MINING LEGISLATION AMENDMENT BILL 2015

Second Reading

Resumed from 22 April.

MR W.J. JOHNSTON (Cannington) [4.20 pm]: I rise to lead the Labor Party's contribution to the second reading debate on the Mining Legislation Amendment Bill 2015. I must say, this is actually very complex legislation. I understand that the briefing by the Department of Mines and Petroleum for the Association of Mining and Exploration Companies took about 10 hours. The briefing provided to me and the member for Gosnells took an hour, and we found that we were not even a quarter of the way through the bill and that we had a further three hours of briefings, so that was a total of four hours of detailed conversation about the legislation. It is clearly a very complex piece of legislation. Effectively, we are trying to unify the environmental procedures for mining in Western Australia. At the moment, a mine needs to make an application under the Environmental Protection Act and the Mining Act. Now the Mining Act will be the pathway for environmental applications by the mining sector.

As it was explained to me, many of the environmental arrangements for individual mines are included in obligations built into the tenement on the mining or exploration lease. In fact, most or many of the environmental obligations are made under the Mining Act at this time; however, a range of obligations also come under the Environmental Protection Act. At the moment, if someone is applying to start a mine or to do some exploration, they are making two separate applications, but those two separate applications are on the same set of topics. What is being attempted here is to try to reduce that to a single application that will cover all the issues that are currently required by the two separate applications. That is what we are attempting to do, and when we get to consideration in detail, we will work out how well we have achieved that.

I would like, at this point, to thank the staff of the Department of Mines and Petroleum who spent such a long time giving me advice on the details of this legislation. Once again, I must say that I found the professional staff of the department to be excellent and prepared to entertain all my silly questions and dumb ideas, and they clarified a whole range of issues that are not immediately obvious when we read through the simple words of the legislation. One of the documents provided was a marked-up copy of the changes; not actually a marked-up copy of the bill, but rather the effect of the changes, and that was a particularly useful document to be provided. It has each of the provisions of the bill in the exact words that are being proposed, and then the actual operation of those in the act. We do not have the whole act, just the bits that are being amended. That is particularly useful. We were also provided some notes about a proposed low-impact authorised activities framework for prospecting and exploration under amendments to the Mining Act 1978, which is out for stakeholder comment, produced on 2 April 2015, and a range of documents from the website that go to mining securities. Obviously there is an impact between the previous changes we made with the mining rehabilitation fund and what we are doing here. We can see that this is no simple arrangement, and we are going to have to go into consideration in detail. I will be asking the minister a whole range of questions and I am sure his advisers will be able to get on the record the effect of these changes. I know my colleague the member for Gosnells will perhaps not have the same number of questions that I have, but he will be looking to ask some questions as well.

I would just like to make the observation that there is now an interesting new power in this legislation. Under these provisions, if a mining application comes through, only the environmental aspects of the application can be considered by the department to provide advice to the minister, but the minister then has to make a decision. Interestingly, the minister's powers are wider than just the straight environmental issues. We can imagine that if there were an application for a mine and there was some very significant reason for the mine not to proceed, such as an historical ruined building on the site, some important piece of Aboriginal cultural heritage or some other cultural or historic issue that might be on the land, the minister still has the power to refuse the application, and that is separate from the question of what the department recommends in respect of the specific environmental aspects of the application. When we get to it, I am going to refer to that as the "Norman Moore" amendment; I will explain when we get to consideration in detail why I am calling it that. The reality today is that no minister will approve every mining application; there will always be some reason, occasionally, for a mining application to be rejected. It is not as straightforward as the mining sector sometimes thinks.

Another thing I want to highlight is the controversy surrounding the people in the eastern goldfields area. They are very concerned that we are putting an environmental objective into the mining legislation. It is their view that the mining legislation should be kept to deal with mining, and that we should deal with environmental issues separately. My comment to them is that it appears that we are already dealing with environmental issues through the Mining Act; all we are doing here is bringing two separate procedures into a single procedure. The Department of Mines and Petroleum is using a range of critiques of the procedures regarding the applications. There is probably a third aspect, which is that some people, particularly in the larger companies, would say that

they are quite satisfied with the way that the Department of Mines and Petroleum is handling applications. Then the junior exploration and mining people will say that they are generally satisfied but they think that costs are too high and there needs to be further consideration of the costs and the regulatory impact. Then there is the third group, the very small end of town, who think that too many people are being told no and that the rules are getting too complex and difficult for them to cope with. I imagine that there would be fair grounds for each of those views from the point of view of where those people are sitting. However, at the end of the day, Western Australia is one of the world's best mining provinces because the mining sector has operated for a long time. The community has a clear understanding of the impacts of mining, both positive and negative, and we understand that we can never get everything that we want but we are always looking for some sort of compromise. It is about getting an effective outcome.

Some people argue that the mining sector is getting away with too much, and others in the mining sector are saying that regulation is getting in the way of making speedy decisions. Sometimes it is said to me, and I am sure you have heard this as well Mr Acting Speaker (Mr P. Abetz), that if both sides of the argument are complaining, we are probably getting it about right. We can always make adjustments, and the community's expectations of mining have changed enormously over the past 125 years. When we think about what we allowed in the past, we would never allow it today, and I imagine that there will be a different expectation of mining in the future. That is what happens; people change their views over time and adjust as the community's expectations adjust.

It is interesting that we are still a very important part of the world mining sector. I have some iron ore statistics from the US Geological Survey "Mineral Commodity Summaries 2013". It is very interesting to look at these figures. I know there is a tiny bit of iron ore mining in South Australia and Tasmania, but effectively iron ore mining in Australia means Western Australia. The document contains a list of production figures for 2012, and the reserves. For the calendar year 2012, the United States production figure was 53 million tonnes; Australia, 525 million tonnes; Brazil, 375 million tonnes; Canada 40 million tonnes; India, 245 million tonnes; Iran, 28 million tonnes; Kazakhstan, 25 million tonnes; Mauritania, 12 million tonnes; Mexico, 13 million tonnes; Russia, 100 million tonnes; South Africa, 61 million tonnes; Sweden, 25 million tonnes; Ukraine, 81 million tonnes; Venezuela, 20 million tonnes; and other countries, 61 million tonnes. I have left one out, but those figures total 1 700 million tonnes of production. The country I left out was China, which produced 1 300 million tonnes, which is two and a half times Australia's production. The big reserves are in Russia, with 25 000 million tonnes; China, 23 000 million tonnes; Brazil, 29 000 million tonnes; and Australia, 35 000 million tonnes. Interestingly, the Brazilian ore would appear to be higher in iron content, because it is also reported by iron content. By that measure, we are at 17 000 million tonnes, and the Brazilians are at 16 000 million tonnes. That is an incredible amount of reserves, and it is no surprise to anybody that iron ore is not considered a rare commodity; it is very much at the lower end of values.

Let us go back and have a look at the Club of Rome and its book *The Limits to Growth*, first published in 1972. I am sure you are quite familiar with that book, Mr Acting Speaker. I was saying to someone else today that, when I lived in Indonesia, my Indonesian foster father always carried a copy of the Club of Rome book around with him, and he would refer to it a lot. The assessments made in the book were generally wrong. Its expectation of constantly rising consumption, of course, proved to be wrong, and its concern about limited resources also proved wrong. I know oil is not a mineral, but I will just use it as an example. Somebody said to me, "Don't you believe in peak oil?" It is not a matter of whether I believe in peak oil but rather that, as the price increases, reserves become available that would not otherwise have been considered. There are just so many resources that we cannot ever expect to use them all. There is a question of how we can extract resources at a price that the customer is prepared to pay. To go back to the Club of Rome, its graph about steel consumption on page 111 shows the per capita steel consumption in the United States, and a big increase from 1890 to 1969. The problem for the Club of Rome was that it did not understand that per capita consumption of steel in the United States actually started to fall. That is actually now the experience of economies. As incomes rise, per capita consumption of minerals does not follow a linear progression but rather follows a bell curve. It goes up as incomes rise and people start buying consumer durables, but then as the economy moves from being focused on manufacturing and more into the services sector, the per capita resources consumption actually falls. There is a lot of talk in the media about the dumping of Chinese steel in South-East Asia having an impact on other Asian countries.

Mr C.J. Barnett: You may well be right on the per capita figure falling, but that doesn't mean that the gross production falls, and that will be the situation with China.

Mr W.J. JOHNSTON: The problem with China, as I am sure the Premier is aware, is that its population is very close to maxing out, and will actually start to decline within a decade because of the one child policy, so not only will per capita consumption fall, so will the gross consumption.

Mr C.J. Barnett: I think that's further away than most analysts predict. All of central and western China is still very much undeveloped.

Mr W.J. JOHNSTON: It will be interesting to see, but as economies move further into services, the volume of mineral consumption falls. I would love it if the consumption of iron ore continued to rise for a long time; it would obviously be very good for Western Australia, because we could have a recovering market. However, the point I am making is that these old-fashioned assumptions about mineral production that underlay the Club of Rome analysis of resource exploitation do not work out over the long term. It is really about the price that we pay. To take oil as an example once again, the oil that is extracted when the price is $200 a barrel will not be extracted when the price is $20 a barrel, although the oil is still there. Interestingly, with oil, we are taught that it is a resource that was laid down millions of years ago, but the Russians believe that hydrocarbons continue to be generated by the geological activities of the earth. I do not think that is something that anybody giving advice to government in Western Australia would say. My mother always talked about the shale oil that used to be extracted in southern New South Wales from the mountains of shale. We cannot do it now, not because it is not technically feasible, but because it is not economically feasible. We would probably need to get to about $400 a barrel to make that work. The point is that there is plenty of material on the surface of the earth. The question is how we can recover it economically. In terms of coal and oil and other hydrocarbons, we also need to think about what will happen as a result of climate change, because there is now a new economic dynamic in that the cost of renewables is coming down much faster than was predicted even as little as 10 years ago.

I now want to get back to mining rather than energy more generally. The challenge for Western Australia is that we have come through a period of incredible price growth basically since about 2003–04 until last year, when prices started to come off dramatically. Whether we take the Premier's sanguine view of future demand out of China for iron ore, or my perhaps more pessimistic attitude, we know that we have finished the period of that incredibly high iron ore price. Interestingly, if we analyse the iron ore price in Australian dollars rather than United States dollars, which is what we are mostly familiar with when talking about the iron ore price, there has been quite a significant recovery this year because of the fall in the Australian dollar. The minister is probably quite happy about that because he is reaping the royalties from it.

Mr W.R. Marmion: But it is still marginal for the mid-tier miners.

Mr W.J. JOHNSTON: Absolutely. In fact, I would not want to run a major, either. The costs for all these companies are critical.

I now want to move off the discussion of iron ore prices, because that is the one we are most familiar with. In how many countries in the world can we go to a coffee shop and people know what the price of iron ore is? It is a bit strange, is it not?

Mr W.R. Marmion: Brazil!

Mr W.J. JOHNSTON: Yes. Brazil and Australia are probably the only two.

Mr W.R. Marmion: They probably would not know in the eastern states, either.

Mr W.J. JOHNSTON: No. However, everyone probably knows roughly the price of a barrel of oil.

Mr W.R. Marmion: They do not put the price of iron ore on television, either, because the TV stations are owned by eastern states' companies.

Mr W.J. JOHNSTON: The ABC has it. The ABC has a commodity index as well. The minister should stop watching the commercial stuff and start watching the ABC and he will pick it up!

Mr W.R. Marmion: I will check whether the ABC puts it on. I know they put on the other commodities. It must be a more recent development if they are now putting on iron ore prices.

Mr W.J. JOHNSTON: Iron ore is not the only mineral that impacts on this state. There was a time in Western Australia when nickel went through its own little boom. The nickel boom ended earlier than the iron ore boom. Nickel is, of course, much more labour intensive than the iron ore sector per tonne of export because it is usually exported in a refined state. Nickel West, which runs a nickel smelter at Kambalda and a refinery at Kwinana, operates under a state agreement, which I think has another five years to run. Nickel West is a very large employer in this state and it is heavily impacted by energy prices. The high gas price in Western Australia over the last four or five years has impacted on its business very strongly. Everyone is happy, except the oil and gas companies, to see a lower gas price at the moment. A lot of employment is tied up in the nickel industry in Western Australia. Therefore, we need to make sure that we do not lose sight of what is happening in that industry. We all talk about what is happening in the iron ore sector, quite rightly, because it is the number one employer in our state. However, we also need to think about what is happening in the nickel sector. The Nickel West workforce at both Kambalda and Kwinana is not a fly in, fly out workforce. It is a settled,

residential workforce. We need to make sure that businesses such as Nickel West can continue to function and operate in Western Australia, because to lose them would be very significant. Of course, Nickel West is not the only nickel operator in Western Australia. The Ravensthorpe nickel project—now Ravensthorpe Nickel Operations; I think that is the correct name for it—cost BHP a lot of money. BHP did a lot of dough on that project, because it had a lot of capital costs and it sold it at a loss. However, that project is now operating very well. That is now another significant employer in the far south east of the state and we need to make sure that it can operate into the future. It is the same with the Murrin Murrin project, which has had a tortuous business history but is now a major employer in this state.

Mr W.R. Marmion: We also have Sirius coming on stream.

Mr W.J. JOHNSTON: Yes, Sirius—the minister's great achievement! I am sure they are very glad that the minister was there with the wrenches on the drill rig to make sure that they hit the right spot in that project!

There are a lot of resources in this state apart from iron ore, which dominates our conversation. It dominates our conversation for good reason, because it is the most important resource in this state both financially and employment-wise. However, there are other resources that we need to keep an eye on. The gold sector has a long history in Western Australia. I note that the Club of Rome's prediction was that we would run out of gold within 29 years. That would have made it 2001, I imagine, when we would run out of gold. However, we are continuing with gold production in this state.

Mr W.R. Marmion: And finding more!

Mr W.J. JOHNSTON: Yes. Indeed, the trick for the future will be continuing to find more gold.

One issue that I know the minister is very familiar with is trying to find minerals that are at a deeper level. I am not a geologist, and if anybody is listening to me and I use the wrong words, I apologise in advance. What the geologists say to me is that they are now using what is called trend, which is the shape of the geology as it comes up. The trend comes to the surface and we find the mineralisation at the surface, and that suggests that the mineralisation continues down to deeper levels. I am told by people in the sector that the way in which geologists are finding new gas and oil resources is by following the geology deeper and deeper. They are saying that it will probably be possible to do that also with mineralisation. The question then is how can we find it, and, once we have found it, how can we extract it at a reasonable price. As we have talked about, there are a lot of minerals in the crust of the earth. However, that does not mean that we can extract those minerals and make money. That is a challenge not only for the junior and mid-tier players in the iron ore sector, but also in other sectors.

My daughter—who the minister is aware of—told me about some diamond mines in South Africa that are one mile, or 1.6 kilometres, deep. There are no mines that deep in Australia. She told me that there are enormous geological pressures on those mines and about how sometimes the galleries are explosively closed. All mines that are that deep will close over time, but these are potentially closed explosively. It is much, much harder to work at that incredible depth. Therefore, one of our challenges will be to develop technologies that will enable us to chase the mineralisation down at an affordable cost. It is interesting that the reason that we have these massive open-pit gold mines is that it is cheaper to take away the overburden. Anyone who looks into the Super Pit would think, "Why in the hell did we do that?" It is because it is cheaper to dig out the overburden than to tunnel in and try to find the mineralisation. I make the comment that when my daughter was working at Laverton, she went underground and at the end of a drive she found gold in the rock face. In most of the mines in Western Australia the gold is in such small parts per million that it cannot be seen in the rock face. She was very excited when she came back at the end of her swing and told Kate and me about that.

Mr W.R. Marmion: Was it a gold vein?

Mr W.J. JOHNSTON: I think they must have cut through the side of a vein, because it was across the wall rather than into the wall. She was very excited about it. I am no geologist, as I keep saying, so I do not understand these things. She said she could actually see it shining on the side of the wall of the mine, which made her very excited about the work she was doing.

I want to briefly talk about geologists. The other night the minister and I were at a function; there were six of us on a panel. It was a very complex format, was it not, minister? Norman Moore was the seventh member of the panel and he had a stopwatch. We had 60 seconds to answer questions and at the end of the 60 seconds he would say that was a very good answer.

Mr W.R. Marmion: It must have been difficult for you to give a 60-second answer, member!

Mr W.J. JOHNSTON: As the minister knows, I am up to 29 minutes now and I am sure I could have answered a bit longer, if he had wanted me to, but 60 seconds was the instruction, so I kept it to 60 seconds. Had they given me 60 minutes, I could have accommodated that.

I was talking to a number of people at the function—I have done this at other industry events—and people were talking about how the demand for geologists had fallen away and now, there having been not enough geologists in the last decade, there were apparently "too many". There is a challenge there for the mining sector in that most industries carry their staff during downturns; the last thing they do is put off their research and development teams, which is effectively what geologists are. It is a challenge to the mining sector to keep enough geologists employed during a downturn so there is no labour shortage when the market changes. If a market changes and it then takes five years to respond, I can tell people now that labour costs will balloon, and that might be good for the number of geologists in the sector at the time. My daughter was being paid the equivalent of $72 000 a year as a student working for a gold company, which was not bad money for a 21-year-old. It was an annualised rate; I am not saying she got that amount. She only got a quarter of that because she worked for only three months, but I reckon that was an enormous amount of money for a 21-year-old. The reason for that was that the company had no choice; it needed to bid for labour. If it had taken a longer-term view, it might have tried to work out a way of keeping people in the industry. That is a challenge, not to each individual company, because I can understand why a company wants to reduce its fixed costs, but for the industry itself. There has to be a bit of thought about how it deals with that, in the same way we need to think about how the necessary research is funded for this very deep exploration. I make the point that Western Australia is a world leader in assembling data that is publicly available. There has been a project with the Department of Mines and Petroleum over the last number of years to put all the data available in Western Australia onto a website that is accessible to everybody in the world, because, of course, people only look when they think something will be there, so the more information that can be provided to them, the more likely it is that they will go and look. That is a very sensible contribution to what we are doing.

There was an answer in question time today about the coal industry and I want to draw attention to it. The question was about Synergy on-selling coal. The minister's answer was not complete—he acknowledged he did not have all the details of the contract et cetera—but we have to know what the circumstances are here, because the future of Collie is challenged. We are lucky we have a man in Mick Murray, the current member for Collie–Preston, who comes out of the coal industry, has a detailed understanding of it and has a determination to see it succeed now and in the future. There is a place for the coal industry in Collie in the future; we just have to make sure that it has a strong future. It will probably not look like it does today in the future, but these are high-skilled, high-paid jobs and the Labor Party will never abandon the people of Collie. We cannot just say that the people of Collie will become tourism workers.

Mr M.P. Murray interjected.

Mr W.J. JOHNSTON: I can see the member for Collie–Preston there!

Mr M.P. Murray: With a flag walking around with a mob behind me!

Mr W.J. JOHNSTON: That is it; yes!

I was talking to a person in the finance sector the other day who was making the point about the current position with unemployment. He said the unemployment rate had not increased as much as many economists predicted, but that it was a cashless unemployment rate. If a job is lost in the mining sector, perhaps at $150 000 a year, there might be two jobs in the tourism sector, but combined they might pay only $100 000, so even though there are still jobs, the effect on the economy is to reduce the amount of cash in it because a job is being paid at a lower rate. That is the challenge in Collie. We cannot just say that the market will look after itself in Collie, because that would be a disaster for the people of Collie. We have to have a plan for the future of Collie. I know that in the member for Collie–Preston we have a person who is capable of leading that debate and it is not something the Labor Party will run away from.

I note for the benefit of the discussion of these issues that last year 51 per cent of the coal used in the world for energy was used in China—this is any coal for energy, not metallurgical coal. Over 90 per cent of that coal, in other words over 45 per cent of coal consumed in the world, was from Chinese production. That is a challenge for us all. If we are to deal with climate change, we will have to deal with that domestic Chinese consumption, because nearly half of all the coal in the world is produced and used in China. As with iron ore, people often concentrate on the seaborne trade, in which Australia, with iron ore and coal, is a major player, but people ignore the total production. In total production, China is dominant in both iron ore and coal. It would be interesting to look at the current debate on the China free trade agreement. The thing I would say most of all about that agreement is that it needs to deal with bringing the market to China. It is a bit hard to have a free trade agreement with a country that does not have a free domestic economy. That will be a challenge as we move forward, because, of course, a restructuring of the domestic Chinese coal and iron ore sectors would benefit both China and Australia. There would be higher income levels in China and Australia, which is an interesting issue. One of

the benefits of that free trade agreement between the United States and Australia was the lowering of domestic costs in Australia because of competition from the United States. That is something the Chinese are missing out on because of the current arrangements in the proposed China–Australia free trade agreement. China is denying its domestic economy the benefit of getting lower cost production out of Australia. If there are lower costs out of Australia, it will mean a lower cost for its domestic sector as well. Of course, China is obviously trying to protect its jobs, and good luck to it.

Mr W.R. Marmion: But they have individual economic provinces in their economy.

Mr W.J. JOHNSTON: Yes, but there was the economic restructuring that the Labor Party encouraged here in Australia in the 1980s against the resistance of the Liberal Party, and in particular the National Party. I remember going out to Canberra Airport to pick up my brother-in-law—I have told this story before—and the airport was occupied by farmers and other National Party voters complaining about economic reform. I remember, too, the 1996 election when John Howard played on reform fatigue and talked about being relaxed and comfortable. That was code for reform fatigue, which used to be debated in the media. *The Australian* newspaper used to write about reform fatigue coming out of the 1980s and 1990s when the Labor Party had restructured Australia's economy. There are potentially significant benefits for the people of China as well as the people of Australia through a more market-orientated approach to the Chinese domestic market.

I want to make some further observations about what we are doing with this Mining Legislation Amendment Bill. As I said, times have changed and the community now has higher expectations of industry than it had in the past. I think most people in the industry welcome that. It was only 15 years ago that I sat in the courtyard of this building with the assistant state secretary of the Labor Party with representatives of the Chamber of Minerals and Energy complaining about the application of native title in Western Australia. Now that debate is behind us and I am very pleased that every time I attend a Chamber of Minerals and Energy function, I hear the welcome to country to start all the events. It is a very laudable change in attitude.

We have seen a change in attitude towards Indigenous employment. Now I cannot go to any major mining house without it making a point about its Indigenous engagement and employment strategies. It is probably not well understood in other parts of Australia that the Western Australian mining sector companies are some of the largest employers of Indigenous Australians anywhere in the country. Again, not well understood elsewhere in the country is the range of Indigenous-owned businesses that are contracting into the mining sector. These are all changes that have happened in the mining sector over the last two decades and are all things we should be pleased to endorse. So it is with attitudes to environmental protection. There are still many challenges. We need a system that does not unnecessarily delay investment decisions because, as I have already explained, we are not unique in the world with mineralisation. Mining can take place in many places in the world. Most of the resources we are trying to extract are not "precious" resources, in inverted commas, in that there are many alternative environments. They are extracted here because we can get discoveries into production quickly. That is the minister's opportunity to yell out, "Serious".

Mr W.R. Marmion: Serious.

Mr W.J. JOHNSTON: How long was it from finding to —

Mr W.R. Marmion: Three years.

Mr W.J. JOHNSTON: There you go, minister; that is very good. We can see that Western Australia is a state that can deliver to the mining sector. That does not take away from the fact that we need proper environmental safeguards. There will always be some debate about where that line is. I want to draw attention to the problems that have arisen with Kimberley Diamonds Ltd. The mining rehabilitation fund is designed so that when mines go out of business, we can make sure we fund the rehabilitation. Previously we bonded mining companies, but there were two problems with that. Firstly, it was expensive because it tied up capital so it was difficult for companies to deal with. The other problem was that the bonds were often nowhere near the value of the potential liability. A company could get into financial trouble or walk away for other reasons, but even though the bond could be recovered, it would not pay for all the rehabilitation. With Kimberley Diamonds, the bond was returned to it when it started to pay the rehabilitation fund; nevertheless, the company got into financial difficulty. There are a whole lot of allegations about the way shares have been traded and other assets are being used, but I do not know the details of that, and I will not go there. I understand one of the directors has currently —

Mr W.R. Marmion: Lost his passport.

Mr W.J. JOHNSTON: — lost his passport because I am not sure whether charges have been laid or he is still being interviewed about it. One way or the other, he is not leaving the country because the commonwealth has taken his passport. I understand Australian Securities and Investments Commission investigations are going on. There is also an impact for us in Western Australia due to environmental obligations in the Kimberley for that

mine. It will be interesting to know from the minister at what stage that process is at because I understand there is a question mark about whether the asset can be on-sold to another company, which would then get Kimberley Diamonds away from its obligations.

Mr W.R. Marmion interjected.

Mr W.J. JOHNSTON: One of the problems is: what are the mine's assets? If the obligation for the rehabilitation goes to the new owner but it has only a short mine life, it is very unlikely to want to buy the mine. That will mean there is no future income.

Mr W.R. Marmion: They might buy it very cheaply.

Mr W.J. JOHNSTON: Somebody might be giving them money. I do not know. This is a major potential problem. I understand from talking to people in the industry that this is not an isolated event, although it might be an extreme example because—as I say, I am not making allegations—there is an ongoing ASIC investigation and directors have resigned. There is great controversy in the media. Read the good work of *The West Australian* business pages to see some of the things that are happening. The point I am getting to is that I understand that other people are saying that other projects are getting to the end of their mine life. If the time between the establishment of the rehabilitation fund and the completion of that project or the company effectively walking away from the project is short, there may not be enough money in the rehabilitation fund to pay for the rehabilitation. I think we need to look at this. In 20 years' time this will not be a problem but in the short-to-medium-term, this is a problem. If it is cheaper for proponents to take a special dividend out of the company and declare bankruptcy and say there are only three years to go on the mine, nobody else will buy the project, because of the short mine life, with those enormous potential liabilities. Tying the obligations to the lease is not necessarily a solution because the company's only asset will become valueless. If all the cash has been taken out, where do we go? We may end up with the rehabilitation fund paying for rehabilitation work when it should have been paid for by the shareholders. Let me make it clear: I am talking about a profitable mine that is made unprofitable by a recapitalisation or —

Mr W.R. Marmion: Or the bond wasn't sufficient to do it anyway.

Mr W.J. JOHNSTON: Yes, that is true but at least there would be something.

Mr F.M. Logan interjected.

Mr W.J. JOHNSTON: It will fall back on the rehabilitation fund, but the problem is that, over time, the rehabilitation fund is supposed to build to a large level. It is a good idea —

Mr W.R. Marmion: It's going well at the moment.

Mr W.J. JOHNSTON: It is a good idea; it is just that transition. We have a potential problem here. I remember very clearly Mr Sellers in the estimates committee last year when we were discussing environmental issues in the mining sector saying that the Department of Mines and Petroleum knew who the rogues were. The department pays extra attention to the rogues, and that is wonderful, but if the rogues can take the cash out of the company and leave the company with liabilities, that is a problem. We will have to look at that. I will be interested to get a response during consideration in detail. The minister does not have to respond now.

Mr W.R. Marmion: We have the power, and that is brought up in this legislation. It stays there. They have to retain the bonds. There were ones that the department considered a bit of a risk. Obviously, this one fell through the cracks.

Mr W.J. JOHNSTON: When the bill went through this house in 2012, obviously the Premier handled the legislation on behalf of Hon Norman Moore. I was not the shadow minister; that was Jon Ford. Jon asked me to ask some questions about this issue.

Mr W.R. Marmion: I think I might have been handling the legislation.

Mr W.J. JOHNSTON: No, I am pretty sure the Premier handled it. Anyway, it does not matter. I am not trying to have a go at anybody. The answer that was provided was that there was an expectation that many bonds would be retained. When the amendment to the Mining Act went through in 2013 that the Minister for Mines and Petroleum handled, we found out that almost all the bonds had been given back. There was a gap in our expectations between what we thought was going to happen and what actually happened. I am not necessarily saying that that was automatically a bad thing, but we now confront this question about this transition period that has been highlighted by Kimberley Diamonds. We do not want to have some rats and mice operators effectively dumping their projects back on the government, because, if so, the mining rehabilitation fund will have to pay out in advance. That would almost certainly mean that the fund —

Mr F.M. Logan interjected.

Mr W.J. JOHNSTON: No; we would have to increase the amount charged to the mining companies for the fund because it is effectively an insurance premium. Like every insurance premium, if we have a large payment record, we have to increase the insurance premium. If a big storm comes through, insurance costs go up the next year, not the year before the storm comes through. It is the same in this case. If a number of these things happen, like with Kimberley Diamonds, that can potentially happen. It will have to be managed very carefully.

The Labor Party will be supporting the legislation at this stage. I make the point that this is not how we would make arrangements. We will continue to discuss with industry things that we think can be improved. We understand that this has been negotiated by government with industry and industry is satisfied with the current arrangements. We will continue to discuss these issues with industry. We think that having one application is probably appropriate but we are concerned about some of the operations of the department. We agree with industry that costs need to be kept under review. We agree with industry that simply making the industry pay for the expenses should not be seen as an excuse by government to allow overstaffing and overservicing from the department. However, we have some questions about the broader administrative arrangements and we will continue to talk to industry about those. None of those things lead us to reject the legislation at this time. I understand that caucus has authorised us to move a couple of amendments when we get into consideration in detail if we think it is worthwhile doing so. As we go through questions and answers with the minister during consideration in detail, we may move some small amendments that we think might improve the legislation. At the same time, we acknowledge that it is very complex legislation. We acknowledge the difficulty in forming proper amendments as we go through, but that is a possibility for us.

We want to ensure that the environment is strongly protected. As I said, the community has changed its attitudes on the environment over time. If we go back to what happened in the 1890s, nobody would accept that when it is compared with what we do now. Apart from anything else, we have a much stronger appreciation of the impact that we are having on the environment because of our superior knowledge of science and its effects.

Mr W.R. Marmion: Interesting, though, member, if you go back to the 1890s, it's hard to find an example of an old mine—an 1890s mine—that hasn't been rehabilitated.

Mr W.J. JOHNSTON: Yes—one that has not been dug over. I always make the point when I talk to people in Victoria that if they went out and did what we do in WA, they would probably find plenty of gold. It is just that they do not want it because technology has moved on. What we thought was worked out, we now know was not. Again, people in industry always point out to me that the most likely place to find more mineral is next to the one we found already. I am no geologist but that is what they keep telling me. The minister is right. Equally, we hear lots of different stories about things that have happened. The minister comes from Kalgoorlie, as does my wife. There are plenty of stories about things that happened in the not-too-distant past in the goldfields that we simply would not accept today. There has been a cultural change to the industry.

Mr W.R. Marmion: We clear-felled all the timber around Kalgoorlie.

Mr W.J. JOHNSTON: Yes. Coolgardie used to be surrounded by forests. My wife, Hon Kate Doust, grew up in Coolgardie. As an aside, the museum in Coolgardie was Kate's house. It was the post office. Her father was the postmaster at Coolgardie. It is now the museum.

Mr C.J. Barnett: Maybe she can place you in it!

Mr W.J. JOHNSTON: That may well happen.

Mr F.M. Logan: Don't give her ideas!

Mr W.J. JOHNSTON: I used to be worth more dead than alive. I never knew what would happen.

Attitudes have changed. Industries have adapted. There is a continuing cultural change. The environment is an essential part of what we do now in the mining sector. Reducing red tape, which is what this bill is designed to do, is worthwhile if it is effective. It is not an uncritical approach; it is a critical approach, but it is one that we think can work. We look forward to the minister providing some more information to us during consideration in detail.

MR P.C. TINLEY (Willagee) [5.17 pm]: I am pleased to be able to make a contribution to the Mining Legislation Amendment Bill 2015. Once again we find ourselves talking about the prime economic driver in our state—that is, the resource sector. It is a particularly interesting point in our economic cycle, I suppose, as we again come out of it. At the height of the cycle, we are left with a greater installed capacity than when we started, which distinguishes this cycle from probably any that went before it. Not only did prices hit as much as $190 a tonne, and it is now coming back to something well below what was expected by any of those people involved in that project, but the installed capacity that we can put out is nearly three-quarters of a billion tonne.

When we look at these sorts of bills, it is really important that we understand that we are part of the global context and environment in relation to iron ore. There is a changing world out there. This bill seeks to address an

amendment to legislation that has been around since 1978 that makes a degree of sense, although, as the member for Cannington said, it is significantly complex in a lot of the ways we have approached it. Nevertheless, the intent of the legislation is very clear. One of the things that has happened in my assessment is that the world has indeed become smaller. That is a bit of a cliché these days, but when we talk about iron ore, Australia no longer has the comparative advantage of proximity to market. With the decline in the price of oil and the increase in the size of ships, the distribution network for iron ore, even at this point in the cycle, is certainly a lot lower. But there is a growing body of knowledge around the place that suggests that that will be a permanent feature—that is, the low cost of distribution of product. We talk about the characteristics of the downturn in 2008 when we saw over 20 per cent of the capesize vessels—the bulk carriers—unused for a significant period.

We also have the advent of Valemax ships, which now make it even more economic for the largest iron ore producer on the planet to get to the markets that we have traditionally enjoyed almost exclusively. Of course, the size and the capacity for shipping, coupled with the declining price of oil, have indeed made the economics and the global proposition for iron ore mining quite different from what it has been in the past. I will read from an instructive ABC report from 2 June 2015 titled "Australian exporters watch competitive advantage erode as shipping rates plunge". Writer Clint Jasper introduces the article by stating —

> **Falling shipping rates are making it cheaper for Australia's export competitors to access South-East and East Asian markets, according to analysts and brokers.**
>
> An oversupply of capesize bulk carriers, most commonly used to ship commodities like iron ore, coal and grains, has seen rates almost halve in the last eight months.
>
> The cost of exporting iron ore from WA ports to northern China fell from just under US$10 a tonne in November 2014 to $5.12 a tonne today.

The article quotes a prominent commentator on these matters, Mr Peter Malpas. He said —

> … the cheaper rates have come at a good time for iron ore exporters, who have seen prices for the key steel-making ingredient plummet, although it has also made the routes for Brazilian rival Vale more cheaper as well.
>
> "In a weak shipping market, the differential that Australia enjoys through its proximity to ports does get eroded away," he said.

There is also, obviously, an impact on grain. It goes on to outline the cost of grain and the relative cost from different ports in Australia, which I will not delay the house on. This article also makes the observation about why the shipping rates are so low. It states —

> An oversupply shipping market is not a new problem for the shipping industry.
>
> As demand for commodities soared prior to the global financial crisis, Chinese and Korean ship builders received many orders for ships, with capacity being the main consideration.

Ships are getting bigger; that is the fundamental point —

> With fuel costs making up around 70 per cent of the cost of chartering a vessel, newer models of fuel-efficient "eco ships" were developed that could be built at prices not seen in decades.

There is a technological disruptor here—the carrying capacity of the ships. They are now bigger than ever and the cost of driving them is cheaper, and the markets are closer. Therefore, Western Australia as a jurisdiction—as mature, developed and stable as it is—is very much in a global competitive fight to ensure that we are relevant. Probably the biggest single disruptor, if you like, in this whole process is the Valemax ships. Looking into them, I found that they are unique and quite scary to a lot of the industry players. I note from my research into this that there is a fairly good indicator of the impact these ships are having, or will continue to have, on the cost curve for Vale's relationship with our two biggest producers, BHP Billiton and Rio Tinto. Obviously, further along the cost curve, the mid and junior producers will be significantly more exposed to these things rather than less, so we should ensure that we keep a reasonably competitive participation rate in the market and not a concentration of the market—although that assumption could probably be tested. Would we be better off with two massive producers in Western Australia or does the economy benefit from having a diverse range of iron ore producers? What do we gain from that? Is there a competitive arrangement that would improve the performance of all the industry participants or would it be an inhibitor to the sector's progress? I would like to think, intuitively, that more competition is better, not least of which includes people finding better and lower cost models to do what we have always done. We can test the status quo to ensure that we are applying the best possible opportunities for our enterprises to compete amongst each other and make the Western Australian jurisdiction the most competitive it can be globally. I had an interesting conversation with Mr Chris Ellison on the weekend.

Mr W.R. Marmion: The mining businessman.

Mr P.C. TINLEY: Yes, thank you. Not the former politician Chris Ellison. It was the one who barracks for the All Blacks; that is all we need to remember to make the distinction between them—the one who barracks for the All Blacks and proudly wears a silver fern on his lapel. He and I can find a lot to agree with, but on that one particular issue, clearly not.

I was talking to him with great interest about how people are looking at a different way to build rail. I have no doubt that the minister has been briefed about that in some format or on some level. It is fascinating, particularly the pylon approach and how obstacles are approached. I really look forward to the results of the 6.5-kilometre test track being built in China to see whether that approach can be applied. The Premier is looking at me quizzically.

Mr C.J. Barnett: I just missed what the six-kilometre track was?

Mr P.C. TINLEY: It is a Mineral Resources test track with a raised platform. The reason I am interested in this is an important point around the sector itself. We could say that it is great for MinRes and potentially for infrastructure and a cheaper cost to port —

Mr W.R. Marmion: The environment.

Mr P.C. TINLEY: — and the environment, but one looks at these things and wonders where they could be applied elsewhere. Perhaps it could be in an urban rail setting. Is it better? Is it something that we could apply to ensure that we can get through environmentally sensitive areas with the least disruption? Of itself, just because there is a depth for a heavy haulage train does not mean there could not be a depth for a road. The Premier might want to consider it for delaying Roe 8. It is a very good reason to delay Roe 8 to make sure that the latest technology could be applied to do the least damage. I have to give a plug to the whole area!

Another reason that technology disruptors are so important is that we often hear, as the cycle comes off, people saying that we are in a post-boom world. They ask what we are doing and say that we have fallen asleep at the wheel and there is nothing left. The bottom line is that there is no such thing as a counterpoise to a $155 billion industry, or whatever its value is. The next nearest industry to the resources sector is $9 billion, I think, for agribusiness, and education is at $6 billion or $7 billion. Do not hold me to those figures, but the reality is it is single digits versus triple digits. The shadow of the resources sector, unfortunately, has a massive impact on the brand that is called Western Australia. Taking up shadow portfolios such as science and innovation makes me realise how much is going on in the sector that is world-class. I do not want to overuse that cliché, but —

Mr F.M. Logan: You and Christopher Pyne.

Mr P.C. TINLEY: Christopher Pyne and I have a lot in common!

The fact that 70 per cent of the world's mining software—so I am reliably informed—is produced here in Western Australia is itself instructive of the levels of technology that are being forged. Of course, Rio's autonomous vehicles are another example that is often used and often quoted, but it is not really understood how some of those things and that technology might be unpacked for the rest of the economy and the flow-on effects from this massive sector into the rest of the economy. That is not to suggest that Transperth will suddenly have driverless buses flying around the city, but some of the positioning knowledge around the geospatial work that is being done, the mine mapping, and the way technology and sensor technology is used on those trucks, trains and drilling rigs that are now autonomous vehicles is really important. The innovation is really important. How is it applied and how do we benefit from that as a total economy, even though it is operating in only one part of the economy?

Mr W.R. Marmion interjected.

Mr P.C. TINLEY: Correct; so if we position ourselves as an agile economy, how are we taking advantage of that as a knowledge exporter? Last week the Alumina Refinery (Mitchell Plateau) Agreement (Termination) Bill 2015 was debated in this place. We have come a long way since 1971 and we now view our traditional industries in a more sophisticated way. No longer do we see it as a linear thing—that is, direct downstream activity, such as a smelter or a hot briquetted iron plant. The downstream benefit from this may not be within the project or even within the sector. It really applies to things such as local content as well. I have said before, here and elsewhere, that although a particular project does not actually have numbers of employment, it is about what might be done with it in subsequent projects. If Western Australians are delivering services and/or employment in West Africa, it does not matter. We need to be sophisticated enough to count that as local content, particularly in the skilled work environment we are developing and will continue to develop here in Western Australia.

Things such as autonomous vehicles and geographic information systems are now being taken into agribusiness. If members talk to the Australian Export Grains Innovation Centre, it will tell them about how GIS capacity is

now down to two centimetres. That is an amazing feat, considering that when I first started mucking around with lasers and pointing lasers at things and trying to blow them up, the closest we could get was 10 metres to 20 metres with the green laser, and that was only 10 years ago. The pace of change is quite significant.

Of course, it applies to more traditional things. I come back to the point about the Valemax freighters, which will bring an increasing amount of Vale's product into our markets and global markets, and tighten it up. Some of the cost comparisons are really important when we talk about the impact it will have on the decline in freight costs. I quote from this report by Annie Gilroy, "Why lower freight costs impact iron ore miners differently" —

> With the recent decline in the freight rate, this seems to be changing. It used to cost $21 per ton to ship from Brazil to China—compared to $9–$11 per ton from Australia to China in 2014. Freight costs declined dramatically in the last six to eight months. The costs declined mainly due to a drop in the price of bunker fuel—a type of oil used to power large ships.
>
> This brings some cheer to Vale. For Vale, this led to a decline of ~$11 per ton of freight cost. Now, it hovers around $10 per ton. There was a decline of $4 per ton for its Australian peers.

So we got a better advantage. The article continues —

> In Australia, the freight costs are around $5–$6 per ton. This makes the incremental cost of shipping from Brazil to China only $5–$6 per ton higher—compared to the previous difference of $12–$15 per ton.

The differential is getting closer and closer. It continues —

> However, this won't be the exact impact on Vale's costs. Vale isn't fully exposed to spot freight. Also, it has long-term contracts or leases with the shipping companies.

The value of these ships is really important on a couple of levels. Obviously, they are directly important as a result of what they do in relation to the markets that they will reach into, but also they give us an indicator of where this industry is going to go in the future and what we need to do to actually reorient ourselves, and the Mining Legislation Amendment Bill 2015 is a step in that direction; I will not say that it is a small step, because it is a significant step since it is the first change since 1978.

The report continues —

> Valemax ships are ultra-large vessels, capable of carrying 400,000 dwt (dead weight tons) each. That's 2.3 times more than traditional Capesize ships.

[Member's time extended.]

Mr P.C. TINLEY: That is 2.3 times the size of a Capesize ship, which is massive. The report continues —

> They also emit 35% less $C0_2$ per ton of ore transported.

That is a really important factor. They are more ecologically viable but they are also doing it on the basis of technology about how they fire their engines and how they deliver surplus gases and so on around the ship's systems. The report continues —

> Valemax ships were built especially to serve Vale's markets in Asia, mainly China, which accounted for ~50% of Vale's iron ore shipments in 2013. The ships have lowered the shipping costs between Brazil and China to $22 per ton.

That is getting very close to what it costs us to ship it to them. There are some docking issues, however. The Chinese are particularly concerned about the Valemax ships being a real imposition on their docks. Some of those docks allow only 250 000 tonnes alongside, so there has been a lot of negotiation and they have come up with an agreement with the China Ocean Shipping Company in relation to that.

Mr W.R. Marmion interjected.

Mr P.C. TINLEY: The draft? Apparently not—because of the displacement. Quite clearly they are deeper.

Mr I.C. Blayney interjected.

Mr P.C. TINLEY: They are disproportionately shallower than one would have thought they would be because of the sheer size of them and the way they float.

Mr I.C. Blayney interjected.

Mr P.C. TINLEY: Yes, just a few. I am not sure we could even get them into our ports, even on the highest of high tides, and then we might be looking at it for a few years once it was there!

Bringing all that back to the bill, the fact is that the globe has got smaller and there are some structural shifts in the distribution network around iron ore. We will see Vale and companies like it a lot more present and

competitive in the mix, and we also have to look at it in a very long term way and say, "What happens when we start getting to peak oil or peak iron ore?" There has to be a conversation at some point about the various mixes, when there is a declining return on the amount of 62 per cent Fe or 58 per cent Fe—that range. What happens and what are we going to do to adapt the economy in a post–58 per cent Fe world? That is a very gross figure for the technicians around the place. They would blanch because I have not talked about all the other impurities and so on and the blended arrangements, but there is a lot of technology to be applied that could actually ensure that we continue to be competitive.

The bill refers to the idea of increasing and improving our competitiveness. However, it is really important to understand that we often talk about this inside a bubble—the bubble that we could always get better, which is a fantastic place to be, and we should always be there, talking about making this jurisdiction and doing business in this jurisdiction a lot more efficient. This bill takes some steps towards making us more efficient in that whole process. But outside the bubble, how does Western Australia and Australia fare? There are many measurements, but I think one of the longest standing ones is the Fraser Institute, which typically follows these measurements by survey of mining companies. I note that it is a mining company view, so in terms of its veracity, it is very relevant to the debate, but it is also very much the perspective of the user of the system. Again, it is probably also instructive from that point of view.

Western Australia is the highest ranked Australian jurisdiction in the world. Out of the areas that were surveyed, we came in at fifteenth with a score of about 79.3 per cent, and there is a whole range of metrics that are covered, including mineral potential, of course; prospectivity; and uncertainty around administration of environmental regulations, which this legislation obviously steps into. Australia does well, and Western Australia does very well, but it is always important to keep the customer in mind and really important, with these types of legislation, that we understand who the customer is. Is it the proponents? Is it the operators? Is it the citizens of Western Australia? I would say the latter, of course, simply because we are the stewards of receiving the best possible return for the natural endowments of Western Australia, which includes the condition of the land once it has been finished with. It is fundamentally important to subsequent generations that we leave the land as good as we can. There is an anonymous quote from an exploration company executive in this document, talking about Western Australia. It states —

> Western Australia should have everything going for it, but its permitting processes are now more costly than actual exploration on the ground, are slow, and the regulators woefully undermanned and underfunded. In exploration and development, time is money and imposing 60-day (some agencies) or 45 working day approval window does not work, especially when the first feedback typically comes in 2 or 3 days before the deadline ...

That is probably one of the principal drivers for making sure that we do everything we can to make the system more efficient. Making investment decisions in the cash flow–tight environment of explorers, with uncertainty at the point when the campaign is being driven into its next phase, is not good. Business will always want more certainty than the regulator can ever give, but there is a happy medium that both can live with. It is not a debate or negotiation; it is about finding that median point that gets the balance right.

Where this legislation dips into the Fraser Institute rankings is in the area of environmental regulation. The report uses a five-tier ranking system, from number 1, "Encourages Investment", to number 5, "Would not pursue investment due to this factor". Western Australia fares the best in Australia on the environmental side for proponents. Of the respondents to the survey, 27 per cent placed us at number 1; 42 per cent at number 2. We can see the curve. Another 23 per cent put us at fair to middling, which is number 3, "Mild Deterrent". We could have more percentage in the mild deterrent side, but no-one would want to see 40 or 50 per cent in the "Not a Deterrent to investment" or "Encourages Investment" categories. We know that that would be a potentially dangerous place to go. How do we compare with Canada and the United States of America? The research breaks down these countries by the various sub-national jurisdictions, and we do very well. Western Australia comes second to only Saskatchewan and Alberta in Canada. All other Australian jurisdictions are always third or fourth or thereabouts. At the far end of the spectrum, the worst performing state is Tasmania. Returning to the USA, California rates only one per cent in the top level, "Encourages Investment". Environmental rules in California are a serious problem, where 34 per cent of respondents selected "Would not pursue investment due to this factor". Despite the Reagan years and despite the efforts of Arnie, California was unable to attract investment because of the way it approaches environmental laws, which was really interesting. Canada, on average, far and away leads the world in the way it approaches this style of legislation. I will not go into much more detail, because we are probably running out of time.

The important point I want to drive home in my contribution is the fact that global economics have changed. Iron ore, like all other minerals, is susceptible to disruptors. With Valemax ships coming online, intruding into our market and affecting the cost curves positively for Vale, the world's biggest iron ore producer, we need to be on

our mettle—on the balls of our feet, so to speak—to make sure that we are looking at all the best possible opportunities to drive the efficiency required, while making sure that the checks and balances are right. Most importantly, we need to make sure that we have a regulatory program in place that we staff. My final point is that we can have all the regulations in the world, but if we are not prepared to supervise them correctly, and include active investigation and inspection on all these proponents at any point in the life cycle of their project, we are letting the people of Western Australia down. I look forward to further debate.

MR C.J. TALLENTIRE (Gosnells) [5.45 pm]: I am pleased to rise to speak to the Mining Legislation Amendment Bill 2015. It strikes me that this bill challenges us all to answer the questions about how we see the whole philosophy of regulation. What is our philosophical position when it comes to regulation? Currently, environmental laws come under the Environmental Protection Act, and, where they are specific to the mining sector, the administration of those laws is delegated to officers of the Department of Mines and Petroleum. That has been a satisfactory system and it has worked reasonably well. It recognises that the Department of Mines and Petroleum has more capacity—there is a question about whether it is enough capacity—and more expertise and familiarity with the mining sector than is the case with officers in the Department of Environment Regulation. There is a big question also about how well resourced the Department of Environment Regulation is. When we tease it all apart, I think anyone would say that in an ideal world, we would want our environmental legislation to be administered by environmental agencies. However, we do not have an ideal world. We have a world in which there is great pressure on public servants to administer a huge program of work—to use the language of the mining sector—to process applications for tenements as they come through the system as rapidly as possible. The current government puts up as its key performance indicators only the processing times. It is not about things like environmental outcomes achieved; it is just about processing times.

Given that situation, I can see why we have come to this position of requiring that the Department of Mines and Petroleum, and its principal act, the Mining Act 1978, receives vestiges of the environmental protection laws that were previously in the Environmental Protection Act. It is a challenge for where we want to go with the philosophy of environmental regulation. Is there a danger? This is a question I would like the minister to comment on: is it ultimately ultra vires to put environmental laws into a mining act? The minister will have this at his fingertips, but I note that the short title of the Mining Act states that it is an act relating to mining "and for incidental and other purposes". Perhaps the environmental regulation aspect is captured in that "incidental and other purposes" part of that title. We have to ask that question when our laws about environmental protection are located in one act and we have a Mining Act that is all about promoting mining.

There are some people who are passionate advocates for the mining industry and would be the first to admit that they are not really bothered about environmental protection. However, they, too, ask questions about the virtue of having so much environmental law in our mining legislation. That is a philosophical position on how much environmental regulation can be done through the Mining Act. I get the argument that there is great capacity within the Department of Mines and Petroleum to undertake environmental regulation. However, I am not convinced that that is enough. I hear of many cases in which there is a struggle to get officers to visit places and we have to bring in spurious arguments around the idea that it is all risk based. However, when it comes to doing risk-based environmental regulation, it depends on where we set the bar. If we set the bar very high and say it will apply to only the very big things, the risk-based approach will reduce the amount of work that needs to be undertaken. However, if we bring the bar down to the point at which we are capturing a lot of things, we will need to undertake a much larger environmental task.

One of the first inklings that I had about the Mining Legislation Amendment Bill 2015 was when I had a look at *Prospect*—the Department of Mines and Petroleum's journal, or magazine I think it would be more correctly called—and saw the article from Dr Phil Gorey, executive director, environment. I thank Dr Gorey and his team for the briefing that they gave us on this bill. I note that the member for Cannington and shadow Minister for Mines and Petroleum was able to attend four hours of briefings on this bill. That indicates the complexity of it. It was also apparent from the briefing that I had, which was all of one hour, that there is a high degree of complexity in this bill. That is one of the challenges. The article by Dr Gorey in *Prospect* distils the situation very well. It makes the point that this is about low-impact exploration and prospecting activity, and that we are looking for a new system. To quote from his article, he says —

> "Once introduced, the low impact notification system will mean that exploration and prospecting activities deemed to have a low environmental impact will receive an automatic environmental assessment by the department," …

That sounds very reasonable, and I think it is a sensible position. I look forward to the minister giving a fulsome explanation about who will make the determination that something is of a low-impact nature. I have some concerns about that. It seems to me from my reading of the bill that ultimately it is about an individual prospector, explorer or company making that declaration. They will have to do the research themselves and

determine that their project is of a low-impact nature. It is a complicated business to make that determination. The Minister for Environment often hears from people who have an agricultural background or are in the agricultural sector that they do not know which areas have been declared an environmentally sensitive area. As the Minister for Environment knows, a different regime applies to people who apply for an exemption to clear land that is in an environmentally sensitive area. However, a lot of landholders do not know where ESAs are located. That makes life very difficult for them. In fact, some landholders claim that the legislation is so complex that they are finding themselves unduly trapped by the law. I think there is even an upper house inquiry into the use of ESAs. I think most landholders are smart enough to work out where ESAs are located. I think it is an insult to most of the people in the sector to say that it is all too complicated. That is not my observation at all. The Department of Environment Regulation has a fairly adequate website—it could be improved—that explains where ESAs are located, and that is one way in which people could find that information.

However, the point is that in this legislation, we are talking about miners, explorers and prospectors who need to know whether they are working in an environmentally sensitive area. I am concerned about how readily available that information will be to them and how easy it will be for them to find it. A lot of the factors that determine whether an area is an ESA will not be directly relevant to them. I suspect that not much exploration takes place near wetlands, but I could be wrong on that. I note from the DER website that an ESA extends to any area that is within 50 metres of a wetland area. People can check where wetlands are located by using the Landgate information, and that is useful. However, it would be difficult for an explorer or prospector to look at the location of their project relative to the location of rare flora. The DER website states that individual datasets for ESAs are publicly available as follows. It goes on to state in paragraph (d) —

> the area covered by vegetation within 50 metres of rare flora, to the extent to which the vegetation is continuous with the vegetation in which the rare flora is located. Clause 4(5)(b) applies and the owner, occupier or person responsible for the care and maintenance of the land must have been notified. Notification is in writing by a hand delivered letter from the Department of Parks and Wildlife. A record is kept of the notification.

That may work for a landholder. However, how will a person who is exploring within 50 metres of rare flora—to use that example—know the datasets about rare flora and priority flora? That is a bit of a closely-guarded secret by the Department of Parks and Wildlife. It is not easy to access. It may be easy for environmental consultants to access that information and provide advice. One of the intentions of the low-impact notification system is to free up things so that people who are not in a position to hire environmental consultants will be able to do their own exploration and prospecting work. However, they will not be able to make this determination about an ESA. This is an example of the complexity of this legislation and the difficulties that we need to foreshadow. There is a similar situation in areas that are covered by a threatened ecological community. The website goes on to state in paragraph (e) —

> the area covered by a threatened ecological community. Clause 4(5)(b) applies and the owner, occupier or person responsible for the care and maintenance of the land must have been notified.

That is okay, because they would be notified by DPaW about that. However, how would an explorer know that their project is within 50 metres of a threatened ecological community? I am not clear on that point. So that is an issue that needs to be further resolved.

I want to talk a bit more broadly about the process by which these amendments to the act will come into place. It seems to me that there is a strong reliance on the amendments that will come through the Mining Regulations 1981. On other occasions when legislation has gone through this place, we have been told not to worry about that, because the detail will be in the amendments to the regulations. The draft regulations are not before us yet. Therefore, it is difficult to know how easy it will be for people to interpret the regulations and how much protection the regulations will afford. Therefore, I have a concern about that as well.

The issue around how this legislation came into being is very interesting. I note that a discussion paper was put out in April of this year, and this bill is already before us. It is remarkable how resources sector legislation can come into this place so rapidly. I applaud those who are involved. I only wish we could have the same speed of legislative development when it comes to important social policy legislation and, indeed, legislation for environmental protection and protection of our state's biodiversity. We do not ever see the same degree of haste with that type of legislation. Earlier this year, the Valuation of Land Amendment Bill 2015 came into this place. There was record speed from the government on that bill. In November 2014, the industry identified a problem with the valuations that applied to rateable land.

Sitting suspended from 6.00 to 7.00 pm

Mr C.J. TALLENTIRE: Before the break I was making a comparison between the haste with which we have seen this legislation come through Parliament and the very, very slow, sloth-like pace with which legislation in other areas comes through Parliament. I can compare it as well with important things like transport policies. There was a Liberal government transport policy commitment to bring out a transport plan in 2008. In 2011 we had a draft, and now we do not even have that. This area of our state's activities does seem to get priority when it comes to the pace with which legislation is moved through Parliament, but when it actually comes to the quality of that legislation, I do have some questions.

One of the major concerns I have about this legislation is the judgement call. Who is going to make the judgement call about something being low impact? It seems to me that that judgement call will rest with the explorer, the prospector or the small-scale miner, but if they get it wrong, the responsibility is somehow going to lie with the state. How does that happen? The minister may correct me on this, and I will be very happy to be corrected, but my understanding is that some form of declaration will be made. This is some of the detail that will be in the regulations, which we have not seen either. I assume that in that declaration there will be an indication of the number of hectares involved that will be subject to this low-impact disturbance and that there will be some description of the vegetation types involved—some level of detail—but we are talking about people who may not have those environmental skills. We would hope that they will have the very basic GIS skills to be able to calculate the area involved.

[Member's time extended.]

Mr C.J. TALLENTIRE: It is easy enough; I can do it myself without paying extra for a Google Earth system. The free version of Google Earth allows one to plot out a polygon and work out how many hectares are within it. Calculating area should not be an issue. Determining the vegetation complexes involved is fairly basic as well, but these services were previously provided to people by government. This is very important because it meant that there was a check in the system. I am worried that with this declaration of low impact, a judgement call is being made by the proponent.

Mr W.R. Marmion: They still have to submit their plan.

Mr C.J. TALLENTIRE: But will that plan be scrutinised?

Mr W.R. Marmion: It will be. As you say, it will be part of the regulations and the process we put in place.

Mr C.J. TALLENTIRE: This is what worries me. I know that if we had the capacity in government to do it, there would be that check, but ultimately, it is down to the minister's ability to resource his agency and to make sure that the staff are there who know the area, are able to get out and do the necessary checking —

Mr W.R. Marmion: It can be done electronically today. Computers are smart.

Mr C.J. TALLENTIRE: Yes and no, minister. Sometimes we need to get officers out into the field to do the checking. I did see in the notes that desktop audits would be done. Mention is made of that in the discussion paper. It is under the heading "Compliance Monitoring", and states —

> It is proposed that DMP record each notification for low impact activity that is deemed an authorised activity so that it can be readily included in a future desktop environmental review and potential site inspection program for compliance monitoring.

That sounds very weak to me. That sounds like it may happen. It is going to be a future desktop environmental review. I think we need to have people going out in the field and actually ground truthing things to see whether the disclosed low impact really was low impact and checking that there was not some serious damage done. While I am on that issue, I turn to one of the deletions from the current Mining Act around the definition of "ground disturbing equipment". I am not sure why that section is being deleted from the act, because it was useful before. It gave people a guide. It let them know what ground disturbance was, because they knew what sort of equipment they were using. That act states that ground disturbing equipment is mechanical drilling equipment, a backhoe, a bulldozer, a grader, a scraper or any other machinery of a kind prescribed for the purposes of the definition, so people could know whether they were engaged in some form of ground disturbance. The Mining Legislation Amendment Bill 2015 will remove that definition from the act. The issue here is about determining the damage that is done when people are describing something as low impact, but perhaps even more importantly, it is about transparency for the general public—the likes of me and those who work for environmental organisations or are environmental consultants. We all want to know each year how many hectares of disturbance have occurred and how many hectares have been destroyed. Then, because of things like the mining rehabilitation fund, we want to know how many hectares have been restored. Because I have not seen what the low-impact disclosure form looks like, I am not clear whether the number of hectares disturbed will actually be audited and tallied up so that we have a nice figure at the end of the year. From

memory, under the mining rehabilitation fund there is some capacity to see how much land is deemed to be reinstated. There is some process with that, which, again, the minister might be able to clarify for me. This is vital, because, as it stands at the moment, one of the best surrogates we have for monitoring the plight of biodiversity in Western Australia is to look at native vegetation cover. If we can use that figure as an indication of loss or gain, or hopefully no net loss, then we know where it is tracking, but if we do not have full disclosure in these low-impact disclosure statements, we are going to be in a situation of not knowing how much has been destroyed or where and how much loss is actually happening.

I want to turn to a couple of other aspects of the bill. I have no doubt that this is an area we will come to in further detail. I refer to proposed section 103AG, "Conditions attached to miscellaneous licences". It gives it away a bit. It states —

> (2) It is a condition of every miscellaneous licence that a relevant activity that is a low-impact activity must not be done by the licensee on land the subject of the miscellaneous licence until —
>
> (a) the licensee has given a notice of low-impact activity in respect of the relevant activity …

The licensee just has to give a notice. This is my concern. I do not know what the notice is going to look like and who is going to check on this. We have seen from the discussion paper that the checking is just going to be some form of desktop survey. That is a fundamental concern of mine. We need the minister to clarify that there will be some form of low-impact statement, that the statements are going to be readily available and that there are not going to be any issues around commercial-in-confidence associated with them. They would need to be posted on a website and be fully accessible to people. That way the minister would be tapping in to the broader public's knowledge and awareness of things. There would perhaps be some sort of appeal process and if somebody with the best of intentions describes something as being low impact, somebody else would be able to say that the site is within one of those environmentally sensitive areas I spoke of earlier, such as in close proximity to an important wetland or containing a population of declared rare flora. It would be very valuable to have access to that community-based knowledge and it would also ensure there is some sort of accountability process, which is not happening in Western Australia at the moment. We saw this last week when we asked the Minister for Environment where the second biodiversity audit for Western Australia was. I note that the last one was released in 2003 and was a major work that the then Department of Conservation and Land Management put out showing how so many species were tracking. We need a repeat of that, and it is a major undertaking. We heard in the estimates committee that it cost over $500 000 to produce that biodiversity audit, but the minister last week revealed that he was unaware of this project that the department has on. He was not able to tell me anything about it at all. He has no doubt been briefed on it now and I look forward to him telling me when it will be released and that it will be in a similar format to that previously in 2003, so we can compare how so many species are tracking. I worry that this government has an aversion to the exposure of facts, numbers and statistics on biodiversity matters. If that transfers into this mining legislation, I am doubly concerned, because we will not have any idea about the area of vegetation that has been lost, and that would be a tragic and very, very poor situation. Biodiversity can be monitored in other ways using other indicators. Interestingly, a lot of work is looking at various indices of bird populations, which can be a good indicator of overall ecological health. The publication *State of Australia's Birds 2015: Headline Trends for Terrestrial Birds*, which is a joint publication of Birdlife Australia and the Australian government Department of the Environment, shows the trends for the arid zones, which are principally the area we are talking about for a lot of exploration work. The publication states —

> Trends for terrestrial birds in the Arid Zone show a largely consistent pattern of decline, with four of the six indices falling significantly below the baseline level.

That is another indicator that we can use, but it is a very negative one and I think we need to back it up with indications about things such as vegetation cover; that would be very valuable.

In the time remaining I want to return to the article in *Prospect* magazine and the pointers it made. It states —

> The Bill will amend the *Mining Act 1978* to allow for the final stage of environmental reform that the Department of Mines and Petroleum (DMP) committed to in 2012 as part of the Reforming Environmental Regulation program.

I sincerely hope that this is the final stage of environmental reform. It strikes me that we have had an unending call for reforms and the removal of anything that appears remotely regulatory. I do not think that is acceptable. The people of Western Australia expect a successful resources sector, but they expect it to be well regulated. Unfortunately, I think many people are blind to the fact that there is inadequate regulation and that inadequacy is because of the lack of resourcing of the agencies. Now we see this transfer of responsibility from the Department of Environment Regulation, with full responsibility now resting with the Department of Mines and Petroleum. I call on this government to make sure that that agency is properly resourced so that it can fully do its job and not just rely on things such as desktop audits to investigate the extent of loss and compliance, but to have

people who can go in the field and really see how things are going so we can check that the amendments we are putting through tonight—these amendments I will support—work. That is critical. There is no point in us doing these amendments if we do not have factual information telling us whether this new approach works. It is critical that we have that information and the resourcing for the agency involved, and that we monitor closely to work out whether we perhaps need to review this philosophical position we have taken on environmental regulation in the mining sector. Perhaps in time we might find out that the extent of loss is such that we have to examine whether we need to bring things back into the responsibilities of the Department of Environment Regulation. That is the sort of thing we need to be able to track and the only way to do that is by having an agency that is adequately resourced to do on-ground monitoring. I support this legislation with much qualification and primarily I want to see an agency that is part of a public service that has the capacity to do the work.

MS W.M. DUNCAN (Kalgoorlie) [7.16 pm]: I welcome the opportunity to speak on the Mining Legislation Amendment Bill 2015. At the outset I would like to thank the minister, his staff and the departmental officers for the time they have taken to help me understand this complex legislation. I was pleased to hear the member for Cannington say that he found it complex, because he is the shadow minister and that makes me feel better. It certainly is quite a large bill with a lot of amendments.

This bill has been in the making for quite some time. There was a review from the Auditor General in 2011 that brought together 14 recommendations on legislative change, in particular relating to the Department of Mines and Petroleum's environmental approvals process. It recommended that a risk-based approach be undertaken and was needed for the industry. In 2012, the ministerial advisory panel, chaired by Hon Cheryl Edwardes, made 14 recommendations to government regarding changes to the environmental approvals process for the mineral exploration and mining industry. The mining Legislation Amendment Bill that was passed in 2013 provided the means to implement the first tranche of changes recommended by the panel. Tonight we are dealing with the legislative structure to provide this risk-based and outcomes-focused approach to environmental regulation in the mining industry. The bill changes the focus of approvals on just specific activities that are proposed to be undertaken and how that will be managed so there are no unacceptable impacts on the environment, rather than on the approval of a document. This will significantly reduce the regulatory burden on tenement holders, as they will no longer have to report against myriad conditions set down over time. The bill also introduces a new low-impact notification process for minor activities such as small-scale prospecting and exploration. Applicants for approvals of programs and works on a mining proposal will be required to address in their application any native vegetation clearing proposed to be undertaken and to demonstrate that the proposed clearing complies with the native vegetation clearing principles set out in schedule 5 of the Environmental Protection Act. This first draft, or the exposure draft, of this bill was brought out in November last year, and, of course, with the intervening Christmas and new year period it probably was not until February that the bill really was on the radar of some of my constituents, being the non-corporate sector of the mining industry—that is, prospectors. They were looking at it at the same time that minister and his department also proposed cost recovery fees for mining proposals and programs of works. I think probably a fair bit of confusion prevailed at that time around whether the Mining Legislation Amendment Bill 2015 was bringing in that change or whether it was the regulations associated with the previous legislation that had been passed. So there was a little consternation on the part of prospectors in my part of the world, in the electorate of Kalgoorlie.

I really wanted to acknowledge that when I raised these questions with the minister and his department, they were very quick to respond, having listened to the concerns of, in particular, the non-corporate miners. Departmental representatives visited the goldfields, and then the minister came to Kalgoorlie and met personally with the several groups that had formed while debating this issue. Some quite valuable acknowledgement was made of some of the concerns raised by the prospectors, particularly in relation to the up-front mining proposal fees and program of works fees. Having visited Kalgoorlie, the minister announced the deferral of the implementation of those fees. He said he would go back and look at proposals put to him by the prospectors he met with, to see whether a better and perhaps more equitable way of raising this revenue could be found without discouraging exploration or these small businesses going about their work and commencing their operations.

There was also quite a lot of debate about the definition of low-impact activities. The original proposal was that an area to be affected by a low-impact activity would be 0.25 of a hectare. When I went out to one of the leases of a prospector, we paced out what 0.25 of a hectare represented, and it was really clear to me that that area was too small to conduct meaningful activities as a prospector. Subsequent debate back and forth with the department eventually resulted in the minister and his department agreeing to the area described under the low-impact activity definition being increased to two hectares. That, I think, certainly put aside a lot of the concerns of the prospectors and non-corporate small miners in the goldfields regions. They are appreciative of that consultation.

The other assurance the minister gave me was that even though the Mining Legislation Amendment Bill 2015 was introduced into the house in April, it would not be brought on for debate until August–September. That

allowed the Amalgamated Prospectors and Leaseholders Association and other groups of prospectors the opportunity to go through the bill clause by clause, and meet with departmental officers to raise their concerns. I believe that was done, particularly with the Amalgamated Prospectors and Leaseholders Association. That association subsequently put to the minister a submission that outlined some of its concerns. I have been given a copy of the minister's response to the Amalgamated Prospectors and Leaseholders Association that indicates to me that some effort was made to meet its concerns. For instance, there was a concern that there were to be changes to the miner's right and what that would allow miners to do. The response from the minister indicates that the parts of the Mining Act that relate to miners' rights were reconsidered in detail, and the minister's office gave an assurance that the bill would not "significantly change the obligations upon holders of a miner's right", and in fact it represents just a modernisation of the language.

There was also concern about some of the definitions in the bill, particularly the definition of environmental harm. Prospectors felt that it was fairly broad and could have in fact brought them in breach of the law although, in their mind, the damage may have been minor. The minister's response was that the use of "environmental harm" is "consistent with similar terms in other legislation". The other important assurance from the minister is —

> The duty to prevent or reduce environmental harm (103AZD in the Bill) relates to mining leases or miscellaneous leases where mining is occurring only. Prospecting leases are not covered or required to meet this duty.

The other question was whether there would be an ability to continue the program of works for prospecting on mining leases. The minister's response was —

> The relevant matter is that the Bill will continue to allow prospecting activities to occur on mining leases.
>
> …
>
> This approach is enabled through DMP having guidelines and templates for these prospecting activities within the Mining Proposal framework …

I think that is very important to these small prospectors and non-corporate miners. Many of them are a little overwhelmed by very large documents that require a lot of input, and having templates that make very clear the information and level of compliance required will greatly assist these small miners.

The other issue was the question of ministerial delegation powers. I think everyone in Parliament understands that most legislation entails the delegation of a minister's powers to his or her departmental officers. One of the things raised with me by prospectors was that there seems to be no ability for the minister to intervene on their behalf if there is some contention about the definition or interpretation of a part of this bill, and that the only recourse, if there is a difference of opinion, is to go to the Supreme Court. A lot of prospectors probably do not have the wherewithal to do that, and would prefer to negotiate their way through, and, if they feel they have reached a stalemate, be able to ask the minister for his opinion.

There was also discussion about the tonnage limits imposed, but it was determined that that was not covered by this bill. There was also concern about digital pegging and its implications for prospectors, particularly those without a high degree of technology in either knowledge or equipment. But, anyway, this bill will not change that. They were the assurances provided by the minister to the small miners, and I greatly appreciate that and thank the minister.

I am interested to hear the minister's response to a few other issues during his second reading reply. I note that one of submissions on the legislation refers to the duplication of processes between the Department of Mines and Petroleum and the Department of Environment Regulation. A particular example is in relation to discharges and emissions being assessed by the DMP environmental branch in the mining proposal approval process when they are assessed, after they have already been assessed by DER in the obtaining of environmental protection licences under the Environmental Protection Act 1986. There is also the issue of assessments for flora and fauna by the DMP environmental branch in the mining proposal approval process, after they have already been addressed by the DMP native vegetation branch in obtaining a clearing of native vegetation approval under the Environmental Protection Act 1986. Concerns have been raised about that duplication. The submission also refers to risk-based assessments and whether there should be some sliding scale in relation to the size of the actual project. The low-impact works are two hectares and below, but everything above that goes into the other category. Maybe there is room to look at that. The submission suggested perhaps having a middle ground for what is known as "basic raw materials", so creating a classification for basic raw materials. I am not sure whether the minister has considered that.

The submission also referred to the interaction between the Building Act 2011 and the Mines Safety and Inspection Act 1994. The Building Act exempts —

> … a building or an incidental structure that is, or is proposed to be, used in the construction, operation or maintenance of a place at which mining operations are carried on.

However, in saying that, the exemption does not apply if a building is a residential facility or a recreational facility—that includes lunchrooms—or one to which members of the public are permitted. This means that temporary crib rooms and confined office lunchrooms would be subject to building licences and improvements, whereas the rest of the infrastructure is assessed under the Mines Safety and Inspection Act. They are just a couple of things that were pointed out in that submission.

The prospectors group raised a few issues with me that were not dealt with in the minister's letter to them, including its concern about the use of the term "may" instead of "likely to" in section 40D(2)(c)(i). The group is concerned that the term "may" might be too broad and creates the opportunity for a frivolous objection to the miner's right holders. The group wonders why that change is being made in the legislation and whether it is necessary, because, in its view, it will just broaden the interpretation. It is also concerned that the act does not define prospecting or exploring for minerals, and it feels that this may eventually lead to the courts determining what might be allowed under these terms if it were to be challenged. They are some of the issues that those prospectors have raised with me.

[Member's time extended.]

Ms W.M. DUNCAN: I spoke before about the desire of the small miners to be able to seek the minister's advice or intervention. In particular they referred to proposed sections 103AO(6) and 103AP(6), which refer to an "unacceptable impact". The miners wonder what is the definition of "unacceptable impact" and who is going to be the arbiter of what is an unacceptable impact. That is just something that those miners are worried about.

The Mining Legislation Amendment Bill 2015 is, as I say, a really complex bill. In spite of the minister's agreement to delay its second reading debate by several months, I get the feeling that some of the members of the prospecting community in the goldfields feel that they have not had sufficient time to understand its full impact. However, there will be an opportunity to debate the bill in the other house and I hope that there will be continued dialogue between the minister and the prospectors. One of the issues—it was touched on by the member for Gosnells—is the chicken and egg situation of what comes first, the bill or the regulations. The minister provided some draft regulations earlier in the year when we were talking about programs of works and mining proposals, and the response was that we cannot look at those until the bill was passed. Then another camp was saying, "We cannot have the bill without the regulations." Therefore, it is very important that we see those regulations soon and that detailed consultation occurs as they are rolled out.

There was also a concern about the need to develop an environmental management system. I think it was touched on by the member for Cannington that some of the requirements under the act mean that people have to employ a consultant, an expert in their field, and that all costs money. If a person has only a small operation, it starts to become prohibitive and many are afraid to even go out and start the job.

There is an underlying concern about the powers of environmental officers to go onto mining leases and to interrogate prospectors and so on. It all comes down to a matter of trust. The word "reasonable" is used in various places in the legislation, and we need to know that environmental officers will be reasonable. One thing that has come to my attention is that sometimes mining companies or prospectors are a little wary of making their concerns or objections known in case they are not fairly dealt with at some time in the future. Perhaps we need to think about some sort of independent arbitration when it comes to the enforcement that may happen under this bill. I have had anecdotal evidence of environmental officers coming out and finding what a mining company believes to be a fairly minor breach and yet it gets an on-the-spot fine without any ability for recourse, whereas in other parts of the act—for instance, if it fails on its expenditure requirements—there is a process to go through in which the company can explain itself, appeal and have the chance of paying a fine instead of forfeiting its leases. We really need to make sure that there is opportunity for lessees in these mining leases to have their voices heard without fear of retribution and to have confidence that the application of the bill will not be heavy handed.

I will conclude by picking up on something that the member for Cannington raised—I admit that I share his concern—about the mining rehabilitation fund. He spoke about the situation of Kimberley Diamonds. We all need to be aware that when mining companies receive back their environmental bonds, the obligation to go through with their mine closure plans and to reserve the capital to undertake that mine closure plan is with the company. We need to be a little wary of perhaps unscrupulous companies organising their affairs so that they do not have to rehabilitate their mines. The idea of the mine rehabilitation fund is excellent and it came at a great

time when mining companies were very short of capital; they greatly appreciated the ability to get their bonds back. However, we need to make sure that the mine closures and the rehabilitation still happen.

That concludes my remarks. I am sure that we will continue to communicate with the minister and his departmental officers as we go through this process.

MR F.M. LOGAN (Cockburn) [7.40 pm]: I rise to say a few words about the Mining Legislation Amendment Bill 2015. Firstly, I indicate to the Minister for Mines and Petroleum that we support the legislation and understand why it has been introduced. Having said that, as the member for Cannington indicated, depending on the minister's explanation to the house in response to some of the comments made by the member for Cannington and some of the issues that will be raised by the member during consideration in detail, this side of the house may move amendments.

Like the member for Cannington, I commend the minister for bringing the bill to the house and commend the government and the department for some of the changes that will allow a more understandable and more efficient operation of the Mining Act, the Environmental Protection Act and the rehabilitation fund, particularly as some of the provisions of the various acts will be consolidated into one part; for example, the environmental section will be consolidated into one part. This will allow the legislation to be read in a more efficient way by those people who are bound by it. It will make it more understandable and, hopefully therefore, easier to comply with, which is obviously the object of the bill. However, I want to raise a few issues about the legislation, including exploration activity, approvals and inspections, particularly the conclusion of exploration activity. I refer to proposed sections 103AZB and 103AE. Clause 18 of the bill will amend section 60 of the Mining Act by removing the capacity to require the holder of an exploration licence to lodge security for compliance with environmental conditions and re-enacting it in proposed section 103AZB. Similarly, clause 19 of the bill will amend section 63 by deleting paragraph (aa), as the requirement to lodge a program of works will be included in proposed section 103AE. Prospecting licences, exploration licences and retention licences will be consolidated under the one provision as a program of work. Everything will now be defined as a program of work, so conditions attached to prospecting licences, exploration licences and retention licences will all be consolidated in proposed section 103AE. That proposed section sets the conditions for exploration activity. Proposed section 103AZB also deals with security for compliance with conditions for preventing, reducing or remediating environmental harm. Exploration activity that was covered under section 60 of the Mining Act will now be covered under proposed section 103AZB.

Although I have no problems with what the bill is attempting to do, which is to consolidate and rationalise the various sections of the Mining Act, what I do not understand from reading the whole bill, particularly proposed section 103AZB, is who will follow up to ensure that, once the exploration activity is concluded, security for compliance with the conditions that have been set—I know that a risk-based system will be applied—and the program of work that has been detailed for the exploration activity is dealt with under proposed section 103AZB; and, if those conditions are not complied with, how will they be dealt with? The reason I bring this to the minister's attention is the experiences I had when I did his job in terms of the damage that was done to the environment by exploration activity when explorers did not follow the conditions that were set for them and the exploration activities were not followed up, perhaps because of a shortage of inspectors or the time taken to follow up on the exploration activity. When I was the minister, as the minister is well aware, frenetic exploration activity was being undertaken across the whole of Western Australia and simply the capacity for the department to follow up on the conditions that had been set for those explorers was quite low. In a number of cases, I tabled in this house pictures of the damage that had been done to various ranges because explorers basically had carved up hillsides to put in drill pads and had left equipment, cans and materials all over the hillside after they had finished, the rubbish that had not been collected, the overall damage that had been done because drill holes had not been backfilled and the significant damage that had been done to the environment.

If, as the member for Cannington has said, the environmental bonds are handed back to the miners but the mining rehabilitation fund does not have the capacity to deal with breaches of the conditions of the Mining Act that I have just referred to, how will the minister go about addressing those issues? In my experience in that job, fines were issued directly to those companies that had breached the Mining Act not for undertaking an unlawful exploration activity, but for causing damage through their exploration activity that was not in keeping with the conditions that had been set for those companies. How is that dealt with? I would like the minister to explain to the house how the changes in consolidating the Mining Act in the way the minister proposes in this bill may lead to greater policing, particularly of exploration. People look at mine sites and think a significant amount of rehabilitation needs to be undertaken once that mine site is closed, which may or may not be the case, but they overlook the amount of damage that is done by exploration activity, particularly if it has not been done in keeping with the conditions set down for them and nobody has followed that up. I remember bringing examples to the house about drilling in the Weld Range and I gave two other shocking examples in which companies deserved the fines they got from the department.

The second point I want to bring to the minister's attention is the issue of mine closures dealt with in proposed section 103AJ of the Mining Act that a mine closure plan has to be submitted and approvals from the director general obtained. There does not seem to be any indication from the wording that inspections need to take place to ensure that the mine closure plan has been complied with and what happens if it has not been complied with. Mine closure plans have always been in the act, and this bill rationalises that process, but what happens once the mine closure plan has been accepted? Are inspections undertaken before the director general of the department signs off on the mine closure plan? Are conditions set down as a result of compliance inspections by the department in relation to the mine closure plan? Following the acceptance of the mine closure plan and the director general signing off on them, are inspections undertaken to ensure that the rehabilitation that is contained in the mine closure plan has been complied with, and what steps are taken if the plan has not been complied with? Over what period of time are the inspections to be undertaken? Is it one year following the mine's closure, five years, 10 years or over what period of time? That does not seem to be dealt with in this bill. I am not saying that it is not in the act, as it may well be dealt with under the act, but how does proposed section 103AJ and what is contained in the act relate?

The third point I wish to raise is similar to that raised by the member for Kalgoorlie, although from a different perspective than she put to the house, and it is about the wording used to describe the introduction of conditions for preventing, reducing or remediating environmental harm under proposed section 103AW. The member for Kalgoorlie questioned the use of the word "may" and was obviously looking at it from a perspective that the minister may go after prospectors for the damage they have caused in areas in which they were prospecting.

Mr W.R. Marmion: She was saying we might be too tough.

Mr F.M. LOGAN: The member for Kalgoorlie was saying the minister was being too tough and she wanted the minister to be weaker, and that just because there had been some minor infringement of the conditions set down, as she described to the house, the minister should not be on their back ensuring they comply with the law. I hope the minister does not take any notice of that argument whatsoever! I have a different issue over the word "reasonable", which is mentioned in division 6 under proposed section 103AW, "Conditions for preventing, reducing or remediating environmental harm and for other purposes" subclause (1) of which reads —

> Reasonable conditions may be imposed on a mining tenement for the following purposes —

The issue I take up with the minister is: What does the word "reasonable" mean, and reasonable to whom? Is it reasonable to the minister? Is it reasonable using the legal interpretation, being reasonable to the common man in the street? Is it reasonable to the department or to the director general? I ask: reasonable to whom? As the minister knows, in many cases at law the word "reasonable" is interpreted and reinterpreted depending on who is sitting on the bench, because the first question the judge would look at, apart from previous authorities, is: reasonable to whom? That is why I would like the minister's interpretation for the purposes of future directions to judges. Given that we are dealing with the second reading speech, I would like the minister and the department to put their definition on record for guidance for future court cases.

Mr W.R. Marmion: Are you raising this in consideration in detail?

Mr F.M. LOGAN: Yes, I will raise what is meant by reasonable. The minister can see exactly where I am coming from, because if that is not clearly defined in the bill this can go on and on in court, whereby somebody wishing to challenge the government might have a different view on what is reasonable.

Mr W.R. Marmion: It would be challenged before it went to court. If a condition is put on it, I think that would be sorted out before they ever did any work, because if the operator thought there was an unreasonable condition, they would be grizzling before then.

Mr F.M. LOGAN: Sure, but they may challenge the conditions that may be set.

[Member's time extended.]

Mr F.M. LOGAN: Depending on the value of the deposit, they may challenge the conditions the minister or the director general might apply to them for preventing, reducing or remediating environmental harm. They may challenge that in court by not accepting the conditions the minister puts on them.

Mr W.R. Marmion: You can do that in proposed subsection (2).

Mr F.M. LOGAN: Yes, but it comes back to the first word in proposed subsection (1). Proposed subsection (2) sets down how a condition may be imposed in prospecting for a mining tenement. In all those conditions in proposed subsections (1)(a) to (c), what does the term "reasonable" mean?

Mr W.R. Marmion: Proposed subsection (3) says that I can cancel or vary it at any time.

Mr F.M. LOGAN: The minister can, but I am not talking about the minister's authority, which is without doubt; I understand that. For the purposes of clarity, for the minister or future ministers and/or judges dealing with a matter that might be referred to the District Court, what does "reasonable" mean?

The fourth point I come to relates to the use or abuse of the mining rehabilitation fund as referred to by the member for Cannington by Kimberley Diamonds, which will possibly leave the state and the fund exposed to a claim that cannot cover the rehabilitation of that mine site. As has been pointed out with the environmental bonds all being handed back to the contributors of those bonds—that is, the companies themselves—it is the fund literally that is left with the obligation to pick up any cost of rehabilitation. Whether that fund is able to do that —

The ACTING SPEAKER (Ms L.L. Baker): Excuse me, member, we have a request from Hansard: could you please speak up a little?

Mr M.P. Murray: Oh no!

The ACTING SPEAKER: The member for Collie–Preston can turn it off!

Mr F.M. LOGAN: There is a request from the member for Collie–Preston to turn it down!

The ACTING SPEAKER: Thank you, member; go ahead.

Mr F.M. LOGAN: It is probably because, rather than talking through you, Madam Acting Speaker, I am talking to the minister directly.

The ACTING SPEAKER: I am sure it is.

Mr F.M. LOGAN: The fourth point of the issues I am raising, and was also raised by the member for Cannington, is about the abuse of the mining rehabilitation fund. I ask the minister to respond to the issues raised by the member for Cannington, particularly the change in the nature of the way rehabilitation will be funded in the future—that is, no further environmental bonds. How do we and the minister know that advice from certain legal organisations in the state, when it comes to costly rehabilitation, will not be advice that says, "You know, the best thing for your company is to declare yourself bankrupt and let the fund pick up the cost of rehabilitation"? That is exactly what is happening in the area of workers' entitlements and outstanding payments to small businesses by disgraceful actions of companies in Western Australia, three accounts of which I brought to this house. The minister will remember those companies that had basically declared false bankruptcies.

Mr W.R. Marmion: That being the case, they'll forfeit their lease and lose all their property.

Mr F.M. LOGAN: I point out to the minister that it does not help those workers who were working for Kimberley Diamonds, who have been left with no wages and all their conditions and superannuation gone. This issue with Kimberley Diamonds is not simply an issue relating to no money left in the fund to undertake rehabilitation of its leases up there in the Kimberley, but also that it has left the workers high and dry. I am sure there are some unscrupulous lawyers and bankruptcy specialists around the place who advise companies to do this. They say, "Don't worry about it. Just go bankrupt. Declare bankruptcy and if it is about your workers' conditions, let the federal fair entitlements guarantee pick up the cost." That is the FEG fund that was established in the commonwealth to which we as taxpayers all contribute. Companies go bankrupt, pay no wages, do not pay out any conditions, do not pay any superannuation and tell the workers, "Oh well, go to the commonwealth and dip into the FEG fund and pick up your conditions from there." It is no different when it comes to rehabilitation. Kimberley Diamonds has done that with its employees. I put to the minister that there is a parallel there with the rehabilitation fund. The company is saying, "We're not going to pay for rehabilitation. Let the WA taxpayer or the Western Australian government pick it up because we've declared bankruptcy." It is a shocking set of conditions, particularly given the current environment we find ourselves in in which some smaller companies will be struggling as time goes on and the advice to those companies might be, "Declare bankruptcy, pay nothing, get out of it, don't pay the workers anything, don't pay the government anything in terms of rehabilitation." That may well be the case.

Finally, I cannot help but notice this little bit of information I picked up on the internet. I remember the minister coming into this house and crowing about what a great job in exploration activity he had done as a minister. We were talking under your nose, Mr Acting Speaker (Ian Britza), about the Fraser Institute reports and stuff like that. The minister was crowing —

Mr W.R. Marmion: We were number one for a period.

Mr F.M. LOGAN: Yes, Western Australia was number one for a short period. I remember the minister coming into this place and crowing about how much the exploration activity had gone up compared with exploration activity under the former Labor government. He basically said that we had not pulled our finger out and we had not done the approvals as fast as the Liberals had, blah, blah, blah—normal stuff for any government to crow about.

Mr W.R. Marmion: Yes, 19 000.

Mr F.M. LOGAN: I am looking at a nice little summary here of Western Australian mining. In 2000 and 2001, 62.1 per cent of all mineral exploration expenditure in Australia was spent in Western Australia. These are the sorts of figures the minister pointed out to me, if he remembers. However, that equated in a dollar amount to $424.1 million. The exploration activity was therefore substantial but it was coming off a small base, and the level of exploration activity across the whole of Australia skewed the figures to make it look like Western Australia had the lion's share of it. Then of course the minister, using the Fraser report, criticised us dramatically about how he thought activity had fallen away. Sure, it fell in percentage terms. By 2002 to 2008 exploration activity in Western Australia had fallen to about 54 per cent of overall expenditure, so there was a decrease in percentage terms but in dollar terms it had risen to $1.25 billion.

Mr W.R. Marmion: What year was that?

Mr F.M. LOGAN: That was during 2007–08. There was a 3.3-fold increase in the actual dollar amount of expenditure on exploration activity from the last period of the Liberal government towards the end period of the Labor government. Although the overall percentage of activity had actually shrunk, it is because South Australia, Queensland and New South Wales were all drilling like mad because they could see there was a mineral resource boom. So, obviously the overall percentage had shrunk but the actual money spent in Western Australia on drilling had risen 3.3-fold. The minister can use figures to say whatever he likes—and he does. He brings them in here and throws them around saying, "That Labor government did nothing." Not much we didn't! At the end of the day, both our government and this government have been the beneficiaries of significant increases in not only exploration activity, but also mining activity to the benefit of Western Australia—and that is a great thing.

I would like the minister, though, to address those four issues I have raised as part of my second reading contribution; they are important. With that I would like to hand over to my colleague the member for Collie–Preston.

MR M.P. MURRAY (Collie–Preston) [8.09 pm]: I rise to speak on the Mining Legislation Amendment Bill 2015. Safety in mining has been spoken about already and is something that has always concerned me, particularly the safety of workers after their shift. I have huge concerns about drive in, drive out workers in many country communities, whether they are involved in goldmining, coal mining or whatever. My concern is that people work nightshift for 12 hours and then a week of dayshifts for 12 hours and then nightshift again and after their last nightshift, if it is a long shift, such as five days of nightshift, they take off in their cars to go home. I believe there should be a distance beyond which these workers must not travel. If they live within a 50-kilometre radius, that is fine and they can travel home. Some people—I use my experience of the Collie area—travel as far as Geraldton to their home base after their last nightshift, and we wonder why we see accidents on country roads in which there is only a driver involved when no-one else is on the road and the car has rolled over or run into a tree and the person is either severely injured or has died. The reason for that is a person has worked five nightshifts of 12 hours' duration, jumped into their car when they knocked off at seven o'clock in the morning and headed home or wherever—believe me, they do not have to go far before they are very tired. I do not think we have addressed that issue enough. We have talked a lot about the issues with fly in, fly out workers, but we have not talked about many of the issues with drive in, drive out workers.

Mr W.R. Marmion: It's not only mining though, is it? A lot of people work in whatever—it could be a white-collar worker. They might work in Main Roads in Kalgoorlie during the week and after working all day on Friday, they drive back to Perth, and they do that every week and they are tired.

Mr M.P. MURRAY: That is right, and I think we have to address that, but if a person is working underground in a goldmine doing very physical work, they have a tiredness that comes on them in a sudden rush. They have showered and freshened up to go home, but an hour down the road, with a couple of hours to go, it starts to catch up on them. A person's eyes can be open and they are looking down the road, but there is just nothing computing. Certainly, I have been in that space a few times myself going home from this place, to say the least. We are talking about having a late night tonight, and I can recall working through to seven o'clock in the morning one Thursday and then driving back to Collie. How stupid was that? I was a bit younger and a bit keener, I suppose, in my first term. But it was stupid.

Mr W.R. Marmion: Did you hit the rumble strips when you did it?

Mr M.P. MURRAY: There were none there; I just used to wake up every second lamppost as I was going along!

I am talking about the mining industry. I believe there should be some checks and balances to ensure people are rested before they get out on the road.

I am led to believe that people travel on a daily basis from Lancelin to the coal mines in Collie. They drive back and forward from Lancelin instead of booking into accommodation overnight. I find that pretty hard to believe, but guys on the job tell me that they travel that far on a daily basis. The minister cannot tell me that is not a safety issue. I brought up the issue with the mine manager and he said he can stop it, but he is not going to. The way that he would stop it would be to fire the guy doing it. I am not asking for that. We should not be sacking someone; we should be asking them to book in somewhere—there are accommodation camps around the area—so they do not go out on the road. Many workers travel from Mandurah, which I think is still stretching it. I know one group that has three people in the car, so it is not that bad because it is not a single person, but it is still a long way and the person driving only has to be inattentive for a few minutes for there to be a problem. Although mining companies go overboard with worker safety on site in some areas, they have an obligation for worker safety off site. I would like the minister to mention that very strongly in his discussions with mining companies. I believe that workers at the Greenbushes tin mine who do not live within three-quarters of an hour of the mine have to camp in the area, managers included—there is no exclusion to that rule. That company takes worker safety very seriously and that rule should be rolled out to other areas.

That brings me back to companies employing people on a skills basis from other towns and not looking after the towns that have to put up with mining. In my town, there is a regular complaint that people employed in the mine are from outside the community and have to travel to the mine, when people in the town have the skills for the job. One company in particular recently employed 40 people but employed only four people from the local community even though people in the community had the skills required. I believe that it is the company's view that workers from outside the community are easier to handle because they do not get involved in the day-to-day talks about what should happen in the mine and they do not join a union and put up a bit of a show. I believe that is the thought process of some of the mining company staff. I can say that a company that employs workers from outside the community has its highest number of drug test failures from contract workers. That shows that local people understand the industry and work with the industry. Over the years, very, very few workers from the local community have failed a drug test. The workers who have come through agencies and travel have certainly had quite a few failed drug tests. That is a reason to employ local workers. Along with that comes a responsibility for mining companies to become more engaged with the community.

Speaking of goldmining communities, Marvel Loch at Kalgoorlie comes to mind. Marvel Loch is a bloody disgrace! The company moved in fly in, fly out or drive in, drive out people and then did not give a damn about what was there. The last time I went through Marvel Loch, it was appalling. There were no trees around the dongas and no work had been done on the streets. Really, the mine collapsed a small community.

Mr W.R. Marmion: How long ago was that?

Mr M.P. MURRAY: It was about two years ago.

Dr G.G. Jacobs: It's been rejuvenated now. It's near Yilgarn, in my electorate.

Mr M.P. MURRAY: Does the member know what I am talking about? It was absolutely disgraceful.

Dr G.G. Jacobs: Absolutely.

Mr M.P. MURRAY: I have seen that happen there and I do not want to see it happen anywhere else. We talk about the riches of mining, yet the companies just run over the shires and use them up and spit them out. The company did not employ locals, so the town dropped away. The houses were not full and those small communities suffered. I think we have to address that along the way, whether it is at Marvel Loch, Collie or another place. One of the mines in Collie has 40 per cent of its workforce living on the coastal strip. We have seen small businesses start to close. Generally, overflow money–type businesses are shutting down because companies are not engaging with communities. Companies are not working to make a vibrant community; they are only worried about the last bit, called the big dollar.

I will move on quickly to rehabilitation, because I am running out of time. The member for Cockburn took away a lot of my speech, but I would like to back him up and say what actually happens with rehabilitation. For a long time the coal mining industry was going very well with rehab, and I certainly challenge members to come and look at some of the areas that are starting to become mature rehab areas, because it is very difficult for the untrained eye to tell the difference between the local forest and the areas that have been rehabilitated. In recent years rehabilitation has dropped off a bit. I think that now and again we have to give the companies a bit of a shake. The minister made some grand statements about fixing a mine void that I assume is from around the 1950s called Black Diamond.

Some money was supposed to come out of the fund. That press release came out nearly two years ago and still nothing has been done, although I believe there has been some movement just recently.

Mr W.R. Marmion: Yes, we've got to work out what to do to shave that bank off so that it's not dangerous.

Mr M.P. MURRAY: The minister is certainly aware of it, but if he is not going to do the job, do not put out the press release.

Mr W.R. Marmion: We are.

Mr M.P. MURRAY: Or just wait until the job is done and then put out the press release. That would probably be better. The press release gave the community some expectations. The community has also complained to me that they have not been engaged at this stage about what they want to see out there without it ruining the very, very lovely waterhole that people swim in.

Mr W.R. Marmion: From my understanding, that is why it's taken so long, because they are consulting with the shire about what they want.

Mr M.P. MURRAY: Minister, rattle the tin! That is his job. That is why I am bringing it up. Hopefully someone is listening within the minister's office so that they will say, "Let's get a move on." As I said, the press release has been out for a long, long time.

I come back to Lake Kepwari, which is another issue about rehabilitation. The former Leader of the National Party Brendon Grylls was going to have a swim in that void with me in 2006 when it was to be released to the public. That still has not happened. I believe it is because it is not on top of the agenda of the mining company. I believe the department should be giving the company a bit of a shake-up and saying, "Come on, it's about time you got a move on." It could be turned into a very, very good side issue for Collie as far as tourism goes. It is two kilometres long, a kilometre wide and about 70 metres deep. I have brought that up many times here. Really, every time we get close, there is another study pulled out. I believe that those studies are being used only to delay and not to get on with the job. As we see, if things are delayed long enough, the company gets sold, no money was expended by the previous company and the next company has to pick it up. That is one issue there. Along with that, I believe there is around $3 million in the South West Development Commission that has been put aside since 2006 or 2007 for works to be done on roads and facilities, so that people can go and ski there. As we know, water bodies for skiing are becoming less and less common. We have one site there that could be used straightaway.

I will go on with the coal industry. It has had its tough times over many years; its ups and downs. At the moment it is struggling a little. It annoys me to think that offers of support have been given to the iron ore industry by this government and absolutely none have been given to the coal industry until recently, probably in some ways a bit too late, when the government had a buy-in of Premier Coal. Now we see the next phase of that happening. I think it is a disgrace, really. Synergy, which won the 20-year contract under tender, has now been allowed to on-sell the coal to another customer. That, to me, would certainly go against the grain of the Liberal Party, which is about free trade and no subsidies, yet we have a company that is being subsidised by the government that is selling the coal to one of its associated industries, such as the power industry, and that industry is now on-selling subsidised coal to the detriment of the company that was selling it in the first place, because they are getting a lower price. It is certainly not a perfect circle the way I see it. The minister should be addressing that. In fact, it may breach some of the rules that are in place about insider trading or something along that line, because it is a case when government money has been used to subsidise coal and then that coal is on-sold. I am happy to say that from talks with the company today that is buying the coal, it believes it is a short-term measure. I would like the minister to confirm that. Even though the Minister for Energy was asked that question today, he could not answer and said that it would be only a once-off or a short-term measure to get people out of a tight spot. I would like to hear that from the Minister for Mines and Petroleum as well. He should say, "Yes, there is a problem out there. It is a short-term issue and it's not going to jeopardise jobs", because that is the fear in the mining industry down there at the moment.

I will move on again with the issue of community connection. From my point of view, I would probably out-sponsor the multinational companies in my area if we were to look at what they contribute to the town. It goes back to nearly every mining company that does not become involved. We have some good companies. There are a couple down on the coastal strip. We could look at Waroona and the help that that small community has been given by a mining group down there—I will not mention names—whereas in the Collie area, there is one company that is very reluctant to become engaged with the community. Again, there needs to be a push from the government to say, "Become involved". The government opposed the mining tax, which I supported because I see what these big companies do. They do not contribute. For a start, they did not contribute under the government agreement act to the rates around the area. Newer mines have had to, but those other ones certainly did not pay rates into those areas. A community such as Collie, which has had 120 years of mining, should have streets paved with gold, but because companies have just been paying what they have to under the government agreement acts, they have not done the

right thing. Certainly as far as being ratepayers, that annoys many within the community because of their lack of help towards those communities. Yes, now and again they will chuck a few bob in, but if we worked out my wages against the income of the mining companies, I can tell members that, percentage-wise, I would be well ahead of those mining groups in terms of my contributions to the community.

The last one I will talk about in the last few minutes I have got is the issue that the member for Cockburn was talking about; that is, people going bankrupt. We had a company that went bankrupt that went in to work for Griffin Coal. That company kept moneys that were salary sacrifice payments like HBF payments and payroll deductions like union fees. That sort of money was rolled into the bankruptcy. I believe that is a criminal issue. I do not believe it should be under the bankruptcy issue. Those people should have been charged with stealing and should not have just been able to roll that over, because they were deductions out of people's pay. That is something that should be addressed in this house. It is probably more a federal issue, but I am sure members understand what I am talking about. If a small business took a person's HBF fees out of their pay and then did not put that into their bank account, the person running that small business would go to jail. They would be found guilty of fraud and deception and probably, in the main, jailed for a white-collar crime. Yet, because it was a big company, it was able to roll over and say, "We are bankrupt. Go and find your money through the receivers and you might get back 10 cents in the dollar." Something absolutely terrible that happened was that because someone's HBF fees had not been paid by the company out of his salary, when his wife went to hospital, they were up for that money to pay for the hospital. There are many areas. Not all companies are guilty of this, but there are some unscrupulous people around, and that certainly needs to be addressed. I do not think the bill covers all of that. I certainly understand why, but in the future we will need to look at that.

[Member's time extended.]

Mr M.P. MURRAY: In finishing, I just think that we must modernise. We must be aware of our changing community attitudes towards the environment. We must spend more money as a government on research. It does not matter which mine we are talking about and whether it is about the down-streaming of iron ore or working out how to mitigate climate change, those are the sorts of things that we cannot ignore. I will leave it at that.

DR G.G. JACOBS (Eyre) [8.29 pm]: With the permission of the Leader of the House and the understanding of the Whip, I will not prolong this process much longer; however, I want to make some comments about the Mining Legislation Amendment Bill 2015 because I have become reasonably close to it. I have not done as much work on it as the minister, and I commend his work during the consultation process to get to where we are today.

I want to speak a little on the comments of the member for Collie-Preston. Although they were not directly relevant to the bill, early on in his comments he spoke about the welfare of miners and the concept of fly in, fly out and drive in, drive out arrangements and their physical and mental health impacts on the workforce. As the house knows, I am Chair of the Education and Health Standing Committee, which did a very comprehensive report on the mental and emotional health wellbeing aspects of FIFO and DIDO and their impacts on not only the worker, but also the worker's family. I understand what the member for Collie–Preston was saying about those matters. The committee was surprised that more effort was not made by mining companies, government and the community to, when possible, house workers close to mining operations. If there are towns nearby, more effort should be made to house families in communities close to the mining operation. The committee believes that the support of a family network and the ability for a worker to go home to his family is critical to short, medium and long-term mental health and wellbeing.

However, I turn to the bill. The minister came down to Kalgoorlie in the goldfields on a Sunday. There were many meetings, because there were many groups with an interest. It took me a little while to handle being a member who represents farming, pastoralism and mining; I have a significant mining space within the seat of Eyre. It is really about consulting and getting a consensus when many groups have an involvement. There was the Amalgamated Prospectors and Leaseholders Association, a non-APLA group, a group called Goldfields First Network and yet another group, and this created some challenges in trying to get a consensus on the Mining Legislation Amendment Bill 2015. That is what the minister did on a couple of occasions by actually visiting and talking to these groups to try to get to a consensus on fashioning a bill with better service delivery; a reduced administrative burden on the mining industry for prospecting, exploration and obtaining a retention licence; and, of course, protection of the environment. We had to get that balance. This is the second tranche of legislation from the ministerial advisory panel since 2013.

The adage in the medical profession is that if we let the patient talk for long enough, he or she will tell us the diagnosis. So it was about listening long and hard, and I commend the minister's office and the staff within the agencies for listening. We often heard long, long stories and long oratory in trying to tease out what the concerns really were. There were a few, and they were around some of the definitions, including what low-impact activity is, and whether that activity allowed prospectors' operations to fall below that activity—in its soil-disturbing

component, if you like—and what that meant. I see there is reference to low-impact activity in many clauses of this legislation.

There were questions around the area thresholds that would deem something to be a program of work and the processes around licensing and fees, although I know this legislation does not deal with fees. That was, I suppose, a major concern, and when we peeled away all the objections what was left was the impost of fees on prospecting, mining and a program of work, and the impact they would have on small prospectors. The point was made that small prospectors are small businesses, not fossickers. We are talking not about someone who goes out into the bush with their metal detector, but a prospector who is doing business and the impact those fees would have on that industry.

The positives that come from this bill are that there is more definition around low-impact activity and programs of work, and the approval of an envelope in which this work can be done. Currently, someone is allowed to work in one little section, but if they move over to another corner they have to go through the process again; this legislation will create an envelope in which this work can occur, so it can happen in one corner, but it can move around to somewhere else. Defining an envelope will reduce the administrative burden and provide better service delivery, without being to the detriment of the environment. I suppose the other positive is that this bill will allow a little flexibility, again without threatening the environment, in that a proponent will be able to define the potential environmental risks and how they will mitigate them. They are some of the positives.

A few concerns were raised around the coercive powers of inspectors, what that meant and how they impacted on prospectors. That needs further definition. It needs to be properly addressed to provide some reassurance about what inspectors can do and are trying to achieve. I have one little anecdote. I was sitting next to a prospector when he asked about issues under proposed section 103AY in relation to the clearing of native vegetation. He cited the scenario, which is probably real for him, of a person who has a tenement off the highway a little way, and how he has to drive through the bush and in doing so has to knock down bush. He is concerned whether that is deemed to be clearing and whether that would breach one of the clauses of the Environmental Protection Act. These sorts of issues need to be cleared up because sometimes those issues are perceived, sometimes they are imagined and sometimes they are feared, but they are not reality. We need to reassure those in the industry that commonsense will prevail and that prospectors will not be pinged for unlawful clearing by knocking down some bush when they drive off the highway to their tenements. We also need to reassure them that if that were the case, then they would be allowed to get some sort of clearing permit to provide a track. We also need to let them know what that would mean and what would be the implications of doing that.

I thank the minister for the work he has done on this bill. It has been a long process of listening. I hope that we can resolve some of the matters that have been raised and do what the minister has indicated in his second reading speech of the Mining Legislation Amendment Bill 2015—that is, to reduce the administrative burden on industry, provide better service delivery and enhance the effectiveness of government, while at the same time minimising risk to the environment. I look forward to going through further processes to be able to reassure the industry that we are going to achieve those goals without imposing an administrative burden on them so that they can be allowed to do what they do best, which is to find minerals in this great state, provide jobs and add to our gross state product.

MR W.R. MARMION (Nedlands — Minister for Mines and Petroleum) [8.42 pm] — in reply: I thank the seven members who have spoken on the bill and for their support of the Mining Legislation Amendment Bill 2015. I also thank the staff who were complimented by all the speakers for their support and for providing information.

Many of the issues raised by members will come up during the consideration in detail stage of the bill, but I will go through some of the points made by each of the speakers in the second reading debate. Before I do, I would like to remind members what this bill is about. The bill will mainly amend the Mining Act 1978 to introduce new part IVAA to consolidate and expand upon provisions relating to environmental management, and to make consequential amendments; make a number of changes to provisions of the act dealing with consents to mine, applications for exploration leases, administrative changes relating to exemptions from expenditure requirements and other minor and miscellaneous matters; and introduce new regulation-making powers to aid compliance with environmental obligations. It will also repeal section 8 of the Mining Legislation Amendment Act 2014, which has not yet commenced. It also amends the Environmental Protection Act 1986 with the effect that clearing of native vegetation that is approved or is a low-impact activity under new part IVAA, and is carried out in accordance with the approval or the applicable requirements, will not require a native vegetation clearing permit under the EP Act. It also contains minor amendments to the Mining and Rehabilitation Fund Act. That is basically what we are doing here.

The member for Cannington referred to the mining rehabilitation fund and the Kimberley Diamonds Ltd issue. That matter is not really pertinent to what is being done tonight, but I will comment on that because other members raised the issue of the mining rehabilitation fund and the impact it could have if mining companies deliberately go into bankruptcy to avoid their environmental rehabilitation obligations. When a company lodges a mining application, they have to put in a mining rehabilitation reinstatement plan, which is part of the mining operation and the annual lease that a company pays, and the company is obliged to conform to all the conditions to maintain their lease. As the minister, I have powers to forfeit a lease and also issue a fine if a company does not meet those conditions.

Most mining leases, even explorations leases, are an ongoing asset, so there is an inbuilt obligation if a company wants to keep its mining lease, which has a value, to meet the conditions. I will not go into all the detail of the Kimberley Diamonds matter because it is probably subject to investigation by the Australian Competition and Consumer Commission and the Australian Taxation Office. We also have some concerns about royalties that it also seems to have squirrelled away, let alone the mining rehabilitation fund, but I am confident that the system we have set up and the levy that we are collecting will basically generate $30 million a year and there will be sufficient funds in the mining rehabilitation fund to deal with the odd one or two Kimberley Diamonds incidents that may happen infrequently. I am pretty comfortable that we will be able to sort that out.

Mr M.P. Murray: On that, I believe that there is one coal company that is $20 million behind in rehab.

Mr W.R. MARMION: I do not have all the detail on that.

Mr M.P. Murray: It's rumoured, put it that way.

Mr W.R. MARMION: Is that in relation to paying the levy? Does it have a bond?

Mr M.P. Murray: It's just how much work that needs to be done; so if they go to the wall, they are going to have $20 million behind them.

Mr W.R. MARMION: In answer to the interjection: if there is still coal in the ground and someone wants to take over that lease, they will take on that responsibility; that will be part of the ongoing operation of that site. That will be the same with Kimberley Diamonds. If there are still some yellow diamonds in the ground, that will be part of the ongoing settlement. However, that does not have anything to do with this bill. All that is being done in the bill is bringing together all the environmental aspects that are spread out in the current legislation and putting them into one nice section and tidying up a few bits and pieces. There is only one issue that relates to the mining rehabilitation fund and that is to make sure that there is only one port of call so someone is responsible and so that notices do not need to be sent out to everybody. All the things that will be done are positive and logical, but I take on the comments about the MRF.

Although the member for Willagee's comments did not relate to any provisions of the bill, his comments were very interesting. He mentioned the viability of iron ore and the challenge for Western Australia to remain competitive with Brazil, which is constructing big ships that can move more volume of iron ore and which is reducing the marginal cost of transportation and putting pressure on Western Australian iron ore producers to remain efficient. I do not disagree with anything that the member has said, and I agree that global economies have changed. At one point the member asked—this is sort of related to the bill, and a number of members raised this also—whether we have the manpower under the regulations to make sure that inspectors inspect the obligations of the environmental plan that each mining company submits. We are going for an outcome based on an environmentally managed system that will come into effect two years after the bill is passed. Members asked whether inspectors will be available to go out and ensure that the requirements are met. I am sure they will.

The member for Gosnells asked a couple of questions that he might be able to ask again during consideration in detail, one of which was about ultra vires. The Mining Act sets out the powers and it does mention the Environmental Protection Act. It is not in the bill, but it is in the early sections of the act. We are talking only about clearing here. We are not overriding the powers of the Environmental Protection Authority; it can step in if a major project is being done. The member also asked what constitutes a low-impact area. He is right; there is further consultation about that with industry and groups, including the Conservation Council of Western Australia. That is a work in progress. It will come up in the regulations, and, obviously, Parliament will have visibility of those regulations, which can be disallowed. The other comment the member made was about a low-impact operation. The person will have to advise the department of the area that they are going to clear and what they will be doing, and if the person had form, the department could immediately check it out. There is nothing to stop the department from using the initiative to do whatever it likes. That is the benefit of this; it is outcomes-based and all the department's resources can be directed towards the companies that have not had a good record in the past, whereas the companies that have had a good record might not be inspected as often. That is how it will be managed. In terms of the plan, I understand that environmentally sensitive areas are well recorded and the Department of Environment Regulation inspectors will be able to highlight something and then

go back to the person and make the obvious adjustments to where that person might be clearing. Another specific question was what "notice" means under proposed section 103AG(2)(a). Those specific meanings can be covered in the consideration in detail stage when I have my advisers with me to make sure that I do not give an opinion that is not right. I thank the member for supporting the bill.

The member for Kalgoorlie, who is not in the chamber, outlined the process that we went through with the concerns of a lot of the prospectors in Kalgoorlie. There was a fairly detailed consultation process that I was personally involved in for nearly a whole day. There is a balance, and I think we have addressed most of their concerns. There will be greater clarity of their concerns in the regulations, so they might feel a little more comfortable when they see the regulations. In most cases, the wording will be the same, but they may not have seen it before. The member for Kalgoorlie also referred to the duplication of processes. The only area in which we are reducing duplication is basically the area of clearing, not other aspects of the Environmental Protection Act. The member also referred to environmental management schemes. These relate only to mining operations. Admittedly, it could be onerous, but an EMS could consist of only one page explaining the environmental management processes that are in place to address any issues that might arise. It is for mining operations that are underway; it is not for exploration or a prospector, so that burden will not be on them. The member for Kalgoorlie also referred to the mining rehabilitation fund, which I have already addressed.

The member for Cockburn supports the legislation; I thank the member. He mentioned that some amendments may be made during consideration in detail, which the member for Cannington also mentioned. The member for Cockburn also made comments about exploration activity. Yes, figures can be provided for whichever argument is put. I do not have all the figures in front of me so I cannot respond in that context. The member also made the comment that the member for Willagee made about having the resources to follow up the activities that the companies are supposed to be doing. It is an outcomes-based process. As I mentioned when I addressed the comments of the member for Gosnells, the department has a good idea which companies might need a little more scrutiny than others, so it can direct its resources to those companies.

Mr F.M. Logan: My specific issue was about exploration.

Mr W.R. MARMION: I cannot remember exactly what the member said. I have about 10 pages of notes.

Mr F.M. Logan: It was about following up on the conditions that are set for exploration. In my time as minister, we ended up fining quite a number of companies that had not complied with the conditions.

Mr W.R. MARMION: If the companies do not comply with the conditions, I can forfeit their tenement. If they put a whole lot of money into exploration and they do not rehabilitate and meet the conditions, and by then the tenement could be worth something, they will lose it or I can fine them. Basically, I can fine them or I can forfeit their tenement. That is how it is addressed now; the bill will not change that.

Mr F.M. Logan: No, but we found out about those breaches a significant period after they occurred simply because of the number of people we had on the ground to do it.

Mr W.R. MARMION: I know that when I was on the ground, the departmental officers showed me some exploration, just as they showed the member. The department knows which company it is, so whenever it does an exploration, the department keeps a watchful eye on that company. That is what happens.

Mr F.M. Logan: The wording used is "reasonable conditions".

Mr W.R. MARMION: Yes. I do not want to give my opinion on that. The member also referred to the Kimberley Diamonds Ltd issue. Indeed, it is a terrible situation. The way it treated its workers was despicable.

The Leader of the House is suggesting I might speed up. I am nearly there, Leader of the House.

Mr F.M. Logan: I thought he just wanted to get close to you!

Mr W.R. MARMION: I want to make a comment because what it did to the workers was appalling. It kicked them off the site but they still had their personal belongings there. I take my hat off to my department. It is going to all the meetings and keeping a watchful eye on that. Obviously, I do not want to comment because I think the Australian Competition and Consumer Commission, the police and the Australian Taxation Office are involved.

The member for Collie–Preston raised an issue that did not exactly relate to any of the clauses in the bill, but I acknowledge the points he made about safety after workers have done a day's work or a week's work and drive tired. It is an issue, particularly for those working in the south west where they may be only an hour or two away from home. I cannot believe that people from Collie drive to Lancelin or Geraldton; that is just unbelievable. I did not know that in Greenbushes, there is a limit of three-quarters of an hour, which probably takes it to

Bunbury. I am not sure what we can do about that, but obviously that has been read into Parliament and my staff will have been listening to it.

The member for Collie–Preston mentioned a firm of which I was aware, Premier Coal, which went bankrupt. The HBF case is probably an example of the impact that it had on people by not meeting its obligations. I am pretty confident with the mining rehabilitation fund in the way we structured the levy. We might get the odd Kimberley Diamond situation, which I think we can cover anyway, but we do not have to rehabilitate straightaway. The member referred to the announcement I made three years ago about rehabilitating Black Diamond Mine, which is only a small mine. If we get lumbered with the job of fixing up the Kimberley Diamond issue, it will not be done next week. I have even had people ring me up who reckon they could do it cheaper than what they have read about in the media. I batted them away! It may not cost that much.

I thank the member for Eyre for his contribution. He did a lot of work with the many groups in Kalgoorlie that popped up and were naturally concerned about this issue. There were probably a whole lot of words they had not seen before; in fact, they had probably never read the Mining Act and all of a sudden they did, and they had some concerns. It is our job when we compile the regulations to make sure that we address the concerns raised in some of the stories these groups bring forward. I have mentioned the Deputy Speaker's contribution. With those words, 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

Clause 1 put and passed.

Clause 2: Commencement —

Mr W.J. JOHNSTON: This clause sets out the various dates on which everything comes into effect. I want to get a picture of whether all the bits of the Mining Legislation Amendment Act 2014 have been enacted. The Mining Legislation Amendment Act 2014 amended the Mining Act 1978, and we are amending the Mining Legislation Amendment Act 2014. Are there some provisions of that legislation that have not yet come into force?

Mr W.R. MARMION: I refer to the table on page 288 of the Mining Act "Provisions that have not come into operation" the first one under "Short Title" is section 7.3 of the Native Title (State Provisions) Act 1999, act 60 of 1999, assented to on 10 January 2000. Under "Commencement" it states "Operative on earliest of commencement of Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 4". That goes back to the year 2000, and I can continue on.

Mr W.J. Johnston: I was specifically asking about the 2014 amendment act.

Mr W.R. MARMION: That one has obviously not come in yet. The member wanted to know about other acts.

The DEPUTY SPEAKER: Order, members! It is difficult for the media room to know who is talking. If the minister completes his response, the member for Cannington can ask for the call.

Mr W.J. JOHNSTON: I was trying to make it easier for the minister to respond. I did not ask about all the enactments that have not come into effect. We have not dealt with the long title yet, but one of the things we are amending is the Mining Legislation Amendment Act 2014. That is the only act that I am worried about. I am not worried about other acts that have not come into force. Which parts of the Mining Legislation Amendment Act 2014 are yet to be enacted? The minister will see what I am getting at, because the Mining Act and the Mining Legislation Amendment 2014 sit alongside each other. The 2014 act amends the 1978 act, but which bits of the 2014 act are yet to come into force?

Mr W.R. MARMION: The Mining Act states that part 2 of the Mining Legislation Amendment Act 2014 has provisions that have not yet come into operation.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Section 8 amended —

Mr W.J. JOHNSTON: I think I know the answer to my question on this clause from the briefing. This clause is deleting a definition, which is the definition of "ground disturbing equipment". I thank the advisers for providing this document to me which refers to mechanical drilling equipment or a backhoe, bulldozer, grader or scraper or

any other machinery of a kind prescribed for the purposes of the definition. I understand that this definition will be deleted as there will be a relevant definition in new part IVAA. Could the minister confirm that that is what is happening: that we are not getting rid of the definition of "ground disturbing equipment" but rather we are providing a contemporary definition in a new part of the proposed legislation?

Mr W.R. MARMION: Yes, that term is no longer required because it will be covered by a new definition under new part IVAA.

Mr W.J. Johnston: Could you tell us where?

Mr W.R. MARMION: Any section that requires approval will be using "machinery" and I will tell the member what they are. They are proposed sections 103AE, 103AF, 103AG, 103AH and 103AI.

Mr C.J. TALLENTIRE: I thank the minister for that introductory explanation. However, following the parts of proposed section 103 and looking for the terms used in proposed section 103AA, I cannot see any definition there. The idea is that the definition of "ground disturbing equipment" has been transferred into this part, which is somewhat implicit if we read the explanatory memorandum about clause 5. It states —

> The definition of "ground disturbing equipment" is being repealed as a consequence of the introduction of new Part IVAA.

That suggests to me that there is an equivalent definition somewhere in part IVAA and I cannot find it. I can see, though, in proposed section 103AC headed "Low-impact activities" that the "regulations may prescribe an activity relating to, or connected with, mining to be a low-impact activity" and perhaps that is part of this replacement definition. If that is the case, it will not appear in the act anymore. This clause will delete something that was in the act and the minister is saying it will go into the regulations. In the minister's previous response, he suggested that the definition is held elsewhere, but I cannot actually see it. I need the minister to tell me on which line he is talking about for a replacement for that important definition of what ground disturbing equipment is. I say it is important—I think I said this in my second reading contribution as well—because it is the sort of terminology that an operator with very little environmental background can relate to. I think it is a real shame if we will lose that definition, but if the minister can tell me that it is here somewhere, I will be reassured.

Mr W.R. MARMION: I can do better than that, member. This is actually a clearer way of presenting it. We have not got just a definition for an approval that is triggered. The relevant activity in proposed section 103AE(1)(b) spells it out. The definition is used in the bill for every activity that gets approval. The term is used each time, and I will read it out —

> (b) using machinery to disturb the surface of the land for the purposes of, or in preparation for, prospecting or exploring for minerals;

That definition in proposed section 103AE(1)(b) spells it out and that paragraph (b) is used in all the other proposed sections that I referred to—103AF, 103AG, 103AH and 103AI. Rather than have one definition in clause 5, we have deleted it and brought it back in six times to make it clearer. It is stronger wording, member.

Mr C.J. TALLENTIRE: I thank the minister for that. I wonder whether that is clear enough because "machinery" is such a general term and could capture anything. There are particular types of machinery that might be of concern. A four-wheel drive going across some land is machinery but it is not causing a disturbance. That is why I thought it was useful to have that clear definition of the sorts of equipment that would be considered ground disturbing equipment.

Mr W.R. MARMION: It spells it out quite well actually. If the member reads proposed paragraph (a) as well as (b), the relevant activity also means clearing on the land. I will digress slightly to set the scene. Someone dragging something behind a four-wheel drive to clear land—this is important too—"for the purposes of, or in preparation for, prospecting or exploring for minerals" needs approval. Proposed paragraph (b) refers to "machinery". Machinery is machinery. Whether it is a four-wheel drive, a backhoe, a Caterpillar D9, anything that is machinery—if the member keeps reading—"to disturb the surface of the land for the purposes of, or in preparation for, prospecting or exploring for minerals". In my view, parliamentary counsel have worked day and night and many months and they have come up with this as a better way to present it to people who want to use this as a working document, and I think I have to agree.

Clause put and passed.

Clause 6: Section 12 replaced —

Mr F.M. LOGAN: Although clause 6 updates the delegation provisions with a new section 12, was there not a subsection that said that the minister signs off on the delegation in the way it is set out in this clause? I thought there was another subsection which said that nothing undermined the power of the minister in his or her capacity

to make decisions regardless of the delegation—that is, while delegation is being handed over to an officer, either the director general or an officer of the department, that delegation does not undermine the power of the minister to take whatever action he or she chooses to take. I am pretty sure that there was a provision in there. It might be in the actual delegation itself. I say that on the basis that the minister's power is always paramount.

Mr W.R. MARMION: Even though I may delegate, I still retain the power. Indeed, if that delegation involves any significant activity, I will be asked to make a decision anyway. Also, a minister can vary or revoke that delegation at any time. That has not changed. The main point of this provision is that if there is a change of minister, we do not have to go through all the delegations again; it carries on until the new minister decides to revoke that delegation and take it back. That is the main reason we are inserting this provision.

Mr W.J. JOHNSTON: Section 12(2) of the Mining Act currently states —

> Any delegation of a power or function under this section by the Minister ceases to have effect upon the appointment (other than in the capacity of an acting Minister) of another person to be the Minister for the purpose of this Act.

I understand that the intention is to remove that provision. That is fine; I am not arguing about that. Do we know why that current arrangement exists? I have two other questions on this clause. I am happy for the minister to answer that question.

Mr W.R. MARMION: I am advised that this is absolutely unique; it is very unusual. We are putting something back into the legislation that is more normal.

Mr W.J. JOHNSTON: That is not the answer to the question I asked but it was a very interesting answer nonetheless. The word "agent" is used in proposed subsection (6). It states —

> Nothing in this section limits the ability of the Minister or the Director General of Mines to perform a function through an officer or agent.

Mr W.R. Marmion: Is that proposed subsection (5)?

Mr W.J. JOHNSTON: No. It is under clause 6. We are amending section 12. I am drawing the minister's attention to proposed subsection (6), which I just read out. It includes the word "agent". In our discussions with departmental staff, it was explained to me that this was a contemporary approach to the delegation. I am just seeking clarification of the word "agent". I can understand the use of the term "officer" because that is generally acknowledged to be the person who is a public servant. I am just trying to work out what the word "agent" relates to. What is an example of a person who is an agent and not an officer?

Mr W.R. MARMION: This is a way of administering the Carltona principle of the minister, and also the director general in this case, being able to delegate a function to an officer. The term "agent" is used as well as "officer" to, I guess, make it broader so that an officer or an agent can act for the minister or the director general to possibly perform a minor task that they obviously do not have to perform because they cannot carry out all the tasks. Under the Carltona principle, the minister or director general can still authorise an officer or an agent to do stuff.

Mr W.J. JOHNSTON: I am not quite sure that answers my question.

Mr F.M. Logan: It depends on the interpretation of the word "agent".

Mr W.J. JOHNSTON: Yes, that is what I am after. Under proposed subsection (1), the minister is authorised to delegate an officer. In proposed subsection (3), the director general is authorised to delegate his powers to an officer. In proposed subsection (5), we use the term "a person" but clearly they must be an officer because they have a delegation under either (1) or (3), but then proposed subsection (6) states —

> Nothing in this section limits the ability of the Minister or the Director General of Mines to perform a function through an officer or agent.

Clearly, it must be someone other than an officer. I also note that it is not a delegation; it is a function through the agent. That is what I am trying to establish. Given that an agent cannot be an officer, otherwise that provision would not need to be in the bill, can the minister explain who or what an agent is? I understand what an officer is; I do not need that defined. I just want to know who or what an agent is.

Mr W.R. MARMION: My advice is that this provision has possibly been over-drafted because it is unlikely that we would ever use an agent; we would always use an officer. That is our on-the-run interpretation of it, without having Parliamentary Counsel explain why it has used the word "agent".

Mr W.J. JOHNSTON: Is the minister going to accept an amendment if we move to delete the words "or agent"?

Mr W.R. MARMION: I would not want to do that without talking to Parliamentary Counsel because there may be a very valid reason why the word "agent" has been left in. It might be a coverall, so I am not going to do that.

Mr W.J. JOHNSTON: I picked that up. The use of the word "agent" troubles us because clearly it is in contemplation of somebody other than an officer. I think we all accept that the minister will delegate his powers to public servants. That is entirely appropriate. In fact, the purpose of the public service is to act on behalf of government on behalf of the community in the exercise of the functions of Parliament. This is clearly not a delegation because it is going alongside a delegation. It is about the minister performing a function through an officer or an agent. I am no lawyer, but we are concerned about that term. There are probably two alternatives: we could just move an amendment, and the government would move against it and it would be defeated anyway; or we could ask that the clause be considered later. The minister might accept that. If he does not accept having the clause dealt with later, at least he could give a commitment to deal with it before it arrives in the other house. In our view, it is a matter that needs to be clarified. We do not want to give a broad power.

Mr W.R. MARMION: If we find that it is obsolete and we do not need it, it could be amended in the Council, if required. There is a possibility that it might be an agent of mine. There might be a reason, though not one that I can envisage, that the minister might have an agent who is not a public servant, and that leaves it open. We are not 100 per cent sure. We will explore it. If it seems that it is a superfluous word, we could move that it be amended in the Council.

Mr W.J. JOHNSTON: On behalf of the party, I accept the minister's undertaking. If the minister goes away and works out that he wants to keep the word, I would appreciate him coming back and letting me know the reason, even if that is done offline, because we do not want to unnecessarily give the minister the right to exercise a function through somebody who is not accountable through the public service processes. I appreciate the minister's undertaking.

Clause put and passed.

Clause 7: Section 20 amended —

Mr W.J. JOHNSTON: I am sorry that the Leader of the House is not in the chamber. We are trying to move the consideration in detail stage along as quickly as we can, but it is, as we keep saying, complex legislation. This clause has been effectively redrafted. I will read out the current section of the act compared with the proposed section we are about to get. Section 20(5a)(d)(i) states —

> take all necessary steps to prevent fire, damage to trees or other property and to prevent damage to any property or damage to livestock by the presence of dogs, the discharge of firearms, the use of vehicles or otherwise; and

Proposed section 20(5a)(d)(i) states —

> take all necessary steps to prevent damage or injury to property or livestock whether resulting from fire, the presence of dogs, the discharge of firearms, the use of vehicles or any other cause; and

Again, I was advised in our briefings that this section was being redrafted for clarity. I draw the minister's attention to my understanding of the current words, which is that people will be obliged to take all necessary steps to prevent fire and then those other things. Whereas the proposed section does not require a person to prevent fire, but only fire that causes the damage listed, which is slightly different. I wonder whether that is the intention of the redrafting, and whether the intention has been achieved.

Mr W.R. MARMION: Parliamentary Counsel, I think quite rightly with this one, has made it a bit clearer that the legislation is trying to stop damage, not necessarily a fire. A person might have a fire for a barbecue. The current wording is not very clear. The proposed section states "take all necessary steps to prevent damage or injury to property or livestock whether resulting from" whatever. It is a lot better way of phrasing the section, because the legislation is trying to prevent damage rather than to prevent a fire.

Mr W.J. JOHNSTON: I will not labour the point, but the new wording changes the meaning of this section, because, as the minister said, a person might have a fire for a barbecue. I think the current wording actually states that a person cannot have a fire for a barbecue.

Mr W.R. Marmion: Correct, so why have it that you can't light a barbecue?

Mr W.J. JOHNSTON: That is the whole point.

Mr F.M. Logan interjected.

The DEPUTY SPEAKER: Order! One at a time, please.

Mr W.J. JOHNSTON: We can have that discussion. I am not going to labour the point, but I think the current words are more restrictive than the ones proposed.

Mr C.J. TALLENTIRE: I am interested in the term "discharge of firearms". I note this term was in the legislation previously, but I am concerned because I am not sure that this clause is consistent with the Firearms Act or the firearms regulations that were amended in the 1990s. Reading the proposed section, it looks to me that it authorises someone to discharge a firearm on crown land. Of course, that is not the case. This was the subject of some discussion in the upper house and indeed the subject of an inquiry. Quite rightly, the minister responded to the recommendations of the inquiry promoted by a member of the Shooters and Fishers Party and found that it was not acceptable to have people in Western Australia shooting on crown land or other public lands. Why does this legislation state that somebody could be shooting on public lands? The clause makes it look perfectly normal for someone to discharge a firearm so long as they do not cause damage when it is impossible for a person to get approval to discharge a firearm on crown land.

Mr W.R. MARMION: I do not read that into this clause. There is no authorisation to use a firearm in that clause. The clause states that a person must "take all necessary steps to prevent damage or injury to property or livestock". They are the main words. The other words are incidental; it could be a fire, dogs or a person discharging a firearm. If someone discharges a firearm illegally or uses a vehicle to cause damage—it could be any other cause—the issue is the first part of the sentence. The second part of the sentence is just giving a bit of a clue to the person reading the clause to see what it means. It could be damage resulting from a fire. Dogs or fire could ruin the environment. A firearm could start a fire and the use of vehicles could wreck the environment. The clause covers that or any other cause of damage. What the member just said is irrelevant. Another act would cover whether a person can discharge a firearm; it is nothing to do with this legislation.

Mr C.J. TALLENTIRE: I take the minister's point that the presence of dogs, a fire or use of a vehicle could be damaging, but taking dogs or a vehicle onto crown land does not require special authorisation. However, a person would have to have special authorisation to discharge a firearm on crown land. I do not know how a person would go about getting that special authorisation because the government made a decision not to allow the discharge of firearms on crown land unless a special exemption has been given in certain circumstances for the control of invasive species. There is no reference to the Firearms Act in this clause. It is as though the constraints that exist over firearm owners do not exist in this legislation. The minister is saying that it is okay to discharge a firearm on crown land and that if a person causes damage, so long as they can show that they took necessary steps not to cause damage, they will be in the clear when they might have committed an illegal act in the first place by possessing a firearm on crown land.

Mr W.R. MARMION: A person doing that would be breaking another law. A person will not get permission to use a firearm, and it is not relevant. This clause covers the case in which the Minister for Environment might give someone permission to use a firearm to get rid of goats or feral cats or something in a particular area. Sometimes there may be the possibility of a firearm being used on crown land, but that is not the main point here. The main point of this provision is that a person needs to take all necessary steps to prevent damage. If a person is on crown land and they do not have a gun licence, they will get pinged under that act. If they do damage, such as leaving lead bullets around, they will get pinged by this legislation as well. It will be a double whammy for a person who does that. I do not read this legislation and think it is giving a person permission to use a firearm—I cannot see where this legislation states that.

Mr C.J. Tallentire interjected.

The DEPUTY SPEAKER: Order, member for Gosnells. One at a time, please.

Mr F.M. LOGAN: Could the minister explain why the wording in the original act, which refers to damage to trees, is being taken out? Remember, section 20(5a)(d) deals with passing through commonwealth land. It is passing or repassing through commonwealth land to wherever a person is going, which may well be on crown land. I have worked in the mining industry on a number of occasions but also in Kalgoorlie pegging mineral claims; I have worked all over Kalgoorlie and north of Kalgoorlie right out to a lake in Wiluna. Passing through crown land for the purposes of pegging, drilling or getting to mine sites quite often involves the removal of fences and, as I know from personal experience, quite a lot of damage to trees, particularly by people doing real estate pegging on behalf of mining companies but also by prospectors. Some of those tenement peggers quite often take a chainsaw with them and, to get a line of site of where the block is, they will cut a whole tree down with a "V" in it. That is exactly what they used to do in the old days before they had pegs to put in the ground; they would put the line of site in. That can still be seen out there now. When one follows the old mineral claim tenements, one can see the line that has been created by people chopping down trees. Occasionally, they still do it. Why take out those words? This is crown land. It belongs to the taxpayer. They do not have authority to

basically just cut down trees or damage trees or any bushes. That will not be picked up. This provision will not be picked up by the environmental section. That has just been taken out.

Mr W.R. MARMION: Yes, it will.

Mr F.M. Logan: How do you explain that?

Mr W.R. MARMION: Let me finish. I am trying to explain, but the member just interjected. This provision is about property and livestock and a miner's right to pass through crown land. If they have a chainsaw and are going to chop down or damage trees, that would be covered by their plan or approach. They have to provide to the department their clearing permit and what they are going to do. That would be checked out by the department, including how they get there. If they need a miscellaneous permit to get to their tenement, that will be covered as well.

Mr F.M. LOGAN: Is the minister telling me and this house that if a company is out pegging mineral claims and they cut down trees or damage crown property through the damage to trees, then that will be picked up by that part of the bill?

Mr W.R. MARMION: It will be picked up in one of two ways. One is under the new provisions of the bill that we are putting through today and the other is under the Environmental Protection Act. If it is not picked up by this bill, it will be picked up by the Environmental Protection Act.

Clause put and passed.

Clause 8: Section 23A inserted —

Mr W.J. JOHNSTON: This is a new provision. On this occasion, I want to draw the minister's attention to proposed subsection (5), which states —

> The Minister, as he or she thinks fit in the circumstances of the case, as an alternative to causing the mining tenement to be forfeited, may —

It then lists the minister's rights. Will there be a process of natural justice in the minister's decision-making? How will the minister allow for natural justice and who will have a right to be heard on the matters that are going to lead to the minister's decision under his powers in this case?

Mr W.R. MARMION: The process that we will go through is that a DMP officer will investigate the issue. If they find that there is a problem, they will write to the tenement holder, who will then have the opportunity to explain the situation. The officer will then provide advice to me with the response from the respondent.

Mr W.J. JOHNSTON: Will there not be an opportunity for the licence holder or the tenement holder to directly make submissions to the minister? This provision is effectively about a penalty. It has already been found that the tenement is liable for forfeiture under section 23(3). This is about the penalty. Is the minister saying that the department does the investigation and makes a recommendation to him and he, as minister, decides that section 23(3) applies and then decides that instead of forfeiture he will impose either no penalty or a fine? Will the minister be acting, effectively, only on the papers and will not be giving a person the opportunity to discuss the matter with him? For example, it may be that in the first instance the minister might be minded to take the tenement under proposed section 23A(1), but he gets convinced that a fine is the appropriate penalty. That is what I am trying to get at. What is the procedure that the minister is going to use? If he says that there will not be hearings, that is understandable—I am surprised, but it would be fine by me. I just want to get some assurance that the decision will be made just on the papers and that there will not be an opportunity for a tenement holder to lobby the minister separately from his departmental officers or to provide the minister with some extra explanation about why he should use his powers under this proposed section rather than under the other section.

Mr W.R. MARMION: This provision is one that I now use all the time. That is a maximum fine. Quite often they are minor offences. The department investigates, the proponent provides their response and the department makes a recommendation to me. I will have the option of forfeiture, a fine or no fine. Quite often, the fine is a lot less than $75 000. That is my call. That is actually important, because there has to be a penalty if someone is not conforming. If they are a serial offender, forfeiture is obviously something that I will look at; but if they are a first offender and they are sorry and this went wrong—the truck broke down or they meant to do something—I will take that into consideration. However, if a year or two goes by and they come back with the same excuse, that is my call. I am a fair person and I think most ministers in my situation would be. I am sure the member for Cockburn would be.

Mr W.J. JOHNSTON: I accept what the minister is saying. The minister has used his powers under proposed subsection (5) to not require the forfeiture of the tenement. He has issued a fine. If the fine goes unpaid within 30 days or another time that the minister has specified, the tenement will be forfeited under proposed

subsection (6). I just want to confirm that the powers under proposed subsection (2) are not available to the minister under proposed subsection (6). The minister has issued a fine but the fine is not paid. As I understood from the briefing, the forfeiture is then automatic and the minister does not have the power to cancel that declaration—it automatically happens under proposed subsection (6) and it is not a declaration under proposed subsection (2). If that is confirmed, I will be happy.

Mr W.R. MARMION: The advice is that, yes, I cannot then use clause 2 to reinstate. That is the situation in this particular case, yes.

Clause put and passed.

Clause 9: Section 40D amended —

Mr C.J. TALLENTIRE: I again refer to this issue of firearms. I would like to know why the minister thinks somebody in the business of mining should carry a firearm.

Mr W.R. MARMION: It is a very similar answer to the answer I gave last time, but I can put a few more words around this one. They could be carrying a firearm—this clause refers to discharging a firearm—because they might be prospecting, but they might have other activities. They might be pastoralists on their own property, and so they are carrying it. They might have a firearm in their car, but if they discharge it illegally, they will be fined. In this particular case, if they discharge it and cause an injury or damage to property, they will be covered by this wording.

Mr C.J. TALLENTIRE: The minister thinks that it is reasonable for people working in isolated areas whose focus is on mining and prospecting, sometimes on crown land, to have this cover so that they can carry a firearm. The minister is prepared to normalise the carrying of firearms when someone's business activity has nothing to do with the need for shooting. Their activity is mining, but does the minister reckon it is okay for them to carry a gun?

Mr W.R. MARMION: I did not say that; I did not say anything like that at all. I did not say it is right and that I approve of them carrying a gun. The member made that up. I did not say that at all.

Mr C.J. Tallentire: You have it in your legislation; you're allowing them to carry guns.

Mr W.R. MARMION: That is not saying we approve of it. We are actually making it an offence to discharge a firearm and cause damage; it is quite the opposite.

Mr C.J. Tallentire: Yes, but, otherwise, if they don't cause damage, they're allowed to discharge a firearm.

The DEPUTY SPEAKER: Order, member for Gosnells!

Mr W.R. Marmion: No more comment.

The DEPUTY SPEAKER: Have you finished?

Mr C.J. TALLENTIRE: I just clarify for the minister that the minister is saying it is only a problem if they cause some sort of damage, but, otherwise, the minister is quite happy for people to wander around in isolated areas with guns.

Mr W.R. Marmion: I did not say that at all.

Mr C.J. TALLENTIRE: That is what your legislation says.

Clause put and passed.

Clause 10: Section 46 amended —

Mr W.J. JOHNSTON: Modernising the language, I think, would be a good way to describe this provision. I think what the minister is saying is that a person who makes these ground disturbances at the moment has to get a specific inspector to come and tell them what to do, and now we are going to allow them to make up their own mind. I agree that is a more modern approach. The words "will be filled in" or "otherwise made safe" currently appear in the act, but then there is this other extra bit.

Mr W.R. Marmion: There is a fair bit in front of me; which bit were you referring to?

Mr W.J. JOHNSTON: Clause 10 reads —

> In section 46:
>
> (a) delete paragraph (aa);

(b) delete paragraph (b) and insert:

Then the last sentence in proposed amended paragraph (b) reads —

will be filled in or otherwise made safe;

That is in respect of holes, pits, trenches and other disturbances to the surface of the land. The current act reads —

will be filled in or otherwise made safe to the satisfaction of the prescribed official;

Now we are just saying "will be filled in or otherwise made safe". We are taking the same language but we are no longer saying that it is in the opinion of the prescribed official. We are modernising the legislation, and I understand and agree with that. I assume there will be some sort of practice note or recommendation about how to handle these things. As we have acknowledged and the members for Kalgoorlie and Eyre both stated, there are people who are not companies; they are low-level prospectors. I imagine that the current arrangements are probably not ideal, because somebody has to go out and tell them what to do. That is not a good idea, but, equally, we do not want to have it on the other side whereby people with a lower level of experience—guys who have been doing it for 50 years probably know what to do—and who have been doing it for a lesser period do not know what to do. Will there be some form of guidance, clarification, encouragement or explanation about what is expected?

Mr W.R. MARMION: Yes, there will be. What the member said is absolutely right. It will also be done in consultation with industry and prospectors so that we come up with an example of what we expect when filling in a hole, without someone going out there and, as the member says, watching them fill in the hole.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Section 48 amended —

Mr W.J. JOHNSTON: I understand that the inclusion of the words "and the conditions referred to in section 103AE" is designed to make clear that the approvals are subject still to environmental approvals. I want that confirmed. Are we inserting this arrangement of words so that when a person has a prospecting licence, they know that that prospecting licence is clearly subject to the environmental approvals that appear later in the act?

Mr W.R. MARMION: That is correct. This change will make sure that when a person has a prospecting licence, they comply with the environmental requirements under section 103AE.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Section 55 amended —

Mr W.J. JOHNSTON: Again, this is not an environmental amendment, as I understand it; this is an amendment to the management of minerals titles. Could the minister explain the effect of this provision?

Mr W.R. MARMION: The retention status will give the holder of a prospecting licence a holding status for a limited time for resources that have been identified but cannot for the time being be accessed for substantial reasons. Section 55 of the Mining Act now requires referral of an application for retention status over a prospecting licence that intersects reserve land to the minister responsible for the reserve. Sometimes the prospecting licence holder does not ever seek consent to access land in a reserve covered by their licence. In these cases there is no need to refer an application for retention status because the reserve will be unaffected. Proposed subsection 5 will mean that referral to the other minister is required only if a tenement holder has already been given consent to prospect within that part of licence. This amendment will remove unnecessary red tape for the Department of Mines and Petroleum and referral agencies and will reduce delays for some tenement holders.

Clause put and passed.

Clause 15: Section 55A amended —

Mr W.J. JOHNSTON: Whilst this is a minor change, it is quite an important change because it will clarify the use of the term "programme of work". I understand that under this clause the term "programme of work" will be deleted and replaced with the term "works schedule", because the words "programme of work" will mean something new in the future. I understand that we are going to get to that when we consider proposed part IVAA. I want to confirm that that is what is being done here; that a term that people have been familiar with in "programme of work" is ceasing in this form and that from now on we will use the term "works schedule" in this

spot because we are giving that additional meaning to the words "programme of work" later on in those environmental approvals processes.

Mr W.R. MARMION: That is correct. So that there is no confusion, "programme of work" will be used to define something else. We are making sure that we use the words "works schedule" so that there is no confusion.

Clause put and passed.

Clause 16: Section 56A amended —

Mr W.J. JOHNSTON: This clause makes it clear that the rights in the licence are still subject to environmental approvals, and having the right itself does not give the person the right to do the work.

Mr W.R. MARMION: The member is absolutely correct, and holding a special prospecting licence does not absolve someone from complying with proposed section 103AE or their environmental obligations.

Clause put and passed.

Clause 17: Section 58 amended —

Mr W.J. JOHNSTON: This is another clause with impenetrable language, in my view; it is probably necessarily impenetrable. As I understand from the briefing, this is not an environmental change but rather amendments to mineral titles management. Proposed section 58(1A) states —

> Subsection (1B) applies if —
>
> (a) a person (the ***original applicant***) has lodged an application referred to in subsection (1) for an exploration licence in respect of an area (the ***exploration area***); and
>
> (b) the Minister has not determined the application by granting or refusing the exploration licence under section 59(6),
>
> and applies even if the application has been withdrawn.

I find it interesting that somebody can apply for a licence, even if it is no longer required. I asked the advisers at the time of the briefing to describe the Department of Mines and Petroleum's processes that are used in these matters, but that was not possible. How does the DMP handle applications that are dealt with under these subsections? What is the effect of this and how does the DMP handle that?

Mr W.R. MARMION: This is probably one of the more important clauses for me as the minister. It is very frustrating when someone goes through the process of an exploration licence application and at the eleventh hour withdraws it. We have gone through all that work and we do not get a lease payment for it. Without naming a particular party, I have one instance in mind and over some years we missed out on the equivalent of half a million dollars that they avoided paying just by pulling out at the last minute and then coming in with a related party. This covers me so that I can do something about that. I might stand corrected here, but I may have used this ultra vires almost, but I can because I am the minister. I got a bit grumpy over someone doing this and used this power. This clarifies that I can do that.

Mr W.J. JOHNSTON: This might be something that has been referred to by Jonathan Barrett in *The Australian Financial Review*. This will give the minister greater powers to clarify the approaches where somebody has deliberately—who knows whether it is deliberate —

Mr W.R. Marmion: Possibly!

Mr W.J. JOHNSTON: — possibly tied up prospective ground by using friends and relatives to delay things. In those circumstances, the Department of Mines and Petroleum will be able to charge the person if they subsequently withdraw.

Mr W.R. Marmion: They cannot do it.

Mr W.J. JOHNSTON: I do not mean charge as in a dispute. The minister can get the money out of them, even if they seek to withdraw the application. When I used the word "charge", I did not mean charged with an offence but rather charge them a fee.

Mr W.R. MARMION: To clarify it, this means that a person cannot lodge successive applications unless they can show me very good grounds why they have done so, and there possibly could be. I might be convinced for one year, but if they keep doing it, it would be pretty hard to convince me.

Clause put and passed.

Clause 18: Section 60 amended —

Mr C.J. TALLENTIRE: I note that clause 18 deletes a section. According to the explanatory memorandum, we are to understand that it relates uniquely to environmental considerations and that it can be deleted because it will be re-enacted in proposed section 103AZB. However, when I look at what will be deleted, I wonder whether it has a broader application than an environmental application. The subsection that will be deleted states —

> The Minister may require the holder of an exploration licence to lodge, in the prescribed manner and within such period as the Minister specifies in writing, an additional security for compliance with conditions imposed in relation to the licence under section 63AA.

I wonder whether that could apply more broadly or to things other than environmental compliance. A miner might have to be in compliance with other things and they would therefore be required to lodge some sort of security.

Mr W.R. MARMION: The subsection that will be deleted refers to section 63AA, and that section will now be replaced by proposed section 103AZB. It will be exactly the same. It is being moved from this section of the act to the new environmental part. We are making sure that the environmental bits of the act are in the new part.

Mr C.J. TALLENTIRE: I accept that the focus is on a form of environmental security, but under section 63, it is not just environmental things that the security could relate to; it could also be administrative matters, such as providing a program of works in an approved manner by an approved time. It seems that that is also a security relating to administrative things, not just to some sort of environmental caution or deposit or bond.

Mr W.R. MARMION: I think the member is referring to section 63 rather than section 63AA.

Mr C.J. TALLENTIRE: Yes, but I am referring to section 63(aa). The minister might be right, but I will check section 63AA. That section is titled "Conditions for prevention or reduction of injury to land" and refers to ground disturbance. Proposed part IVAA is all about ground disturbance, but what about injury to the land through disruption to, say, a watercourse? I do not think that would be covered by those provisions that are much more around ground disturbance. If someone had disrupted the flow of a watercourse, I do think that would be picked up. That is potentially in section 63AA, but I am asking the minister why clause 18 deletes section 60(1a). It seems that that has an application that goes beyond the ground-disturbance aspect.

Mr W.R. MARMION: Proposed section 103AZB headed "Security for compliance with conditions for preventing, reducing or remediating environmental harm" is basically the new section 60(1a). We are deleting section 60(1a), which has four and a half lines, and including this new section, which has seven lines. I think it is amply covered.

Clause put and passed.

Clauses 19 to 21 put and passed.

Clause 22: Section 66 amended —

Mr W.J. JOHNSTON: The provisions in clauses 19, 20 and 21 repeat what has happened previously, which we need to get on the record, but I will do that in the third reading debate. Clause 22 is still on exploration licences. I want to make it clear that holding the exploration licence is still subject to environmental approval.

Mr W.R. MARMION: The answer again is yes. This covers rights on exploration licences and means that conditions referred to in section 103AE apply.

Clause put and passed.

Clauses 23 to 25 put and passed.

Clause 26: Section 70H amended —

Mr W.J. JOHNSTON: I note that clauses 24 and 25 did similar things to what is in previous clauses but, again, I did not want to delay the house on them. Clause 26 is about retention licences. It is the same language, so we will be deleting paragraphs (aa) and (a) because I understand those issues will be dealt with in the new part and we are adopting the same language about filling in the holes.

Mr W.R. Marmion: Yes.

Mr W.J. JOHNSTON: We are also using contemporary language for preventing injury to property, livestock et cetera. This is about retention licences rather than exploration licences, so we are again making clear that these are the obligations for the retention licence at this stage.

Mr W.R. MARMION: That is correct. It also makes sure that the terminology and the wording is similar.

Clause put and passed.

Clause 27 put and passed.

Clause 28: Section 70IA amended —

Mr W.J. JOHNSTON: I note that we are again changing the words "programme of work" to the newer terminology "works schedule". Proposed subsection (3) reads —

> A condition imposed under subsection (1) may be cancelled or varied by the Minister at any time.

I understand that although these are new words, that is not a new power for the minister. Then new subsection (4A) will be inserted because we amended section 70I a minute ago when we dealt with clause 27. We now need to include these words so that the minister can continue to have the powers to limit the rights of the person under the retention licence—if that is the right word. We are still continuing the obligations. The first amendment is to change the nomenclature, which we understand. Proposed subsection (3) will continue a power that is said to be here already but in new words. I would like to have that clarified.

Mr W.R. Marmion: Correct.

Mr W.J. JOHNSTON: This new subsection (4A) refers effectively to the powers lost by deleting section 70I so that the minister can put endorsements or conditions on the licence to have the holder of the licence do or not do what the minister wants them to deal with on that licence. I understand that to be the case and just want to get it on the record again.

Mr W.R. MARMION: Yes, the member is 100 per cent right. Because we have taken out section 70I, the procedural provisions that are required will be put back into proposed section 70IA.

Clause put and passed.

Clause 29 put and passed.

Clause 30: Section 70K amended —

Mr W.J. JOHNSTON: I note that clause 29 mirrors previous clauses that we have dealt with, such as clause 16. We do not need to discuss that but I note it is there. Proposed section 70K provides for a retention licence that is liable to forfeiture. This clause will now include additional powers that will require the forfeiture to take place, noting that section 70I no longer exists because the concepts in that section have been moved to new part IVAA. As with exploration licences, we will again provide forfeiture powers for retention licences that do not comply with the environmental obligations that will be imposed by new part IVAA.

Mr W.R. MARMION: Yes. The purpose of this clause is to update references to provisions dealing with compliance with environment conditions on a retention licence, as the member said. This will ensure that a breach of those conditions still means that the licence can be forfeited. It just keeps the status quo.

Clause put and passed.

Clauses 31 to 33 put and passed.

Clause 34: Section 74 amended —

Mr W.J. JOHNSTON: I note again that clauses 31, 32 and 33 effectively repeat provisions that related to exploration licences and retention licences, and we do not need to deal with those as we know what they do. Proposed section 74(2) will delete "and in the prescribed manner" from section 74(1AA). I love the way these bills that are frequently amended get amended and amended again. I want to know what the effect is and how we are dealing with the concept of "prescribed manner". At the moment the wording of the current section 74(1AA) is —

> Instead of accompanying an application for a mining lease under subsection (1)(ca), a mining proposal may be lodged within the prescribed time and in the prescribed manner and, if so lodged, is to be treated for the purposes of this Division as a mining proposal that accompanied the application for the mining lease under section 74(1)(ca).

We are getting rid of "and in the prescribed manner". If we are not prescribing a manner, we obviously need to tell them how to do it, and I understand that that is going to be included in the new part. Can the minister confirm that, and direct me to where the new provision is going to be?

Mr W.R. MARMION: The new provision will be proposed section 103AP, which is headed "Lodging and approving mining proposals".

Mr C.J. TALLENTIRE: Still on clause 34, I am just looking at the words "mining proposal". That term concerns me, minister, because I know it is defined later on in division 4 of part IVAA, but it just seems that we

are introducing yet another term. We already have the terms "works schedule" and "programme of work", and now we are talking, somewhat generically, about a "mining proposal". I am just wondering whether, at this point, when we are saying that an application for a mining lease "shall be accompanied by", is it really just a mining proposal that we are talking about or is it actually a mining proposal and a works schedule, or a mining proposal and a program of work? Is there something else that is a more generic, all-encompassing term that we should be using there?

Mr W.R. MARMION: If the member looks carefully, he will see that the phrase "mining proposal" is a well-known term that has been in operation since at least 2006. All we are doing is actually adding the words after "a mining proposal in accordance with Part IVAA Division 4", so we are making sure that when a mining proposal is put in, it is in accordance with the new provisions that we are putting in here, some of which are already in there, but they have moved. Got that?

Mr C.J. TALLENTIRE: That makes sense, but we have changed terms. Before we used the term "programme of work" there was another term that was used prior to 2008; I cannot recall it. There has been a succession of terms and I am just concerned that that is going to add to confusion, especially now that we have changed "mining proposal" and we are making specific reference to the environmental management area under part IVAA, which is all about environmental management, but the minister here is wanting to talk about a mining proposal in the most generic sense. Perhaps a clearer use of language to reflect that we have a whole new regime in place would be to talk about a "mining project"; would that be a clearer way of dealing with it?

Mr W.R. MARMION: Section 74 relates to an application for a mining lease. An applicant is going to do some mining. They have gone past the exploration stage and they have done their prospecting. Suddenly they are going to go into the big time and start mining. If they are going to start mining, they have to have a mining proposal. Everyone knows what that is; it is a proposal of how to mine. This provision is saying that when an applicant applies for a mining lease, they will put in a mining proposal. All we are doing is strengthening the provision. It currently includes the words "a mining proposal". We are seeking to change that to "a mining proposal in accordance with Part IVAA Division 4", which is all the environmental bit. I would have thought that the opposition would have been most satisfied with the way we have addressed this wording because it actually makes it clearer.

Clause put and passed.

Clause 35 put and passed.

Clause 36: Section 82A deleted —

Mr W.J. JOHNSTON: Just as a note, there are all these different terms. I will get to them in a minute. I understand that this clause seeks to delete a section of the act that applied to formal approvals. How are we dealing with the approvals that were already given under the pre-2006 arrangements and what will happen with those existing approvals?

Mr W.R. MARMION: This section is being deleted because it will become the new section 103AH. It will be covered by a new section in the new part.

Clause put and passed.

Clauses 37 to 39 put and passed.

Clause 40: Section 90 amended —

Mr C.J. TALLENTIRE: I am looking at the insertion in this clause that relates to "a programme of work lodged by the holder of the general purpose lease". If a program of work is being lodged —

Mr W.R. Marmion: Which words are you referring to, member? Is it proposed section (1)(b)(a)?

Mr C.J. TALLENTIRE: Yes, exactly—line 22 of the bill. If I have understood this correctly, this amendment replaces references to conditions that were previously replaced. Those conditions referred to a prescribed regulation that came under section 89. I am just concerned that that is inconsistent with what we have here, referring to the program of work, and then the general purpose lease provisions in section 89 of the act.

Mr W.R. MARMION: The purpose of the wording here is to make sure that anything to do with the general purpose lease relates, and anything to do with the program of works refers, to the new conditions. It must refer to the new environmental part. They all comply with a general purpose lease.

Mr C.J. TALLENTIRE: This clause refers back to section 89 of the current act, and talks specifically about covenants and terms and conditions that might be prescribed, as the minister may from time to time in writing specify. I do not see this as being a clear reference to the new part IVAA at all. I am trying to work out why it

refers back to section 89. Perhaps the minister can give me an example of the sorts of covenants that the minister might specify from time to time in writing.

Mr W.R. MARMION: Section 89 is about the form of a general purpose lease. It is irrelevant what is in it. It says that a general purpose lease shall be in the prescribed form and shall contain a whole lot of stuff. That is all we have to know about section 89. In section 90, in subsection (b) we are deleting reference to section 82(1)(ca), because it does not exist anymore, having been previously deleted. Then we are making sure that section 89 remains valid, with new subsection (a), which reads —

> a programme of work lodged by the holder of the general purpose lease in compliance with a condition prescribed by the regulations for the purposes of section 89;

Section 89 is still in there, and paragraph (b) is got rid of because it no longer exists—that is the old (b)—and subsection (1d)(a) is replaced by the following paragraph.

Mr C.J. TALLENTIRE: I cannot see subsection (1d)(a) in the main act. I have 91A and 91B, but I am not sure where (1d)(a) actually came into this.

Mr W.R. MARMION: This is a little complicated. Clause 40(1)(a) and (b) revise references in section 90, so that the existing Mining Act provisions dealing with the referral of certain proposals to the Environmental Protection Authority continue to apply to general purpose leases in the same way as they apply to mining leases.

Mr C.J. TALLENTIRE: Can the minister clarify where that information he just read out came from?

Mr W.R. MARMION: The beginning of section 90 refers to section 6(1a), (1c) and (1d). Going back to section 6, those subsections refer to the EPA. Section 6(1d) is the main reference. It reads —

> If a mining lease is granted on an application referred to in subsection (1a), nothing in that subsection affects the application of section 38 of the *Environmental Protection Act 1986* to —
>
> (a) a programme of work lodged by the holder of the mining lease in compliance with the condition referred to in section 82(1)(ca); or
>
> (b) a mining proposal lodged by the holder of the mining lease in compliance with the condition referred to in section 82A.

That brings it all together. It is a little bit complex, member. Trust me.

Mr W.J. JOHNSTON: If the minister wanted to choose words that were more confusing, I am not quite sure he could have.

Mr W.R. Marmion: Which clause of the bill are we looking at?

Mr W.J. JOHNSTON: I am still on clause 40 of the bill, which amends section 90 of the act. As I understand it, we have dealt with exploration licences and we have dealt with retention licences and we are now dealing with general leases. I understand that general leases are related to mining leases and also miscellaneous leases. It will help me if at some point the minister could explain those three different leases and how they relate to each other—that being a mining lease, a general lease and a miscellaneous lease. That will help me to deal with the amendments that will come up in which we are amending amendments on amendments. In respect of these words—I am sure there are good reasons for choosing them—this is what the clause will state after the amendments. I am reading from page 9 of the inclusions the department provided. The extract on section 90 as proposed to be amended states —

> (a) a reference in those <u>subsections, other than in subsection (1d)(a)</u> … to a mining lease were a reference to a general purpose lease; and
>
> <u>(b) subsection (1d)(a) were replaced by the following paragraph —</u>
>
> <u>(a) a programme of work lodged by the holder of the general purpose lease in compliance with a condition prescribed by the regulations for the purposes of section 89; or</u> …

I understand that that states that the provisions that apply to a mining lease will also apply to a general purpose lease except with the modification of subsection (1d)(a). If I am right, why did the minister not simply repeat the obligations from the mining lease into the general purpose lease section? Would that not have been simpler? I acknowledge that the clause is already structured in the way that it is structured, but talk about making it hard to read. I am no lawyer—with all due respect to the fine legal minds that drafted up this legislation—but it seems to add complexity.

Mr W.R. MARMION: I have to half agree with the member in that respect. The reason for that wording is that the drafters decided to retain section 90 and they had to make it fit—I think that is probably the best way to describe it—which made it a little difficult to read.

Mr W.J. JOHNSTON: Given that when we get to part IVA, the minister can see that we repeat, rightly so, all these different provisions for all the different types of lease and tenement arrangements, it surprises me that the same was not done in dealing with this provision, because we could have separated it out and we would not have had to have that complexity. I would be obliged, for the purpose that we do not have to go over old ground later, if the minister could put on the record for us the difference between the three different types of leases that we will be dealing with. I think this is a great time for the minister to do that. Could the minister explain what mining, general and miscellaneous leases are and how those three types of tenements relate to each other?

Mr W.R. MARMION: A mining lease is sort of self-explanatory. It has to do with the mine site. A general purpose lease is infrastructure, but it has to relate directly to the mine. A general purpose lease is an auxiliary lease relating to the mine site. There is the mine, and there is a general purpose lease to make that mine work. Infrastructure could be a tailings dam, for example, or it could be a road.

Mr W.J. Johnston: It could be a camp.

Mr W.R. MARMION: No. That would normally be a miscellaneous licence. A miscellaneous licence is infrastructure, with an exploration licence and with a mining lease, and it can be granted over other titles as well. A road is probably a good example of quite a common miscellaneous licence. A general purpose lease is infrastructure—probably not a road; more like a tailings dam—and it has to relate exactly to that mine, so it cannot be another mine site.

Clause put and passed.

Clause 41: Section 92 amended —

Mr C.J. TALLENTIRE: The explanatory memorandum states that there is a need to delete section 46A of the act because there is now a reference to the new section 103AW, which will apply in its place. I have looked for the reference to proposed section 103AW and I cannot see it. I am not sure how essential it is, but I cannot see that specific reference.

Mr W.R. MARMION: Basically, section 46A has been deleted because it is not required. The environmental provisions relating to miscellaneous licences are covered in proposed new section 103AW, and section 46A does not exist anymore because we have deleted it.

Mr C.J. TALLENTIRE: The minister wants me to look backwards here, and the minister is right that what was originally in the act has been totally deleted, but the act now still contains a reference to section 46A. It states —

Deleted by the Mining Legislation Amendment Bill 2015 cl. 11

That is there; it still exists. What I am really concerned about is reference in the explanatory memorandum —

Mr W.R. Marmion: I am sorry, you have lost me here. It's been deleted.

Mr C.J. TALLENTIRE: No, there is still a reference to it though.

Mr W.R. Marmion: Show me where.

Mr C.J. TALLENTIRE: I am looking at the blue —

Mr W.R. Marmion: Tell me where you are looking.

Mr C.J. TALLENTIRE: I am looking at the blue page 58.

Mr W.R. Marmion: I am looking at the act. I have a completely marked-up whole act.

Mr C.J. TALLENTIRE: Yes, that is what I am looking at as well—the marked up version of the act. On page 58 there is a whole lot of red that shows section 46A has been deleted, but in blue there is an insertion that states —

Deleted by the Mining Legislation Amendment Bill 2015 cl. 11

Mr W.R. MARMION: This is just a normal convention of leaving reference to section 46A so that someone who is reading this amended act knows that there used to be a section 46A, but it is no longer there because it was deleted by the Mining Legislation Amendment Bill 2015. I guess there could be protocol for it to stay as an amendment bill, but it will change to an act when it becomes an act.

Mr C.J. TALLENTIRE: I am prepared to accept that that is a convention in that case, although I know that sometimes when something is deleted from an act, it disappears entirely—generally that is the case. When we

say to delete something, it is deleted; sections are deleted and there is no further reference to them in the amended act. That is not my real concern here. My concern is that the explanatory memorandum states there is a reference to new section 103AW that will apply in its place. From reading the explanatory memorandum it is reasonable to understand that there should be some reference to new section 103AW, but there is not.

Mr W.R. MARMION: The explanatory memorandum that refers to new section 103AW is incorrect, but the drafting of the bill is right—there is a problem with that. We are getting rid of section 46A, which the member has seen, but we do not worry about that because the environmental conditions of approval around miscellaneous licences will still be covered by new section 103AW.

Mr C.J. TALLENTIRE: Is the minister saying that the memorandum is wrong? Is there a mistake there? I am now trying to track down proposed section 103AW, because I want to reassure myself. If it is in the memorandum, there should be a reference to it; I just want to be sure. Why did it say that one minute, and now the minister is telling me we do not need it? I think it requires us just to double-check that the provisions in proposed section 103AW are such that that reference is not needed. Looking at proposed section 103AW, "Conditions for preventing, reducing or remediating environmental harm and for other purposes", was there an intention for that to relate to the provisions applying to all miscellaneous licences? Is that perhaps the reason that at some stage in the drafting it was thought that proposed section 103AW should have gained a particular reference?

Mr W.R. MARMION: "Mining tenement" covers all leases, so it covers a miscellaneous licence, which is what the member is particularly referring to. It is covered here, because a mining tenement includes a miscellaneous licence.

Clause put and passed.

Clause 42 put and passed.

Clause 43: Section 102 amended —

Mr W.J. JOHNSTON: Again, I understand this not an environment-related provision; rather, it is a provision regarding the management of tenements. As I understand, this clause updates the act to allow the electronic processing of applications, specifically applications for exemption from the expenditure requirements of mining tenements; I am not quite sure. It is, again, a provision that is probably necessarily quite long. I want to clarify that we are not granting the minister or the Warden's Court additional powers. Are we just changing the process by which applications are made and dealt with?

Mr W.R. MARMION: Yes, I can confirm that there really is no change. It just means we can do everything online now. It saves paperwork, which means it will be more efficient.

Mr C.J. TALLENTIRE: I am keen to know more about the circumstances under which the minister would grant an exemption. It is not really clear whether there are some rules by which that call for an exemption could be assessed. It just seems as though an application for an exemption may be made to the mining registrar. I am just trying to work out what would justify that kind of exemption, and whether there is some sort of criteria that an application could be assessed on.

Mr W.R. MARMION: I can give the member a few by just flicking the page over to the current section 102(2), which reads "exemption may be granted for any of the following reasons". Does the member want me to read them all out from (a) to —

Mr C.J. Tallentire: No, I have them; it's okay.

Mr W.R. MARMION: There is a whole pile of reasons there, member.

Mr W.J. JOHNSTON: At page 19 of the bill, proposed new subsection (9) states —

> If an application for exemption is not heard by the warden or the Minister receives a report under subsection (8), the Minister may —

Then a list of powers follows. Proposed new subsection (8) states —

> If an application for exemption is heard by the warden under subsection (7) …

How does the minister receive a report under proposed new subsection (8) if an application for exemption is not heard by the warden, because it seems that the report under proposed new subsection (8) is in fact produced by the application under proposed new subsection (7) and requires the warden to do things, including provide the notes of evidence. If the warden has not heard it, how does he get the notes of evidence? Does the minister see what I mean?

Mr W.R. Marmion: I know what you mean, but I don't know where you're coming from. I cannot read those three sections in one second.

Mr W.J. JOHNSTON: If the minister could seek advice, that would be helpful to me, because I am certainly confused by the words.

Mr W.R. MARMION: Without going through and working out the chessboard logic, I have been advised that if the member looks at proposed new subsection (6), it begins with —

> If no notice of objection is lodged within the prescribed time, or any notice of objection is withdrawn, the mining registrar shall forward the application for exemption to the Minister for determination.

That is the key subsection.

Mr W.J. JOHNSTON: Is the minister saying that it comes to him under either proposed new subsection (6) or proposed new subsection (8)?

Mr W.R. Marmion: Yes.

Mr W.J. JOHNSTON: That makes sense. I understand.

Mr C.J. TALLENTIRE: Proposed new subclause (5) states —

> A person who wishes to object to the granting of an exemption shall lodge a notice of objection within the prescribed time and in the prescribed manner.

How could someone who might want to lodge an objection to the granting of an exemption know about an exemption, recognising that there would be certain deadlines by which someone would be able to apply for an exemption? What happens when someone lodges an application for an exemption at a late stage; how would someone who wants to object to the application for the objection get to know about it?

Mr W.R. MARMION: The application cannot be lodged at the last minute. There is a period in which to lodge an objection.

Mr C.J. TALLENTIRE: What is the transparency around that? Is it a matter of consulting a website, or how would someone get to hear about it?

Mr W.R. MARMION: It is on the website and the register in the Department of Mines and Petroleum, so there is transparency once someone has asked for an exemption.

Mr C.J. Tallentire: How long do they have?

Mr W.R. MARMION: They have 35 days.

Clause put and passed.

Clauses 44 and 45 put and passed.

Clause 46: Part IVAA inserted —

Mr W.J. JOHNSTON: The Leader of the House might be excited to know that we have now finished the preliminary matters of the bill and we have got to the substantive matters of the bill.

Mr J.H.D. Day: We wouldn't want to be in a hurry, would we?

Mr W.J. JOHNSTON: These are very complex matters and the fact we have taken hours and hours in briefings is not a surprise. As I understand the standing orders, we can range backwards and forwards across clause 46 and do not have to move through in lineal fashion.

The DEPUTY SPEAKER: That is correct, member for Cannington.

Mr W.J. JOHNSTON: That is not my intention, because I know the minister likes things to go from A to B. We will do our best to do that, but I make that point because my colleagues might chip in with questions I do not know about.

Basically, this is the guts of the bill, where we are creating the environmental management function. As the opposition has observed previously, DMP currently gives approvals for native vegetation clearing under delegated authority from the Environmental Protection Authority, but that is now coming into the Mining Act, so the DMP will be acting on its own motion for that. I am told these provisions mirror the existing arrangement in the Environmental Protection Act. The first and most important term is one about the environment, which reads —

> ***environment*** means —
>
> (a) ecosystems and their constituent parts; and
>
> (b) natural physical and biological attributes of land,
>
> but does not include —

(c) man-made structures or works on land; or

(d) social, economic, heritage and cultural features of land;

I will get to the Norman Moore provision later on. We are dealing with the natural, physical and biological attributes of land and ecosystems and their constituent parts. I also note proposed section 103AB "Object of Part", which reads —

> The object of this Part is to support the responsible environmental management of mining, including land rehabilitation and mine closure.

That is a matter that many people in the goldfields find somewhat controversial because it is giving an environmental objective to what has up to now been a provision under the Mining Act. That is not necessarily a bad thing from the Labor Party's point of view, but it is a matter of controversy in the goldfields. We are also trying to have the applications done in an online environment so that the Department of Mines and Petroleum will enter the digital world. We are trying to place standardised conditions and obligations on people involved in the mining industry. We want responses to be published within short periods; I understand a month to six weeks is the aim of these changes. We are going to do all those things through the provisions outlined in this clause. I know that we have a lot of questions, so I will perhaps let my colleague the member for Gosnells ask the first question. However, I thought it was worth putting on the record from the Labor Party's point of view exactly what these provisions will do.

Mr C.J. TALLENTIRE: Indeed, I will try to do this as sequentially as possible. I am curious to know why the government has made a definite point of stating that clearing has the meaning given in section 51A of the Environmental Protection Act 1986—that is good; there is a clear reference to the EP act—but it seems that for the next few terms, especially "environmental harm", the government is not accepting the definitions in the EP act. Why would it have that sort of inconsistency?

Mr W.R. MARMION: The answer I have been given is that the definition of "environment" for the purposes of the Mining Act —

Mr C.J. Tallentire: No—environmental harm.

Mr W.R. MARMION: I am getting to that, I hope. The definition tends to cover only those elements that may be regulated under this legislation. Adding other features could result in duplication of legislation administered by other departments, such as the Department of Aboriginal Affairs or the Department of Parks and Wildlife, through which proponents for mineral exploration or mining activities may still be required to gain approvals. However, the amendments ensure that the decision-maker also is permitted to have regard to matters other than environmental, including the social, economic and cultural attributes of the land. This ensures that if a proposed activity is likely to be unacceptable due to strong and defensible public interest reasons rather than an unacceptable impact on the environment, the decision-maker has the ability to refuse to approve the application. We might read into that that we are being careful to not move into other areas of definition that other departments might already be looking at.

Mr C.J. TALLENTIRE: That was a hint of an explanation about why the definition of "environmental harm" in the Mining Act will mean adverse ecological effects on the environment. I suppose that the government is saying that the impacts will be of an ecological nature. However, the definition of "environmental harm" in the Environmental Protection Act is much more detailed and it certainly relates to matters ecological. I again say that we should be going for consistency, especially as, just a couple of lines above this definition, the bill states that clearing has the meaning in the Environmental Protection Act 1986. Why would the definition of "environmental harm" not be the same as that found in the Environmental Protection Act? To clarify it for the minister, the Environmental Protection Act states —

> ***environmental harm*** means direct or indirect —
>
> (a) harm to the environment involving removal or destruction of, or damage to —
>
> (i) native vegetation; or
>
> (ii) the habitat of native vegetation or indigenous aquatic or terrestrial animals;

That is clearly an ecological definition. The minister's argument was that the Mining Act will stick with the ecological side of the definition because he does not want it to stray into things around pollution that could impact on humans or anything like that. But if we read on, in the Environmental Protection Act, the definition of "environmental harm" reads in part —

> (b) alteration of the environment to its detriment or degradation or potential detriment or degradation; or

(c) alteration of the environment to the detriment or potential detriment of an environmental value; or

(d) alteration of the environment of a prescribed kind;

I put it to the minister that we should have some consistency; we cannot just pick and choose on these things. If one definition in the Mining Legislation Amendment Bill is taken straight out of the Environmental Protection Act and refers back to the Environmental Protection Act, how can there be a definition of "environmental harm" five lines further down that does not relate to the Environmental Protection Act? That is an inconsistency that does not stack up.

Mr W.R. MARMION: That might be your opinion, member.

Mr C.J. Tallentire: It's not consistent, minister.

The DEPUTY SPEAKER: Allow the minister to answer, please, member for Gosnells.

Mr C.J. Tallentire interjected.

Mr W.R. MARMION: The member is losing it. Just relax; chill out.

Mr C.J. Tallentire: I am relaxed. I just want the minister to give a decent answer.

The DEPUTY SPEAKER: Member for Gosnells, allow the minister to answer.

Mr W.R. MARMION: Environmental harm is a fundamental part of the EP act. That is what the whole legislation is based on. In this bill, the term "environmental harm" is mentioned in proposed section 103AZD. We have many more clauses to go, which will be great fun. It is mentioned in only one clause so why would we have a massive definition of environmental harm that reads exactly the same as a whole act, which is about environmental harm, when it is used once and we want to make it simple? Why would we complicate it and put in a definition when the definition used in the EP act is fundamental to establishing offences? That act contains many aspects because it is fundamental, whereas this proposed section is for clearing. Proposed section 103AZD, "Duty to prevent or reduce environmental harm", is used in that particular clause. That is why the definition is as it is. It was suggested by parliamentary counsel as the best and most efficient way to word it.

Mr C.J. TALLENTIRE: By that logic, why did the minister not use the approach that he took six lines above when he said that clearing has the meaning in section 51A of the Environmental Protection Act? Why did he not say that environmental harm has the meaning in section 3A(2) of the Environmental Protection Act?

Mr W.R. MARMION: One section we are taking seriously is obviously the clearing provisions of the EP act. We want to replicate that because we said that we wanted to assess clearing under the 10 principles that apply in the EP act. That is why we have been a bit more prescriptive there rather than in the definition of "environmental harm" in that act. I think we are arguing semantics.

Mr C.J. TALLENTIRE: I object to that, minister; it is not semantics at all. I am looking for consistency. It is that sort of inconsistency that makes people think that it does not make sense. A definition is taken straight out of the Environmental Protection Act in one area, but in another area the minister wants to modify it quite substantially and, indeed, weaken the definition. The real concern is that he has in fact weakened it. He has left out significant components of what environmental harm actually is according to the Environmental Protection Act. The minister was prepared to use that as the source for the previous definition, so why is he using this weaker definition of environmental harm in this bill before us?

Mr W.R. MARMION: I would not say it is a weaker definition. The environmental harm provision in the EP act still applies. We are talking about a mining proposal under the Mining Act but it could be any proposal; it does not have to be a mining proposal. The EP act would apply. If there is serious environmental harm, the EP act would kick in and all the provisions of the definition of environmental harm the member wants in this bill will still apply under the EP act. The system works, member. All we are doing is making sure that the assessment of clearing by officers in DMP covers the same principles of clearing that apply to officers under the Environmental Protection Act. That is why it is reasonably prescriptive there. The broader concept of "environmental harm" is covered in the Environmental Protection Act—so it is covered. We have a definition fit for purpose here. It means "adverse ecological effects on the environment", which is what we try to avoid when we approve a mining proposal. We do not want it to have an adverse ecological effect on the environment, so I think the definition is fit for purpose. It is really important when we are drafting stuff that we make it fit for purpose and that we do not broaden it as a cover-all. I am therefore very comfortable with the definition.

Mr F.M. LOGAN: The minister just told the house that he decided basically to reduce the definition of what "environmental harm" means from the EP act because it is used only once in proposed section 103AZD, but that is not right, is it? That is not true.

Mr W.R. Marmion: I am sorry, I missed the question. I was talking to the Leader of the House.

Mr F.M. LOGAN: I will repeat it. The minister told the house earlier that he basically trimmed down the interpretation of "environmental harm".

Mr W.R. Marmion: I am having trouble hearing as well.

Mr F.M. LOGAN: Does the minister want me to shout? It is late at night. I do not really want to shout at the minister.

Mr W.R. Marmion: I don't want you to shout.

Mr F.M. LOGAN: The minister does not like me shouting at him?

Mr W.R. Marmion: Lower it two decibels.

Mr F.M. LOGAN: The minister told the house that he trimmed down the definition of "environmental harm" from how it is defined under the EP act to suit the conditions of this bill.

Mr W.R. Marmion: I don't think I used the word "trimmed".

Mr F.M. LOGAN: The minister reduced the definition of the term "environmental harm" to what it is in this bill compared with how the member for Gosnells referred to it in the EP act. That was on the basis, as the minister told the house, that it relates to only one clause, and that is proposed section 103AZD headed "Duty to prevent or reduce environmental harm". That is what the minister said, but that is not correct, is it, because it is referred to in proposed section 103AZA and also proposed section 103AW. "Environmental harm" is used in a series of proposed sections as a term that needs proper definition. I support what the member for Gosnells just put to the minister. If it is used extensively throughout this bill and not, as the minister told the house, only once—the minister will remember he told the house that this reflection of the EP act provisions have been brought into the bill for the purposes of administrative clarity—then make sure it is consistent. As the member for Gosnells put to the minister, if "environmental harm" is used extensively, as it is, ensure that the definition is consistent with that in the EP act. There would then be the need only to modify the definition of "environmental harm" to say that the term is the same as it is under the Environmental Protection Act. That is all that the definition in this provision needs to say.

Mr W.R. MARMION: The member is right: it is used in other proposed 103 sections. However, the advice from parliamentary counsel who drafted the bill is that "environmental harm" as per the definition is how we will define it. The member can move an amendment and suggest a better definition but I will vote against it.

Mr W.J. JOHNSTON: My colleagues can ask further questions if they like. However, I make the point that if the decision to move the arrangements from the EP act to this act was designed to cut down the paperwork required by mining companies, we on the Labor side can understand and agree to that. What we are not quite so convinced of is the need to change the definition. The bill has been sold to us on the basis that all we are doing is removing the arrangements from the Environmental Protection Act to the Mining Act, but if that were the case, we would expect it to be the same. The point that my good friend the member for Gosnells makes about the definition of "clearing" actually does then stick out when we look at the definition of "environmental harm"—that there must be some reason. The minister says to us, "Oh, parliamentary counsel drafted it this way". Of course parliamentary counsel did, following the drafting instructions of the cabinet of the Western Australian government, because that is the job of the parliamentary counsel—to take the decisions of cabinet and make them into words of the law. When the minister says, "Oh well, this was drafted by parliamentary counsel", of course it was, but that is not the real issue. The issue is why the minister is changing the definition. There is a potentially negative consequence for the mining sector because we know that the definition is not the same as the definition in the Environmental Protection Act, so when a future court has to decide whether there has been environmental harm, the one thing it cannot do is rely on decisions made in relation to the Environmental Protection Act, because the words are different. Whether this standard is higher or lower, I do not know. My colleague the member for Gosnells has suggested that it is lower, but it may well be that a court in the future may say it is a higher standard. One thing we do know, and one thing that the industry will have to cope with, is the fact that it is not the same, and when it is litigated, precedents that have been set under the current arrangement will not apply because they are not the same words. The courts will have to come up with a new interpretation of the words we have used. Without knowing why the government has chosen not to use the same words, it is very hard for us to assess whether it will achieve what it set out to achieve, because we do not know what it is that the government is setting out to achieve. It is just a strange decision for the government to do that.

Mr W.R. MARMION: I think members are all getting too tired and are not thinking. It is really clear: we do not want Department of Mines and Petroleum environmental officers doing the job of the Environmental Protection

Authority or the Department of Aboriginal Affairs and assessing things for social, economic, heritage, or cultural values. They have been deliberately excluded. We want them to look at the ecological side; that is —

Mr C.J. Tallentire interjected.

Mr W.R. MARMION: I am not taking interjections. Let me finish.

That is really quite clear. This is fit for purpose. How we define "environmental harm" falls under this particular bill, and I am very comfortable with that. The opposition has not persuaded me at all. Do members opposite really want the definition of "environmental harm" to cover social, economic, heritage and cultural features? That is what we want to exclude.

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.

House adjourned at 11.28 pm