

**MINING REHABILITATION FUND BILL 2012**

*Second Reading*

Resumed from 15 August.

**MR W.J. JOHNSTON (Cannington)** [4.40 pm]: In making my comments on the Mining Rehabilitation Fund Bill 2012 and the Mining Rehabilitation Fund Amendment Bill 2012, I would like to point out that Western Australia has a long history of bonding mines against the risk of environmental damage. What happens is that as part of the approvals process for a mine, the payment of a bond is required, in an amount that is determined on a case-by-case basis, to be used if, at the end of the mine's life, there has been a failure to properly remediate the environmental damage of that mine. The problem that the mining industry has raised with the government on this issue is that the cost of that bond can be quite prohibitive, particularly for smaller miners. Mining companies that have a limited amount of capital can often find it difficult to get the necessary resources to ensure that they can put that bond in place, and they may also have charges imposed on them by financial institutions in providing the money for those bonds.

Therefore, following discussions with the industry, a new approach has been introduced in this legislation. What will now happen is that a levy, or a tax, will be imposed on all mining companies, based on the area that is affected by the mining tenement. That tax will then be hypothecated into a fund to pay for the future remediation of mine sites. The bill provides also that the interest that is earned from those hypothecated levies can be used for the cleaning up of legacy mine sites in this state. In the past, the environmental standards in the mining industry were very different from what they are today, so we have ended up with a number of mine sites around this state that have not been remediated. At the moment, no resources are available for remediation work on those sites. So that provision in this bill is to be welcomed. The principal—and the interest as well—can also be used for the remediation of future abandoned mine sites.

The determination about how to allocate the resources among the various demands that exist from both legacy sites and future abandoned sites will be made by an advisory panel. Representatives from industry and government will liaise to set priorities for government with regard to the rehabilitation of these sites. It is possible that over a period of time, the money that is raised by this tax will be more than is required for that remediation work—remembering that although the interest can be used on legacy sites, the principal can be used only on future abandoned sites. If that is the case, the government may be in a position in five or 10 years to reconsider the levy rates, and perhaps even to consider refunding money to some mining operators. It will be interesting to see what procedure the government will use to return these funds to mining companies, and perhaps the minister with responsibility for this bill might be able to explain how the government might do that. I think that could be quite a problem. It would probably be better to allow the principal amount to increase so that more interest will be earned to be available for dealing with legacy sites, because, as I have said, a lot of environmental damage was caused in earlier times when mining standards were nowhere near as high as they are now. Any reading of the literature shows that there is a continuing discussion about how best to deal with these legacy sites, and there might be some contributions from other members about that issue. The mining industry of the 1960s did not look like the modern mining industry that we have today—attitudes to Indigenous issues were very different back then, attitudes to safety were very different back then, and, indeed, attitudes to environmental issues were very different back then.

The reason the industry players support this new tax is because they are hoping that they will no longer need to be bonded. But it is important to understand that this legislation will not in itself remove the need to bond and that the government will be continuing to bond mining projects for quite some time. That is because it will take some time—perhaps five years—to build up sufficient capital in the fund to ensure that enough resources are available to government if a mine is abandoned in the future and needs to be rehabilitated. It is, therefore, important for the industry to understand that this legislation does not mean that the bonding of mining projects will disappear. Therefore, the issues related to the raising of capital by mining companies, particularly smaller mining companies, will continue to exist for quite a while yet.

The other issue that needs to be borne in mind is that mining projects that are covered by state agreements are not covered by this new tax. That is clearly because the whole purpose of state agreements is to ensure stability for the regulatory environment of the proponents. It is not that the fund cannot apply to these proponents; it is that it can apply only with the agreement of the state agreement holder. So, BHP, Rio or Fortescue, or whatever else, or even smaller projects, that have a state agreement, will not be bound by the provisions of this legislation, and for good reason—that reason being that the state, through the state agreement process, is guaranteeing that those companies will have regulatory stability.

Given that there are such extensive mining operations in this state covered by state agreements, it will probably be an important issue to negotiate between the state of Western Australia and existing state agreement mining

operations to ensure that the largest number of proponents are included in the levy. The reason for that is that obviously the more projects that are included in this new tax, the lower the rate has to be. The probability of a project being abandoned in the future is quite small.

**Dr K.D. Hames:** It has been brought to my attention that the plan was that these two bills be agreed to be debated cognately. I should have moved that at the start, and that has been brought to my attention. We can agree to do that later if you speak now as though you are speaking to both bills, providing you are satisfied. If you do not want to, we will have to do them separately.

**Mr W.J. JOHNSTON:** I am very happy to treat it as a cognate debate. I am very happy for that to occur. I have certainly been directing my comments to both pieces of legislation. I am glad that that is what we are doing. The reason there are two pieces of legislation is the standard reason that if a new tax is being introduced, it has to be in a specific bill. That is why the levy is being introduced separately to the operations of the process that the levy is funding. As we know, taxation bills have to cover just taxation matters. I am sure that the member for Victoria Park is much more capable of explaining those issues if people are worried about them.

Another thing that we need to understand about this legislation is that the fund can also be used to remediate the effects of a mine even where that effect is off the mining tenement. Let us say we have a problem with tailings. There might be some leakage of the tailings, which leaves the mining tenement and goes on to other land. That other affected land can also be remediated using the resources available through this fund. The principal is available for future abandoned mines and the interest on the principal is available for dealing with legacy issues. I think that is a sensible arrangement. It is not just the mine; the impact of the mine can be dealt with through the legislation that we are discussing.

We are very fortunate in Western Australia that we have such immense natural resources in this state. The amounts that flow to us through royalty revenue have gone up by nearly 300 per cent over the past five years. An extraordinary amount of money is available. That is one of the reasons the state government has more income today than it has ever had in the past; 50 per cent more than just five years ago is flowing into the coffers of the state government. An unprecedented river of gold has arrived in Western Australia. According to the budget estimates, which we all need to look at because of the problems with the assumptions on the dollar and the assumptions on the iron ore prices that are in the budget, under the current arrangement that river of gold is expected to continue over four years of the forward estimates and, in fact, increase. The mining industry principally makes that contribution to this state. When we think about the gold and iron ore resources that we have, along with mineral sands, nickel, rare earth, lithium, bauxite and all these gifts of providence that Western Australia has received, we are very lucky that we are in that position. It gives this state unprecedented and unequalled financial freedom.

There are also challenges that go with that wealth. One of those very important challenges is this question of the environmental impact of mining. Western Australians have a particular attitude to resource extraction. Industry in this state is very fortunate that it has such a supportive community. I think about 170 mines were approved over the seven and a half years of the former Labor government. An unprecedented expansion of the mining industry took place under the leadership of Premiers Gallop and Carpenter. Never before in the history of the state has there been such a large expansion of the mining industry. It will be interesting to see whether that large expansion will ever be exceeded into the future. That large expansion underpinned the current period of unprecedented prosperity. Having expanded the mining industry in this state, particularly in the iron ore sector, the fortuitous rise in the value of iron ore exports because of the demand of China pushed up the prices to unprecedented levels, leading to this extraordinary wealth that this current government has enjoyed that no former government has ever had. As I said, the government predicts it will continue. But there is this challenge of the legacy of the extraction of minerals.

We would be confident that, generally speaking, there would be an expectation that not many projects will be abandoned in the future. The regulatory environment in Western Australia should be able to ensure proper standards on mines. It is the expectation of the minerals industry—I think it is the expectation of the community—that that is what will happen. We hope that there will not be much need to draw on the money that has been paid in through this new tax by the mining industry. It is good to know that those resources will be available to government because it is clear that the royalty that is paid by the minerals industry is the price, as the Premier has explained on a number of occasions, that the industry pays to extract the resources on behalf of the people of the state because they are our resources, not the mining industry's resources. There has been some commentary in the media lately by advocates of the minerals industry criticising politicians for saying that the resources belonged to the people; they belonged to the crown, if we like. It is quite extraordinary that people would criticise a politician for stating a fact. These resources do belong to the people, not to the mining companies.

**Mr C.J. Barnett:** Because the companies tell their overseas customers they own the resources and sometimes I tell their customers that companies do not own their resources.

**Mr W.J. JOHNSTON:** Indeed, Premier. I read his speech to the Rice University in the United States.

**Mr C.J. Barnett:** The Baker Institute.

**Mr W.J. JOHNSTON:** Yes, the Baker Institute at the Rice University. That was great. I agreed with the Premier's comments about ensuring that investors understand that the resources belong to the people and not to the companies. Of course the mines themselves belong to the companies. Domestic investors have a right to expect a reasonable return on their investments. Fortunately in Western Australia at the moment, particularly in the iron ore industry and the gold sector as well, we are getting that return. Nickel is not particularly attractive at the moment. They all seem to be having their own problems as the prices do not seem to be achieving what they were in the past.

The point I am trying to make is that the royalty is the payment for the resource. That is why it is important to understand that that royalty should not be used to resolve the environmental problems that might occur because of a mining operation. That is why it is justifiable to introduce a new tax on the mining sector to ensure that the resources are available to the people of the state for those small number of projects that might happen in the future where direct government intervention is needed to deal with priority problems. As I say, they are nice, broad rules that allow us to deal with not just the mine itself but the affected lands off the mining tenement.

I do not intend to keep the house any longer, so I will conclude by saying that we need to all watch what happens with those legacy abandoned mine sites. We must make sure that the interest on the earnings of that hypothecated tax will be properly used to deal with those abandoned mines. The Mining Rehabilitation Advisory Panel will choose the priorities for that expenditure. It will probably take some years for enough principal to accrue a sufficient amount of interest to make a big dent in those legacy mine sites. But I think it will be one of the critical issues. I can understand why industry would not agree to paying a tax to deal with somebody else's problems, so I understand why spending is limited to the principal only on future abandoned sites, but it is very critical that the state ensure the legacy sites are properly dealt with. Thank you very much, Mr Speaker.

**MR C.J. TALLENTIRE (Gosnells)** [5.00 pm]: I too rise to speak to the Mining Rehabilitation Fund Bill 2012 and the Mining Rehabilitation Fund Amendment Bill 2012. The notion of bonds has been with our mining sector for a long time but I think it is agreed by those who derive great profit from the mining sector and those who travel the breadth of our country observing the effects of the mining industry that the bond system has, on many occasions, let us down. If we travel in parts of the goldfields or in the Murchison near Meekatharra and Cue or other parts of the state we can see these legacy mines. In the goldfields and elsewhere we can see not only legacy mines but also the unfortunate result of exploration work. We can see uncapped drilling holes and the risk they pose to the natural environment, especially fauna that fall down them. Those sorts of things should be dealt with by the industry. It should be ashamed when it goes back and explores yet again for resources and sees the legacies left to the people of Western Australia and realises that it could have cleaned up its mess before moving on. That should have been the case, but the previous bond system did not tackle these situations adequately.

There is no doubt that there were some positives with the bond system. A bond was specific to a particular mine and that enabled the funds derived from the bond to be applied to that mine site, although, in some ways it is a negative in that other areas need remediation. Bonds have been the most used mechanism in Australia, in fact, for remediation. Some of the negatives are that it is only a site-specific funding arrangement; bonds from the company's point of view have to be cashed back, so companies do not like them. Another key negative is that once a bond is relinquished, there are no funds left should other problems be found with a particular site.

Rather than a full cost bond system, this new system will be a centralised fund to replace the bond system and that seems to be a positive outcome. I think, in some ways, we could describe this new centralised fund system as something of a socialised insurance fund for the rehabilitation of mine sites and mine exploration areas because it means it can be applied more broadly. As the member for Cannington said, the actual interest on the money can also be applied to the legacy sites. Some improvements can come about with that situation. I think the real test here must be the funds that will be raised. There will be a calculator. We had a bond calculator, but in future it will be called a levy calculator. The Department of Mines and Petroleum will examine the hectares that will be disturbed or destroyed and will look at the cost of rehabilitating them. Depending on the vegetation type and the geology, the calculator will work out the levy per hectare. I understand this can vary quite considerably from a few thousand dollars per hectare to tens of thousands of dollars per hectare. It is a fairly crude system. If people get the estimates wrong because the levy calculator does not work effectively, we can suddenly find ourselves out of pocket. That aspect does worry me, but it is a level of detail we do not have in this legislation. It is something that will be apparent only when the regulations come before us.

There has been much discussion in the mining sector about improving the bond system and switching to this centralised fund. I understand four working groups have been put together by the Minister for Mines and

**Extract from Hansard**

[ASSEMBLY — Thursday, 20 September 2012]

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Petroleum. One of them has been looking at the approvals process. The industry is always obsessing about how it can get approvals through more quickly, ignoring many other reasons to not go full tilt in getting a mine approved. Nevertheless, there is an approvals committee. There is also a compliance committee because that has to examine how we regulate mines when they are in operation; it will examine whether we have the human resources in government to do that. There is a governance committee and a petroleum committee. Four committees will be overseen by an overarching committee, the mining approvals process committee, which is chaired by a former member of this place, Cheryl Edwardes. There is a lot of committee work going on at the moment, yet we have gone ahead with this legislative change. I wonder whether perhaps we would have been better advised to wait until the findings of the various groups had been presented to us before introducing these bills. Nevertheless, the decision has been made to introduce this legislation and I think it is a positive step.

We have to guard against some of the really bad situations. We need only think of the clean-up costs associated with, say, the Wittenoom mine. The cleaning up of that situation will involve horrendous costs and will have health impacts on people. Enormous costs are attached to some of the clean-ups of mine sites. The Northern Territory's Rum Jungle uranium mine cost \$100 million to clean up and the problem is still not entirely fixed, so mines can be incredibly costly to clean up.

I have raised the issue of whether this legislation links to the whole compliance issue. I note that there is a growing trend towards not having the mining sector regulated, not having it managed and, even in the approval stage, not having it approved by the environmental authorities. Instead, the approvals processes, the regulatory processes, are being run by the Department of Mines and Petroleum. I worry about that. I think there is a lot wrong with a system in which an agency is responsible for promoting and regulating its own sector. I fully acknowledge that the wealth of this state at the moment is dependent on the mining sector, so we want an agency that is strong and capable of promoting the mining sector and ministers who are strong advocates for their industry. But, at the same time, do we want them to be also the people responsible for the regulation of that sector? As a model of governance, I think that is flawed, so I caution the government on our proceeding further down that path. We need to make sure we have regulatory and approval processes outside the mining agency. I note, for example, that with those very major projects there is still a full Environmental Protection Authority approval process, but as the Premier said quite recently, there is going to be a growing trend towards having EPA assessments done when just one EPA board member is actually eligible to be involved in the approval process. We have seen that with the Browse situation in which only the chairman, Paul Vogel, was found to be without some form of conflict of interest. Only one person was able to do it. The Premier's projection is that that situation will continue—that we will have more of those sorts of cases. I think the rationale is that Perth is a small place and therefore there is a shortage of people who, in his view, would have the credentials to be on the EPA. I worry about that. I think this is a missed opportunity to make sure that there is good, broad representation on the EPA and that we have people there who are not conflicted and who are from the community sector. That has been the case in the past. I note that the previous community representative or member of the EPA, Joan Payne, was not replaced at the end of her term with someone from a similar background. That is a disappointment. Instead, we have put people on the board who are conflicted. In the case of Browse, those people have strong connections with the project either through government or Woodside and so they are conflicted, and we are down to one person as far as the EPA decision making goes on the issue of the final report and recommendations—one person on the biggest project the state has perhaps ever seen. On the one hand we are saying, "Let us put more regulation into the environmental agency" and "Let us continue the growth of our resources sector", but on the other we are saying, "Let's just accept that there may be only one person in the environmental authority who is in a position to actually decide on that particular project." That is a real concern.

Nevertheless, with this move towards a rehabilitation fund there is some hope that this will in fact be a better system. As has already been noted, this will not apply directly to state agreement act projects. That is something that still has to be borne in mind. Another issue is that we have a situation in which we could still apply a bond if it were deemed totally necessary, so a bond could in fact be on top of a levy, but I wonder how often that will apply. In fact, the legislation does not change that potential for a bond to be issued.

I note that the whole review process that I mentioned before, which has not been concluded but is underway, has had a reasonable amount of input from various stakeholders who do not have a direct pecuniary interest. Of course, there have also been very weighty contributions from those with a direct pecuniary interest. The Chamber of Minerals and Energy, the Association of Mining and Exploration Companies and other bodies are heavily involved and have put enormous resources into guiding these sorts of reviews and the findings that they come up with. I think there is still a need for us to be very much involved in looking at the findings of these reviews and making sure that as we take on board the messages that inevitably come from these sorts of bodies, such as that they want less regulation, that we do have to sometimes take that with a pinch of salt, accepting that they are speaking from a particular view of their own financial interest—they want life to be as easy as possible and do not want more regulation. If, in fact, we are accepting that we have a situation in which we might have only one EPA member who is in a position to make a decision, we may need more regulation at another stage of

the process. If we have reduced the capacity of the assessing bodies, perhaps we need a different regulatory capacity once we are in the operational phase. I certainly caution the minister and the agencies involved that we should not be looking to reduce the amount of regulation, because otherwise we will find problems with compliance. The Auditor General released a report last year that highlighted the high degree of compliance failure when it comes to the Department of Mines and Petroleum reading annual environmental reports. I note that the agency is talking about switching to a risk-based approach, but when we boil it down that means that the agency will only read reports on environmental performance at particular mine sites when they think there is a risk. I am worried about the number of cases that could slip through with that type of approach.

I will conclude my remarks. I support this switch to a rehabilitation fund model. I think it can work. But as a group of legislators, as a Parliament, we need to be sceptical about some of the claims of those who say they want less regulation in this area. We have to make sure that there is adequate resourcing of the agencies involved, so that the whole Western Australian community can be sure that we will benefit from the wealth that is derived from the mining sector but not at the cost of our environment. We do not want people who fly across the state looking down and seeing a multitude of mine sites left neglected and un-rehabilitated. We want to know that rehabilitation is very much a part of a mine. I know that to get an approval plan through, normally it is essential to present a mine closure plan. We want to be absolutely confident that those mine closure plans are fulfilled. That is my hope.

**MR J.R. QUIGLEY (Mindarie)** [5.16 pm]: I will take the Premier's advice on this occasion and seek leave to continue my remarks on another occasion.

[Leave granted for the member's speech to be continued at a later sitting.]

Debate thus adjourned.