MINING AMENDMENT BILL 2023

Second Reading

Resumed from 15 June.

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [5.45 pm]: I was not far off finishing my contribution on the second reading before we adjourned. I had a very few moments left. I want to go through some of the key things that we would like the minister—the parliamentary secretary—to respond to.

Hon Dr Steve Thomas: He got promoted!

Hon Matthew Swinbourn: The two Clerks got a promotion, then I get one.

Hon COLIN de GRUSSA: That is all right. The parliamentary secretary has probably earned it.

Anyway, as I was outlining in my contribution, the opposition does not oppose this legislation. We do not really see a great need for it; however, it appears that the need has been identified by the department rather than by industry. Certainly, that is the view that has been expressed to us in the consultations we have had.

As I was asking before the adjournment of the house last Thursday, perhaps the parliamentary secretary can outline the actual genesis of this bill in his reply. What was the approach from industry in terms of the need for this legislation or amendment? What consultation process occurred in the development of the bill? Who first flagged those issues with the department, or was it the department itself that realised there could be a potential issue with the carbon farming projects causing issues for mining projects in the state?

With that, I will leave my second reading remarks. I look forward to the contribution of other members before we go into the Committee of the Whole.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [5.47 pm]: I intend to make a not too lengthy contribution to the debate on the Mining Amendment Bill 2023. This is an interesting bill. Obviously, as we legislate and regulate the mining industry, we sometimes end up with unexpected consequences. I think we are looking at something of an example of that.

Deputy President, dare I venture into the area of property rights a little bit, just to raise the spectre, if you will? What we are trying to do in this case is a fairly sensible outcome, and I am quite supportive of the bill before the house, but it raises the issues that sometimes arise when we have a change of legislation. The simple conundrum before the house, in my view, is that across the state of Western Australia, we have multiple uses of land, for the most part. Sometimes that is more honoured in the breach than anywhere else. Perhaps we might have a debate at some point about multiple land uses depending on who is the owner of the land. Sometimes, when the government owns the land it seems to have a different outcome from when the land is privately owned. In this particular set of circumstances, there is a potential conflict between the people who want to engage effectively in carbon farming—that is, carbon storage—and the wider mining sector, which might want a piece of land for other uses.

As far as I am aware, this came about because of some establishing legislation in the federal Parliament. Our legislative system was not ready for what might happen with carbon farming, which is partially managed at a state level and partially managed at a federal level.

What does carbon farming actually look like, and is it a potential threat to the mining sector? If we look at it from a practical sense, we have to assume that the threat is pretty minor. There are effectively two ways to farm carbon, and they are divided into the old classics, biosequestration and geosequestration. I will deal with each of them separately. Just so members are aware, the Mining Amendment Bill 2023 will attempt to identify the sorts of things we are talking about as offsets projects. Clause 4 of the bill inserts proposed section 8(1) into the Mining Act, which defines "offsets project" as —

> (a) an eligible offsets project as defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Commonwealth) section 5;

Obviously that is a piece of commonwealth legislation —

> (b) an offsets project, as defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Commonwealth) section 5, if —
>
> (i) the offsets project is the subject of an application under section 22 of that Act; and
>
> (ii) a decision on the application has not been made;

Basically, the definition of "offsets project" comes under section 5 of the federal Carbon Credits (Carbon Farming Initiative) Act 2011. Section 5 of that act is the definitions section, and it states, in part —

> ***offsets project*** means:

(a) a sequestration offsets project; or

(b) an emissions avoidance offsets project.

Basically, the legislation does not define it much more fully than that. It is effectively a project for the sequestration of carbon, either as a genuine carbon farming project, or an emissions offset—which, to be honest, for the most part vary only in respect of who is running it, as far as I can tell.

Let us break down the two obvious forms of carbon farming, biosequestration and geosequestration, because we need to understand whether there is a threat from the mining sector for those who intend to engage in one of those things. In a little while—maybe after the dinner break—I will talk about why we need to have dual use of this sort of land. Let us look at carbon farming in terms of biosequestration. Should there not be an exemption to being able to block a mining tenement over a biosequestration project, there will be a separate set of rules—separate from almost every other form of land tenure. Most biosequestration projects have to cover a significant area; they have to cover hundreds, if not thousands, of hectares to be able to sequester a sufficient amount of carbon to make it economically viable. It also depends on the price of carbon. The international price of carbon in some markets is up around $100 a tonne, and at that stage, smaller projects might actually start to become economically viable over a couple of hundred acres. We also need to remember that, for the most part, most mining footprints are very, very small, so the impact of the mining industry on a fairly large carbon farming project will be fairly minimal.

Obviously, the better the soil and the higher the rainfall, the more likely it is that there will be high carbon storage capacity. The south west and great southern parts of the state will therefore absolutely have the most capacity to densely store carbon under a biosequestration model. That is generally about large trees, in places where large pines, karri and marri can be grown. When that is harvested, there is then the question of whether it is genuine sequestration; tonight is not the night to have that very long debate. The reality is that we have, in the south west and great southern regions, dense carbon storage potential. Those are also the regions of the state that are least likely to have mining impacts. Basically, the risk involved in putting this legislation in place is fairly small. We are most likely to find the two industries in conflict in the larger, extensive areas from the wheatbelt out to Kalgoorlie and further north, in the mining and pastoral regions. That is where we are much more likely to find mining activity. Secondly, biosequestration is a much broader exercise in those areas, because we are looking at smaller and less dense vegetation, so the capacity for long-term storage is more complicated.

Soil storage of carbon is still a form of biosequestration, but it is a bit more complicated. In theory, it would be great if we could increase the average carbon level of Western Australian soils. When we talk about carbon, we also tend to talk about the fertility of the soil: for the most part, the higher the carbon, the higher the moisture retention, and the more productive the soil is. Most of Western Australia's soil is around two per cent carbon, for example; funnily enough, we live in a pretty sandy state. In places like the Darling Downs in Queensland, the organic soil carbon level is more like 10 or 12 per cent, so obviously a lot more can be stored there. The tricky part with measuring soil carbon is that we are never sure how permanent the sequestration is; much of it is bacterial in nature and it comes and goes, so measuring soil carbon is a much trickier exercise than people realise. Being able to rely on it in the long term is a little tougher. However, if we are looking at soil carbon, it is difficult to accept that we would exclude the possibility of mining on the basis that we wanted to keep a soil carbon project in place. In respect of biosequestration, whether it is vegetation-based carbon or soil-based carbon, the reality is that we will not be protecting much of that capacity by not having this bill in place. Opening that up actually has a very small risk factor in terms of the small areas that might be impacted by mining proposals.

It is even more interesting when we get to the geosequestration model. There are a few examples of geosequestration around the state. Barrow Island is the most obvious one; there are a couple of other areas around the world where they are looking at significant geosequestration models. In theory, there might be an impact, although not so much from iron ore mining or rare earth minerals mining, because most geosequestration will occur in an aquifer or a very deep channel. I think they are going down more than three kilometres at Barrow Island; it might even be four kilometres. It is a long way down. There are not many mines that go down to that sort of depth; maybe some gold mines might get there in the fullness of time, but certainly most iron ore mines are superficial; they are open-cut mines. We would have to be in an enclosed mining situation to get to those extreme depths. The reason for that is that carbon is injected in a gas form and can leak, so superficial aquifers are very rarely used because there is a potential leakage issue. If we tried to store liquid carbon dioxide in a superficial aquifer, it could quite easily come back out, so it is unlikely that superficial mining—particularly open-cut mining—is going to interfere with carbon sequestration and storage further down. For example, we are not likely to go down three or four kilometres in an open-cut mine.

The only mining that could potentially go down that far, in my view, is oil and gas, where they are actually trying to hit a gas aquifer, and that is precisely where we sequester carbon in the geosequestration process today. On Barrow Island, for example, we are putting it into the aquifers and through the systems and pipes that were used

to extract oil and gas. They are going down much deeper; they are going into low aquifers. The argument around geosequestration is that as we take the gas out, there is an obvious place to put liquefied carbon dioxide back in.

Sitting suspended from 6.00 to 7.00 pm

Hon Dr STEVE THOMAS: We are dealing with the Mining Amendment Bill 2023. We had a bit of a discussion before the dinner break about the various ways in which carbon is stored and the fact that we are looking at, for the most part, carbon storage via sequestration—that is, the storage of carbon over a fairly large area in relation to vegetation with the possibility of soil carbon as well. I do not propose to spend time going back through a recap of the work we have already done. I would like to progress to a bit more substance around the bill.

It is good to be debating a bill that recognises carbon farming and the need for action on carbon and climate change and, at the same time, reflects on our support for the mining sector. I know the government is a supporter of the mining sector. The government has to be supportive of the mining sector because the mining sector has underpinned the government's finances for a long period—I would have said far more so than in any other state but, as we noticed last week, Queensland dropped a $12 billion surplus on the table, which has taken a fair bit of the sting out of my arguments and my attack on the government. I have had to reassess the Scrooge McDuck approach because the government has now been beaten by a bigger scrooge, which is quite impressive. In fact, it has been doubled. In the media, I note that somebody suggested it was three times. Last time I looked, six doubled was 12, rather than three times. Anyway, we should perhaps not make comment on their mathematics skills. I am not sure how much mathematics is done in a journalism course. A $12 billion surplus is a pretty impressive amount. We are no longer the state with the biggest windfalls from the mining sector in this country's history. We are not far off. To equal Queensland's surplus of 2023, we have to add our last two—the $5.8 billion and the $6 billion together to match it. It is a two-for-one. Maybe someone should suggest that Western Australia is going to have to pick up its act a bit because we have now been bested by Queensland in the eastern states and our reputation is suddenly on the line. I suspect the problem will be that the iron ore prices will go about correcting.

The focus at the moment in the world economy is very much more on energy than it is on steel. Of course, that will not be the same forever and we will come and go. As we keep saying, we need to diversify the state's economy so we are not so focused on iron ore. Hopefully, that is where the bill before the house will get us at least a little bit in the right direction. This government, I am prepared to admit, has obviously been a pretty strong supporter of the mining sector—as has the opposition, just quietly! It is one of those things in which we find ourselves in furious agreement and not occasionally in competition. Certainly, for some of the better mining sectors, there has been a bit of competition to try to get into the sector and pledge our support, if you will. There is always a bit of competition between the major parties to get in and be supportive of some mining companies—I will not name them—involved in not just the more traditional mines, but also in some of the newer technologies like lithium and others. That is not necessarily the case across the board. In a little while, I suspect we will hear from the Greens about their position on this bill, which may be a little bit different from the Labor Party and the opposition alliance, the Nationals WA and the Liberal Party. I suspect that the Greens will take a position that generally opposes mining pretty much in any way, shape or form. Members of the Greens are generally as fond of mining as they are of the timber industry. Having assisted in its demise, they will now focus a bit more on the mining sector, I presume. However, I will let Hon Dr Brad Pettitt make his case in the fullness of time. But I think that the Liberal, National and Labor Parties are fairly unified in their positions on this.

Of course, we all want to see action on climate change, and it is important for a number of reasons. It is partly because we want to see successful methods of biosequestration and geosequestration. Biosequestration is the easy one. It is out there in the marketplace and is fairly simple to do. The growing of trees and vegetation is not complicated. Soil carbon in itself is more complicated—more so in the measurement than in anything else. I am aware of many examples of a farmer simply growing vegetation and allowing it to, effectively, fall. Initially, they have to fertilise a bit to get that vegetation in place if they are starting in a low carbon environment. If the farmer is starting at one per cent carbon in very sandy soil, it is usually somewhat acidic. It is not the easiest thing in the world to get that vegetation to grow, so that it can drop and increase the amount of soil carbon and, ultimately, get this biological ecosystem happening, but it can be done. In places where it is done, the tricky part is that it is hard to maintain that measurement over time. A farmer can easily increase soil carbon on a temporary basis; it is not difficult to do. If they put fertiliser on an area of ground, they tend to get additional crops. In a lot of cases, they do not even have to knock it down or cut it; it will fall in the fullness of time and, ultimately, a better biome will generally develop over time. That is how farmers get richer soils. There is usually a long history of vegetation that has stayed in place. It is not a complicated science and never has been. The tricky part is that soils can lose carbon at a fairly rapid rate. If a farmer suddenly gets a rapid growth of vegetation or happens to disturb the soil significantly—even just drying it out, because some of that biome carbon is actually microorganisms—they can lose organic carbon in that biome in the same way that soil loses moisture. That is why those engaged in that process will often try to not till the soil and to plough it back in, as it were. Those of us who have been around the farming community for some decades, such as Hon Colin de Grussa and Hon Steve Martin, would probably remember the era when we used to plough stuff

back in in an attempt to lift levels of soil carbon. I think Hon Dan Caddy might remember a bit of farming back then, in his old—I was going to say Nuffield tractor, but that was not him; I think that was me. We had Massey Fergusons and Nuffields back in the day.

Hon Dan Caddy: It was the 9G!

Hon Dr STEVE THOMAS: The member is a bit younger than me, so his tractors were probably a bit newer than mine. I do not know whether Hon Steve Martin remembers a bit further back again, perhaps the old three-cylinder tractors or something. That would potentially be a bit rude and cheeky.

Hon Kyle McGinn interjected.

Hon Dr STEVE THOMAS: You remember the three cylinder or that was your nickname?

Hon Kyle McGinn: I won't say what my nickname was!

Hon Dr STEVE THOMAS: I take one look at the haircut, Hon Kyle McGinn, and I can have a fair guess, but that is a whole other argument! He has distracted me again. I have to maintain some focus when Hon Kyle McGinn is in the chamber. In the old days we used to try to build soil carbon simply by putting carbon back into the soil, and we used to cut and plough. I know farmers today who try to raise soil fertility by growing a crop, typically a legume, specifically to plough back in. A legume crop has nitrogen-fixing bacteria, generally in nodules, and they often have to be inoculated and seeded to do the job properly. The level of nitrogen in soil is raised, which is critically important in many places. Most of Western Australia is borderline nitrogen deficient, as it is borderline phosphorus deficient, and usually a few other things as well. There is a fair bit of selenium deficiency in lots of patches, particularly in the wheatbelt. Farmers put in a legume crop and plough it back in, so they try to put biomass, organic carbon, back into the soil to stimulate it so it absorbs the bio-carbon. It works very well. Farmers do that to generate much more significant crops. I do not want to disparage the territory of any members from the wheatbelt on either side of the house, but an example would be a canola crop that might produce a couple of tonnes in slightly more marginal country might go to five tonnes with this ploughing back of carbon into the soil, particularly an organic-based carbon. It is more difficult with inorganic-based carbons.

Members who have been around the Collie coal industry for as many decades as I have will remember that we tried to use coal carbon, effectively coal dust, as a soil supplement for some years, trying to get absorption of carbon into the soil. It did not take off—I see some bemused expressions on the other side. The reason it did not take off is that it was an inorganic carbon, even though it was organic based, if we assume that coal, like oil and gas, was originally an organic base many years ago. Before people say "dinosaurs", not much of it comes from actual dinosaurs; most of it is from plant-based fossils that were highly compressed. Yes, it was slightly organic, but these days it is not organic any more than a diamond, pressed carbon, is organic. It is not organic based anymore. When we put coal fines, coal dust, on paddocks, the problem was that even if it was ploughed in, there would be trouble converting it into organic carbon, so the biome was not ready to pick it up and run with it. It was a good experiment; the intent was there. In those days it was not done because of climate change but in an attempt to lift productivity in the soil, and that was quite reasonable, but it was not successful. Carbon farming tries to develop organic carbon growth. That is precisely what it needs to be about. It needs to be about getting organic carbons into soils.

The question before us is: what is the intent of the bill? I think it can be summed up in a couple of key lines of the second reading speech of the parliamentary secretary. When the parliamentary secretary talks about the policy intent of allowing coexistence, there is a line at the beginning of his speech where he said —

> This policy intent would be defeated if carbon farmers could object to proposed mining tenure on the basis that it adversely affects the carbon farming use.

That is reinforced by the line that says —

> The key element of the bill prohibits a person to lodge a notice of objection if the basis for the objection is a mining tenement or the activities authorised by the mining tenement would affect an offsets project.

The question is, and it looks like a real question, the fact that the attempt to sequester carbon potentially allows an objection to a mining tenement to be lodged. In the first instance, this is about exploration rather than mining, and we know exploration is critically important. It also covers broad areas of land. Exploration is not generally found on a small plot, although, interestingly, members might be keen to know that some small claims are being lodged in relation to lithium mining. Lithium is a fairly specialised field of mining. It tends to occur only with certain geology. Where they are looking for it for the most part is in a much more restricted area. We are, in lithium, getting smaller tenements sought and smaller tenements looked at. Interestingly, the south west has at this stage the best lithium mine in the world. It is down at Greenbushes and Talison Lithium is one of those places that members of all sides of politics are trying to knock on the door and attach themselves to it—including me—because we all want to get on board the lithium story. It is looking at broader areas because it has to explore to find an extension of that mine.

At the moment it is looking through the old, processed material because it has new techniques to pull more lithium out and that will extend the lives of those mines significantly. Ultimately, even at the increased rate, if Talison, for example, gets that fourth train up and running then what was a 25-year mine life suddenly becomes a 15-year mine life. That has a significant impact. Firstly, on the region and longer term jobs, but also on the capacity to get lithium out to transition to a renewable future.

I am pleased to say I have long been a supporter of a transition to a renewable future. I want to see it done in a way that is stable and I want to see it done in a way that keeps the lights on. I do not think the current government's plan, as it is outlined, does that. Maybe there is a lot more that will come in the government's current plan, but from my personal point of view I would rather see a milestones-based debate based on capacity. The government has, in its current transition plan, developed milestones that are purely time based and I suspect ideologically based. There is a time frame for closing down coal and there is a time frame for this transition that is not necessarily practical but ideological. I would like to see that shift to practical.

One of the issues with that is that there is currently not enough lithium in the system to build all the batteries required for all of the countries in the world to transition. We are not even close. The amount of lithium required—assuming that the transition to renewables is based on lithium, we are decades away from enough lithium for that transition to occur. There might be other metals and other storage in the end but, as I have said and I think the Minister for Energy agrees, that storage is the key to any transition to a renewable future. I remain committed, as I think almost everybody remains committed—sorry, that is not true, not everybody—I remain committed to a net carbon neutral 2050 target. I think everybody who takes a strong interest in climate change around the world is committed to an approximation of that. There are a few countries that might aim earlier and there are other countries that are going to go later and there are countries that I do not think are going to get anywhere near 2050. Some of those countries are countries that have nice, big renewable-energy systems in place but massive, carbon-fossil-fuel energy systems as well. We talk about the growth of renewable energies and that is fantastic. It is huge, but so is the growth in fossil fuels. We are also seeing a return to nuclear energy plants being developed.

Back to what is happening with lithium. If we wanted to shift to all electric cars in Australia there are a few major problems. There is not enough lithium to put batteries in all of those cars. The other part of that argument is we have to get better technology in those batteries because as the batteries deplete over time—the batteries currently needed to run a car are in the order of $15 000 worth of battery before the rest of the car is attached. If that runs out in 10 years' time and the car was used a bit, then to resell that car it requires a replacement of that $15 000 battery, so we are going to need a significant amount of lithium. That is the problem with lithium; lithium depletes in a battery.

It is really interesting to watch what we are doing around some of the newer technologies. For example, in its newest studies, vanadium does not appear to deplete like lithium does. There is an opportunity around vanadium, which is also found in Western Australia, as well as other places in the world such as Canada and China. There is an opportunity for some diversity in where storage is placed. The critical thing, though, is that storage has to be sorted out. Storage needs to be at a level that allows for this transition, both in terms of vehicles and wider energy storage, so that the lights are kept on in people's houses. That is not an easy thing to do. We will need massive amounts of critical minerals to get anywhere close to that—and that is just for Australia. If looking at the modelling that states if we wanted to take Australia to entirely renewables—which I think is ultimately everybody's goal—I would have said a time frame around 2050 is looking like a feasible prospect as long as technology maintains its growth. If it accelerates, that is well and good, but it is sort of going to take that long. That is another 27 years to get enough minerals out of the ground to convert everybody. The acting president of the Grattan Institute, who has swung to become a bit of a left-wing think tank—not something he probably started life as—today or yesterday came out with a report that said we have to ultimately wean households and industry off gas. It is a lot harder to wean those larger industries off gas, but the issue is going to be that suddenly there is talk about the storage requirements starting to go through the roof, and there is a cost involved in all of that. More importantly, there is a huge cost involved in getting the stabilisation of the system right, and that is all about storage.

I am not speaking on behalf of the crossbench, which may have a different view—I suspect the Greens might do—but the good part of this debate is that the major parties in the house are all basically in agreement that that renewable future, if we are able to get there, will be based very much on those critical minerals that we have to get access to. A lot of that will happen in the Mining and Pastoral Region, but as I say, down in my south west, there is lithium exploration, because the best lithium mine in the world will need to extend its life span. That is critically important for a whole range of reasons, particularly if looking at the proposal to extend the railway. The business case for that will probably require a far longer access to resource in the next 15 years. It is absolutely the case that we need access to these rarer earth minerals. It is not just lithium or vanadium—obviously there is great prospectivity around silicon and a few others. For those that are not keen on some of the other producers, particularly places such as SIMCO—which is a big producer in the south west—some of its materials are critically important in the renewable marketplace as well. One of its issues is access to timber.

We could almost drag the timber debate into this: as the Labor Party closes down the timber industry, we have SIMCO for the quality of their product currently using jarrah that may well not be available. Far be it from me to comment on timber policy in this particular bill, but one might actually drag that in. Those things are critically important. Exploration for those critical minerals is critically important. It is pleasing to see that we are debating a bill in which the two large sides of the house are actually in furious agreement that that is critically important. The other angle on this I want to mention before I close is the relative debate on access to property. This effectively prevents an application for a notice of objection for exploration for the critical minerals that we have just been talking about. The parliamentary secretary might give us some feedback on this when he gives his second reading response, but my understanding is that there are not many other cases in which an exploration licence can be rejected based on how a person uses their land. If a person is a regular farmer rather than a carbon farmer—I do not want to denigrate carbon farming as a prospect because I think we should be encouraging it. As I have said numerous times before in this house, I have never supported a process for pastoral leases that says people have to run stock and they cannot use the land for carbon farming or tourism. I think that once a person has the land they should be free to deal with it. I am an old-fashioned believer that once a person is in charge of land, governments should get the heck out of their way. I have toned myself down on that. I think that is the case. The question is: what other land tenures can prevent exploration? I do not think there are many. Could the parliamentary secretary give us an indication of that because I think the comparison is critically important. I hate to think that we will set up a two-tiered system in which Hon Colin de Grussa is running sheep down at Esperance—do you still have land down at Esperance?

Hon Colin de Grussa: No.

Hon Dr STEVE THOMAS: Your family has some down there?

Hon Colin de Grussa: Yes.

Hon Dr STEVE THOMAS: The family is running sheep down at Esperance and they cannot prevent exploration for critical minerals on their farm, but the farmer down the road who is engaged in a carbon farming process—which I think we should support—can lodge an objection and potentially tie up that exploration for a long period. To me, this bill will to some degree provide an equal playing field for the use of land and for when people can lodge an objection. I understand and I get that that is almost the reverse of the property rights argument. People think that once they have purchased land they should have control of it and should be able to prevent somebody from coming in and doing, basically, anything on it, and that becomes a property right. I have to say that branches of my family are adamant property rights advocates who think that once a person has purchased a property they should be allowed to do whatever they want on it. If they want to clear it, they should be able to clear it. They think they can do whatever they like and it does not matter. I am probably a heretic in the family because I think that people have an obligation to hand land on in as good or better condition than they received it. I have never actually believed in that. I think people do have an obligation to look after the land. But it is a fraught area of both politics and legislation. What rights do we give a landowner? In Queen Victoria's day, for those who remember the Queen Victoria titles—it was not necessarily Queen Victoria because that would make me a fair age; not even Hon Martin Pritchard gets to that level —

Hon Martin Pritchard: Back to you.

Hon Dr STEVE THOMAS: Okay. A few of those old titles still exist from before the Torrens system took over. They basically gave a person all the land to the centre of the Earth and all the air above it.

Hon Matthew Swinbourn: Let's be clear, all titles derive from the Crown. Although a person has title to that land, the Crown always reserves the right to resume its superior title, which is why it can take the land off you at different points in time.

Hon Dr STEVE THOMAS: The parliamentary secretary is exactly right. In effect, people lease the land from the Crown. My little 100-acre property was leased off Queen Elizabeth II and apparently we now lease it off King Charles III. I note that every second King Charles gets beheaded so we will see where we go and where we end up with that one. That is exactly right that people do not actually own the land that they are on; they effectively rent the land from the Crown.

Hon Kyle McGinn: You might want to tell your mate that.

Hon Dr STEVE THOMAS: I am not sure which one the member is referring to.

We want to have as much as possible an even playing field. The balance between the state and commonwealth has ended up giving people engaged in carbon farming potentially an ability that others will not have. If this legislation makes the rules uniform for everybody and balances that out, it will be a reasonably good outcome.

We have to have the ability to find rare metals. I know friends of mine whose land has been pegged for lithium exploration in the south west. I am about 30 kays from Greenbushes and the geology is interesting. Lithium is found in specific geological formations, so there is movement out there to find and exploit that resource, and that is a good thing. Several of them are on private properties; they might be able to find a way to object to mining, if

that occurs, but they have no objections, so it makes sense to me to have a level playing field in which everyone is operating on the same level. I think that is because we recognise that it is such a huge task—the transition to a renewable future. In my view, the time frame will absolutely be longer than most people think. The ideologues go first and drag the world along, but it will happen in a time frame that is practical, and in the end that will be a lot longer than people think.

The Mining Amendment Bill 2023 will level the playing field and give support for the critical minerals that will be essential. For that reason, as Hon Colin de Grussa said, the opposition will support the bill, but I think there is an opportunity to pin down a few more details during Committee of the Whole.

HON DR BRAD PETTITT (South Metropolitan) [7.31 pm]: I stand to speak to the second reading debate on the Mining Amendment Bill 2023. I thank Hon Dr Steve Thomas for his contribution. I was away on urgent parliamentary business, driving back from Fremantle, but I listened in on the whole speech and I thought there were some interesting elements in it. I will say that the Greens actually do support mining projects. I want to put that on the record, because mining is going to be absolutely essential to the transition that has to happen. There was a good conversation about lithium, and I must say I agree. We need it for the electrification of our vehicles, and the maths involved is pretty extraordinary. A project I am working on is trying to calculate how metropolitan Perth can get to net zero, and we did some sums around how many battery kilowatt hours it would take to electrify our current vehicle fleet—that is, passenger vehicles only—and it was the equivalent of 375 Kwinana big batteries, just to put that in context. That is a lot of batteries driving around on wheels, so we will need to get pretty smart about how we do that, but that is a conversation for another time, on another subject.

This bill is a really interesting one and one that I had not originally intended speaking on, but we have spoken to some of our constituents on it. I guess the key issue that came up that raises concerns for us is the idea of removing the right of a carbon farming group using Crown land to oppose a mining application on the basis that it would affect its project. When we ran this idea by many of our constituents, including traditional owner groups and other First Nations organisations across the country, the pretty unanimous answer was not necessarily that they were opposed, but that they had never heard about that—none of them. That was pretty extraordinary. In fact, quite a few of them were concerned when we raised this issue with them because there was a sense that they had no visibility on it. They were also really concerned about how it might create a potential conflict, going forward, between carbon farming and mining corporations. It would be useful to know in the reply speech whether the state government has been in contact with any of these groups and consulted them on the impacts that this bill might have on projects that they already have in the pipeline. Certainly, none of the Aboriginal organisations that we regularly speak to—many that perform carbon farming on crown land in WA—had heard of these bills or the changes. That raises some serious issues for us.

It is a vexed issue, because carbon farming provides an enormous opportunity for self-determination and self-sufficiency for many First Nations communities. I do not know whether members have been looking at what has been happening in the Northern Territory, but we have seen some of the strongest examples of how when these projects work, good carbon farming projects can transform a local community. They provide meaningful local jobs and set up a community for generational change. These are long-term jobs with long-term investment in their communities, and good change that they can see from reinvesting in land in place. It is pretty important stuff. The empowerment of those communities has, I think, a really nice compatibility with cultural values. There is a huge opportunity here around caring for country and the like. It is pretty amazing. That raises real concerns for us. Some of those First Nations communities talked to us about the income they can generate in perpetuity from these projects for them to have long, enduring positive outcomes. They were nervous when they first heard about this legislation. They were not across the detail and how it might impact them. That is one of the key points I want to make tonight. I want to make sure that there is a really good understanding of what kind of consultation has happened. At the end of my speech I will move that this bill be referred to a committee, but I will come back to that in due course.

Maybe I am a little nervous about how we do not want to see a clash set up between mining and how carbon farming works. I think they can work together. This bill feels like a rather blunt instrument that could perhaps threaten not only these really good carbon farming projects, especially those in First Nations communities, but also Western Australia's ability to reduce our emissions and, ultimately, Australia's ability to meet its various international obligations. Members might say that mining exploration is just a very small percentage of a site and that it would not be material to the carbon credits that are based on that project, but the Australian carbon credit unit account system is actually quite strict. If there is a loss or change of more than five per cent on any project, that could force that project to lose all the carbon credits for the entire project, not just the five per cent that is impacted. If a mining tenement was granted on an area that impacted more than five per cent of the area, there is a risk that the entire project would have its eligibility removed under ACCU accounting. That, I guess, is another question. Have we looked at that? That is the advice that we are getting from people who are more expert in that area than I am. Has government had advice on that? If that is the case, has that been taken into account? I do not think we want to see those kinds of projects so hugely undermined for exploratory mining.

There is an interesting question here, because at the heart of carbon farming is long-term certainty and security for those projects. They need certainty going forward that they can deliver on those contracts over a long period because that carbon needs to stay in the trees and in the ground. We do not want to see First Nations communities in a position where they are not able to deliver on those contracts and projects.

When I asked during the briefing how this will be dealt with in the event that a mining tenement was granted in an area where a carbon project was operating, I was advised that the project would be provided with compensation from the mining company. I wonder whether that makes sense. I am concerned that compensation will be left for a legal or maybe a commercial agreement. If that does not work out and the parties cannot agree, it will be determined by a legal dispute between the mining company and the carbon project. There is no framework in this legislation to ensure that organisations are fairly and adequately compensated if a large part or even the entire project is lost due to a mining application. I would be interested in the government's response. If the government goes down this route, it feels like there was an opportunity to put into legislation a proper framework that would ensure that those carbon farming projects would be properly and fairly compensated if they were undermined in some way by a mining application. That would seem to be one of the basics. We want to do both.

I come back to where I started. The Greens are not against mining; we support mining that is done well, in the right locations and for the right things. We do not want mining to undermine other really good investments that are being made by corporations or First Nations groups. That would be detrimental. It would be a disappointing own goal.

At a time when Western Australia's initiatives are skyrocketing and we need all the legitimate carbon storage and biodiversity initiatives we can get, it seems rather odd that the state government is creating what could be—I hope it will not be—another deterrent for investing in a low carbon, zero emissions future. Aside from the negative impact this bill would have on our First Nations communities, there is a real danger that through this legislation, we may inadvertently disincentivise major carbon farming projects on crown land. It would be disappointing if that were the case. There is a real danger that this will have a churning effect across the carbon industry because of the WA state government ultimately creating another level of uncertainty and risk of investing in our state's renewable low carbon future.

This legislation will be important for Western Australia and carbon emissions. Hopefully, this is the year when the sectoral emissions reduction strategies will finally see the light of day. I hope we will have some clear targets for getting to net zero—in fact, real zero. I hope that net zero is at least backed up by some very robust offsets like those that could be provided from carbon farming projects here in Western Australia. That is where the win-wins ultimately have to be. There is a real danger that this legislation and its consequences have not been fully thought through and we might end up seeing some of those projects cut off at the knees or cut off too early. That would be extremely disappointing.

Carbon farming projects, particularly ones that are led and managed by First Nations communities, which are the cultural experts on caring for country, result in better outcomes for our planet, communities and regional economies. Carbon farming will only become more of a necessity as we move into the future. This government should be doing everything it can to ensure that these projects, particularly the First Nations–led ones, are protected at all costs.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

HON DR BRAD PETTITT (South Metropolitan) [7.49 pm] — without notice: I move —

> That the Mining Amendment Bill 2023 be discharged and referred to the Standing Committee on Legislation for consideration and report not later than 21 September 2023.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.46 pm]: I want to respond. This is the first I have heard of the member's intention to refer the Mining Amendment Bill 2023 to the Standing Committee on Legislation, so my response will obviously be short because we have not had a great deal of time to consider it. I make it clear that we will not support the referral motion. This is a nine-clause bill. Most of the clauses pertain to purely operative matters; others relate to what can only be described as a bit of gardening by the Parliamentary Counsel's Office to fix up gendered terms in the legislation. There is not a lot in this bill. The shortness of a nine-clause bill might belie the heaviness of the content, but, in this instance, it does not justify its referral to a committee and a further delay in its passage.

I will come to some of the broader points that the member made to justify his support for the bill in terms of the potential for it to be a disincentive to carbon farming. I assure the member that that is not the government's intention. We do not intend anything that we are doing here to be a disincentive to carbon farming. Quite the contrary, the government is and has been promoting carbon farming quite strongly. The minister beside me and the minister before her are strong advocates for carbon farming. That is not what this is about. This is about ensuring that what the member has identified—that is, the necessity to mine for particularly critical minerals to support the decarbonisation of our economy and the broader economy and to support others around the world—can continue and that an inappropriate use of carbon farming to stop mining cannot effectively exist. That is really what it comes down to.

Pastoral leases are extremely large; on average, they are over 200 000 hectares. Carbon farms can also be very large. Mining activities tend to be on tens of hectares or sometimes hundreds if they are very large mines. In terms of the scale and impact of carbon farming, we would not anticipate that very many would go over the five per cent threshold and affect their entitlement to continue to effectively carbon farm. There are appropriate mechanisms—I will deal with this more in my reply—in the Mining Act to seek compensation for any impact on that activity. It is a twofold activity. Firstly, it is for the purposes of carbon sequestration, which is a worthwhile thing in and of itself; and, secondly, it is a money-generating activity for pastoralists, including the Aboriginal groups that the member referred to that are entitled to earn an income through their ownership of pastoral leases and other activities. That is why it is twofold. Obviously, a mining activity that reduces the amount of carbon sequestration will affect that first goal, but we say that that is of a minor scale compared with the overall scale. Secondly, there are mechanisms through which they can be compensated for a number of things. Again, I will deal with that more in my reply, because that issue was raised by Hon Colin de Grussa. We do not think the nature of the matters dealt with in this bill are sufficiently serious enough to refer the bill to a committee, so the government will not be supporting the referral.

HON COLIN de GRUSSA (Agricultural — Deputy Leader of the Opposition) [7.50 pm]: On behalf of the opposition, I rise to speak on the referral motion. I indicate from the outset that the opposition was not aware of Hon Dr Brad Pettitt's intention to move this motion and, as he said, neither was the parliamentary secretary. We raised a few concerns in the second reading debate but, by and large, the opposition does not have an issue with this bill. We will not oppose it. We do not necessarily believe that it will do a lot, but we also do not believe there are grounds for the bill to be referred to the Standing Committee on Legislation. In any case, I am not sure what would come back from that committee, other than the bill we have before us. There is not much of great contention in the bill. Of course, when we go into committee, we will discuss some issues around compensation and some other smaller, niggling issues that the opposition has with the bill, but, by and large, we are supportive of it. As such, we will not support the referral.

Question put and negatived.

Second Reading Resumed

Resumed from an earlier stage of the sitting.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.51 pm] — in reply: I previously outlined some of the issues I will address in my reply to the second reading debate on the Mining Amendment Bill 2023. I thank the three members who contributed to the debate on this bill. I missed some of Hon Dr Steve Thomas's address because I was on urgent parliamentary business, but I will study the *Hansard* in great detail, particularly in relation to the dinosaurs that he mentioned. My notes suggest that he also mentioned legumes, lithium, nuclear energy and those sorts of things. I appreciated his contribution. I also appreciated the contribution of Hon Colin de Grussa, who gave the response on behalf of the opposition alliance, and of course the contribution and matters raised by Hon Dr Brad Pettitt. As I have notes prepared for me on the matters raised by Hon Colin de Grussa, I might get stuck into those. If material comes to me on the matters raised by Hon Dr Brad Pettitt, I can add to that, but we might be able to explore those matters in more detail in committee if the member chooses to use that forum.

Hon Colin de Grussa asked about three things. If I can paraphrase him, I think the first was about the genesis of the bill, the second concerned compensation issues and the third was the potential risk that carbon farming projects will be an impediment to mining leases or exploration. I hope I have captured those. The first question I will address was about the genesis of the bill. That might help Hon Dr Brad Pettitt understand a few points as well. The amendments proposed in this bill were foreshadowed on 23 November 2022 in the second reading speech delivered in the other place on the Land and Public Works Legislation Amendment Bill 2022, which I will now refer to as the LPWL. That second reading speech anticipated the requirement that this amendment bill follow as a consequence of those amendments. I have been informed by the Department of Mines, Industry Regulation and Safety—DMIRS to its friends—that it was not possible to include these amendments into the LPWL bill at that time. I suppose the member can take from that that it would have been desirable to have included these amendments in the LPWL bill. We were not able to achieve that, but now we are in a position to come forward and legislate this matter. It was not possible to include those amendments, but the intention was always to keep the amendments in this bill as close as possible in time to the LPWL amendments. The reason for this is that the amendments to the bill relate to the new section 92B(2) of the Land Administration Act 1997 introduced in the LPWL, which itself received royal assent on 24 March this year. That provision states that a diversification lease can be granted for any purpose and that it will provide non-exclusive broad-based land tenure options for crown land that can coexist with other land uses such as multiple land uses, especially with native title and land uses by the resources industry.

The interaction of that provision with the objection provisions of the Mining Act have led to the proposed amendments in this bill. I would like to mention here that a basic principle of land use in this state is that crown

land is subject to multiple land uses. I think Hon Dr Steve Thomas might have explored that issue in his second reading debate contribution and conceded that that is the reality of land tenure in the state.

Hon Dr Steve Thomas: And so it should be. It has to be.

Hon MATTHEW SWINBOURN: Yes. I concede that it does not always present itself easily to people because they think when their mum and dad passed the land on to them, it was theirs forever. Perhaps because people fail to understand how land tenure actually works, they do not understand that their title derives from the Crown and they only have an interest. That is a very boring discussion, but it actually has a real world meaning out there. When the Public Works Department comes along—not that there is one anymore—and says, "We're going to have to resume your land to put this pipe through the middle of your front yard", people say, "No, it's my castle. You shouldn't be able to do that." We end up in a bit of a quagmire because people think that *The Castle* is legal precedent for their entitlement to stop progress. Unfortunately, although we all love to cite the vibe, it is not the state of law.

Hon Dr Steve Thomas: That is how all lawyers operate, isn't it?

Hon MATTHEW SWINBOURN: Sorry?

Hon Dr Steve Thomas: *The Castle* is the standard for all lawyers.

Hon MATTHEW SWINBOURN: Yes. That is right. The speech would have been remiss if I had not been able to include reference to *The Castle. I* might also add that that related to a federal land dispute and the Australian Constitution does provide some protection because it is on just terms, whereas there is no such protection in state law.

Hon Dr Steve Thomas: Look out! Now you are seriously looking into the property rights debate. I suggest that might be a week-long debate if we start down that path.

Hon MATTHEW SWINBOURN: We will keep away from that. I will get back to my speech.

I am just repeating this to cover off. The bill's amendments relate to new section 92B(2) of the Land Administration Act 1997 introduced in the LPWL, which itself received royal assent on 24 March 2023. I then talked about the fundamental principle that crown land in particular has multiple land uses. The interaction of that provision with the objection provision of the Mining Act has led to the proposed amendments in the bill. I would like to mention that the basic principle of land use in the state is that crown land is subject to multiple land uses. An example of this is the coexistence of pastoral leases under the Land Administration Act and mining tenements under the Mining Act 1978.

The bill preserves the principle of multiple land uses and provides resolution to situations in which there are competing land uses over the same patch of land. It does this by ensuring that broad-based land tenure, such as pastoral leases devoted to carbon farming, do not prevent or impede access to the mineral resources of the state. The mineral resources of our state, such as critical and battery minerals, are essential to reaching our target of net zero greenhouse gas emissions by 2050. Members of the Nationals WA, the Liberal Party and the Greens have all spoken about the universal understanding of the importance of critical minerals. The government—that is, the Labor Party—also understands the importance of critical minerals. Again, we cannot access them and gain them unless we mine them. That is the simple reality. If we want to decarbonise, we need those critical minerals because there is no alternative to maintain our lifestyle, our living standards and a number of other things.

The bill will ensure that diversification leases will be able to provide non-exclusive land tenure for large-scale carbon farming projects that can coexist with the resources industry. As outlined in the media release of 15 December 2021 by Ministers Sanderson, Dawson and Buti, the government has made its policy intention clear, and that is that exploration and mining is still able to occur over areas that are subject to carbon farming. Currently, no objection to a mining tenement application is available or, rather, if an objection is made, there is no opportunity to be heard on the grounds that it would affect pastoral activities. Given that a pastoral lease is granted for pastoral purposes, it follows that carbon farming that is currently carried out on pastoral leases is a pastoral activity. This is the status quo for the carbon farming activities currently carried out on pastoral leases. The bill will maintain the status quo for carbon farming activities carried out on pastoral leases, and this is in accordance with the consequential amendments to the Mining Act in the Land and Public Works Legislation Amendment Bill. Those amendments ensure that diversification leases are treated the same as pastoral leases under the Mining Act. Therefore, the rights of carbon farmers located on pastoral leases are not practically affected by the bill's amendments. For them, the bill's amendments will merely insert one part of the legal principle into the text of the Mining Act, which is the prohibition on objections based on carbon farming. The prohibition for all pastoral purposes will continue to be the common law and can be developed by the courts for other activity, as necessary.

Under the LPWL bill, diversification leases are intended to interact with mining interests in the same way as pastoral leases do; that is, mining activities can occur over diversification leases in the same way and with the same protections as currently occurs over pastoral leases. One point of difference is that diversification leases can be granted for any purpose, not just a pastoral purpose, and this severs the connection between carbon farming and pastoral purposes; that is, on a diversification lease, carbon farming activities will no longer be pastoral activities. The common law

that currently relates to pastoral activities only has nothing yet to say about pastoral activities carried out on new tenures such as diversification leases. Therefore, the bill seeks to maintain the status quo by specifying clearly that an objection to a mining tenement application is available on the grounds that it would affect offsets projects—that is, carbon farming carried out on other types of tenure. It is appropriate that high-level policy decisions on the priorities of the interactions between carbon farming and the resources industry are set and placed into legislation by Parliament rather than at the level of the warden.

I now refer to the time line of the bill. The first part of the drafting process was the signposting of the necessity for this bill in the second reading speech for the LPWL bill, which was in November last year, if I recall correctly. The bill was then made available for public consultation between 18 and 30 January 2023. During that time, the department made the bill available to the public through its open consultations website and also held a number of meetings with interested stakeholders, including other state government agencies and resource industry peak bodies as well as the Pastoralists and Graziers Association of WA and the Carbon Market Institute.

I will just check my notes. What has happened to page 74? There is no page 74. No wonder! All right. The member also asked a question around how the rights of carbon farmers are recognised. This goes to the second question, if I can put it that way. The introductory part of my notes is *Hansard* of what the member said, so I will not repeat that, but, essentially, the next part of the conversation was about the compensation process. The bill amendments are intended to decrease the number of cases going to the warden at the application stage and to encourage parties to reach a negotiated outcome outside the Warden's Court system. This is achieved by compensation. The proposed amendments, on the other hand, are about objections rather than compensation.

Going to the question of compensation, nothing will really change as a result of this bill. The preferred option for carbon farmers, and indeed pastoralists holding pastoral leases, is for there to be a compensation agreement negotiated between the carbon farmer and the mining applicant. This was most recently recognised by Warden Cleary in a case she decided in December 2022 called Telupac Holdings Pty Ltd v Hoyer. To quote the warden —

> … the objection of the pastoralist that there is the potential for damage or loss arising from mining operations, there being a general principle that such an objection will not stand in the way of mining activities, the resolution of that risk being rested in the compensation provisions under the *Mining Act*, and in the imposition of conditions.

That is paragraph 67 of the decision; the citation is 2022 WAMW 26. Examples are also provided in the explanatory memorandum at examples 1 and 2, and they illustrate how this would also work. The compensation would be for all loss and damage suffered or likely to be suffered from mining as provided for in section 123(2) of the Mining Act 1978. If the miner and the farmer cannot agree on the amount of compensation, the parties can go to the Warden's Court, which will then determine the amount of compensation.

To recap that, member, to make it a bit clearer, the bill will not interfere with the existing compensation mechanisms. The bill is not about compensation; it is about dealing with objections. The existing compensation mechanisms provide for that. The first step is to attempt to negotiate an outcome that both parties can agree to. In the absence of a negotiated outcome, they have access to the Warden's Court, which will obviously determine the loss and damage that has been suffered as a consequence of the activity and then make an award for compensation. That is a well-ventilated process. It is not one that would be surprising to those who work in this area. Obviously, a carbon farmer may never have had a mining activity interfere with them, but given the scale of these things, I think the people we are talking about have a level of sophistication that means they would be able to access the right level of advice and representation in these circumstances.

The Mining Act enumerates some of the things that are compensable. Given that the Carbon Credits (Carbon Farming Initiative) Act 2011 is more recent than the Mining Act, there is no reference to Australian carbon credit units in the Mining Act. However, it is to be expected that the financial loss occasioned by the diminution of the ACCUs would be compensable either under the Mining Act or at common law. The honourable member referred to the Department of Primary Industries and Regional Development. That department would be able to provide a compensation mechanism to pastoralists whose operations are affected by resource industry activities. The affected pastoralists would provide evidence to the department for their claim of compensation—for example, the circumstances of how the land was cleared—as well as showing the actual loss incurred. It is important to note that this mechanism for compensation is specific to human-induced regeneration methodology for carbon farming on pastoral leases. I think that is an alternative compensation process.

The member also asked about consultation and whether the possibility of carbon farming projects being an impediment to mining leases or exploration was raised during the consultation process. When the Department of Primary Industries and Regional Development conducted its consultation on carbon farming, the peak industry bodies and the Department of Mines, Industry Regulation and Safety raised concerns about the impact of carbon farming on mining tenure. I have been advised by DMIRS that the result is that mining leases and associated miscellaneous leases, general purpose leases, petroleum production licences of less than one block and tenure

held under state agreements are excised from the carbon farming project carried out on farming leases unless the mining lease owner agrees otherwise. Similarly, pending mining leases and associated general-purpose leases and miscellaneous leases must be formally excluded from project areas unless the mining lease owner agrees that the carbon farming activities can take place on the area. The exclusions were mentioned in the consultation materials put out by the Department of Primary Industries and Regional Development as a way of allaying those concerns.

That is the sum of my notes at the moment. Both members who spoke who are still in the chamber have indicated their intent to take the bill into Committee of the Whole stage, where we can explore any of the matters I have been unable to cover in sufficient detail or not at all. I will wrap up my comments here by saying that although this bill deals with an important matter, it will not make a seismic change to anything. It is not meant to be of that nature. It is also not meant to disincentivise carbon farming. That is not the intention. Hon Colin de Grussa made mention a number of times at the back end of his speech about whether the department had a particular beef with carbon farming, perhaps suggesting it did. He asked whether the department held the same view as the government about the significance of carbon for Western Australia. He made some references to comments on carbon farming. I assure the member that the department and my minister understand the value of carbon farming and understand its importance for a number of groups, including pastoralists and Indigenous groups that are engaged. We understand that all carbon abatement activities are important as a means to decarbonise our economy, but we also weigh that against the importance of mining in this state. We think the Mining Amendment Bill 2023 provides a balance between those two things. With those words, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Stephen Pratt) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon COLIN de GRUSSA: I thank the parliamentary secretary for that reply to the second reading debate, which comprehensively outlined the genesis of the bill and responded to some of the queries I raised. My intention here in the Committee of the Whole stage of the bill is to ask a few questions at clauses 1 and 4, but most of my questions will be around clause 5. Given that the subsequent clauses are basically very similar in language, we will probably be able to cover most of it at clause 5 and make progress from there. To start with clause 1, I am trying to get an understanding of how the Warden's Court process will work for objections to mining activities. What are the grounds on which an objection can be lodged currently?

Hon MATTHEW SWINBOURN: There are already some restrictions on the right to object to an application. For example, there is no right to object to a mining lease application on the basis that there is no significant mineralisation in, on or under the land to which the application relates. More specifically, to answer the member's question on the kinds of grounds on which people can object, the first thing to make clear is that there is not an exhaustive list of grounds. Generally speaking, the advice is that a significant number of objections to applications are essentially on the basis that the proponent has not complied with requirements of the Mining Act. It could be a requirement that relates to process or some other matter. Objections are also raised on what can be described as public policy grounds—for example, the impact that the particular activity might have on a community, the environment, an amenity and those sorts of things. As I say, I cannot give the member a list of grounds on which someone can object to a mining activity because there is no such list. There is obviously a limited number of restricted grounds on which someone cannot object, but there is not a catch-all. I hope that answers the member's question.

Hon COLIN de GRUSSA: I thank the parliamentary secretary. That clears it up. As the parliamentary secretary said, there is not an exhaustive list, but there are some specific exclusions for which someone cannot lodge an objection.

Hon Matthew Swinbourn: That is right.

Hon COLIN de GRUSSA: Presumably, to lodge an objection, there must be a process or form to be filled in, and the objector will make the argument for their objection on that form. What happens then? Presumably that form will be lodged with the Warden's Court. At that point, will work stop on that process?

Hon Matthew Swinbourn: We will give the member a run-down of the breakdown. We will work on that, and then I will answer the member in full.

Hon COLIN de GRUSSA: Yes.

Hon MATTHEW SWINBOURN: The first thing to understand about objections is that the majority are lodged by other miners and are of a commercial nature. Looking at the bucket of objections generated, some of them will be from affected landowners and some from members of the public who are not inclined to support a project, but the majority are for commercial issues between the two parties, which I understand. Hopefully, that will give context

to the process that follows. There is a form for the objection—I am sure it has a number but my adviser cannot remember it off the top of his head. That form is completed and then lodged with the department, which, effectively, acts as the registrar for the warden. This is not a judicial process; it is an administrative process. We have to understand the difference between what might happen if we went to the Supreme Court, for example, as supposed to what we are talking about here with dealing with objections. That form is then processed by the warden. There is no at-large right to be heard on an objection because sometimes there is no foundation for them and they might be dismissed. But that is probably at the very end of the process. Overwhelmingly, parties will negotiate an outcome between them and then the matter will be withdrawn by consent, so the warden will not deal with it. The warden will of course afford procedural fairness to an objecting party and may deal with the objection on the papers available before them or conduct a hearing and hear from the particular parties, before ultimately making a decision about the resolution of the objection. That is the mud map plan of the way that process works.

Hon COLIN de GRUSSA: I thank the parliamentary secretary for that very comprehensive answer to that question. That helps clarify that process in my mind. I guess the question now becomes whether there are time frames, even ballpark, on how long the various stages of that process take. As I asked before, does that mean that work stops once the forms are lodged with the registrar, being the department? Can work by the proponent on the mining activity continue or do they have to wait until there is a determination? How long does it take to process? Is the project stalled during that time?

Hon MATTHEW SWINBOURN: I cannot give the member a time frame because it will largely depend on the parties involved, the complexity of the issues raised, whether they have a litigious attitude and those sorts of factors. There is no statement that by 21 days X must happen and by 42 days Y must happen. That is not how the system works. In some instances, it can take years. Of course, motivated parties will come to agreement and resolve matters much more quickly. It is a like a "how long is a piece of string?" kind of argument. I wish I could be more precise but that is an accurate description.

It is important to understand that at that stage no work will have commenced. Work cannot commence until a mining tenement has been granted. In this particular instance, the work would not commence until that has happened, so the application part of the process is all that leads up to the work. To get a mining tenement application in place requires approval, and that undoubtedly would include environmental approval and might include Aboriginal cultural issues and a range of other factors. Another limiting factor would probably be having the necessary capital to proceed. A person would not have the money up-front; it would come after the mining tenement has been approved. That is when that happens, and the work would not be affected in that regard through that process.

Hon COLIN de GRUSSA: Essentially, this process runs in parallel with other processes undertaken by the proponent at the time.

Hon Matthew Swinbourn: Yes.

Hon COLIN de GRUSSA: Would it be fair to say that there would be a very minimal effect on delaying projects because a whole bunch of other things have to happen at the same time?

Hon MATTHEW SWINBOURN: An ordinary application process without objections can take a couple of years. My advice is that if objections are raised, it can add a year or years to that process, depending on the nature of the objections, who is raising them and, I suspect, how deep their pockets are.

Hon COLIN de GRUSSA: I have one more question on this clause and then I think my colleague has some further questions. I suspect I know the answer to this one. Have any objections been lodged to date on the basis of affecting a carbon farming project?

Hon MATTHEW SWINBOURN: Objections have been lodged by people engaged in carbon farming activities, but the nature of those objections, as we understand them, is not the mischief that this bill seeks to deal with. A person being a carbon farmer does not mean that they cannot lodge an objection; it is just that they cannot lodge an objection because of the carbon farming activity and how that works. It is important to understand that. There could be other bases on which they lodge objections—for example, environmental impacts and things of that kind, or that the provisions of the Mining Act were not followed properly and those sorts of things. But as I say, I think the member's interest here is whether we are going to interfere with an objection that might be underway because we are now taking that away through this legislation. We are not aware of any such objection currently in existence.

Hon Dr BRAD PETTITT: Before my question, I want to apologise to Hon Colin de Grussa. I was not aware of the protocol for referring to standing committees, so I will make sure that that does not happen next time.

Hon Matthew Swinbourn: I will have a discussion behind the chair!

Hon Dr BRAD PETTITT: My apologies; it was not my intention to surprise anyone. My question follows along those lines. I am wondering who was consulted in the construction of this legislation.

Hon MATTHEW SWINBOURN: I mentioned consultation in my reply to the second reading debate, but I will give the member some additional details that I did not cover then. A public consultation process started on 18 January and closed on 30 January, and was conducted through the department's website and its open consultation process, I think it is called, or system. That was the one for members of the public. Yes, I acknowledge that it was only 12 days, but from the point of view of the complexity of the bill and the matters it deals with, I suppose it was not seen to be necessary to have a much broader consultation periodas might happen for a much more substantial change.

With regard to other matters, there was consultation with state agencies, including the Department of Primary Industries and Regional Development; the Department of Water and Environmental Regulation; the Department of Biodiversity, Conservation and Attractions; and the Department of Planning, Lands and Heritage. They were all consulted. Then there was the department's consultation with a number of groups. I mentioned two of those, which was the Pastoralists and Graziers Association and the Carbon Market Institute. It also went to the Association of Mining and Exploration Companies, the Chamber of Minerals and Energy, the Amalgamated Prospectors and Leaseholders Association of WA and the Energy and Resources Law Association, which is apparently the professional grouping for energy and resource lawyers. I have never heard of it, personally. There is no reason I would have, because I am not really in that space as a lawyer. The department consulted with that group as well. I do not know that we have any more. I have been advised that in due course a consultation report will be produced by the department that lists the nature of the consultation on this matter, which I think is a practice that it follows when it does consultation. It has not been prepared for the purposes of today's bill.

Hon Dr BRAD PETTITT: In that 12-day public consultation period, did the department get any feedback from likely impacted landowners, including Aboriginal corporations or First Nations groups that do carbon farming?

Hon MATTHEW SWINBOURN: Only one submission was received through that feedback from a group called GreenCollar, which I understand is an eastern states group that is engaged in carbon farming activities. I cannot give the member any more details than that. It provided a submission through that portal. No other submissions were received, and certainly not from the groups the member identified.

Hon Dr BRAD PETTITT: I cannot help but conclude that they probably did not know about it. That certainly is the indication we got when we reached out to those groups. I do not think they would mind me saying that there was a general sense of panic, with them asking, "What are you talking about?" I wonder why a more proactive approach was not taken. Obviously, particular groups will be impacted by this kind of amendment bill. Why was there no attempt to directly contact them and seek their feedback, given many of them would be easy to find and contact?

Hon MATTHEW SWINBOURN: The department's strategy for engaging in consultation was to have an open public forum. The other way was to approach peak groups that it reasonably believed had an interest in this matter. I think that when the member is talking about Aboriginal corporations engaged in carbon farming, he is talking about individual proponents that are engaged in carbon farming; he is not talking about a group that represents a group of carbon farmers. I am not aware of a collective group that represents Aboriginal corporation carbon farmers, if I can use that particular term. The department did not approach other individual proponents that are engaged in carbon farming because, clearly, not just Aboriginal corporations and groups are doing carbon farming; a broad range of people are doing it on pastoral leases. There was no individual level of engagement. That is why they did not go to the group that the member identified, but neither did they go to any other groups.

Hon Dr BRAD PETTITT: I may have misunderstood, but those other groups did go to the peak bodies. There is a danger that if the government is going to engage only with established industries that already have peak bodies, there is a problem with the consultation process. I put it to the parliamentary secretary that surely it is not hard to reach out and identify those groups. The number of groups, both Aboriginal and non-Aboriginal, that are engaged in carbon farming is not huge. I assume it would be good practice to consult those groups. As I said previously, there is currently uncertainty amongst those groups around what is happening. I am not sure whether the parliamentary secretary can answer this, but noting that this bill will likely pass tonight or this week, will there be ongoing communication strategies with those groups so they understand the implications of this bill that will become an act?

Hon MATTHEW SWINBOURN: This bill will not give rise to a broad communication strategy compared with a recent big change such as the Aboriginal Cultural Heritage Act, dare I mention it. This is not a paradigm shift in reform. The department will communicate to industry about the progress of this legislation, but the member has to understand that we are seeking to preserve the status quo. Effectively, there are already limitations on the groups that the member identified that are engaging in activities on pastoral leases in that they do not have objection rights in any event to some other aspects of that. I highlighted that in my second reading speech. It is also a consequence of the introduction of the diversification lease.

The member is obviously in contact with these groups. We are happy for the member to communicate to them that they can contact the minister's office or the department directly. They will be happy to engage with those groups so that they can be more comfortable with what is happening. This part of the department has a good relationship

with industry, so it is good at communicating with it. Without putting more work on the member, I encourage him to feed back to them that the door is open for them to communicate.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 8 amended —

Hon COLIN de GRUSSA: Clause 4 seeks to amend section 8 of the Mining Act 1978 to insert a definition of "offsets project". The definition is in two parts, and I seek to understand the reason for those two parts. My reading of this is that it will effectively apply to offsets projects as defined in the federal Carbon Credits (Carbon Farming Initiative) Act 2011 that have commenced, and also to offsets projects that may not have commenced or have not had a decision made on them. Is that correct?

Hon MATTHEW SWINBOURN: The member is generally on track with the way he described it. Paragraph (a) deals with existing offsets projects and paragraph (b) deals with ones that have essentially not yet been approved by the commonwealth.

Hon COLIN de GRUSSA: My final question on this clause is: is the government satisfied that that definition will capture all carbon farming projects?

Hon MATTHEW SWINBOURN: Yes, we are.

Clause put and passed.

Clause 5: Section 42 amended —

Hon COLIN de GRUSSA: Clause 5 is the first of the amendments that seek to insert the prohibition of an objection on the basis that the activity will affect an offsets project. In this case, clause 5 seeks to amend section 42(1A), which deals with prospecting licences. As we heard in response to some questions on clause 1, there is not an exhaustive list of reasons for an objection, but there are specific exclusions. This amendment will insert the specific exclusion on the grounds of an effect on an offsets project. The second part of clause 5 seeks to insert new subsection (1C). Can the parliamentary secretary explain why there is a need to ensure that freehold land is not included?

Hon MATTHEW SWINBOURN: Essentially, a diversification lease does not apply to freehold land. The need for this bill arose out of the amendments to that other act, the name of which escapes me. I am also told that during the consultation period, it was submitted directly to the department that it should not apply to freehold land, and the department has accepted that submission. This has obviously cascaded through to the following two clauses, which deal with exploration and retention leases. That is for the same reasons—freehold land does not include diversification leases.

Hon COLIN de GRUSSA: As we heard at clause 1, the majority of objections tend to be lodged by other miners. There might be some objections from members of the public, but they do not come so much from landholders or leaseholders, in a pastoral sense. Those objections could potentially add some time to the application process, although they might well be done in parallel with other processes involved in the application. The question for me is whether a leaseholder or landholder will be specifically precluded from objecting on the basis that whatever activity is being applied for would affect an offsets project, but, effectively, they could still object on other grounds. Would a leaseholder not just make a rights and interests argument or an argument on environmental grounds or some other basis so that the objection could still occur?

Hon MATTHEW SWINBOURN: What the member described is certainly possible and would go to the intent of the person involved, but what we are trying to do here is in terms of raising an objection on a ground that does not include having an offsets project affected by the mining activity. As I have said previously, we are trying to preserve the status quo on the rights to object or not object. We are using Parliament to make that very clear, rather than leaving it to the Warden's Court to essentially use the common law framework to come to the conclusion that we deliberatively want to preserve. That is why we are here. Hon Dr Steve Thomas essentially captured that argument about the preservation of the status quo in his contribution to the second reading debate. That is what we are trying to achieve here.

Hon COLIN de GRUSSA: I thank the parliamentary secretary. Essentially, the bill will make it explicit that people cannot object on the grounds of an effect on a carbon-farming project, but that will not preclude people from being mischievous if they want to and making an objection based on other reasons.

Hon Matthew Swinbourn: Of course not, but the Warden's Court will deal with that in the way that it deals with it currently.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Section 75 amended —

Hon COLIN de GRUSSA: I ask this for the purposes of clarification as I know the answer. This clause will not add anything new in terms of an ability to lodge a notice of objection on the basis that there is no significant mineralisation. That is already in the act. This clause will simply amend section 75 by adding a provision that people cannot make an objection on the basis of an effect on an offsets project. Is that correct?

Hon MATTHEW SWINBOURN: Yes, that is correct.

Clause put and passed.

Clause 9 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, and transmitted to the Assembly.