MINING LEGISLATION AMENDMENT BILL 2013

Second Reading

Resumed from 3 April.

HON ROBIN CHAPPLE (Mining and Pastoral) [8.31 pm]: I extend my thanks to the Leader of the House for allowing me to speak on this debate today because I was away last week. The Greens (WA) oppose the Mining Legislation Amendment Bill 2013, although we will not delay it by dividing the house or anything else, but it is important to put a number of things on the record.

This bill does a number of things. Some of them are good within the context of what we have already established, and some are not so good, and we will seek clarification of them. The problem is that we are starting with a rotten egg. The mining industry in Western Australia originally had a bond system whereby mining corporations had either an insurance process or a bond to cover rehabilitation on the mine site should they default, or the bond was held until the rehabilitation work had been done. It was an incentive to do the work. This bill removes that process and establishes what I call a check-in system under which a small amount of money is paid into a general fund by each mining corporation each year. That general fund does not have anywhere near the financial capacity to do the rehabilitation that was achieved by the bond arrangement. The Department of Mines and Petroleum itself inquired into this issue, I think, about three or four years ago. That inquiry said that we should not go down this path; we should establish a much more rigorous bond system that is cost reflective. The bond system covered about 25 per cent of the reparation costs should a mining company default. At the time, the inquiry recommended we go back into a 100 per cent bond so that if there was a problem, the taxpayers did not have to foot the bill. Unfortunately, with the process in this bill, we do not have enough money in the kitty and, if a company does default, the company and the taxpayers will have to foot the bill. During the initial debate in this chamber, we asked whether the existing bonds would remain until the particular projects were finalised and whether there would be a time when the small amount of funding that goes in through the mining rehabilitation fund accrued to a point at which the government, using that fund, could indeed deal with reparation.

I turn to the mining proponents on Cockatoo Island, which have had their bond refunded. Cockatoo Island is in a disastrous state. The proponents are trying to get out of the environmental conditions that required them to rehabilitate to certain standards, and that was to infill the pit or allow the water into the pit to bring back normality and to take away the bund that existed around the pit. As I say, the proponents have been given back their bond, but even the seawall there is now overtopping, and has overtopped a couple of times recently due to surges in that location. The batter on the inside of the island has been pushed back, rather than benches being built, which is the normal process, and that establishes a 45-degree angle. We are now looking at a 75-degree angle on that slope. Just rock bolts and cement are holding it up, and that is not good mining practice. This is the sort of legacy that will be left by this process. I am genuinely concerned that into the future, the taxpayer will be left holding the baby. I will talk more about that shortly.

For quite a while there has been an abandoned mine sites registry. Abandoned mine sites are the very thing that these sorts of funds are supposed to fix. I remember many years ago, when I was serving on the Minerals Environment Liaison Committee with members of the mines department, looking at the issue of Wittenoom, which, as members know, has massive tailings dumps around the old area of Western Gorge and the old settlement. As part of the mines department process, we were looking to get funds to clean it up. We went to the Chamber of Minerals and Energy, the mines department and the Environmental Protection Authority, and there was tacit agreement between all the members of MELC that we would find the funds to clean up this mine site. It never happened because at the end of the day the Chamber of Minerals and Energy could not find its portion of funding. The state government agreed, the mines department agreed and the EPA agreed but, in the end, industry failed to provide the relevant amount of funding to enable that rehabilitation. The situation in Western Gorge is exactly the same as it was when I was there in the 1970s working with Lang Hancock. Unfortunately, we continue to talk about simplifying processes, but we are leaving the environment, the legacies and the problems behind.

Going back a little while to the end of last year, as far as I am aware, the number of companies that had opted into the process at that stage was 84. There are 1 283 tenements covered by the opt-in system, and at that time $85.4 million worth of environmental bonds had been released back to the mining corporations. At that stage, although we released $85.4 million back to the corporations, we accrued $2.2 million in the mining rehabilitation fund. We know that there are more than 17 000 abandoned mine sites in this state. The Minister for Agriculture and Food may be aware that he has a question on his desk that I will ask him over the next couple of days about a number of abandoned mine sites, or holes, that exist within 75 metres of the Leonora District High School. They are unfenced and unbunded, and are a death trap. Despite all the rhetoric from the government about the

need to resolve these problems, they are not going away. Through this very process we are minimising the amount of money available to government to do something on the ground with these systems. It will take years to build up the environmental bond or rehabilitation fund to a point at which it can actually do anything. In the meantime, whilst these amendments, which I will talk to shortly, seem to fix one of the problems—they provide more compulsion for the government to go after wayward mining corporations—it is quite clear that this process has no transparency and no reporting back to the community at large. I will deal with that a little later.

I am very, very concerned that the situation out in the real world in Western Australia is going from bad to worse. I am really concerned that the process we have put in place and which these amendments are dealing with is fundamentally flawed, not from an environmental perspective but from a fiscal perspective. The legacy will be that when we actually decide to do something real about the problems out there, we will not have the wherewithal to deal with them. There was not enough money in the bond system to fix the problems and there certainly will not be enough money to fix the 17 000 or so abandoned mine sites out there. Under the old bond system there was a way of causing mining companies a degree of grief so that they would do the job. Mining corporations would get bond relief if they started rehabilitation works during the life of the mine. But because there is now no ability for bond relief because the bond does not exist, most companies will move those economics to the end of a mine's life when it is less economic for them to do the work. The best time for people to do rehab is as they go. I remember being part of the Golden Gecko technical panel and assessing corporations that were doing rehabilitation work. I cannot remember the gentleman's name, but there was one prospector who was doing a sterling job rehabilitating as he went. His seed banks were so good because he was rehabilitating as he went that he was getting a better outcome than just about anybody else. He had virtually no overheads and mobilised his plant while he was there. It was a great outcome. Unfortunately, the bean counters in the mining industry who drive a lot of the mining investment and a lot of the dollars into the industry do not see it in those terms; they look at it in terms of pure economics in the here and now. I really wanted to lay it on the line in terms of our fundamental opposition to the fund that we are establishing through the mining rehabilitation fund. It sounds good, but it is a pup—that is not a reference to Mr Palmer and his political party!

We had a briefing with Neil Van Drunen, policy adviser to Hon Bill Marmion, Minister for Mines and Petroleum, for which I thank the minister. Basically, the same line that appears in the briefing notes and the explanatory memorandum to this bill was espoused. The Department of Mines and Petroleum explained that proposed section 9A, to be inserted by clause 11, will allow it to recover funds or to fix abandoned mines to avoid further environmental problems and then to recover funds. That is good, but I really want to know how the department is going to do that. If the current rehabilitation, management and monitoring systems operating within the Department of Mines and Petroleum are anything to go by, I seriously doubt whether it has either the capacity or the desire to tackle wayward mines. We asked some questions today on the spills that have been occurring at the Buru fracking proposals in the Kimberley. At this site, concrete drill cuttings, drill fluid and cement are being pumped out of ponds and across the environment. The Department of Mines and Petroleum does not even know about that because it has not been there. When the Environmental Protection Authority was asked whether it could do anything about it, it said no because it is the responsibility of the mines department. This is the same department that will be administering these funds and trying to manage this process—it cannot manage what it has at the moment. I am seriously concerned about the process. Another recent issue concerning mines department management was in relation to the unfortunate death that occurred at the Sir Major decline. It was virtually two days before the department could get there to administer the issue. The body was not supposed to be moved until representatives from the Department of Mines and Petroleum got there, and it took two days for them to get there. The mines department is failing dramatically in my view.

I have been involved in the mining industry. I was with BHP and with Hancock Prospecting back in the 70s. I suggest that by the early 90s we had just about got it right and the system was actually working. Some of the controls put in place and the administration by that department were really good, but we seem to have regressed quite dramatically since then. A person can step off any of the gazetted roads in the goldfields, such as the Goldfields Highway from Kalgoorlie to Menzies, and find an abandoned pit. There are open pits with no fencing and no bunding just metres from the road. This was supposed to be fixed a number of years ago. Under Hon Norman Moore, I was part of a committee that produced a report in 1994 into the goldfields and aspects of tails dams and abandoned pits. We did a review of the 1986 Playford report and put forward a number of recommendations, some of which were taken up by the minister in 1995, but most of the major ones, especially in relation to abandoned mine sites and the hazards of tails dams, were not dealt with. We can again look at some issues around the place. There are contractors on Cockatoo Island who seem to have little or no oversight by either Gibson Metals or the mines department. Their mobile crushers are spewing litres and litres of diesel and hydraulic fluid underneath their plant on a daily basis, and there is no management of them. It is of major concern to me that this sort of thing is happening. The new Tropicana mine is supposed to have a state-of-the-art tails dam, but it is leaking weak acid-dissolved cyanide into the groundwater. Those things are not being

checked. If none of these projects is being checked or monitored, how is this reduced funding capacity going to help fix any of these problems?

I will return to the essence of the bill and some of the things that I want to ask the minister representing the Minister for Mines and Petroleum to deal with. The transparency of the approval and assessment documents is one issue that I would really like to have clarified. Quite clearly, there is to be a situation in which only the director general releases information, subject to an internal policy that would appear to be no quicker than a freedom of information request. What is the administrative process of that internal policy? Will we be made aware of it during this debate, or will we be left in a situation in which, as we saw from the answers to questions asked today, the guidelines, licence conditions and issues around them are described as being commercial-in-confidence? We need to know whether this process will be open and transparent, which it is intended to be, because there is a lack of clarity within the legislation, given that it will be at the discretion of the director general.

There are a number of proposals that do not appear within the amendments. During the first half of 2014, will the government attempt to regulate the Mining Act to deal with environmental problems? There is no regulation in the act at the moment to deal with those issues. As we know from the 1992 memorandum of understanding between the Environmental Protection Authority and the Department of Mines and Petroleum, if the mines department says it is okay, the EPA does not bother. We need to know how we will deal with those environmental problems. Are those processes going to be secretive or in the public domain? The Mining Act can deal only with ground disturbance and therefore cannot deal with environmental problems, so I need to get that clarified because clearly the Mining Act does not allow for that.

The off-site issue is another matter. Again, there was the recent situation with Buru Energy sending its water off its site. The EPA said that it could not do anything because it had not been advised by the Department of Mines and Petroleum about the problem, and the mines department said that because it was off-site and off the tenement, it was not the department's responsibility. We have to make sure that there is an interlocutory mechanism within this process to enable the EPA to deal with some of these things.

This permeates into all interpretations at every level, and it is our view that the environmental part of these proposals should have come through the Environmental Protection Act, not through the Mining Act. As I have already said, the EPA has handballed mine closure to the DMP, which in turn cannot regulate anything off-tenement. Many of the tailings dams around Kalgoorlie are leaking, and there is a really weird scenario in which they are not supposed to leak, but because the groundwater is hypersaline and therefore of no value, nothing ever happens when they leak. The watertable around Kalgoorlie has gone from around 19 metres to two metres in many places. If one goes into the basement of the Australia Hotel, one could mine salt, the watertable is so high; but it cannot go back to the Department of Mines and Petroleum, because it is off-site, and therefore we have a major problem.

Also, interestingly enough, if someone wanted to do some mining adjacent to one of these giant tailings dams and found out that they were getting 10 parts per million in their water column, they could be had up for gold stealing, because that water, even though it is not supposed to be there, does not belong to the Department of Mines and Petroleum because the mine has no aspect outside the tenement, and because the water actually came from someone else's tenement and is carrying gold, they could be had up for gold stealing. There are so many problems that need to be resolved, and this tin-pot method of removing the bond system from major corporations and replacing it with this chuck-in system that will never, ever come up with the right amount of dollars to do the work that needs to be done now, will never work. I have no problem with this process, but we need to retain the bond system at the same time. Without the bond system, this money will just be consumed as a replacement for the bond system.

Some amendments will probably need to be made to this legislation. I have not proposed to move them, and I will not move them, but I will run them past the minister, because I think this is the basic problem. Criminal penalties are needed for vacating a mining tenement; an offence with a penalty attached for being in contravention of, or having not achieved, the mine closure plan. A registered mine manager must remain on-site until the mine closure plan is completed. Notwithstanding all that is covered in this legislation and in the explanatory memorandum, at the moment, if someone wants to walk away, they can walk away. Mining companies come and go; a small to medium mining company can walk off-site, there is a furore, they are told they will never mine in Western Australia again, and the guy leaves because he does not want to mine here ever again. Either that, or he just changes his corporate structure, or goes to work for a new mining company. I think that any director or mine manager associated with a defaulting mine should not be allowed to be a director or mine manager of any future mine, and therein lies a problem, because we know that at one particular mine that is being looked at by the Department of Mines and Petroleum and the Department of Environment Regulation, the mine manager has repeated notes to file with the department for having failed on numerous occasions to deal with issues; yet he is still out there, operating as a mine manager, when he should not be.

That will do me on this issue, but notwithstanding the political agenda, I would like the department and the minister's advisers to actually understand the fiscal risk to this state into the future. If we are not worried about abandoned mine sites and if we do not care about the future, then yes, we should follow this process. I hate to say it, but I think that at some stage in the future we might be going back over the debate on the original legislation and concerning ourselves with the economic plight we have got ourselves into.

HON KEN BASTON (Mining and Pastoral — Minister for Agriculture and Food) [8.59] — in reply: I would like first to make a few comments on the points made by Hon Robin Chapple. His speech was very broad, and this bill is fairly narrow; it actually is only about amendments to two acts—the Mining Act 1978 and the Mining Rehabilitation Fund Act 2012.

Hon Robin Chapple: I was involved at length in that debate.

Hon KEN BASTON: I can imagine the honourable member was!

This reform legislation was very much part of Hon Norman Moore's desire and will to recognise the value of mining in this state and to help and encourage the development of further mining. I will quickly reiterate the key elements of the Mining Legislation Amendment Bill 2013 that were proposed in the second reading speech. The proposed amendments fall within four discrete areas. I will read them out for the benefit of members again: firstly, facilitating environmental data release; secondly, simplifying environmental approval authorisation process; thirdly, streamlining issues of notices under the Mining Rehabilitation Fund Act; and fourthly, enabling recovery of MRF money, which was something Hon Robin Chapple very much referred to. From memory that is clause 11.

Hon Robin Chapple: Can I by way of interjection ask how you are going to enable that data release, because that certainly is a concern. Is it going to be easier than an FOI application? Is it going to be constrained or have any commercial aspects to it? They talked about its release. I want to know how it will be released and in what timely manner.

Hon KEN BASTON: As I understand it, from reading through the bill, it will be released online. If there is any commercial-in-confidence concern, obviously those documents will not be released.

Hon Robin Chapple: But the whole agreement?

Hon KEN BASTON: The whole idea is that it be more accountable and more transparent; it is a step in the right direction.

Hon Robin Chapple: Minister, again by way of interjection, if I may. We received a response by way of a question tonight that the environmental reports about a tenement in the Kimberley cannot be released because the whole thing is commercial-in-confidence. If we are going to run that line every time we actually have an environmental condition or an environmental responsibility, that the whole thing is commercial-in-confidence, people aren't going to be seeing them.

Hon KEN BASTON: Yes, I understand where the member is coming from.

I will move on to the mining rehabilitation fund; it has been in a phase from 2013. In 2014, it will actually be the law to collect that levy. In 2013–14, there was the opportunity—given it was a voluntary period—whereby people started paying the levy, and the unconditional performance bonds were then returned to the mining company. The whole thing is about releasing that capital to expand in the mine. That, of course, produces more wealth and produces more people in the resource sector to receive a greater return. In February, some $231 million was returned in bonds to the companies from that early levy. Also, in February, some $5 million was collected in voluntary payments.

The mining rehabilitation fund will reform the way that government manages environmental security in the mining industry. Hon Robin Chapple mentioned in his speech that the bonds covered only 20 per cent —

Hon Robin Chapple: Twenty five.

Hon KEN BASTON: Yes, 25 per cent. He was suggesting 100 per cent.

Hon Robin Chapple: That was actually the recommendation from the department.

Hon KEN BASTON: Basically, we have moved to a situation whereby we can use the levy to move in and rehabilitate a mine. The last person who has the title to a mine is responsible. Under this bill, it allows the person to reclaim that money or to have greater access —

Hon Robin Chapple: They don't have the money to do it.

Hon KEN BASTON: In that case, people will have to go down the legal path. However, one of the things I did pick up on is that the interest from this money can be used for legacy mines. Hon Robin Chapple will have a question tomorrow about it, but he mentioned mine sites situated close to roads. I was talking to somebody only the other day about that, and it is the case. If we go from places between Mt Magnet and Cue, which he would be very familiar with, we certainly would not wander off the road very far in the evening because there are mine shafts everywhere. It will take time, because it was another era of mining, and we cannot expect that to just happen overnight; that is, to rehabilitate and fence those mines off because I do not even know the number of mines there.

Hon Kate Doust asked some questions; namely, when will the regulations referred to in the Mining Legislation Amendment Bill be done? Minister Marmion stated in 2013, in the other house, that his expectation was that the regulations will be in place in the first half of 2014. Of course, given the time that this bill has taken to progress through Parliament, that time period has almost elapsed. Given the delay, we expect those regulations to come in in the second half of 2014. Should the bill be passed in good time, that is when those regulations should occur. The other question Hon Kate Doust raised was: what will happen if the regulations are not done? The primary aim of the regulations is to authorise the Department of Mines and Petroleum to make various types of documents publicly available. The legislation as it stands now gives the department, without the regulation, some restrictive capacity—as I understand it—to make documents available. The government and stakeholders all wish to increase the transparency and widen the range of documents that are available to the public. The department's capacity to do so will remain restricted until those regulations are able to be made.

Hon Kate Doust asked a further question about how many mining tenements there were as well as how many mining applications. There are approximately 26 000 live mining tenements. Of these, as of 4 April 2014, some 22 223 have mining obligations to the mining rehabilitation fund. Over the past four years, the Department of Mines and Petroleum has received the following on average number of different classes of applications: 2 463 programs of works; 359 mining proposals with mining leases, and mining proposals with mine closure plans; 184 mine closure plans; and 707 annual environmental reports.

The other question Hon Kate Doust asked was why these documents will be identified in regulations rather than directly in the act. The regulations will specify particular instances of information submitted in connection with the Mining Act that the department has authorised to make public. It is appropriate to identify types of information that can be released in the regulations. This is because over time the description of types of reports or other information may change. Obviously, it is easier to have a regulation change it rather than to bring a bill into Parliament. Also, regulations authorising data release do not impose further obligations on tenement holders or impose costs of responsibility on anybody. They simply allow information that has already been collected to be made public. Accordingly, it is appropriate to the scope of the authorisation to be set out in regulation rather than an act of Parliament.

Hon Kate Doust asked: how does the MRF act ensure the fund will only be used for rehabilitation? The MRF act establishes the mining rehabilitation fund as a special purpose account under the Financial Management Act. It is subject to strict reporting and audit requirements. Section 8 of the MRF act refers to money being paid out of the fund. It deals with two components of the fund; firstly, money that is paid in by way of levies or the principal amount; and secondly, interest earned on the principal amount. In effect, the money that is interest earned on the principal amount can be used to fund the rehabilitation of historical as well as legacy and abandoned mines, which I have already touched on.

It can also be used to fund programs and information services to do with mine site rehabilitation and to pay for administering the fund and administering and enforcing the act. The principal amount can be used only to fund the rehabilitation of abandoned mines in relation to which a levy has been, or should have been, paid into the fund. The mining rehabilitation fund cannot be used for any other purpose.

The last question Hon Kate Doust asked was: when will the new environmental reform be introduced? The first tranche is proposed to be introduced in the other place after the winter recess this year. Continuing this important reform is a priority of this government.

Hon Robin Chapple raised some points. The Minister for Mines and Petroleum has given a commitment to introduce legislation to the other place after the winter break. The commitment to protect commercially sensitive information is well established in the Department of Mines and Petroleum. In 2011, the Department of Mines and Petroleum published the "Strategy Paper: Transparency in Environmental Regulatory Decision Making", which remains DMP's policy.

Hon Robin Chapple: In that case, why would the department not release the environmental conditions earlier today? They were referred to me as being commercial in confidence.

Hon KEN BASTON: I presume they were commercial in confidence.

Hon Robin Chapple: That is exactly the point. If you are going to have environmental conditions and they are actually going to be commercial in confidence, quite clearly that makes a mockery of the position that the minister has put.

The ACTING PRESIDENT (Hon Liz Behjat): Member, there is some latitude with interjections, but I think you have already made your second reading contribution.

Hon KEN BASTON: I was interested to hear Hon Robin Chapple talk about water on sites in Kalgoorlie where, if a shaft was dug, the water came in from another mine. I thought it was rather interesting. It could end up being mine stealing when the water carries gold in it. It is a very interesting case. I guess the good thing about gold is that it has a DNA, and a company would be able to say whether it was their gold or the other mine's gold.

Hon Robin Chapple interjected.

Hon KEN BASTON: Yes. I found that quite interesting.

This is a small amendment bill; it has two parts. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Ken Baston (Minister for Agriculture and Food)**, and passed.