## DUTIES AMENDMENT (FARM-IN AGREEMENTS) BILL 2022

*Committee*

Resumed from 26 October. The Deputy Chair of Committees (Hon Steve Martin) in the chair; Hon Stephen Dawson (Minister for Emergency Services) in charge of the bill.

**Clause 8: Chapter 2 Part 5 Division 9 inserted —**

Progress was reported after the clause had been partly considered.

**Hon STEPHEN DAWSON**: Yesterday, before we finished, Hon Dr Steve Thomas asked for a summary about prospecting licences and how they are costed under the farm-in legislation. The general duty position is that a transaction for prospecting licences alone does not attract duty. If a transaction relates to prospecting licences and other dutiable property, a duty applies. The definitions in proposed section 91U(1) are designed to make the distinction between prospecting licences and other tenement types and define farm-in agreements that relate only to prospecting licences for the purpose of applying proposed section 91U.

Proposed section 91U(2) is a drafting device to resolve potential conflict between the provisions about the general duty treatment of prospecting licences and the provisions for the farm-in concession. Proposed section 91U(3) aligns with a general duty position so that a farm-in agreement relating only to prospecting licences and no other mining tenement will not be a dutiable transaction or a concessional farm-in transaction. The farm-in concession will not apply because it is not needed. These farm-in agreements will not need to be lodged with RevenueWA. A later transfer of an interest in the prospecting licences after the exploration requirement is met will also not be a dutiable transaction. It will be able to be registered with the Department of Mines, Industry Regulation and Safety without a duty assessment. However, a situation may occur, for example, in which a farm-in agreement is made in relation to a prospecting licence, but before the exploration requirement is satisfied, a mining lease is granted over some or all the area of the prospecting licence.

Proposed sections 91U(4) to (6) will mean that if there is a transfer of an interest in a mining lease in this scenario, the original farm-in agreement will become a dutiable transaction, and the normal farm-in concession provisions will apply. Duty will not be payable on the exploration amount, but it will be payable on any other consideration. Without this provision, the scenario would result in the farmee paying full duty on the transfer of an interest in the mining lease even though it has resulted from a farm-in agreement.

Another scenario is that the original farm-in agreement relates only to prospecting licences, but after the agreement is made, a different kind of mining tenement—for example, an exploration licence—is added to the agreement. Proposed sections 91U(7) and (8) will mean that the agreement will become a dutiable transaction from the date the other tenement is added to the agreement, and the farm-in concession provisions will apply as normal to the entire agreement.

Finally, proposed sections 91U(9) and (10) will give the Commissioner of State Revenue the power to make reassessments to give effect to the provisions of proposed section 91U and will provide that the usual five-year time limit on reassessments does not apply. Hopefully, that has answered the member's question.

**Hon Dr STEVE THOMAS**: Thank you, minister. That was actually an excellent summary of that, so, thank you.

**Hon Stephen Dawson**: I have to thank the advisers for that who have obviously put some great effort into it.

**Hon Dr STEVE THOMAS**: Would the minister give whoever wrote that one a pay rise, but limit it to a certain percentage, after the debate we had this morning; otherwise, I will be hearing about it forever!

That is really good because I was going to raise a question on proposed section 91U(2) with the minister, but that was a particularly good explanation. I think that the non-prospecting dutiable transactions and how prospecting relates to exploration and what the difference is between the two is one of those complicated arguments, which again comes back to this issue about how complicated this piece of legislation is in trying to fix what on the surface seems to be a fairly simple issue, but the technicalities are fairly extreme. My apologies for dragging all the advisers back in for a third day, but I figure that that is more the minister's fault than mine.

The intent of the opposition is that if the answers continue to be that good, I think we will hopefully be finished by the lunch break and his advisers can go back to their normal occupations.

**Hon Stephen Dawson**: I am sure they will be happy with that.

**Hon Dr STEVE THOMAS**: I want to get to the end of clause 8, and we are just about there. I refer to proposed section 91V, on page 33, "Treatment of certain options under farm-in agreements". Subclause (1)(a) states —

(a) separately from any concessional farm-in transaction contained in it, a farm-in agreement provides, whether conditionally or not, for the grant to the farmee, after the making of the farm-in agreement, of an option to acquire an interest in —

(i) a mining tenement that is a relevant mining tenement for a concessional farm-in transaction …

Or a derivative of that mining tenement. This may well be my last question in the clause 8 debate. Where it says "a relevant mining tenement", to what is that referring? It is separate from the concessional farm-in transaction—that the farmee can acquire an interest in a relevant mining tenement? How related is that to the farm-in agreement, or is it a completely separate, isolated, fenced-off part?

**Hon STEPHEN DAWSON**: That is over one of the tenements in that agreement, honourable member.

**Hon Dr Steve Thomas**: So it has to be within the agreements?

**Hon STEPHEN DAWSON**: Yes.

**Clause put and passed.**

**Clauses 9 to 13 put and passed.**

**Clause 14: Schedule 3 Division 11 inserted —**

**Hon Dr STEVE THOMAS**: We are now on the last substantive clause, and if we are going into bat, let us try to get this done in 25 minutes if we can.

Proposed section 60 refers to the first pre-amendment period and the second pre-amendment period, the definitions of which are on page 38. The first pre-amendment period is from 1 July 2008 and the second pre-amendment period starts on 28 November. On page 45, proposed section 67(2) states —

… In subsection (2) of section 13 —

I think that is section 13 of the act, not the bill before the house —

**Hon Stephen Dawson**: Again, by way of interjection, you are correct.

**Hon Dr STEVE THOMAS**: Yes. I will just pull that up in a second. We are operating on various parts. Proposed section 67 states —

(2) In subsection (2) of section 13, in relation to an agreement made during the second pre-amendment period, the reference to exploration or development only includes development to the extent that it is carried out solely —

(a) for the purpose of facilitating exploration; or

(b) otherwise incidentally to exploration.

I have a couple of quick questions on that. I am not sure what "otherwise incidentally to exploration" means in terms of the development of that. I suspect that "otherwise incidentally to exploration" could include the construction of buildings et cetera that are useful for exploration, so I am interested in what that means. Why is it limited to the second pre-amendment period? Is there a difference? I must admit that I find the two periods in the legislation a little bit confusing as to what occurs when. If there is a way to simplify that for us, can the minister do that? Can the minister also give us an indication of what development that might be otherwise incidental to exploration looks like?

**Hon STEPHEN DAWSON**: We will get an answer to the first part of the member's question. In relation to the two dates: 1 July 2008 and —

**Hon Dr Steve Thomas**: Because much of this clause relates around the two dates et cetera.

**Hon STEPHEN DAWSON**: The date 28 November 2018 and —

**Hon Dr Steve Thomas**: A simplified explanation would be useful.

**Hon STEPHEN DAWSON**: Yes; and the difference essentially. That 1 July 2008 date relates to amendments that are favourable to taxpayers. The 28 November 2018 date is not favourable to taxpayers. The amendments that apply from 28 November 2018 are to exclude the concession from applying to agreements wherein the exploration amount is capital expenditure on mining operations or the construction of mining infrastructure; to ensure that duty can be assessed on all consideration under a farm-in agreement, including consideration provided after the agreement is entered into but before the interest is transferred—any consideration for the transfer of the interest in the mining tenement or derivative mining right; and to ensure duty can be refunded on any contingent consideration that is not ultimately paid. Therefore, saying that it is less favourable is probably not the right words. But those are the amendments that will apply from that 28 November 2018 date.

In relation to the member's other question, development for facilitating exploration will usually involve things like power, water, access or accommodation that are necessary to conduct exploration on the tenements.

**Hon Dr STEVE THOMAS**: I suspected that that might be precisely the case. Again, that makes sense. Is the only measure of development incidental to exploration and what could ostensibly be preparation for mining based around the 20 per cent figure that we debated yesterday, or is there a more formal set of rules about what is going to be allowed in terms of incidental development for exploration versus what is actually likely to be used? I would imagine the facilities we put in place for exploration will also be some of the facilities we have in place for mining, plus all the other bits we require in relation to mining. Exactly what gets to be in the definition of "exploration" might be interesting.

**Hon STEPHEN DAWSON**: Essentially, the guidance material will provide guidance on what is development to facilitate exploration, but the 20 per cent relates to administrative costs, not expenditure incidental to exploration.

**Hon Dr STEVE THOMAS**: Okay. I am actually going to jump over proposed section 71. I thought some of those things were particularly complicated. There are a couple of things I highlighted to myself that were, I thought, just hilarious. I might just read this one in for the fun of it. I do not require a reply. Proposed section 71(2) states —

> In relation to section 13 farm-in agreements that are made during the second pre-amendment period or that are deemed section 13 farm-in agreements under clause 65(2)(b), this Act is taken to have applied during the second pre-amendment period, and applies on and after amendment day under clause 66, subject to subclauses (3) to (11).

My Latin is pretty rusty these days, but some of these clauses have taken a bit of getting through. I will take the minister at his word; with regard to these amendments, I say: timeo Danaos et dona ferentes—that is about the last phrase that I remember in substance.

**Hon Stephen Dawson**: You'd better write it down for Hansard!

**Hon Dr STEVE THOMAS**: Yes. It is just an indication of the complexity of this piece of legislation. If I were being facetious and we had all the time in the world, I would actually ask the minister to stand up and explain it, because I thought that that would maybe be a good one to pick out, a very complicated clause. I think we have to take it on some faith that the people who constructed this legislation managed to do so in a way that picked up all these technicalities. I think the simple truth is that if we get bogged down by me asking the minister to explain every complicated clause in this bill, we will potentially finish this bill by the rising of Parliament in 2024, and go straight to an election after that. I have gone through as many clauses as I can to try to make sure that they make sense. I have asked for explanations when I have not been certain, but there are some clauses like that, and under this clause, 14, there are a bunch of proposed provisions that seem to follow after each other and make life very difficult as a legislator.

I will cut back to a couple of quick things to finish off. Proposed section 72 on page 49 deals with no double duty on the exploration amount. It then divides into proposed section 73, which is attached specifically to mining tenements. Proposed section 74 makes provision for derivative mining rights, which also includes replacement derivative mining rights and, under proposed section 73, replacement mining tenements. I am going to assume for the sake of debate that the rest of the proposed sections in this clause, from proposed sections 73 and 74, are pretty much what we would consider uniform in their approach, but there seems to be a particular focus on ensuring that there is no double duty paid on any of these transactions. This might be my last question in Committee of the Whole. I will not ask the minister to explain entire clauses or else, again, we would not finish until the Christmas break. Obviously, the intention is that there should not be double duties applied. Is there a summary the minister can give us of the intention around those two proposed sections that is an easier outcome than trying to sit down and read them?

**Hon STEPHEN DAWSON**: Even though the member has moved past it, I will say about proposed section 71 that it is complex and complicated. Far be it from me to question the drafters and the Parliamentary Counsel's Office and others, but —

**Hon Dr Steve Thomas**: If you wanted to, we could do so for a long period of time.

**Hon STEPHEN DAWSON**: I know. I agree with the member, though. Essentially, proposed section 71 will apply the amendments to allow the commissioner to reassess duty, if there is a change in consideration for farm-in agreements entered into between 28 November 2018 and the commencement day of the bill. It will also allow the commissioner to refund duty on any contingent consideration that is not paid on a farm-in agreement entered into during this period.

With regard to proposed section 73, the commissioner's assessing practice has been to allow the concession when interest in a replacement mining tenement is transferred to the farmee instead of an interest in the mining tenement, the subject of the farm-in transaction. This usually occurs for tenement conversions, such as when an exploration licence, the subject of the farm-in agreement, is converted to a mining lease before the earned interest is transferred to the farmee. Proposed section 73 will provide legislative support for concessions applied to transfers of an interest in a replacement mining tenement from 1 July 2008, and allow concession for transactions on hand that were entered into before amendment day. For farm-in agreements entered into from 28 November 2018, this provision

will also ensure that duty will apply to any consideration given for the transfer of the interest in the mining tenement or replacement mining tenement.

Proposed section 74 will ensure that duties will not apply to a grant or transfer of an interest in a derivative mining right, or a replacement derivative mining right, on or after 13 June 2019, if it is under a farm-in agreement that has been duly endorsed, and charges duty if further consideration is provided for the grant or transfer of an interest in a derivative mining right or a replacement derivative mining right under a farm-in agreement.

**Hon Dr STEVE THOMAS**: I thank the minister for that. That is largely as expected. Obviously, the later stages of this bill will grant a significant amount of power to the commissioner with regard to judgement. There will obviously have to be a fair bit of work involved in putting that in place. Given the legislation we have been debating, it is very hard to see how the government could have written a prescriptive bill that restricted those decisions and judgements, so I think we have to accept that there is a little risk involved that there will occasionally be inconsistencies, despite the best efforts of the person in that position to make sure that there are not.

If I had a better solution to that, I would obviously provide it in the form of amendment, but I think the way it is written is probably the only way that we can progress with it. It is difficult and complicated, and interpretation will be, as it is in many of these things, critically important. I think we have no other option but to go down the path we have, so I think the clause can be accepted.

**Clause put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services)** [12.50 pm]: I move —

That the bill be now read a third time.

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [12.50 pm]: I thank the Minister for Emergency Services for his assistance on the Duties Amendment (Farm-in Agreements) Bill 2022. It is an important piece of legislation. I have to say that it is one of the most complicated bills I have dealt with. As I pointed out in my address on the second reading, the bill is managed by a two-page second reading speech from the government, a two-and-a-quarter page overall explanatory memorandum, and 80-odd pages of significantly complicated explanations on a clause-by-clause basis. It is unusual to see a two-page second reading speech for a bill with 56 pages to work our way through. All of that suggests this is a highly technical piece of legislation, and I think that is the case. I thank the advisers who provided briefings for the assistance they gave over the last three days of the debate on this. This has been a quite intense debate. I have to say that the answer given at the start of today was remarkably well written and I was pleased to receive it.

Exploration is critically important to maintain Western Australia's economy. I note that we had a fairly forthright debate this morning on the need for the mining sector to maintain the cash levels in the money bin. It is critical that exploration be allowed to occur largely unhindered. This bill is important so that the state does not provide a roadblock by making exploration more difficult than it needs to be. The exploration economy and marketplace is very difficult and complex. It is not like it was 100-odd years ago when people could push a wheelbarrow across the state and just go looking. It has developed into a much more complicated process. We fully accept that we need to make it as simple as possible to allow exploration to continue. It is particularly important, in my view, to encourage exploration in onshore gas when we can because, as I said in the second reading debate, that will play an absolutely critical role in driving Western Australia forward, including with energy generation. I know that the government is looking at alternatives and its transition plans are remarkably different from ours, but I think some of this work needs to drive that forward.

I want to highlight to the house that one of the issues with a complicated piece of legislation like this is that its application and regulations will also be quite complex. I appreciate that the minister provided a range of documents in draft form during the debate that will hopefully assist the exploration sector and, ultimately, the mining sector in understanding those regulations. I think there will be a continuing debate in the industry on whether a standardised form or template agreement should be developed. I know that is incredibly hard to do. Every farm-in agreement is different and is designed for a specific outcome. As we learnt during the debate, it is not just a financial agreement. More often than not, it is an agreement to provide services for exploration generally and also for components of exploration. It would be very difficult to develop a standardised form or template agreement. There remains some concern in the industry that not having a standardised form will make it difficult for smaller companies and explorers in particular, and I think that is a valid and legitimate concern. I am sure that the government is aware of that. The

government's consultation on this bill has been very good, if for no reason other than we are on the third iteration of the bill and some changes were made to it as we went through this process. It is good to see that that level of consultation occurred, and I congratulate the government for that.

I think there are still a couple of concerns, particularly around the practicalities of what a standardised agreement would look like. Once we pass this legislation, I urge the government to try, as much as possible, to get as much information as it can to the business community that is engaged in exploration so that the industry will understand the best ways it can manage its current and future obligations. I suspect there was some confusion around the definition of "administrative costs". I think we examined that fairly well during the debate. Hopefully, that has been further refined. I suspect, on the advice of the minister during the debate, that some additional information will be provided. That is where we started today's debate. I appreciate that and hope that it is forthcoming.

Industry raised with me the issue of the use of the replacement mining tenement. We have probed that issue. Again, I urge the government to make sure that that is well defined in the documents that will assist this bill. We looked at proposed section 91N on exploration amounts and various other references. Hopefully, the commissioner's view of the definition of "global exploration amount" being split into various parts of the ownership of the farm-in laws if it is a multiple group will come in the form of either the forthcoming advice from the commissioner or in a commissioner's future ruling. They are the areas the industry has been most concerned about. I accept that the government has done its very best to address those concerns and I thank the minister for the goodwill in the debate today. We could spend a year on this, but we will not. With those few words, I also commend the bill to the house.

Question put and passed.

Bill read a third time and passed.

*Sitting suspended from 12.58 to 2.00 pm*