DUTIES AMENDMENT (FARM-IN AGREEMENTS) BILL 2022

Second Reading

Resumed from 21 September.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [2.08 pm]: Before there is a mass exit for the doors as we commence debate on the Duties Amendment (Farm-in Agreements) Bill, I am sure everybody will be riveted to have a discussion about dutiable amounts in the mining industry. I will start my contribution by saying that the opposition supports the bill; therefore, any need for members to fill the chamber should be done so only on the basis of an interest in the Duties Act 2008 and its application in the mining industry because we are not anticipating a great deal of dissent in the house today. I am pleased to see that nobody has exited! Everybody must be waiting with bated breath for a very in-depth debate on dutiable activities.

As I said, the opposition will support the bill. We can normally tell the complexity of legislation in that the minister's second reading speech was effectively two pages long and it oversighted the intent of the bill. The explanatory memorandum and the bill itself are far weightier, meatier documents, which goes to the complications that occur around duties, as they occur around taxation. What seems to be a simple process at the start of the day is usually a remarkably complex one by the time we wend our way through all the various parts of the legislation. It certainly is the case with this particular thing. That is, obviously, across the board. Those who have tried to deal with the federal tax act will know that it started as a fairly simple piece of legislation and now occupies the wall of a room. As every opportunity for somebody to get around the tax act presents itself, the tax act has to be amended to make allowances for those particular intents. The same is often the case for duties et cetera. It is not surprising that what seems like a fairly simple process ends up being far more complex by the time we get to its application. That is certainly the case today.

Before I start on the detail of the bill, I want to explain to the house and to members why it is so important that we get exploration, in particular, right in the state of Western Australia. I will refer to a few documents, and the minister will be pleased to know that I have a chart that I am happy to lend him. We can have a look in a couple of places for the importance of exploration in Western Australia and how it relates to the entire country. One of the best references is the Australian Bureau of Statistics, which releases quarterly statistics. It releases a document called *Mineral and petroleum exploration, Australia: Quarterly statistics on mineral and petroleum exploration expenditure by private organisations in Australia*. It is quite a useful document because we get to pick up trends over time. I have the most recent version of that today, with the reference period to June 2022. That is the final quarter of the 2021–22 financial year, and the report was released on 29 August. Obviously, a new one is probably due in the not-too-distant future, but this was the most recent version that I could come up with.

It is pleasing to see that mineral exploration continues to rise significantly. The Australian Bureau of Statistics is saying that mineral exploration across the nation hit over $1 billion in the June 2022 quarter. I think that is the first time that the quarterly exploration of minerals and petroleum got over the $1 billion mark; it is certainly the first time I can remember this in the decade or so that I have been watching these reports. That is a pretty significant achievement. We will talk about this quite frequently.

Effectively, the two versions of exploration are brownfields investigations, in which companies investigate places where they know deposits already exist and they are going back to look at them, and greenfields investigations, in which the companies are out there looking for it and trying to find the next Lasseter's Reef. Probably some members in the chamber are too young to know what that is, but I am sure some will—before we get to the Scrooge McDuck argument again. In the most recent quarter, existing deposit exploration rose 24.5 per cent, and new deposit exploration rose 20.2 per cent. It is the case that it is often easier to find more resources close to or as a part of the resource that a company is already exploring.

Members are probably also interested to know the breakdown of what that exploration is going into. Gold still leads the pack, with a bit over $400 million of the somewhat over $1 billion of exploration that occurred in the last financial quarter. Hundreds of years later, we are still primarily chasing gold, despite the fact that many other minerals provide, overall, a greater injection into the economy. Base metals are at about $250 million. Iron ore is at about $200 million. Interestingly, coal is down, hitting the roughly $70 million mark. All others combined are at about $120 million to $130 million, out of the $1 billion in that quarter. Members will note that gold exploration is still very high, but bear in mind that that is an Australia-wide measure.

Another interesting measure is the metres drilled across the board for all minerals and petroleum. If we go back over recent years, we hit a peak not in the last quarter but at the end of 2021, when we hit 3.5 million metres drilled for exploration. We have actually declined a bit; we have probably declined about half a million metres. There has been some little drilling correction, but overall we would have to say that it remains quite promising despite a little reduction. When we see the breakdown, most of that reduction can probably be attributed to petroleum as opposed to other minerals.

The same Australian Bureau of Statistics report indicates that petroleum exploration investment has declined significantly. Eight years ago, when petroleum was really booming, investment in exploration hit as high as nearly $1.6 billion in one quarter. The current investment, seasonally adjusted, looks more like $225 million, so that has been a significant decline in oil and gas exploration. We even have a breakdown of that. We can break that down into onshore and offshore, but it does not matter how we break it down; both have significantly declined. Offshore exploration, in which expenditure has traditionally been higher, was at around $1.1 billion in June 2014 and has declined now to probably $125 million. Onshore exploration has not had quite the same level of decline, but it has still gone down from about $450 million to about $150 million. It has declined and is about a third of what it was. Whereas, offshore exploration is now one-tenth of what it was when it hit $1.1 billion; it has reduced by a factor of 10.

What does that mean in relevant terms? I think it reflects the great expansion of exploration when oil, in particular, and natural gas were expanding in those early years. Some pretty major oil and gas fields were discovered. We think of the ones that sit up north of Western Australia, such as Wheatstone and Gorgon. Those major finds were major investments in offshore exploration, and we have seen something of a decline in offshore exploration.

As a little aside to the argument, we should be concerned by the significant decline in gas exploration over the last decade or so. Admittedly, it is a tougher marketplace, and the financial situation has differed, but I remain convinced that as the world shifts from coal-fired generation—I will resist the urge to talk about Western Australian coal-fired generation because it does not relate to the bill today—gas will continue to play an important role. I repeat what I have said in the chamber before about the transition that Western Australia faces: access to a good source of natural gas for power generation will be critical. I think natural gas generation should be expanded to pick up baseload as we transition out of coal. As I have said before, I think I would be building 200 to 300 megawatts of gas-fired generation on the Dampier pipeline somewhere in the northern part of Perth, on the edge of the metropolitan region, just to manage the transition. Unfortunately, I think the government will struggle with this over the next seven to eight years as it tries to transition. That exploration remains important because the additional gas load is only delivered over time, particularly on the international market with additional exploration. Western Australia is lucky; in terms of its own generation, it has a domestic reservation policy: here is an admission for those members who were not around at the time, which is most members in the chamber. That reservation policy was introduced by the Carpenter government—in fact, by Alan Carpenter himself. I remember the debate when I was down in the place that shall not be named—but below—and that debate was a really interesting one. Unfortunately for us, the then opposition, there was an opposition to that reservation policy. From our perspective, there was a lack of support.

Hon Sue Ellery: Wrong side of history again!

Hon Dr STEVE THOMAS: Well, on occasions, I would say, minister—on occasions. I am always happy to say that if we did not get it right on a particular occasion, I am usually pretty good at coming in and saying that perhaps we should have looked at that differently. That was one of those occasions for which I think wholesome support would have been a better solution.

Well done to Alan Carpenter on that particular policy. It might have been before he was Premier, when he was minister. I do not remember the exact time frame of that. He went from resources minister to Premier and would have been in that role around that time. I have not gone back to read through *Hansard* to work that out, but it was very much the case that that put Western Australia in a good position in terms of gas reservation. It gave an opportunity to those smaller companies that were not entirely focused on export to invest and look at the domestic consumption of gas. As I say, I would be building 200 to 300 megawatts of gas north of Perth, and my understanding is that in the current domestic reservation policy there is sufficient reserve in the Dampier to Bunbury gas pipeline to account for that. Members might have a different view of that, and one day that would be an interesting debate for the house. I think there is sufficient gas in that pipeline, but that will maintain only in the longer term.

Gas, as a baseload power, through the transition to renewables—I accept and agree with the government and the Minister for Energy that that will take place; we are arguing over time frame, not intent—will continue to play a baseload role for some decades to come. We are probably looking at 30 to 40 years of gas as a base as we transition out of coal in particular, and I do not think that we will transition out of coal at the rate the government has set. The Minister for Energy has said that we will not be building any more fossil fuel power stations, and I think that will cause a huge hiccup that will mean we will have no choice but to continue coal generation longer than the 2029–30 deadline that the government has set for itself. I think that because ultimately until storage is put in place, the government has no capacity to deliver the transition. We have to get storage right, but if the storage is not right, the government is betting on battery production and pumped hydro. Beyond that, the government is betting that the commercial marketplace and the private sector will come up with a solution for storage by 2029.

In fact, that is the government's wager on its transition. It is summed up in that particular wager; that is, the government is betting that someone will come up with the technology to manage storage by 2029 and that will allow the government that full transition into renewables. I personally would be hedging my bet on that because I think

it is immensely optimistic. At one end we have a group of people saying that fourth-generation nuclear plants will be around and commercially viable in the same period. I have been hearing that argument for two decades as well. I am always open to science progressing, but I think it is reasonably unlikely that we will see that happen any faster than any of the others. Whilst we are out there dreaming, let us dream about nuclear fusion, and suddenly the world has energy forever! But that is a different argument. I think that the storage issue is going to cause Labor a great deal of grief in trying to get that right in the years 2027–29. If an additional baseload is not looked at in some way, shape or form, there is going to be an issue. However, that is my warning to the government. The government has six or so years before it becomes a crisis, so I suspect that we will be having these debates quite regularly.

I will bring us back to why exploration is important, more specifically, in Western Australia. I have a couple of good reference documents here. The most recent, obvious figures that I could find—some others might be able to get more recent figures—were the full financial 2020 year figures, and I will read in a couple of these. In 2020, the total mineral exploration expenditure for the calendar year was $2.7928 billion. Bear in mind that that was in 2020, and, as we said before, exploration in the June quarter of this year alone was $1 billion. So in 2020, it was roughly $2.8 billion—nearly $3 billion—on exploration, and $1 billion over this year. If we maintain that quarterly average, it will be even higher again. That is a significant amount of exploration. Anyone would think we were in a mining boom!

Hon Kyle McGinn: I have to ask —

Hon Dr STEVE THOMAS: Wait for it, Hon Kyle McGinn. We will get there.

Hon Kyle McGinn: I have to ask: do you know what a mining boom looked like in 2011?

Hon Dr STEVE THOMAS: Yes.

Hon Kyle McGinn: Did you know what that looked like? Because I think the squandering that was going on then was pretty remarkable.

Hon Dr STEVE THOMAS: I have already tabled graphs of the mining booms of 2003–08, 2008–14 and now 2019–22 and ongoing. So, yes, I was around for all that. I could table a chart again, if the member likes, in case he missed the last ones, but I might table a different one in a minute.

We were talking before about the brownfield and greenfield explorations. Of the $2.8 billion in 2020, $1.8 billion of it was brownfield exploration and $950 million of it was greenfield exploration. About one-third was new exploration in areas where we do not know what the resources are and two-thirds was looking around the resources we currently have, including reprocessing some played-out areas as well. It has been a fact for some time that there is more exploration, and ultimately often more mining, around areas that we already know are productive and producing, rather than anything else. Of those, if we break down the exploration expenditure by commodity: gold was $1.3 billion, copper was $333 million, iron ore was $395 million and coal was $289 million. This document then breaks it down to the much smaller commodities after that. The exploration spend on the minor commodities—this is interesting—such as lithium, manganese, molybdenum, phosphate, tin, tungsten and vanadium, was $193.8 million. I suspect that spending $200 million on exploration 10 years ago for those minor and rare earth commodities would be almost non-existent. It would be a fraction of the cost. Therefore, obviously, we are seeing a shift in exploration as we deal with a shift in the economy and the marketplace in which rare earth has suddenly become a particular target.

Obviously, we still chase gold. There is something about human beings chasing gold that just seems to be immutable. When we look at everything else, the big producers of iron ore and coal are on the list, but I think we will see an increasing focus on those rare earth minerals over time. Lithium is probably the most desirable mineral out there; it is the sexy one right now. But, ultimately, I think we will see a shift away from that, too.

Western Australia is lucky in that it has some of the best lithium resources in the world. It certainly has, right now, the best lithium mine in the world, down in Greenbushes, in my patch. It is by far the best resource in terms of turning it over. But there are a number of other potential lithium sources around Western Australia and around the country. They will be important, I think, for the next couple of decades. Bear in mind that we talked before about storage being the major detriment to the government achieving its renewable energy agenda because storage is critical. There is an enormous demand for lithium. There is currently not enough lithium being mined to meet anywhere near the demand there will be as economies shift into renewables and major battery storage. Right now, it is still an immensely complex and expensive process. To give members an example, there is an issue around lithium-based batteries for electric cars. Firstly, their life span is limited; we are probably looking at 10 to 12 years on average. They are also very expensive. When people buy electric cars, they strike a couple of issues. The battery in that $90 000 car is probably worth $23 000 or $25 000, depending on who they buy it from. At the end of 10 years, as people go to resell their car, they will immediately have a $23 000 replacement cost if the cost of the battery does not come down. That will become an issue if we do not become more efficient with mining lithium, if we stay with lithium. The reason is that a lithium battery depletes over time—more so than a lot of other batteries. With the old rechargeable lead batteries, we used to be able to hold them between finger and thumb and a colour chart

would tell us how much charge there was left in it. We would start at 100 per cent, but after a while that would decrease until we got to a point where they were no longer efficient. With lithium batteries, that looks like 10 years. I note that some early research shows that vanadium may not deplete. That would be an interesting concept—to have a non-depleting battery, so there is permanency, but of course there is a lot less vanadium being mined around the world than there is lithium, so there would be a significant lag time over that. That is a significant issue.

The same thing applies when we look at lithium energy storage in terms of the sort of transition that the government is talking about. The government is building a 500-megawatt-hour battery in Kwinana, and that is not the only place where that is happening; a similar thing is happening in South Australia. It sounds very impressive, but the problem with large-scale batteries is that we are talking about $1 million per megawatt hour to build them. Most of that is involved only in smoothing; it basically takes the peaks and troughs from renewable energy generation. When the wind blows, it is stored, and when the sun shines, it is stored. On a still night, obviously it is not being stored or generated, so energy has to be dragged out from some sort of source. Just to give that some sort of measurable number, if there is 12 hours of still night and the peak demand on the south west interconnected system is currently about 3 500 megawatts—that is generally late afternoon, when everyone switches their air-conditioning on—then in the middle of the night, it might get down to 1 000 megawatts. If the demand overnight is 1 000 megawatts for 12 hours, 12 000 megawatts will be needed. Bear in mind, a 500-megawatt battery demonstrates that we will be paying basically $1 million per megawatt, so a 12 000-megawatt battery for overnight coverage for the south west interconnected system will be $12 billion. To build the kind of battery capacity in Western Australia to allow this to work on its own will be a $12 billion exercise.

Again, vanadium may be better, and that is why a focus on exploration for vanadium is critical. But it is no easy task to come up with an alternative to $12 billion worth of batteries, bearing in mind that on a dark night on which the wind does not blow, we will probably want additional capacity. We would probably need $24 billion worth of batteries if we run our system entirely on renewables and lithium storage. We are probably looking at a $24 billion cost. That is why the government will have to look at outside sources and get the private sector far more heavily involved. That is going to be very difficult.

That is the breakdown for exploration by commodity. Members will be very pleased to know that in that same $2.8 billion year, $1.7 billion of that exploration occurred in Western Australia. At that point, Western Australia accounted for 62.4 per cent of Australia's exploration marketplace, followed by Queensland at $407 million; New South Wales at $288 million; Victoria at $152 million; the Northern Territory at $111 million; South Australia, going great guns at $80 million; and even Tasmania managing $10 million of exploration for minerals. I am not exactly sure what they were looking for in Tasmania, but I suspect rare earth. Western Australia is therefore four times the next highest. Members should bear in mind that that was 2020; I suspect it might have hit 64 per cent by now. One could argue that two-thirds of exploration across the board is carried out in Western Australia, and that includes both minerals and petroleum. It is a massive industry in this state—a $1.8 billion industry. Obviously that pales in comparison with the hundreds of millions of dollars that are generated when mining hits production, but the exploration sector is not immaterial. That reinforces the need to take this legislation and the work we are about to do in this house very seriously.

I turn now to the Department of Mines, Industry Regulation and Safety and some reviews by the state government. For the first time in a decade, we have seen an increase in employees. There are more than 120 000 employees in the mineral and petroleum industries in the state of Western Australia, so they are significant employers. Of those, half are in the iron ore industry, one-quarter in gold, and roughly one-quarter in everything else. In terms of overall mining investment, Western Australia punches very much above its weight. On a percentage basis, Western Australia generally accounts for between 50 per cent and 65 per cent of mining investment. Mining investment, as opposed to exploration investment, has only just started to see a little tick-up. I will not seek to table the charts and graphs; they are all available, and I am sure that the minister reviews these things. In terms of actual mining investment, in one year we have gone from $95 billion across Australia down to $40 billion in 2021–22. I think that reflects the fact that although exploration remains reasonable, probably boosted by rare earth materials, actual mining activity has declined significantly. That is certainly not based on the development of the iron ore industry in Western Australia, which has not only remained immune to downturns but is actually doing very well. That will be a debate for later this week.

The Western Australian iron ore industry continues to put out massive levels of production—hundreds of millions of tonnes. The production level is high, and the price it is receiving is high, so in terms of productivity, Western Australia is certainly well above the rest, but actual mining investment as a whole across Australia is in decline and is charted in this report.

In agreement with both the Australian Bureau of Statistics and Geoscience Australia, mineral exploration across Australia in the last 10 years has increased. Again, Western Australia has done very well in that area. Its percentage of exploration sits even higher; it is generally in the 60 to 70 per cent bracket. Although mining activity has declined, particularly, I suspect, in the eastern states, not discounting coalmining production has probably declined in Collie

this year, but it is at such a relatively low level that I do not think it is impacting on the national numbers, exploration continues to rise, and that is critically important.

Again, in agreeance with both the ABS and Geoscience Australia, Western Australia has seen a significant decline in oil and gas exploration over the last decade. During the peak year of 2012–13, we saw oil and gas exploration across Australia at the $4.7 billion mark. That has since declined to just over $1 billion. Again, that is a four-fold decline in that industry. In terms of Western Australia's proportion of it, it has held on better than the rest of the country but it has still declined from over $1 billion to in the order of half a billion dollars over the same period. Again, that reflects the fact that exploration in oil and gas is of significant concern. The bill before the house will not have an enormous impact on that but it will have an impact. That debate was designed to underpin the importance of the bill before the house. The bill is probably one of the government's two major incentives towards exploration, both of which are welcome. The first, which we will address soon, is having a nominal duty on exploration farm-in agreements. The second is the exploration incentive scheme, which in theory sounds like it might be more modest in its contribution, but we will be asking the minister about the financial impacts when we get to the committee stage of the bill. I say to the minister that I intend to consider the bill in Committee of the Whole. I only intend to talk about clauses 1, 8 and 14 because they are effectively the substance of the bill. I do not expect to spend a huge amount of time on them.

I turn to the export incentive scheme. According to the Minister for Mines and Petroleum, since 2017, the government has provided $80 million in funding. I would imagine that applying full duty on farm-in agreements would, in theory, provide significantly more money than that. During debate on clause 1, we will be asking what that level of impact might look like. What generosity has existed since 2008 in providing duty relief for farm-in agreements?

As I said earlier, the second reading speech is a fairly simple two-page document. It simply says that the government is trying to formalise and cement a duty concession that has effectively existed for a very long period. For over 25 years, the intent has been to allow a person who has exploration rights over a tenement to share the cost. That is effectively what we are talking about. It is absolutely the case that most of the large-scale major mineral explorers will manage those things in their own right. We are not talking about the BHPs and the Rio Tintos of the world, who do not need farm-in agreements and basically get some to assist with the exploration; they can do that themselves. We are talking about the second and third tier of exploration, where a group of people with an exploration tenement and limited resources engage in full-scale exploration—that is, to the point of using the newly available science and effectively converting that into drilling. Ultimately, they have to get to that drilling point.

There are some interesting new developments, particularly around geophysics. Using ultrasound and all those technologies, we certainly have the capacity to map where we have not mapped before and see what is there, but ultimately it is still very expensive to get into the drilling process. Significant drilling is a multimillion-dollar exercise. It is not easy to do for someone who has taken up a mining tenement and wants to engage. The concession allows a person who has a mining tenement—the farmor—the capacity to give a right or an entitlement to a farmee, who will invest in exploration going forward. We should bear in mind that plenty of non-productive exploration occurs; that is, it does not prove up a resource—it can be mined. This legislation will give someone else the opportunity to come in and invest in the mining process.

It probably needs to be said from the outset that farmor–farmee agreements and contracts—that is, the farm-in agreements—are incredibly complex but often written down very simply. This issue relates to lots of other bills, some of which we will discuss in the not-too-distant future, where an agreement is effectively struck on the shake of a hand on an investment that might go in. In the old days, I am sure many of them were written on the back of bar coasters in places like Kalgoorlie. The issue is complex but the agreement as the farmor and the farmee often think it is quite simple. They will have an agreement that the farmee will provide X millions of dollars to exploration, which will give that person a certain level of right over the tenement or a certain level of income if mining occurs. There is no doubt that there are also certain implications for the federal tax act of what is a realisable investment and if it is an investment, that contract also impacts on the tax.

First and foremost, my message to the government is that I get that this is a simple process in theory, but the technicalities around contracting always leave me terrified. In fact, the worst issues that we generally face when trying to help people relate to contract law. I suspect that contract lawyers are the richest lawyers in the country. It is an immensely difficult process. We will spend some time on clause 1 of the bill trying to get a handle on what these contracts need to look like because they can become immensely complex.

This bill will update the Duties Act 2008. The Minister for Emergency Services states in his second reading speech that the farm-in concession has existed for 25 years, but advice from the State Solicitor's Office and RevenueWA has identified that the Duties Act 2008 is not sufficient to ensure that this concession will apply to the agreements and contracts to which it should apply and is excluded from those to which it should not apply.

One of the major issues that we intend to raise during Committee of the Whole is whether administrative costs are a reasonable component of a farm-in agreement. A farm-in agreement is supposed to be confined to exploration,

so whether administrative costs will be applied is worthy of some debate. The minister explained it in his second reading speech in this way —

> The amendments clarify that the concession does not apply to farm-in agreements where the exploration amount involves expenditure in connection with mining operations or capital costs associated with the construction of mining infrastructure to allow mining operations to be carried out.

We agree with that. Obviously, the concession is not meant to apply to a mining asset; it is meant to apply to an exploration asset. Administrative cost is one thing that has not been explored. I am pleased that a level of administrative cost will be allowed so long as it is part of a farm-in agreement contract.

The Duties Act 2008 makes remarkably limited reference to farm-in agreements. It deals with farm-in agreements in only a few small sections. It is astounding that we are dealing with a 56-page bill that will effectively replace only a couple of very simple references in the Duties Act. Section 11(1), in chapter 2, part 3 of the Duties Act 2008, identifies that a farm-in agreement is a dutiable transaction. It states —

> (1) Subject to subsection (2), any of the following is a ***dutiable transaction*** —
>
> …
>
> (j) a farm-in agreement.

Subsection (2) lists the exclusions; that is, the transactions that are not dutiable transactions.

Another section of the Duties Act that is proposed to be replaced is section 13. That states —

> (1) A reference to a farm-in agreement is to an agreement between —
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> (a) an owner of a mining tenement, or a person who holds a right to exploit a mining tenement; and
>
> (b) another person,
>
> to the effect that, after the other person expends the exploration amount specified in the agreement —
>
> (c) that other person will have —
>
> (i) a right to acquire an interest, or an entitlement to an interest, in the mining tenement that is specified in the agreement; or
>
> (ii) a right to acquire a right to exploit, or an entitlement to a right to exploit, the mining tenement that is specified in the agreement;
>
> and
>
> (d) the mining tenement, or the right to exploit the mining tenement, will be held with the person referred to in paragraph (a).

That is the owner —

> (2) A reference to an exploration amount in relation to a farm-in agreement means an amount to be expended, after the agreement is made, on exploration or development of the mining tenement carried out after the agreement is made.

Basically, agreement is reached that a certain amount will be spent on exploration. The development of the mine tenement must be a separate part of the contract. As I understand it, the relief provided is specific to the exploration component. That effectively means that it will be provided to the person who expends the exploration amount. When we get to clause 1 of the bill, we will ask some questions about what an exploration amount might look like. Could two people sign a contract on the back of a beer coaster to invest $100 in exploration and suddenly be granted a duty exemption—not that any duty would be payable on that? The question is: will limitations be placed upon when this would impact and a payment would be due.

To finish the references in the Duties Act, section 135, "Farm-in agreements", identifies the nominal duty. It states —

> (1) Nominal duty is chargeable on a farm-in agreement if no consideration is paid, or agreed to be paid, for the agreement.

I understand that the nominal duty is $20 even if nothing is paid.

It continues —

> (2) The dutiable value for a dutiable transaction that is a farm-in agreement is the consideration for the transaction.

That effectively means the exploration amount that has been agreed. It continues —

> (3) In subsections (1) and (2) —

> ***consideration*** does not include the exploration amount.

The only other reference to farm-in agreements in the entire Duties Act is section 42, in chapter 2, part 4. It states in subsection 15 —

> Duty is not chargeable on a transfer of, or an agreement for the transfer of, an interest in a mining tenement under a farm-in agreement if —
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> (a) the farm-in agreement is duty endorsed; and
>
> (b) the exploration amount under the agreement has been expended.

Those four references that I have quoted are the entire set of references in the Duties Act 2008 to farm-in agreements. The intent of the government is obviously to provide significantly more references to what farm-in agreements should look like and what duty will be payable. The intent of the government is to effectively maintain the normal duty components of the Duties Act. That is very welcome. The level of exploration activity is currently very high. It could potentially be argued that exploration does not need that level of encouragement. However, it always does. The reason I made the point to the chamber earlier about how mining has declined, particularly in oil and gas, was not just whimsy; it was designed to demonstrate that exploration, which precedes mining, is a critical component. Whether mining is going well or going backwards, we need to keep up our exploration activity. That is because Western Australia in particular, and Australia, is so reliant on the mining industry. I am not sure what time the federal budget will be handed down, but I suspect it will be in the not too distant future.

Hon Stephen Dawson: It will be at around four o'clock.

Hon Dr STEVE THOMAS: It is usually at around seven o'clock eastern states time, so it probably will be four o'clock. I have actually been to a couple of federal budget statements over the years and have sat there and watched.

Hon Stephen Dawson: I saw your former boss at Brunswick Junction on the weekend, actually.

Hon Dr STEVE THOMAS: They were all down at Brunswick Junction? I was in Augusta at the time. I have sat up in the gallery and listened to budget statements and budget replies. I note that the current budget will say that the situation has improved dramatically, thanks largely to the mining industry. I think that is absolutely the case. There will be millions of dollars of additional revenue thanks to the mining industry. I would like to see a bit more of that position or statement from the McGowan Labor government. I would like to see a bit of thanks for the mining industry's generosity, which delivers the Premier the capacity to behave very much like Scrooge McDuck and his money bin. The mining industry certainly underpins the Western Australian economy, even further than the Australian economy. It will be interesting to see the outcome of that in the not too distant future. Exploration remains a critical part.

I will outline my focus in the very limited time that I have left, because, unfortunately, I am going to run out of time. I think we will go through most of it at the committee stage. I am quite interested in the practicalities of how this applies. Bear in mind, the opposition obviously supports the government's intent. We support the mining industry; governments of both sides have done that. Certainly, since 2008, it has been the intent of both sides of Parliament to assist the exploration industry. It is often the practicalities and how these contracts are written that I think will be critically important. I suspect that going forward, as we take those four very small references to farm-in agreements in the current duties act and we apply the 54, 55 or 56 pages once the act is amended, the technical detail will become very important.

I know this has been raised, but I have to say that the government's consultation on this process has been very good. I think this is the third version of the bill that has ultimately been worked on. I apologise if it is the fourth. It is at least the third version that has been examined. I think it has been a commitment since 2018; it has been a while coming. That has not impacted on people's capacity, because we are still simply working under the previous system, despite the fact that the advice is that the legislation is not up to scratch. It is not as though, by waiting from 2018 to 2022, there has been a significant impact. I will acknowledge that in this particular case, the government has consulted widely and frequently. I suspect there might be people who have contributed to all three versions of the bill as it currently goes forward. I think that if the government was trying to sneak anything through in an untoward manner, it would not go back three times to give everybody a good look at it. I think the consultation on this particular bill has been very good. The opposition appreciates that there has been an intent to try to get this very complicated process right.

I think we will spend a little bit of time, as we get into the committee stage of the bill, just looking at what those contracts might look like. I am a little concerned—I am trying to find the right words—that the, let us call it, "loosely determined" contracts and agreements seeking duty relief might have to be beefed up. We might have to set a stronger minimum standard of contract so we can better determine that the dutiable relief is going to the appropriate people. We will potentially need to look at how much that is. I understand that the government—we can confirm this when we get to the clause 1 debate itself—had some debate around whether standardised contracts would

be required. This was to the point where perhaps there might even need to be a template contract for those people engaged in exploration who do not have the capacity to hire the legal team required for a more detailed contract. I suspect that when we make these changes, the contract on the back of the beer coaster will probably be gone. I think that that is a good thing and it probably should be. There will potentially be a few long-time traditionalists who might think that they still want operate that way.

There may be a template that we possibly need to look at in relation to what these contracts will be like. This is very much about the contract. It does not just make or break the deal, it makes or breaks the tax payable by various parties, and also, in my view, the duty concession that the government is putting in place to stimulate exploration. That contracting will be absolutely critical. We want to go into what needs to be written into the contract beyond simply the expenditure amount for example and other sorts of things, with a considerable amount of detail.

It is not my intention to make this last all day. I think a little bit of time spent working out those details will be very useful to identify some of the issues. I note that the explanatory memorandum, as it often does in very complex cases, provides lots of examples. I did not actually count the number, but there are certainly dozens of examples in my memory to demonstrate how this works. There we go—I have just flicked back to example 33. There are a huge number of examples in the explanatory memorandum trying to determine how this works. The minister's second reading speech is two pages, the outline of the explanatory memorandum is basically two and a third pages, and the entire document runs out to 84 pages, including pages of examples. I think this just demonstrates the complexity of the legislation. I will try to address most of the rest in my comments during the committee stage of the bill. It is an immensely complex piece of legislation trying to do a pretty simple thing.

I have enormous sympathy for the minister and government because those things are often an absolute pain. Like dealing with the tax act, dotting all the i's and crossing the t's in this is immensely complicated. Let us just see how we go through the committee stage of the bill. I am not expecting to spend a huge amount of time there. I think the vast majority of the entire house—well, I am not entirely certain; in the old days I might have had a fight with Hon Alison Xamon—are of one mind that this legislation needs to pass to encourage exploration in the state of Western Australia. We underpin the national economy with exploration, ultimately turning that into a mining sector be it minerals, oil and gas, onshore or offshore. We are of one mind. We think this is a good, if complex and difficult, piece of legislation. We will endeavour to do justice to it, while supporting the concept all the way through. I look forward to the committee stage to do some more of that.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [3.08 pm] — in reply: I was waiting for a second, just in case somebody else stood up. I can see that Hon Dr Steve Thomas is very passionate about this issue. I wondered if his passion was shared by anybody else in the house. It is certainly the case that he did make a very good contribution, so I understand why no one else in the opposition needed to stand to make a contribution.

I indicate from the outset my thanks for the member's support of the legislation. I will try to deal with some of the issues that he has raised in his second reading contribution. I note, of course, that we will get an opportunity to go into committee and he can tease those out further when we get there. He did point out that the explanatory memorandum and bill are weighty documents. The complexity of the amendments is largely due to the need to accommodate, where possible, the different ways in which farm-in agreements may be structured. The diversity of these practices, together with the historically broad application of the concession, has resulted in more complex legislation and the current provisions. These provisions are no longer fit for purpose to cater to different farm-in arrangements. The new legislation will support RevenueWA's existing assessing practices as much as possible, which will minimise the impact on taxpayers. RevenueWA will publish guidance material to assist industry with interpreting the amendments.

In relation to the economic level of the mining industry, the bill under consideration today will ensure that the historical concession for farm-in agreements will continue to apply.

Hon Dr Steve Thomas spoke about the importance of exploration to the mining industry. The bill will support exploration in the mining industry by ensuring concessional treatment for farm-in agreements.

Hon Dr Steve Thomas asked about the budget impact of allowing the farm-in concession. No information is recorded on the duty that would be payable on farm-in agreements if there were no concession, so it is not possible to estimate the duty that would have been collected. The total amount collected since 2016 is $360 054.30, and a further $327 321.20 is likely to be collected on farm-in agreements that are currently waiting for assessment.

Hon Dr Steve Thomas: I accept that you cannot find a number. It would be interesting to know because, ultimately, that is the level of support that the government is giving.

Hon STEPHEN DAWSON: I have quizzed that, but it does not exist.

There was a question around whether the Duties Act has a minimum exploration commitment to qualify for the farm-in concession. The legislation does not impose a minimum exploration amount or commitment from the farmee for the concession to apply. This allows the concession to apply to farm-in agreements involving smaller greenfields exploration projects that do not require significant exploration expenditure from the farmee.

I think the member asked whether the industry will need to accept a stronger minimum standard of contract. The concession will still apply to more informal farm-in agreements as long as they meet the eligibility criteria, which are consistent with the concession under the current provisions and the commissioner's assessing practices. The new provisions are longer and more complex because they aim to accommodate the diverse practices in farm-in agreements that RevenueWA has come across over the years. The amendments largely aim to align the law with the historical administration of the concession as much as possible. This will minimise the impact on the mining industry, as it will be familiar with how farm-in agreements have been assessed. To assist junior miners and industry in understanding the new provisions, RevenueWA has drafted a fact sheet, revenue ruling and commissioner's practice to provide guidance on the new provisions. I am told that the draft publications have been sent to relevant industry bodies for comment, prior to being finalised and published once the bill is passed.

Hon Dr Steve Thomas: So they are not public yet?

Hon STEPHEN DAWSON: No, they are not public yet. We are in a consultation process. Stakeholders have them. I am not sure whether we have any drafts with us here.

Hon Dr Steve Thomas: I will ask you in committee and then you can take it away and ask the minister.

Hon STEPHEN DAWSON: I am happy to see whether that might be possible.

Technical presentations will be offered to industry bodies to assist their members with understanding the new legislation after the bill is passed. Template contracts are not proposed, as the legislation is designed to cater for the broad range of industry practices.

The honourable member made a comment about the amendments being complex. There is a school of thought about whether it will be difficult for taxpayers to comply with the legislation.

Hon Dr Steve Thomas: I made that positive by saying that I understand that they have to be.

Hon STEPHEN DAWSON: Yes. Certainly, the structure and content of the legislative amendments were determined by the Parliamentary Counsel's Office in consultation with RevenueWA. The complexity of the amendments is largely due to the need to accommodate, where possible, the different ways in which farm-in agreements may be structured. The diversity of these practices, together with the historically broad application of the concession, has resulted in more complex and prescriptive legislation than the current provisions, which are no longer fit for purpose to cater for the different farm-in arrangements. The new legislation will support RevenueWA's existing assessing practices as much as possible, which should minimise the impact on taxpayers. RevenueWA will publish guidance material to assist industry and advisers with interpreting the amendments. I will leave my commentary there. I do have a copy of the draft publication that has been circulated to stakeholders.

Hon Dr Steve Thomas: Sorry, which draft?

Hon STEPHEN DAWSON: The draft that I alluded to a second ago.

Hon Dr Steve Thomas: The fact sheet?

Hon STEPHEN DAWSON: Yes, the information sheet.

Hon Dr Steve Thomas: We will do it in committee; that is great.

Hon STEPHEN DAWSON: I just want to check, though. What has not been given to me is an indication of whether I can table it in this place. Once we get into committee, I will ask that question. I will get it to the honourable member somehow. With those comments, I will draw my remarks to a conclusion.

I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

Clause 1: Short title —

Hon Dr STEVE THOMAS: As I indicated in my contribution to the second reading debate, I will effectively deal with clauses 1, 8 and 14. That does not help much because they are the two big clauses, but I think we can get past the more functional components. I am interested in establishing a bit of background, particularly for the chamber, on what currently exists and what we are moving to. I always think that I will start with a simple question, but I do not think this is a simple question, unfortunately. This relates to why it is such a complex bill. I was going to ask whether the minister can give us an indication of what the current farm-in agreements look like. The problem is that there is a diverse range of them. Let us do the basics. In the earliest of phases, this potentially would have included verbal agreements as well as written agreements. What level of agreement is currently required to qualify as a farm-in agreement? Let us start with that.

Hon STEPHEN DAWSON: While I get an answer to that question —

Hon Dr Steve Thomas: Apologies; it is a complex question masquerading as a simple one.

Hon STEPHEN DAWSON: That is all right. We will see what we can get for the honourable member. In the meantime, I have sought advice from the advisers on the draft publications. One is a commissioner's practice on farm-in agreements, one is a revenue ruling on exploration for farm-in transactions, and the third is a fact sheet on farm-in agreements. I am happy to table those documents now. I note, of course, that they are draft documents, so they are out for stakeholder consultation at the moment. They could change, but as of today, they are current. I table those documents.

[See paper 1765.]

Hon STEPHEN DAWSON: I will answer the honourable member's question in this way, noting, of course, that he said it is a complex one.

Hon Dr Steve Thomas: I am sorry that it is tough.

Hon STEPHEN DAWSON: That is all right. Broadly, the eligibility requirements are that the farmee must spend the exploration amount on the mining tenement or derivative mining right after the agreement is entered into. The farmee has a right to acquire an interest in the mining tenement or derivative mining right only after they spend the exploration amount—that is, the farmor cannot acquire the interest in the tenement or right up-front and then spend the exploration amount. The mining tenement or derivative mining right must be held with the farmor after the completion of the transaction. This means that if the final stage of a farm-in agreement results in the farmee getting 100 per cent in the tenement, the final stage will not be eligible for the concession and the farmee cannot hold an interest in the mining tenement or derivative mining right when the farm-in agreement is made.

Hon Dr STEVE THOMAS: Some of that reflects what is in the Duties Act currently, which I read out a little bit earlier.

Hon Stephen Dawson: By way of interjection, I should point out that the broad eligibility requirements will be the same after the amendments are made.

Hon Dr STEVE THOMAS: Yes, and that is why there is some repetition of what is there currently, but it is obviously in a lot more detail than what it will look like when the bill passes, which is fine. I still want to chase this rabbit down the rabbit hole a little bit. For example, my wife and I have a property and we decide to get a mining tenement over it. The minister wants to take an interest in exploration so we strike a contract deal. At what point and how will the duty be assessed? At what point and how will the concession be decided? I presume these things are all registered in some way, shape or form. If the minister and I sign a contract and I put it in the back of the pantry and it never sees the light of day, there has to be a process that we work through for an action to have occurred and a duty to arise then that duty to be waived. What does that process look like in the operations of government?

Hon STEPHEN DAWSON: For the last couple of minutes, I have not been able to get out of my head that the honourable member talked about chasing a rabbit down the rabbit hole. I have in my head, "Run rabbit, run rabbit, run, run, run; don't let the farmor have all the fun"! I could have sung it for the member but I did not, so he should be grateful.

Under a farm-in arrangement, two separate transactions could give rise to a duty liability. The first dutiable transaction is the farm-in agreement itself. The second dutiable transaction is the transfer of the interest in the tenement or derivative mining right to the farmee after they have earned the interest by fulfilling of the exploration requirement. If the eligibility requirements are met and there is no consideration for the farm-in other than the exploration amount, a nominal duty of $20 will apply to the farm-in agreement. If consideration is provided for the farm-in agreement, duty will apply at the general rate. After the farmee has spent the exploration amount, the transfer of the interest in the tenement or right to the farmee under the farm-in agreement will be exempt from duty. If there is no concession, full duty will apply on the interest in the tenement or right acquired by the farmee. This is the duty treatment of eligible farm-in agreements under the current legislation and will continue to be the duty treatment after the amendments are made.

Hon Dr STEVE THOMAS: How would the Department of Finance become aware that this is occurring? What are the lodgement points that give rise to this occurring or is it entirely based on the fact that the legislation exists and the onus is on the signatories to the contract to notify when they arise? Let me confirm that first before I get to the spot-checking component.

Hon STEPHEN DAWSON: The Duties Act will require the farm-in agreement to be lodged.

Hon Dr STEVE THOMAS: That is what I am looking for. Each farm-in agreement will be lodged with whom?

Hon Stephen Dawson: It is RevenueWA.

Hon Dr STEVE THOMAS: It will be lodged with RevenueWA. Is that currently in a standardised form or is it simply whatever contract happens to be signed? Does the contract itself have to be lodged with RevenueWA?

Hon STEPHEN DAWSON: The contract has to be lodged, but not in a standard way because I mentioned earlier the historical differences in how this has been treated over time. An agreement must be lodged with RevenueWA within two months after the agreement is made. It will then be reviewed by RevenueWA to determine whether the concession applies. A transfer of a mining tenement under a farm-in agreement must be assessed before it can be registered with the Department of Mines, Industry Regulation and Safety.

Hon Dr STEVE THOMAS: Certainly, when there is a transfer of the title of a mining tenement, for example, if I go to that extreme, that will have its own level of paperwork and additional components. When the registration of a right is lodged, if the farmor maintains the majority share of the activity, even including the exploration, will there be no other notification apart from the need to lodge the contract in whatever form it exists? I presume it will be a copy and not necessarily the original documents in whatever form they come in. That demonstrates to the government there is at least an examination to be done of whether it is a dutiable transfer. Will a follow-up or spot-check occur? If contracts might be signed that provide the entitlement but are simply not lodged, is there another way that the government might see them and pick them up? It possibly would not be until the production stage, but is there anything in place that follows that route?

Hon STEPHEN DAWSON: The Department of Mines, Industry Regulation and Safety will not register the transfer unless it says "duty endorsed". The transfer of a mining tenement under a farm-in agreement must be assessed before it can be registered with DMIRS. There is no central register of rights or farm-in agreements. A copy of the document will suffice.

Hon Dr STEVE THOMAS: Thank you. I think that explores and explains that component. Perhaps, on occasions, things sneak through, but given we are probably not talking about large amounts of money, we do not want to make it overly difficult to get them.

One of the most critical considerations is the definitions of and distinctions between "exploration" and "mining activity" and the things that might be expended on for that purpose. I imagine there is some crossover, so if someone is exploring a tenement, for example, they may well find themselves being forced to clear areas of land for exploration or drilling. I do not imagine it will be huge amounts but could we explore the difference in those definitions? I imagine that will be firmed up under this legislation compared with the current legislation. Could we have a look at that?

Hon STEPHEN DAWSON: In the context of a mining tenement, exploration involves activities that have a purpose of discovering mineral bodies or, if a mineral body has been identified, scrutinising or examining the mineral body to better define the extent of the body and the degree of mineralisation or to determine other factors that are relevant to the feasibility of mining. Exploration will generally include development of the mining tenement until construction of a mine commences. This includes exploratory drilling, preparing and producing scoping studies, prefeasibility studies, feasibility studies, mineralisation reports, resource reports, environmental impact studies and mining proposals. A revenue ruling will be published to provide guidance on what is meant by "exploration", and, as I have previously indicated, industry bodies will be consulted on that ruling.

Hon Dr STEVE THOMAS: The feedback that I have received is that the fact that a revenue ruling is on its way is greatly appreciated across the board. That might take some of the question marks out of it. Is there an issue around what we call brownfields exploration—that is, where we are exploring around known resources? Is it envisaged that there will be a complication that will make existing operations difficult? Will the concession be available across the board on brownfield sites, or will there be a set of rules that will determine under what circumstances brownfields exploration is really an extension of an existing mining operation rather than looking at a genuinely new site or an extended exploration?

Hon STEPHEN DAWSON: I am advised that the Department of Mines, Industry Regulation and Safety will look at the substance of the activity on a case-by-case basis, honourable member.

Hon Dr STEVE THOMAS: I think that is going to be the problem in most of our discussions as we go forward: the activity will be looked at on a case-by-case basis. I think we will get stuck with that a few times as we explore the bill. That is basically one component of the definition of "exploration" versus "mining". I am happy to open the

door here and maybe debate it more as we get further into the bill, but the intent of the bill is to allow administrative costs to be included, and that is a good thing. But how do we confirm that the administrative costs are specific to exploration versus other activities? Again, on a greenfield exploration site, it might be fairly simple; on a brownfield exploration site, it might be a little more complex. Therefore, how do we define the level of administration that is applicable to the concession?

Hon STEPHEN DAWSON: It is common for the exploration amount under a farm-in agreement to include some administrative or overhead expenses, such as head office costs and accounting and research costs. Agreements that include this expenditure do not qualify as an eligible farm-in agreement under the existing provision because it is not expenditure on exploration. This is inconsistent with the Commissioner of State Revenue's assessing practices. The amendment in the bill will give the commissioner discretion to treat small amounts of administration costs as exploration costs because they are accepted by the Department of Mines, Industry Regulation and Safety in determining whether the expenditure conditions of a mining tenement are met. Therefore, we will follow the same essential policy—a small amount would. DMIRS has already indicated what is an acceptable administrative cost. Again, there will be an element of looking at it on a case-by-case basis associated with this, honourable member.

Hon Dr STEVE THOMAS: Yes. I think we are going to find that for lots of our conversations, and I do not intend to drag it out.

Hon Stephen Dawson: Just by way of interjection, it should not be a surprise to those applying if they have done it before, and certainly if they have engaged with DMIRS, it would be similar practice.

Hon Dr STEVE THOMAS: Yes. I think that is right. Again, it is perhaps not as great a concern because most of those who are engaged in farm-in agreements, I suspect, are at the smaller end of the commercial scale versus the administration costs charged at a Rio Tinto level. That is likely to be significantly different from the level of administration that I think we are talking about under the circumstances that we are engaged in now. Therefore, I suspect that means it will probably be okay.

I want to raise a question about multiple farm-in agreements on the same tenement. How will the proposed legislation deal with multiple farm-in agreements on the same tenement? Will they be they registered separately? Will they all generally receive a concession? Will there be a limit on the concessions, or as long as they meet that test around the expenditure amount, which appears to be the pivotal component, will they all receive that concessional amount? Will there be a point at which it will get so complicated that that makes it difficult?

Hon STEPHEN DAWSON: I am told that multiple farm-in agreements will be fine on the same tenements. As long as each farm-in agreement meets the eligibility requirements, they will be able to access it.

Hon Dr STEVE THOMAS: Then, potentially, if there is no limit on the number of farm-in agreements one could put in place —

Hon Stephen Dawson: Correct.

Hon Dr STEVE THOMAS: Yes. Therefore, as long as, in each case, the expenditure amount is met in advance, that would give people the opportunity to build up. I am interested to know how often it happens that multiple farm-in agreements are trying to deliver bigger outcomes, bigger projects and higher levels of exploration. How often do we see multiple farm-in agreements versus what we assume is a one-on-one component?

Hon STEPHEN DAWSON: I do not have the data on me, honourable member, but I am told that it is generally quite common.

Hon Dr Steve Thomas: So it is common that multiple —

Hon STEPHEN DAWSON: Yes.

Hon Dr STEVE THOMAS: Okay. That is interesting. I would be interested to know a bit more about how big that is. Again, I am asking things that the minister does not necessarily have the answers to, but —

Hon Stephen Dawson: Just by way of interjection. Data doesn't get collected on this issue, but the advisers, who have got experience with it, tell me that it is quite common.

Hon Dr STEVE THOMAS: Okay. Just out of interest, then—I am getting a little sidetracked, but it will not be for long—I know there is everything from "not much" to "many", but in terms of the amount of money invested in a farm-in agreement and exploration, what would be the more common amounts seen by RevenueWA within those contracts as a fairly typical example of the level of agreed exploration revenue provided by the farmee to the farmor?

Hon STEPHEN DAWSON: I am told that the common range is between $10 000 and a couple of million dollars.

Hon Dr STEVE THOMAS: That is interesting as well. The minister is probably not in a position to answer this question, but at the lower end of that, would we tend to find agreements at the $10 000 to $30 000 level in

multi-farm-in provision contracts? Is that an example in which the farmor tries to get a number of people to invest a smaller amount to get up to a larger amount? I cannot imagine that $10 000 would deliver much in the way of exploration, to be honest.

Hon STEPHEN DAWSON: I am told that $10 000 would usually just be a single stage of greenfields.

Hon Dr STEVE THOMAS: Would it be common for such agreements to be stage-by-stage or action-by-action? The farmor might decide, "I might need a component of exploration; I have a farm-in agreement on that." Is that a relatively common occurrence, in which it is stage-by-stage?

Hon STEPHEN DAWSON: I am told that it is usually up to the farmee to decide how much they want to keep spending, stage-by-stage.

Hon Dr STEVE THOMAS: Okay. This is a really interesting debate, actually. I appreciate all the effort the minister is going to. That lends itself to another question. Let us start with the simplest question first: can the contract for provision of expenditure for exploration include exploration-in-kind? Does it have to be a cash transfer? Could it be the case that a company or person that has the capacity to provide exploration skills or activity, provides that as part of the contract, rather than it being a cash transfer?

Hon STEPHEN DAWSON: Yes, it could be in-kind. The exploration amount in an agreement may require achieving an identified outcome or milestone rather than spending an amount of money. For example, the person may be required to drill to a certain depth, or to produce a bankable feasibility study. The current section 13 does not apply to this type of agreement, because it requires the farmee to spend the exploration amount specified in the agreement. This is inconsistent with the commissioner's assessing practice, which has been to allow the concession in these circumstances.

Hon Dr STEVE THOMAS: That is very interesting. Can I just confirm that under the existing legislation it was not able to be done in-kind, but under the new legislation it will be able to be delivered in that way?

Hon STEPHEN DAWSON: That is correct, although I will go further and say that it has been common practice to allow in-kind spending, even though it might have been outside the wording of the current legislation.

Hon Dr STEVE THOMAS: I am not opposed to someone in those circumstances taking advantage of that. Even though it is not captured under the legislation as it currently exists, it has presumably been the reality in practice all the way back to 2008. I fully get that. I am sure it happens regularly that a drilling contractor with capacity might engage in investing in exploration on a tenement where the tenement owner does not have the capacity, but the explorer possibly does. It is a bit like building a spec house; they go out there, and if they have excess capacity in whatever form—I used drillers as an example, but it could be any one of the others—they can actually go out there and effectively come under a contract with a farmee, and they take the risk as part of their corporate venture. It is actually not a bad way to use capacity that might not otherwise be used. In terms of any untoward advantage being gained, it would be exactly the same if they were not providing that service directly. I actually think that is a good outcome—that they get to deliver capacity that they otherwise would not have had. I think formalising that in this legislation is a good thing. I do not imagine that there is any capacity to work out how often that happens, as an example?

Hon STEPHEN DAWSON: I am told that it is uncommon, but there is no reason why it could not happen.

Hon Dr STEVE THOMAS: That is good; I appreciate that. I am coming towards the end of my questions on clause 1, but I would be interested to explore the backdating of the legislation to 2008 and 2018. In effect, there are two different periods that are defined in the bill, as I recall. Is there a significant difference in the operations between 2008 and 2018, when the review was done? How was it applied from 2018 to 2022? In 2008, everyone agreed that this was the intent. Clause 14, which we will get to, makes reference to the first pre-amendment period and the second pre-amendment period, which sounds a bit like Jurassic and Triassic! Basically, in that period from July 2008 to 2018, was there a difference in the way the concession was applied once we hit 2018? Is that why, as we get further into the bill, we deal with the 2008 to 2018 section, and a separate 2018 to present-day section?

Hon STEPHEN DAWSON: The amendments that apply to farm-in agreements entered into since 1 July 2008—the date that the Duties Act 2008 commenced—are favourable to taxpayers. They provide legislative support for concessions applied to farm-in agreements in accordance with the commissioner's practices. As such, these amendments will not result in any taxpayers receiving an unexpected bill. In relation to backdating of favourable amendments, it is common practice for amendments favourable to the taxpayer to operate retrospectively. This supports concessions or exemptions that have been applied under longstanding policy settings. If the amendments favourable to the taxpayer did not apply retrospectively, it would mean that concessions applied to farm-in agreements entered since 1 July 2008 are not valid, which could result in a tax liability for many transactions.

To safeguard the integrity of the state's revenue base, the state government announced on 28 November 2018 that amendments will be introduced to ensure that the concession does not apply to farm-in agreements involving only

capital expenditure entered into from that date. Amendments were also announced to ensure that duty applies to all consideration provided for farm-in agreements, including consideration agreed to be paid after the agreement is entered into. The bill will give effect to the announced changes. The practice of announcing unfavourable amendments and having those amendments apply from the announcement date is common and ensures the integrity of taxes. Industry has been aware of these amendments since the 2018 announcement, and relevant industry groups were briefed about the proposed amendments before the announcement and consulted again during the drafting of the bill. A circular was also published after the announcement to provide further details about the proposed amendments to taxpayers in general, including changes that would be effective from 28 November 2018.

Hon Dr STEVE THOMAS: To finish clause 1 off, I want to address the complexity of the bill compared with the previous legislation. I am sure it has been put to the government, it has certainly been put to me, that the original bill was written with those few provisions. I found the line I referenced in my contribution to the second reading. It is in the minister's second reading speech about midway through, halfway down the bottom of the second page, and states —

> The detailed provisions in the bill replace one short provision in the Duties Act.

I think that is very true. Those are wise words. It is quite detailed legislation replacing a very simple thing. I think that simplicity was preferred and liked by the industry because it gave it a great degree of leeway and flexibility in how it managed this process.

I am happy to put on the record that I think the government's intent on this bill is good. I think we all support the process. I appreciate the minister tabling the documents earlier about how to get people across the technicalities and details of this and that ultimately, whether it is a simple or complex contract, I think I understood the minister in saying that the contracts do not need to be more complex than they were previously.

Hon Stephen Dawson: That is correct.

Hon Dr STEVE THOMAS: Thank you.

Those very simple contracts, obviously condensed, still apply. Apart from, I guess, going through the documents the minister tabled, is there intended to be some form of awareness campaign to try to reassure industry and the exploration industry, which I find is a reasonably disparate group, and to make sure that it understands that those processes look fairly similar, despite the fact that the legislation looks remarkably different and certainly appears more complex? There is a question mark around the fear that making it look more complex, even though in application it might not be, might be seen to be a hurdle to overcome. Is there intended to be an awareness campaign beyond simply those documents? I assume that negotiation would continue with all the people whom the government has negotiated with in good faith multiple times already to make sure that everybody is aware that the new rules can still be applied in a similar sort of manner. Perhaps the government might consider something of a before and after process: "Previously, you went through this set of steps; you, effectively, are going to go through the same set of steps, but be aware that these bits have changed." A very simple before and after component, a bit like a blue bill, might be really useful. I am looking for some reassurance that the government is fully intending to make sure that people find this new system as useable as possible, particularly considering I do not think the users' component of it appears to have changed significantly, despite the significant changes in the legislation.

Hon STEPHEN DAWSON: I want to go back to the member's earlier point when he pointed out the line in my second reading speech about the detailed provisions in the bill replacing one short provision in the Duties Act. It is complicated, as we said. The reality though is that because of the historically broad application of the section, that has resulted in more complex legislation than the current provisions. We are essentially retro fitting. The law says one thing, the policy has been something else and we are trying to retro fit to enable what has been common practice to be included in the bill before us. It adds to the complexity.

Regarding an awareness campaign, we are certainly in regular contact with industry groups through the state revenue liaison committee. Last week Revenue WA presented on the farm-in changes to the Association of Mining and Exploration Companies conference. The plan is to continue to engage with industry groups when possible. Other groups, like the Law Society of Western Australia, have consulted as part of the process. They may potentially provide assistance to some people who may not be members of AMEC, for example.

Hon Dr Steve Thomas: I would have thought AMEC would be your primary representative body, with perhaps a smidgeon of the CME in there as well.

Hon STEPHEN DAWSON: That is correct.

Hon Dr Steve Thomas: Outside of that, I think it is up to everybody else to demonstrate an interest.

Hon STEPHEN DAWSON: Updated information will be available on the wa.gov.au website, for example.

The other point is that we have certainly made undertakings to work with industry groups to assist their members to understand the legislation. That could include speaking at further conferences, information days, open days or whatever.

Hon Dr STEVE THOMAS: I return to administration costs. I understand that the current act refers to the concession being for administrative costs. A proposal was put to me—again, I think AMEC raised this with me; it probably raised it with the minister as well—that the concession will involve small amounts of non-exploration expenditure such as administration costs. Can the minister confirm that the concession will be specifically limited to administration costs? Has that been rectified in consultation with the particular group that the minister is aware of?

Hon STEPHEN DAWSON: I am told that we have addressed the concerns that were raised by AMEC, for example. The current provisions prevent the concession from applying to exploration amounts involving administrative costs. It is common for the exploration amount under a farm-in agreement to include some administrative or overhead expenses, such as head office, accounting, and research costs, as I said earlier. Agreements that include this expenditure do not qualify as eligible farm-in agreements under the existing provision because it is not expenditure on exploration. That is inconsistent with the commissioner's assessing practices. The amount in the bill gives the commissioner discretion to treat small amounts of administrative costs as exploration costs because, as I alluded to earlier, they are accepted by the Department of Mines, Industry Regulation and Safety in determining whether the expenditure conditions of a mining tenement are met.

Clause put and passed.

Clauses 2 to 7 put and passed.

Clause 8: Chapter 2 Part 5 Division 9 inserted —

Hon Dr STEVE THOMAS: This is obviously one of the two significant and substantive clauses in the bill. I take the minister to proposed section 91K, "Terms used". I thought it was interesting that there was a definition of "primary farmor", set out at the bottom of page 4, which states —

> (a) means a person who is the holder, or 1 of the 18 holders, of a mining tenement; and
>
> (b) includes a person … who is not the holder, or 1 of the holders, of a mining tenement in a case where —
>
> > (i) there is a transfer of an interest in the mining tenement to the transferee in order to make the transferee the holder, or 1 of the holders, of the mining tenement; and
> >
> > (ii) the transfer is still to be registered under the *Mining Act 1978* …

I probably do not need to read the rest of it. Then it starts to get more complicated. It is obvious that in the same way that there can be more than one farmee because there can be multiple farm-in agreements, there can be more than one farmor—that is, more than one titleholder to the exploration tenement. Let us start with that. It suddenly seems like a complication that I am not sure was covered anywhere in the Duties Act. In a circumstance in which there might be multiple farmors and multiple farmees, will there be a limitation on the contracts that might exist? We would presume that if all the farmors own a share each, they would have to be a party to a contract to a farmee. Would there be cases in which that is not how it will work?

Hon STEPHEN DAWSON: The primary farmor holds the tenement. The farmor can also hold a derivative mining right. Yes, there absolutely can be multiple primary farmors.

Hon Dr STEVE THOMAS: I come back to that statement that we made earlier: there are probably as many different types of contract for this as there are days in the year.

Hon Stephen Dawson: I think that is what the bill before us is trying to capture.

Hon Dr STEVE THOMAS: I think that is absolutely right. It is trying to pick up all the variations that currently exist. We could have multiple farmors. Presumably, that is why the definition states "who is the holder, or 1 of the holders". Is there a circumstance in which there could be multiple unconnected holders of a tenement? Surely they would have to be a connected legal entity of some sort.

Hon Stephen Dawson: Yes, as in the latter part of your question.

Hon Dr STEVE THOMAS: Yes, they would have to be legally connected somehow.

Hon Stephen Dawson: They could be a joint venture, for example.

Hon Dr STEVE THOMAS: Or in some form of contract, which they will have set up. It continues to get more complicated.

In the first part of that definition, there could potentially be multiple farmors—multiple people who could potentially own the tenement. It could also include a person who is apparently designated as the transferee who is not the holder or one of the holders but presumably has some form of registered interest in the tenement. I am interested to know what that circumstance looks like. How will somebody, under proposed subparagraph (i), transfer an interest if they

are not recognised as another farmor and they have to be identified differently? Under what circumstances might somebody find themselves being captured as a transferee under proposed paragraph (b)(i)?

Hon STEPHEN DAWSON: This will apply when, one, they have a tenement but have not registered that interest with the Department of Mines, Industry Regulation and Safety; and, two, they have earned an interest under a previous farm-in agreement that is not registered.

Hon Dr STEVE THOMAS: Is there a time frame by which they will be expected to register their interest?

Hon Stephen Dawson: No, there is not.

Hon Dr STEVE THOMAS: Therefore, potentially the contract will be fairly open ended. Why would that be left open ended if effectively an interest exists but it remains unregistered? I am not sure why there would not be a time frame for that.

Hon Stephen Dawson: Are you asking why they have not registered their interest with DMIRS?

Hon Dr STEVE THOMAS: Yes. I apologise if that is not the area of expertise of the minister's advisers; I accept that. However, it would seem to be a simpler process if an interest was required to be registered earlier, or at least if a time frame was put on it, rather than simply allow a person to be called a transferee and to effectively have an interest and be another farmor, when in practice they miss out on that definition because they have not registered their interest.

Hon STEPHEN DAWSON: I am told that there is normally a natural incentive for people to register, because DMIRS will not deal with a person unless they are on the title.

Hon Dr STEVE THOMAS: I suspect that this is a just-in-case-clause, because if there is an incentive for a transferee to become one of the primary farmors, we would think that would happen regularly. I am not sure whether there might be a longer term benefit for some transferees to remain unregistered. I guess that might depend upon how many primary farmors are in the process. They might find it is easier not to engage in that process. I get that the minister does not have the capacity to explain this now, but it would be useful at some point, perhaps in a wider government discussion around DMIRS, to find out why a specific time line within which to register an interest has not been put in place. The interest would surely be contracted, so there would be a contract of interest, but, if it is not registered, that person is a transferee. I think that is what we are reading into this particular definition. If a person registers the contract, they are one of the primary farmors; if they do not, they are a transferee. Perhaps we could look at whether there might be some opportunity to put a time limit on the registration of those contracted rights. I am trying to work out whether I actually had a question in that. I will just put that out there, minister.

Hon STEPHEN DAWSON: I am told that this is about plugging a gap for an issue that might cause problems for taxpayers, or has caused problems for taxpayers in the past. I am further told that people register as soon as possible to protect their interest. It is similar to buying land. There is no time frame. That is obviously something in the Mining Act that would need to be changed.

Hon Dr STEVE THOMAS: I think that is right. I accept that this is a bit of a catch-all or just-in-case clause. I would be interested to know whether there are any particularly long-outstanding cases and whether there is a reason for that, but let us not get bogged down on that at the moment.

Hon Stephen Dawson: By way of interjection, I am told it came about because of a live case.

Hon Dr STEVE THOMAS: It is probably not appropriate to discuss that particular case here.

Hon Stephen Dawson: We would not be able to do that, no.

Hon Dr STEVE THOMAS: That would be interesting, though.

I take the minister to proposed section 91K(1) at page 5 of the bill —

> ***relevant derivative mining right***, in relation to a farm-in transaction, means a derivative mining right that is a relevant derivative mining right for the farm-in transaction under section 91M(1)(a)(ii), subject to subsection (3) of this section;

Can the minister give us the lay version of what a "relevant derivative mining right" might be and what it looks like?

Hon STEPHEN DAWSON: I am told that it is a way to link the mining right to the relevant tenement. It is a way of drafting. It is a Parliamentary Counsel's Office decision. It is essentially to link the mining right to the tenement.

Hon Dr STEVE THOMAS: This is a complicated piece of legislation! Okay. I will accept that. There is also a definition of "replacement derivative mining right". That links to proposed section 91K(4) on page 5, which states —

> In this Division, references to a mining tenement or derivative mining right being granted to replace another mining tenement or derivative mining right include cases where the mining tenement or derivative mining right is granted in substitution, conversion or renewal of the other mining tenement or derivative mining right.

This indicates that a farmee might swap either a tenement or a right to invest in exploration. We are dealing with a duty concession that will basically apply once the concession amount has been expended, although that will change under the legislation. Under what circumstances are we likely to get a swapping of either a tenement or a right to activity? Is that a common occurrence? What is occurring under those circumstances that this proposed section is seeking to pick up?

Hon STEPHEN DAWSON: This is another provision to plug a gap. It is not about a swap. Under the concession, the transfer of an interest to the farmee after the exploration amount has been spent is exempt from duty. However, issues with the current provisions mean that the transfer is not exempt if the mining tenement under the farm-in agreement is converted to another tenement type. This typically occurs when a farm-in transaction is made for an exploration licence. The farmor may apply to convert that exploration licence to a mining lease if there is no mineralisation on the tenement and they want to commence mining. If the conversion occurs before the tenement is transferred, the transfer to the farmee of the mining lease is not exempt from duty under the current provisions, and this produces an unfair outcome for the taxpayer.

Hon Dr STEVE THOMAS: It is hard to link the explanation the minister has given to the replacement. I fully understand that when one converts to a mining tenement or starts mining then suddenly all duty concessions are off the table and transfers at that point become dutiable instruments, and so they should be. I am not sure that that explanation gives an indication of the replacement of the mining tenement. Proposed section 91K(4) states —

> … references to a mining tenement or derivative mining right being granted to replace another mining tenement …

It sounds as though, effectively, one tenement will be replaced with another. Perhaps there is a more direct explanation that the minister might be able to come up with. Again, apologies, but it is very complex and technical area and bill.

Hon STEPHEN DAWSON: Technically it is not the same tenement once it has been converted. If it is a derivative mining right and the underlining tenement is converted, a new derivative mining right would need to be granted. The legislation refers to these as replacements. A replacement mining tenement is a conversion of an existing tenement. The most common example is a mining lease granted over part of the area of an exploration licence. If the farmee earns an interest in an exploration licence but it is converted to a mining lease before it is transferred, the exemption would not apply under current provisions.

Hon Dr STEVE THOMAS: I thank the minister for that; it makes it clear. Maybe it was just the way I heard it. Sometimes it is as much the way I hear something as the way the minister says it.

Hon Stephen Dawson interjected.

Hon Dr STEVE THOMAS: That is what my wife tells me frequently. I have taken that on board. That is good. I thank the minister for that clarification.

On page 7 we get to the meat, or substance, of the bill with proposed subdivision 2 "Explanation of farm-in agreements, farm-in transactions and related concepts". Proposed section 91L, "Farm-in agreements and concessional farm-in transactions, states —

> (1) A ***farm-in agreement*** is an agreement, whether conditional or not —

I am interested in the phrase "whether conditional or not". Is there an example of what sort of conditions might be applied under that provision? Given that in a minute we are going to start to talk about the conditions that will be required to meet the duty concession under proposed section 91N, "Exploration requirement and exploration amount", presumably "whether conditional or not" means that the farmor and farmee will sign a contract and that contract will be conditional on more things than simply what the new legislation will deal with in terms of exploration requirements? Currently it is just the amount, but presumably this provision will catch conditions that might be placed in the contract outside that. I presume that is what we are dealing with.

Hon STEPHEN DAWSON: A common example is a due diligence clause. It could also be conditional on finance. Those are two examples.

Hon Dr STEVE THOMAS: I think that is the simplest and most straightforward answer we have had today on a very complex piece of legislation.

Hon Stephen Dawson: You know I aim to please.

Hon Dr STEVE THOMAS: The minister is very good.

Several members interjected.

Hon Dr STEVE THOMAS: The minister had better watch out because others are going to press him, but he is fighting to hold his territory remarkably well. We will see what number he is on the ticket next time.

Several members interjected.

Hon Stephen Dawson: I won't be up very high if you guys keep going on.

Hon Dr STEVE THOMAS: Yes—well.

Let us jump to page 14 and proposed section 91N. This is where this bill shifts away from the current legislation with the definition of "exploration requirement" and "exploration amount". Proposed section 91N(1) reads —

> … an ***exploration requirement*** is a requirement to do either or both of the following after the farm-in transaction is made —
>
> (a) expend, on exploration carried out by the farmee after the farm-in transaction is made, an amount that is specified in, or determined in accordance with, the farm-in transaction;
>
> (b) carry out exploration as specified in, or determined in accordance with, the farm-in transaction.

Neither the word "or" nor "and" are used. Is it implicit that it is "and" between the paragraphs? I accept that the minister needs to do something. He can tell me when he needs me to sit down and be quiet.

I presume that "an exploration requirement" is, as we talked about before, shifting from the capacity for someone to provide a service rather than simply to provide an amount.

Hon STEPHEN DAWSON: I will have a good answer for the honourable member at a later stage. For now, I ask we report progress and seek to sit again.

Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson.