

**MINING AMENDMENT BILL 2022**

*Second Reading*

Resumed from 10 August.

**MR R.S. LOVE (Moore — Deputy Leader of the Opposition)** [5.52 pm]: I will make a short contribution before the six o'clock scheduled meal break. I will keep my commentary brief. The opposition supports the Mining Amendment Bill 2022. From our discussions with industry, so far as we have been able to ascertain through consultation with groups representing industry and a number of individual companies and concerns, it appears that the industry supports this regulatory change to be brought about basically in four different parts, as I understand.

One of the issues that will be dealt with first is the adoption of the Geocentric Datum of Australia 2020, which will replace the earlier 1994 version, GDA94, to maintain the accuracy of information and to ensure continuity between different mapping databases et cetera. This is necessary because the continent drifts ever so slightly every year around seven centimetres, I think, which is quite a bit when we think about it. Over a million years, you are going places, but in our lifetimes it is probably not going to make a huge amount of difference, unless we are a surveyor trying to get information as accurate as possible. This legislation will not only adopt a new datum, but also mean that there will not need to be legislative change in the future for a similar update to take place from time to time as required. That will instead be done through regulations. It will be a more seamless and less cumbersome way of dealing with it, and presumably it may be done more regularly than is currently the case.

The second aspect of the bill deals with making applications on licences for leases et cetera. The ground has to be marked out as part of the process for lease applications. We know from the experience of COVID, for instance, that there were circumstances in which people could not get onto the land to mark it out due to lockdowns et cetera. It may have been that they were locked out of particular areas because of the region-wide lockdowns. There may have been other issues with getting into lands where Aboriginal people were present. There may have been a range of problems in people getting onto the land. There are other times when circumstances might dictate that it is not possible to gain access to land—for instance, if there were a major fire or some other natural event that prevented access. The land will still need to be marked out, but there will be more flexibility if indeed the proponent can make a case that there is a need for that discretion to be exercised. The applicant has to provide enough evidence to satisfy the mining registrar of those particular circumstances; otherwise, the applicant still has to mark out the land as before. There will be a time limit on how long the situation will persist before we again see the need for that land to be marked out. It is not an indefinite length of time. It is simply to enable the person to overcome that particular hurdle that stands in the way, and they will have a reasonable amount of time after that to mark up the lease.

The third arm of this legislation will provide for fees to be imposed for objections against applications for mining tenure. I understand that this will bring this part of the Mining Act into line with other parts of the act as well as legislation in other jurisdictions. If someone makes an application, for instance, to appeal a matter at the State Administrative Tribunal, as I think the minister pointed out in his second reading speech, they will have to make an application and pay a fee. A fee is to be set by regulation. I think it is not being set in the legislation as such, but the legislation will allow for that fee setting to occur into the future. We will also have a bit of streamlining in the sense that the electronic provision of certain information can occur. That will enable a more streamlined and better way forward for the provision of that information for the industry.

As I said, the bill is not contentious. I do not intend to go into consideration in detail. I do not think it is necessary. There is no shortage of quite detailed information in the Mining Amendment Bill explanatory memorandum around the issues of what constitutes, for instance, the circumstances in which a person may have the ability to lodge a lease application without having first marked out the land. Examples are given such as a person trying to get to a lease at Laverton when intrastate travel restrictions are declared across Western Australia and what would happen in that circumstance. Another example is whether an application for a lease at Marble Bar without the land being marked would be supported if restrictions were in place. The reasons are given in each example. Another example is Wiluna where there are boundaries across different regions and it explains what would happen if intrastate travel restrictions came into place. Other circumstances are explored throughout the examples.

I think it is all laid out fairly clearly in the explanatory memorandum. I do not see the need for us to interrogate deeply in Parliament this very uncontentious and well-supported bill. If the minister wants to make some points that he would like to point out in clarification to industry and Parliament in general, he is welcome to do that in his winding-up on the second reading debate. I do not know whether there are any other speakers at the second reading stage. I may continue on very briefly after the dinner break, but, if not, I am satisfied that I have outlined all the matters relevant on this legislation from the opposition's point of view. I again reiterate the support of the opposition for this legislation and our understanding of how important it is to ensure that the mining industry has better processes in place.

*Sitting suspended from 6.00 to 7.00 pm*

**Mr R.S. LOVE:** I will just wind up my contribution on the Mining Amendment Bill 2022. Before the dinner break, I was saying that I might ask a little question of the Minister for Mines and Petroleum about some other matter that is not, strictly speaking, about the Mining Amendment Bill 2022 but is certainly related to the exploration situation in Western Australia. I want to know, minister, whether there has been any further consideration of the decision of the Warden's Court. I know that the minister came out and gave some assurance to industry over it. I think the name of the decision was *True Fella Pty Ltd v Pantoro South Pty Ltd*, and there was a great deal of consternation in the industry about that. Again, I thank the minister for coming out and making a strong position on that for the benefit of the industry. But I think as time goes on, there is probably a need for more clarity to be expressed at some point. I am taking this opportunity, seeing as this is a speech in the second reading debate and we can deal with a slightly wider range of matters, to ask whether the minister has an update or any further information on what the department and he might be able to do.

**Mr W.J. Johnston:** If you keep talking, I will walk to the back of the chamber and have a discussion with the advisers there.

**Mr R.S. LOVE:** Okay. So if the minister is able to have a bit of a brief discussion, I think it would be of benefit. We know that the mining industry in Western Australia is a powerhouse of the Australian economy, and for that to keep going, there has to be surety around all sides of the process, in not just mining known deposits, but also finding new deposits. To do that, people have to have confidence that the exploration licences are in order. I think they find it difficult to lay out a four or five-year program from scratch because they are going into a field of unknowns. They do not know what they will encounter. They do not know what they do not know! Therefore, there has been a bit of a practice build-up in which people put a year or more into a work program, and then they can reassess based on what they find and what problems they encounter et cetera and then provide greater detail. If the minister is ready to have a bit of a discussion on those points, that would be wonderful. I think everyone would be very keen to hear that.

As I said before, we will not delay the house on debating the Mining Amendment Bill 2022 itself, which is not at all contentious, but this other matter is something of a contentious issue for the industry, and I think, as contentious issues go, it is financially one of the most important situations that needs to be dealt with. Without certainty in the industry, there could well be a stymieing of the investment in and the action of exploration. As we look around at some of the new critical minerals that are required for our economy's growth, it is vital that exploration continues and that people have confidence in that.

With that, I will conclude my speech for the second reading debate. I commend the bill to the house. The opposition will certainly support the bill through all stages.

**MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum)** [7.04 pm] — in reply: I thank the opposition members for their support for the Mining Amendment Bill 2022. I will start by tabling a paper. I said in question time that I would table a paper, and I gave a copy to the Deputy Leader of the Opposition at the end of question time, so I will just table it.

[See paper [1435](#).]

**Mr W.J. JOHNSTON:** It is a copy of correspondence to my office from the Australian Transaction Reports and Analysis Centre regarding our inquiry about it with respect to the Gold Corporation. I could not get the document out of my folder during question time, but I gave a copy to the member for Moore when I could, and I have now formally tabled it.

I will start with the Pantoro South matter. I put out a media release on 26 August 2022. I am not quoting; I am just reading. The gist of the release was that the Department of Mines, Industry Regulation and Safety was having a look at the decision on that matter. On 18 August, the Mining Warden made the decision in respect of the section 58 statement, which was included with the application, and the department was looking at that matter and seeking advice. My comments, which I will now read, quoting from the media release, were —

“I have been informed of the Warden's Court decision relating to True Fella's exploration licence application.

“Industry can be assured the McGowan Government is taking this matter very seriously, and will act to ensure certainty and security of tenure for proponents.

“This will include any steps necessary to ensure the validity of granted exploration licences.”

That is the end of the quote.

I have a couple of things to discuss. Firstly, I want to make it clear that I am not reflecting on any current matters in courts, because those matters would be sub judice and therefore I would be breaching standing orders if I referred to them, so I will just make that clear at the start. But I will also highlight the context of this decision. The warden sits in an administrative capacity, so their decisions are important in the process because they are examining questions

of fact. But they do not set precedent, and that is the challenge, so we do not know what a judge would say of this administrative matter. Therefore, it is an administrative process as part of the Mining Act. Some elements of this lead to my desk for which I am the actual decision-maker. Not all decisions, but some decisions, can be made at the minister's discretion, and the minister's decision can be separately appealed on questions of law but not on merit, so it is a very difficult thing. I have to be very careful in the way that I present the commentary that I am making.

At the moment, the department's view is still that—I have just confirmed—we do not think that this bill will change any practices that the department needs to do. We are continuing to engage with the State Solicitor's Office in seeking to clarify that advice, but that is still the advice to me from the department. However, if anything changes, we are committed to, as I said in my media statement, taking any steps necessary to ensure the validity of granted exploration licences, and so we remain committed to that. But I have to be careful in the wording, because I cannot be seen to be reflecting on any open matter; indeed, I cannot be seen to be reflecting on what decision I might make in any matter that might come before me, because I have to provide natural justice to all the matters that come to me. However, we are determined to make sure that these matters are properly dealt with. That is as much as I can say because I do not want to overstep, but we are determined to provide certainty to the extent that we can do so.

In respect of this bill, the member for Moore did not really ask about any matters on this bill. As the member points out, this is a highly technical one. It does not go to many policy matters. I thank the Leader of the House for his sterling effort in giving the second reading speech on my behalf.

I just draw attention to the third area of reform, which is to enable fees to be prescribed for lodging an objection against a mining tenement application. That is something that the industry has been very keen to see come in because sometimes complaints are made on tenements that are designed to get a payment for the person making the complaint to go away rather than to actually test the validity of the application. We want to be in a position where serial planters —

**Mr R.S. Love:** It's quite a lucrative industry.

**Mr W.J. JOHNSTON:** Yes, it is. This will allow us to introduce a modest fee that might discourage some of those serial planters who simply complain everything rather than having a look at the individual matters. Having said that, "use it or lose it" is an essential element of the exploration and mining framework here in Western Australia, and we must continue to support that—and the complaining process is one of the ways through which examination can occur on whether people who currently have the tenement are using it. We do not want to have warehousing, so we do not want to make it too difficult to make a complaint because it is an important process as part of the overall management of tenements. We want people looking, because if they do not look, they do not find, and if they do not find, we do not have a strong industry. We have to balance those two things together, and we think this legislation does that.

I thank the opposition for its support and I thank all the other members of the chamber for their clear and unequivocal support for this legislation, and I commend the bill to the house.

Question put and passed.

Bill read a second time.

[Leave granted to proceed forthwith to third reading.]

*Third Reading*

Bill read a third time, on motion by **Mr W.J. Johnston (Minister for Mines and Petroleum)**, and transmitted to the Council.