go up and down as things happen, but if the department says that it collected too much in a former year, is this a sufficient head of power to retrospectively reassess those contributions and pay them back to somebody who might no longer be operating in the mining industry?

Mr C.J. BARNETT: As it is drafted, the bill does not provide any option for payments like that to be made out of the fund. This clause relates, for example, to when the rehabilitation cost of a particular mine is assessed at, say, $10 million and, therefore, the company is paying one per cent of $10 million into the fund. That company may well believe that $10 million figure is too high and put to the director general that he thinks it should be only $7 million, and therefore his company is paying too much into the levy. Obviously, that will be assessed and the director general would make a call on that, and that would prevent that company from coming back within two years for another assessment. It could work the other way. The director general might suddenly decide that the cost is too low and needs to be higher because the rehabilitation costs are seen to be higher.

Mr W.J. JOHNSTON: I thank the Premier for the answer. Subclause (1)(c) reads —

> it is otherwise appropriate to do so.

That is a broad power, and there is nothing wrong with a broad power, but I wonder whether that was the power discussed with me at the briefing. If not, that is fair enough.

Mr C.J. Barnett: I am advised it is not.

Mr W.J. JOHNSTON: That is cool. The Premier can answer this point in the third reading, not right this second, but I wonder whether a provision that I have missed authorises the CEO to return former-year payments in the circumstances described to me by the departmental officers in the briefing when the fund gets too big and it is decided that the tax rate was set too high.

Mr C.J. BARNETT: If, for example, the mining rehabilitation estimate was agreed to be too high and therefore the levy lowered, that would be prospective only if previous payments can be claimed back.

Clause put and passed.

Clause 19 to 28 put and passed.

Clause 29: CEO may require information and records —

Mr C.J. TALLENTIRE: Clause 29 mentions penalties that would be applied should a person fail to give information as the CEO requires. The penalty amount there—one has to assume it is a maximum—is $20 000. Given that a levy calculator will apply and that some of the higher limits on that calculator will involve

rehabilitation rates of well over $20 000 a hectare, if someone fails to give the CEO information about perhaps an extension of a pit area or a disturbance area, they could avoid rehabilitation costs well in excess of this penalty amount. I am curious to know why that penalty does not have some sort of flexibility in it. If we are talking about someone failing to disclose information related to the disturbance of a small area that would only come to $1 000 in extra costs, of course they would not worry about it, but there is just as much potential for someone to avoid disclosing rehabilitation costs of areas well in excess of $20 000, yet our penalty rate would stay at this flat $20 000. I seek the Premier's advice on how we can have some flexibility about the use of the penalty depending on the scale of the offence.

Mr C.J. BARNETT: This penalty, which is set at a maximum of $20 000, is for a failure to provide information. There will be other penalties. For example, if a company failed to make its payments into a fund, the penalty would be a penalty rate of interest on that and ultimately actions would be taken under the Mining Act. It is laid down in the legislation. I would think the shame and embarrassment to the executive or the company would be the major penalty. A penalty of $20 000 may not make a big difference, but the reputation of a mining company would suffer significant damage if it failed to comply with an environmental obligation.

Mr C.J. Tallentire: Not if it is going to move on; it is not going to worry about protection.

Mr C.J. BARNETT: I think the minister of the day would be pretty hard on it.

Clause put and passed.

Clauses 30 to 32 put and passed.

Clause 33: Mining Rehabilitation Advisory Panel —

Mr C.J. TALLENTIRE: I know that the member for Cannington also has some important points to make on this clause. The composition of this advisory panel seems to be an important issue. In discussion, we have already touched on some of the responsibilities of the advisory panel. I am keen to know about the diversity of skills on the panel. I would be concerned if we had people on the panel who were currently employed in the industry and could, therefore, on behalf of the panel, perhaps give information that was in just the industry's interests. I am interested in seeing that this panel comprises people who might not just think about the financial implications for the industry, but also have the interests of the broader community at heart. I am therefore mindful that sitting around the table will be the very well funded mining executives, who will have great technical knowledge in mine site rehabilitation—admittedly, they will have that—and will be very well paid and resourced. We will also have around the table, I hope, people representing the broader community interest, but there is no way that those people, looking at this act, would be funded to the same level and resourced in the same way as those who represent the industry's view. I am keen to know how the Premier will balance that. Some special provision is needed for community interest to be represented on the advisory panel and, given that those community people will not be resourced or paid in the same manner as mining executives, some funding is required so they can sit around the table in a position of equality and have access to the same level of resourcing to provide information and make meaningful contributions to the deliberations of the advisory panel.

Mr C.J. BARNETT: The CEO is responsible for the administration of this fund but would obviously draw on advice. The advisory panel is not intended to be a representative panel, but an expert panel consisting of people with not only mining experience, but also environmental, technical and scientific expertise. Its credibility will depend on having that expert capacity.

Mr C.J. TALLENTIRE: I am partly reassured by the Premier's response but it perhaps needs to be more explicitly stated. Yes, I agree it needs to be an expert panel, not a representative one, but if we are not careful, that definition of "expert" can too quickly be used to define or describe just those who are well paid and working in the sector. We need to acknowledge that some people who have expert knowledge—they could make an expert contribution—may not be currently paid. They might be retired mining executives or people who have worked in other areas altogether but have the technical expertise. They might be academics or retired academics. This does not get away from the problem that some people at the advisory panel meetings will be very well paid for their time and also very well resourced—they will be able to come up with all sorts of technical information to present or argue a particular point—and there could be people who do not have those resources. What will the direction to the CEO be to ensure that there is some assistance to those who may not have the resourcing behind them but do have the expert knowledge to contribute? We need to ensure that there is some fairness about the resourcing of all people who are members of the advisory panel.

Mr C.J. BARNETT: The regulations will specify the areas of expertise for the panel. The director general has some discretion, but he would obviously pay meeting, travel and out-of-pocket expenses for the panel members if that were required.

Mr W.J. JOHNSTON: I thank the Premier for the answers to the member for Gosnells' questions. They have cleared up most of the matters that I wanted to raise. What is the intended number of people on the panel and what is the intended amount of —

Mr C.J. Barnett: Five.

Mr W.J. JOHNSTON: Is that the CEO plus five?

Mr C.J. Barnett: It is five in total.

Mr W.J. JOHNSTON: Five in total including the CEO. The Premier said that it is intended that they be recompensed for attending the meeting.

Mr C.J. Barnett: For meeting and travel expenses, but they are not paid positions.

Mr W.J. JOHNSTON: There is no intended stipend. Okay, that is great. They are the issues I wanted clarified.

Clause put and passed.

Clauses 34 to 37 put and passed.

New Clause 37A —

Mr W.J. JOHNSTON: I move —

Page 22, after line 17 — To insert —

37A. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as is practicable after the end of the period of 10 years beginning on the day on which this Act receives the Royal Assent.

(2) The Minister must prepare a report based on the review and must cause the report to be laid before each House of Parliament as soon as is practicable after it is prepared and, in any event, not later than 18 months after the end of the period referred to in subsection (1).

Mr C.J. BARNETT: Briefly, we obviously have not seen the wording of that because it was not on the notice paper. In principle we do not have an objection to a 10-year review of the bill, but I would like the opportunity for that to be looked at from a drafting point of view. As long as it does not create something that is not anticipated, we will probably agree to that.

Mr W.J. JOHNSTON: That is pleasing. I move this on behalf of my colleague, the shadow Minister for Mines and Petroleum, Hon Jon Ford. All we seek to do is insert a review mechanism. I accept that drafting by opposition is sometimes not perfect because we do not have all the resources available to us that are available to government. Obviously, the Premier needs to see the new clause first; I have only just moved the amendment and it is on its way back to him now. I wonder whether there is any way of delaying the conversation for a couple of minutes —

Mr C.J. Barnett: You have never struggled to speak before in the house, from my observation!

Mr W.J. JOHNSTON: If the Premier wants me to, I am very happy to continue to speak. The point I am getting to is that if the government formally puts on the record that it supports the insertion of a clause that would require the review of the act after 10 years, I could seek leave to withdraw this amendment and that could be dealt with in the other chamber when the government has a bit of time to go through the drafting matters.

Mr C.J. BARNETT: I thank the member for that. That would probably make it a little easier. I think we just need to look at the wording of that new clause. The bill will pass through here and I give the commitment that a new clause to establish a review mechanism will be inserted when the bill is in the upper house. The only proviso is that the minister agree; I do not see why he should not agree. The preference is to check the drafting. I will give an in-principle commitment. So long as the Minister for Mines and Petroleum agrees—I imagine he will—that clause will be inserted in the upper house.

Mr W.J. JOHNSTON: I place on the record that the Labor Party's understanding is that all things being equal and subject to the proviso the Premier has made, a provision will be inserted into the bill to have a review of the act after 10 years. On that basis I seek leave to withdraw the amendment.

New clause, by leave, withdrawn.

Clause 38 put and passed.

Title put and passed.

Third Reading

MR C.J. BARNETT (Cottesloe — Premier) [1.15 pm]: I move —

That the bill be now read a third time.

MR W.J. JOHNSTON (Cannington) [1.16 pm]: I know that my colleague the member for Gosnells also wants to make some remarks on the Mining Rehabilitation Fund Bill 2012 at the third reading stage, which is not surprising as he has such an extensive background in the environmental movement. He pays careful attention to these things and I place on the record my appreciation for the work he has done on this bill. I also place on the record my appreciation for Hon Jon Ford and his staff, and the staff of the Department of Mines and Petroleum, who were so careful when briefing me on the issues involved in this bill. I will make a couple of comments about what we have done. In a minute we will move on to the Mining Rehabilitation Fund Amendment Bill 2012 and that will formally impose the tax that we are levelling on the mining industry, which is a tax of about $30 million or $40 million a year, so between $120 million and $160 million for a four-year cycle of government. That is an exciting opportunity for environmental rehabilitation in this state. It is a good fund; it will ensure that when things go wrong in the mining sector, we will have the resources to ensure that there is proper and adequate rehabilitation. Having said that positive thing, I have been lobbied by mining interests on this bill and I just hope that they understand that just because this bill comes in, does not mean that bonding finishes. It may be quite a number of years before government is in a position to remove the bonds on mining companies. From the information that the various lobby groups have provided to me I understand the benefits of removing those bonds. However, as I said, it might be five or 10 years before bonds on mining operations in this state are removed.

We need to be careful about the wording and whether the transport of mineral resources is covered by the operation of the act. I think the answer the Premier gave us was that there is broad enough wording in the bill that we can broadly rehabilitate the effects of mining operations. That will be an issue in the future because quite often it is not only the direct effects of the mining or the effects of a runaway of tailings or undermining because something has happened such as geotechnical issues, but also more broader impacts that there might have been through mining activity through its transport of the resource.

I also want to comment on the advisory panel. I join the member for Gosnells in saying that I think the operation of that panel is quite important. It will be important to make sure that it is not narrowly focused and that it focuses broadly on the impacts with which we are trying to deal. The panel should comprise a broad range of people who can all contribute different viewpoints to the advice that goes to the chief executive officer and the CEO making decisions on how to use this new resource for government.

I have two things to say before I finish. Firstly, I thank the government for agreeing, subject to the caveat that the Premier made, to review the act after 10 years. It is a good opportunity to make sure all legislation works in the way we expect it to. Ten years is quite a good length of time to ensure plenty of history is under the belt before we look to see what we should do to move forward. It is a good idea to make sure we have a broad look at how we are going. The second thing I comment on is the legacy sites issue. Given that only the earnings on the fund can be used for legacy sites, that will encourage a large amount of money to be kept in the fund. Over time, there could be quite a substantial amount of resources. When we have a review in 10 years' time, we will see whether it is an opportune time to look at broadening the operations of the underlying fund to ensure sufficient work is being done to rehabilitate legacy sites. We all expect that the mining industry, as we move forward, gets better and better in its environmental performance. We do not expect there will be future abandoned mines, yet that is where the bulk of resources will be focused. We need to look back at what will happen in the future to see how we can deal with those legacy issues that blight our state. As I explained during the second reading debate, it is not reasonable to use just the royalty income that the government receives—because that is the payment for the resource—to rehabilitate legacy sites. We need to think about what other resources are available to us to ensure those legacy sites are properly dealt with.

Mr C.J. Barnett: I think that is a reasonable point. After that 10-year review there may actually be a reduction in the levy, if environmental standards improve. Maybe some of that principal could be used for rehabilitation. If the fund is $1 billion or $2 billion, it would probably be pretty safe to do that.

Mr W.J. JOHNSTON: It is not unreasonable for the current-day operators of mines to say they should not be held responsible for some other person who received a benefit out of a mine because the environmental standards of the past do not meet current standards. I can understand why the mining industry says it does not want to be the principal resource for fixing up abandoned mines. One of the problems is trying to find out who received the benefit and who should make the payment—give it a user-pays approach. I understand why it is only the interest on the principal, but I think 10 years, as the Premier says, is probably an opportune period to look at how we can deal with an important issue for the state of Western Australia.

MR C.J. TALLENTIRE (Gosnells) [1.22 pm]: I rise to make a brief contribution to conclude our consideration of the Mining Rehabilitation Fund Bill 2012. I want to stress to the house that these bills are not trivial at all. I was at a function recently at which somebody from the Chamber of Minerals and Energy said that the actual footprint area of mine impact in Western Australia is about equivalent to the area occupied by shopping centre car parks. When those claims are tested, they do not stack up. The actual footprint area of mining is growing all the time. That is understandable when we consider the scale of mining activity and its growth in this country, and to use the Pilbara example the volumes of iron ore going out of that region. The disturbance footprint is growing all the time and the cost of rehabilitating those areas increases. It is something the state will have to deal with eventually, one way or another.

In discussion, the Premier pointed out that the reputation of companies is perhaps one of our best safeguards against them leaving sites in an unsatisfactory and unrehabilitated state. He is right to a point. That is true when it comes to the major mining companies. We know that even from the mining majors, we see all sorts of changes, including buyouts, takeovers, mergers and acquisitions. When that happens, a company that was perhaps a household name almost disappears and another one takes its place. That is often used as a technique to avoid reputational costs. That is something we need to be mindful of. We need to make sure this fund is adequately funded so it has the capacity to pay for expensive rehabilitation works. Something we have not managed to get through in discussion so far is a draft of the levy calculator, which will be key to things. Some areas have very, very high costs of rehabilitation. I remember Alcoa representatives saying 10 to 15 years ago that the company budgeted $20 000 per hectare just for earthworks at its bauxite operations in the Darling Scarp and in the south of the state. That figure of $20 000 per hectare does not include all the scientific research that goes into looking at the propagation techniques required for various recalcitrant plant species; that is, plant species that are difficult to germinate. Botanists apply the word “recalcitrant” to those species. They require many years of expensive, intensive research before they can be germinated and propagated in the lab, and then there are more years before they can be propagated out in the field on a rehabilitation site. Sometimes that work happens, and happens very well. I note that Alcoa claims nowadays that it can rehabilitate 100 per cent of the known species in a disturbed area. It stresses, though, that that is the “known” species. There could be species there that are unknown. They are not in the suite of species that are reintroduced. Sometimes when one goes into a rehabilitation area, it can be very good. It can be almost indistinguishable from an area of regrowth that has had a fire go through it. Sometimes the quality of the rehabilitation is excellent, but there are plenty of examples of it being quite poor.

We touched on the rehabilitation of quarries in our discussion. I am disappointed that the bill does not necessarily apply to quarries. The reason the Premier gave was that quarries are generally covered by local government. Those sorts of quarries can be relatively minor—gravel pits and things used for sourcing gravel for road construction. In those cases there should be some state government means to force gravel pit operators, who often are those very same local governments, to undertake rehabilitation work. It is sometimes too easy for a local government requiring some gravel to look at its roadside vegetation area and road verges to access it. It is sometimes convenient, but it seems like a cheaper and simpler solution than negotiating with an adjacent landholder who might already have some cleared land under a cropping regime that would be ideal for sourcing the necessary basic raw material. In those cases we need some sort of financial incentive to push negotiations along to ensure local government enters into negotiations with adjacent landholders and perhaps provides a new stream of income, or a temporary boost in income, to a landholder who has land under a cropping program. The returns for cropping are highly variable and are not always that great. If landholders with a five or 10-hectare area out of the cropping program for, say, 10 years, receive some recompense from local government, that is a very effective way to source the gravel. It also gives local people some sort of financial boost and gets a good job done without disturbing an area of native vegetation. That is why we need some form of state government capacity to impose on local governments a stronger involvement in rehabilitation. I accept, though, that this money will not be applied to those areas, but I think it will be a disappointment. Other areas, such as the quarries, which we see from our offices here in Perth when we look at the Darling Scarp and which are a blight on visual amenity, are certainly a concern to people. They want to feel that those areas will be rehabilitated. I note in passing that the rehabilitation plan for the Holcim quarry, which dominates the scarp above Gosnells in my electorate, seems to have somehow managed to have got its approvals through at a time when there was not the consistent requirement to sequentially rehabilitate the quarry face. As a result, people in my electorate live in an area close to the scarp that should be an attractive area to view, but they look up at the scarp and unfortunately they see the huge Holcim quarry. I understand that quarry has a life expectancy of hundreds of years to come. The rehabilitation could have been required in such a way that there was a screen and that the quarry would not have to be before our eyes every day that we travel around the Gosnells area, but, unfortunately, that has not been the case. I do not think this legislation will deal with issues of visual amenity, disturbance or quarry rehabilitation, and that is certainly a disappointment to people in my electorate.

Another aspect of the legislation I do not think we have dealt with properly, unfortunately, relates to other impacts associated with a quarry or a mine, and I am thinking particularly of dewatering. The volumes of water that are often moved off mine sites are absolutely enormous. I know I have mentioned in this place before some of the projects in the Pilbara in which volumes of water—as much as 45 gigalitres—are diverted and dewatered, such as at the Rio Tinto operation that has been moved out of the Weeli Wolli Creek area. Forty-five gigalitres of water is the equivalent amount to the annual production level of one our desalination plants. These are absolutely huge dewatering operations and we cannot pretend that that does not have some negative consequence on the area that has been dewatered or the receiving area—and what a waste as well. I think when people hear about mine rehabilitation funds, they want to feel that the money will be applied as broadly as possible. Of course, there are other means of putting conditions on mines, and that can be through the environmental approval process or the Department of Mines and Petroleum's approval process, and that process run by the Department of Mines and Petroleum needs to have greater transparency. I understand that that approval process is under review, and I mentioned in my second reading contribution that there are four working groups. One is looking at this approval process, one is looking at compliance, one is looking at governance and another is looking at petroleum issues. The hope is that we will get a more transparent system that enables people to be properly involved in the approval process—to be able to make comments on it so that the community can have some confidence that it can shape things, unlike the current arrangements in which things are done so much behind closed doors.

I refer to the example that I mentioned during consideration in detail of the Toro Energy uranium mining project at Wiluna and the failure of the government to honour its commitment to proceed in a way that is consistent with world's best practice. Those were the words that Hon Norman Moore used when he described how he would shape the regulatory framework for the Toro Energy Wiluna uranium mine. Unfortunately, we have seen that that commitment is not being met because we do not have the closure guidelines, and that is a huge disappointment. I would think that a mine of this nature—the first uranium mine in Western Australia—would have to meet higher standards than other mines. When other mines have to present closure plans right up-front as part of the approval process, why is that not the case for the Wiluna mine? I just do not understand that at all. I would have thought that the closure plan should have been presented, just as it is with any other mine. The standard and expectation should be higher for the Toro proposal, yet we are letting it off at the moment; there is no closure guideline out for public comment. I think that deficiency in the regulatory process is very worrying, and it certainly seems like a breach of the commitments that Hon Norman Moore made for world's best practice.

I think the community is becoming more and more aware of the environmental impact of mining. It is true to say that for a long time the majority of Western Australians were very metropolitan focused and did not necessarily get out to see areas that we derive so much of our great wealth from. However, with more and more people now employed in the sector and also with people wanting to explore the state more than ever before, it means we have increasing awareness about the consequences of mining—what the real cost is. Yes, we derive huge material gain from the sector, but we also want to know that this sector can manage itself properly and, when necessary, be correctly regulated by government. I think we need to anticipate that not only will the community's expectation grow, but also the community's vigilance will grow and, as they travel around the state, people will actually be the number one reporting mechanism. I know that officers from the Department of Mines and Petroleum are reporting on various mining standards, and there are requirements that individual mines submit annual environmental reports. Those reports sometimes do not get read, and it was highlighted in an Auditor General's report that there are some serious deficiencies and that there is more work to be done on that. However, we need to anticipate that the community's interest will grow. The community will expect to pass a mine and not just see signs saying, "No public access. Keep out" and telling people that they do not have a right to visit the area, as though the mining company actually owns the land. Of course, there are health and safety impacts—obviously we cannot just have people wandering onto mine sites—but people will want the ability not only to hear about the safety records of mine sites, but also to know about the environmental plans around a mine and what rehabilitation plan is in place. They will want to get those details as they drive past a mine. They would have every right to access that information and to stop at a mine, meet a site manager and be told about the rehabilitation plans, and perhaps even be pointed to some of the ongoing rehabilitation work so that they can inspect and see for themselves the quality of rehabilitation work. Why should people not be allowed to do that? I think it is a very reasonable thing and it would be a great check in the system. We have seen that the system is not perfect, but we have an opportunity to improve things by allowing the community to be involved in what could almost be called random site inspections. Why not? As Western Australians, we should be entitled to see the quality of rehabilitation work and have it explained to us. I think that is the very minimum we should expect. In fact, we hear the mining sector quite proudly state that it employs more environmental officers and environmentally qualified people than any other sector in our community. I am sure that is true, but those people on mine sites doing the rehabilitation work should also be in a position to show general community members around mines, with some notice given so that there is no risk to safety. We do not want people in light vehicles

encountering Haulpak trucks and things like that. We should have some capacity for people to visit mines much more readily than is presently the case, ask questions and see what rehabilitation programs are in place; and, if people are not happy, they should be entitled to report back to the Department of Mines and Petroleum, ask questions and get information. All that information flow will be so much more reliable if a decent approvals process is in place. That is what I have concerns about at the moment. Those concerns are not specific to this legislation, but I certainly have concerns about the lack of transparency in the approvals process. When closure plans are not submitted on major projects, that is a cause for concern. People have every right to be concerned and sceptical about the ambitions of the mining sector to rehabilitate a mine site to the community's expected standards. I look forward to hearing about the effectiveness of mine site rehabilitation using the funds that will be gathered through this legislation.

MR C.J. BARNETT (Cottesloe — Premier) [1.40 pm] — in reply: I again thank members for their support. The new fidelity fund system will be introduced progressively. As I have said before, I think it is a good reform for the mining industry but, most importantly, it is a more modern way of dealing with rehabilitation obligations and, for the first time, opens the door to a source for funds for dealing with historic mine sites. As I said, the government accepts the recommendation moved by the member for Cannington. In 10 years—he may well be here; I assure members that I will not!—Parliament may decide to change the way the fund is used.

Question put and passed.

Bill read a third time and transmitted to the Council.