

DUTIES AMENDMENT (FARM-IN AGREEMENTS) BILL 2022

Committee

Resumed from 25 October. The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 8: Chapter 2 Part 5 Division 9 inserted —

Progress was reported after the clause had been partly considered.

Hon STEPHEN DAWSON: When we finished the debate yesterday, a couple of questions were left unanswered. I want to place those answers on the record. Hon Dr Steve Thomas referred to the definition of an exploration requirement under proposed section 91N(1) and asked whether proposed paragraphs (a) and (b) were separated by either an “and” or an “or”. The lead-in paragraph at proposed subsection (1) states that an exploration requirement is a requirement to do either or both of the things listed in proposed paragraphs (a) and (b). Effectively, both “and” and “or” can be read between proposed paragraphs (a) and (b).

Hon Dr Steve Thomas: So they do not put in “and” or “or”, but leave it blank?

Hon STEPHEN DAWSON: Yes. The member also asked whether under proposed section 91N(1) an exploration requirement will permit someone to provide a service rather than simply pay an amount. The exploration amount may be expressed as a non-monetary obligation to be fulfilled by the farmee to carry out exploration rather than spending an amount of money. For example, an agreement may require the farmee to achieve an identified outcome or milestone in order to earn the interest in the tenement, such as drilling to a certain depth or producing a bankable feasibility study. Section 13 of the act does not apply to this type of agreement because it requires the farmee to spend the exploration amount specified in the agreement. This, too, is inconsistent with the commissioner’s assessing practice, which has been to allow the concession in these circumstances.

Hon Dr STEVE THOMAS: I thank the minister. When I have a chance to read the advisory documents, that will also provide a further explanation of the obligation, or potential splitting, of an exploration amount and exploration activity. I appreciate the minister refining that definition.

I will continue on proposed section 91N. I am sorry, but this is complicated. Proposed section 91N(2) states —

In subsection (1)(a) and (b), references to exploration are to —

This goes back to the definition of a “farm-in agreement” under proposed section 91M, which is fine. Proposed section 91N(2)(b) states —

in relation to exploration of a relevant derivative mining right, exploration that consists only of either or both of the following —

- (i) mining that is authorised by the relevant derivative mining right;

If we read the legislation from proposed section 91N(2), it states that references to exploration can include references to mining. I thought that the act of mining itself was precluded. That might be the just the nomenclature that is required by the legal people, but it did not appear to make sense to me when I read it.

Hon STEPHEN DAWSON: I am told that the definition of “mining” is broad and includes exploration on a mining tenement.

Hon Dr STEVE THOMAS: Okay. This bill is a complicated process. Is there a possibility that at some point someone will read this when it is an act and believe that it includes mining? I wonder why “exploration” is not specified. I accept that mining could include exploration as a broad term, but the point of the bill is that it is focused on exploration and precludes the act of mining. In other parts of the bill we talk about mining being precluded from the duty concession for farm-in agreements. Perhaps this is asking for an opinion, but could it be interpreted in that way or is there a definition in an act that would preclude that?

Hon STEPHEN DAWSON: The act will need to be read as a whole. It is clear in other provisions that the concession is applicable only to exploration. If the member looks at the preliminary words in proposed section 91N(2)(b), he will see that it is constrained by the reference to exploration. The member will see that it says exploration, and that is the limitation.

Hon Dr STEVE THOMAS: Legislation often appears wordy or difficult, but I will take the minister’s word for that. I want to jump to proposed section 91N(6). Proposed subsection (6) is the primary provision—correct me if I am wrong—about the administration of administrative costs. Proposed section 91N(6) states —

The Commissioner may, in relation to an agreement, allow expenditure on administrative costs that would not otherwise be regarded as expenditure on exploration for the purposes of this section to be so regarded, subject to any limits or other conditions imposed by the Commissioner.

Again, the document the minister tabled yesterday has more detail on that, which is good. Can the minister give us a view on what the limits or conditions imposed on the administrative costs might be? I will come back to the 20 per cent rule, which is in the documentation in the commissioner's assessing practice guide.

Hon STEPHEN DAWSON: The commissioner will generally accept costs as exploration costs if they can be included for the purposes of determining whether the expenditure commitment under the Mining Act 1978 is met. On that basis, the commissioner will consider that the administration costs are for exploration expenditure, provided they do not exceed 20 per cent of the exploration amount. The commissioner's assessing practice will be published to provide further guidance on how the discretion will be exercised. RevenueWA has provided the draft practice to industry bodies for comment before it is finalised.

Hon Dr STEVE THOMAS: I thank the minister. I thought that would be the case. The draft *Commissioner's practice DA 54.0* itemises the 20 per cent interest. Interestingly, that seems to indicate that if the commissioner is satisfied that the total spend on exploration, including those administration costs, is the exploration amount or more, the commissioner will allow up to 20 per cent of that exploration amount to be spent on administration. If the administration costs are greater than 20 per cent—I think this is the right thing to do—and the farmee has spent at least 80 per cent of the exploration amount, not including the administrative costs, I presume that the commissioner's practice assumes that 20 per cent was spent on administration costs, but if the farmee spent more than that, the farmee would get only 20 per cent of the original farm-in agreement. Additional expenditure does not necessarily mean that the commissioner will tick off on the additional administration costs. That is how I read that particular advice. Hopefully, that is right. It is actually a sensible outcome. I want to get that on the record without necessarily having a reply from the minister.

How was the 20 per cent amount picked? Is that an average amount that we have been looking at? What this provision does sounds pretty reasonable. Twenty per cent of a \$1 000 farm-in agreement is not much, but 20 per cent of a \$5 million agreement is pretty significant. Was a sliding scale looked at and thought to be too difficult to use?

Hon STEPHEN DAWSON: The 20 per cent amount is what the Department of Mines, Industry Regulation and Safety currently accepts under the Mining Act. I go back to the member's earlier comments and remind him again that the publication is still a draft and may not be implemented as written.

Hon Dr Steve Thomas: That is fair enough too, sorry.

The DEPUTY CHAIR: Leader of the Opposition.

Hon Dr STEVE THOMAS: I have done the wrong thing and spoken while sitting down. Yes, it is absolutely a draft, but having read it, it looks like a reasonable outcome. That has dealt with proposed section 91N. Unfortunately, a lot of things here are quite complicated. I will jump to proposed section 91P(1) on page 17 that states —

Nominal duty is chargeable on a concessional farm-in transaction if there is not, and will not be, any consideration for the concessional farm-in transaction.

I presume that means not that there is not an exploration amount, but as long as there is no charge for the actual farm-in agreement itself then—we are not talking about what has to be spent, but actually the farm-in agreement stuff.

Hon Stephen Dawson: By way of interjection, the answer is yes.

Hon Dr STEVE THOMAS: I will tick that one off, thank you very much. I move to proposed section 91P(3) —

Nominal duty is chargeable on all of the concessional farm-in transactions taken together as if they were a single dutiable transaction.

Apart from being common sense, it seems to push all potential farm-in agreements into a single farm-in agreement. As we debated yesterday—it feels like a week ago—a farmer can have multiple farm-in agreements. I assume this means that it does not matter how many multiple farm-in agreements a farmer might put in place, they are looking at one \$20 fee for that process. If that is true, would it not be simpler to have a general recommendation that a person roll in as many farm-in agreements as they possibly can into the one agreement, or does that make the paperwork too complicated?

Hon STEPHEN DAWSON: One overall amount of money is paid. A farm-in agreement is the overall document. It might have different transactions on numerous stages, but there is only one \$20 payment.

Hon Dr STEVE THOMAS: That makes sense. Does that not apply then to separate farm-in agreements that one farmer might have with a number of farmees? It has to be in the same contract.

Hon STEPHEN DAWSON: It has to be in the same farm-in agreement.

Hon Dr STEVE THOMAS: I refer to proposed section 91P(5) —

Duty is not chargeable on a concessional farm-in transaction if —

- (a) apart from this subsection, the concessional farm-in transaction would be chargeable with nominal duty;

Proposed subsection (5) seems to indicate that duty is not chargeable if the concessional farm-in transaction is be chargeable with a nominal duty. It is odd that it reads like it is not chargeable on the one hand, but it has a nominal charge on the other. It might again be a wording issue for the lawyers.

Hon STEPHEN DAWSON: Proposed subsection (5) ensures that nominal duty does not also apply to the concessional farm-in transactions for which there is no consideration if the farm-in agreement contains other farm-in transactions to which the general rate of duty applies.

Hon Dr STEVE THOMAS: I might be generous to the minister and let him get through clause 8 today. I jump to page 29, proposed section 91U. I am interested in the interaction between farm-in transactions and prospecting licences. Prospecting is an interesting part of the component. Can the minister start with a very brief overview of the interaction between prospecting licences and how they are caught under the farm-in transactions legislation?

Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson (Minister for Emergency Services).