

**MINING AMENDMENT BILL 2004**

*Second Reading*

Resumed from an earlier stage of the sitting.

**MR C.M. BROWN** (Bassendean - Minister for State Development) [2.40 pm]: Before question time, I was responding to the member for Ningaloo. Those companies that have applied for mining leases but are interested in continuing their exploration programs will take the opportunity to convert. Those companies that are interested in pursuing mining leases to actively mine -

Mr R.N. Sweetman interjected.

Mr C.M. BROWN: We will have to wait and see. However, it is generally believed -

Mr R.N. Sweetman: It could be as many as half.

Mr C.M. BROWN: It is generally believed to be more than that, but we will have to wait and see. Those companies that are interested in mining and getting a mining lease to mine obviously will go forward with their application.

The SPEAKER: Order, members! It is very difficult to hear the minister. Those members who wish to carry on conversations should please leave the Chamber so that we can hear the minister.

Mr C.M. BROWN: Those companies that are interested in mining will pursue their application for a mining lease. If any companies have been using the difficulties in the present system to land bank - I am not saying that any have done so - that will become immediately apparent. If that becomes apparent to the Department of Industry and Resources, the department will pursue the matter. The member for Kalgoorlie made the point in his contribution that it is important that the Bill deal with land turnover. It is very important that people with exploration licences are exploring, people with mining leases are mining and people who do not wish to do either of those and who simply wish to land bank do not have the opportunity to retain land unless they wish to purchase it freehold, and many do not want to do that.

The member for Ningaloo raised the issue of the national Native Title Act and changes. The first point that must be made is that there have been successive judgments from the High Court of Australia on the meaning of the legislation, and there has been a very long process in getting decisions from the High Court. To suggest that court decisions will lead to a quickening of the process is to misunderstand the degree of complexity of those cases and just how long it takes to get a decision from the High Court. Indeed, in many areas decisions of the High Court have simply raised other legal questions that have not been answered and need to be the subject of further litigation. We came to the view very early in our term in government that, whenever possible, native title matters should be settled by negotiation rather than through litigation.

The member for Ningaloo raised the question of how significant the mineral resource will have to be to satisfy the Executive Director of Geological Survey of Western Australia. A mineralisation report will be sought and that will be at a lower level of reserves and resources. The mining industry put very strongly to the Government during the discussions that it did not want to be required to submit a level of information that met either the reserves or the resources requirements. Therefore, this definition is a lower level definition. Nevertheless, it is a sufficient definition to enable consideration to be given to whether the mining will be underground or open cut, the degree of surface disturbance, the degree of infrastructure necessary, the nature of the mine and the longevity of the mine. They are all issues that native title parties need to know. A mining lease could be very large indeed. Native title parties want to know whether it is a tiny mining operation that will involve very little disturbance, whether it is a massive open cut and what types of production facilities will be required. All those issues are relevant and germane and, indeed, have been considered to be relevant and germane under the national Native Title Act. In many ways this legislation will prescribe what has already been raised, sought and provided in the course of native title negotiations. This simply sets out a more formalised process.

I make two points about the member's concerns about matters being held up; that is, people who have placed their mineralisation report. First, someone who holds an exploration licence is required in any event to submit returns to the Department of Industry and Resources on their mineral discoveries to Geological Survey. Secondly, the mineralisation report must be done by a geologist or a mining engineer of five years' standing. The person who does that report is a person whom the company has selected. The company puts its own credibility on the line. The report then goes to the Executive Director of Geological Survey who is, of course, not a political appointment but a senior public service officer, who then uses his expertise and the records that the Department of Industry and Resources already has in Geological Survey to see whether it is a fair report based on the evidence that Geological Survey already has. The process is designed to be very transparent, but very clean. I do not think it would permit, other than by bad faith - I do not believe we will see that in

Geological Survey - a situation in which this would be held up. We have sought to make it a very transparent and factual process, and it is designed with that very much in mind.

The member for Kalgoorlie also raised the matter of the prospectors. The Amalgamated Prospectors and Leaseholders Association was involved in all the discussions of the technical task force on native title. APLA was involved in the minerals working group arrangements for mineral titles. APLA has been involved consistently in the Mining Industry Liaison Committee, or MILC, on all these matters. APLA has not been involved in the detailed discussions on Aboriginal heritage protocols, because it withdrew from those discussions. I understand that the officers have been acutely aware of involving all aspects of the industry, from the larger companies represented by the Chamber of Minerals and Energy through to the smaller companies and exploration companies represented by the Association of Mining and Exploration Companies and the prospectors. Each of those groups has been involved in discussions all the way through the process. It is true that one matter of concern to prospectors has been raised with us. It is a difficult issue. It is not connected with this Bill, but it is a matter that we are seeking to work through with the prospectors. We have not been able to do that yet, but work is taking place on that.

Another matter that was raised was form 5. This goes to expenditure requirements. A form 5 is required for exploration leases for exploration licences, prospecting licences and mining leases. Indeed, as the member might recall, the Auditor General released a report a while back suggesting that we should be more, rather than less, stringent in this area. That is why there is provision in the Bill to enable us to call for audited reports on exploration expenditure if that needs to be done following the Auditor General's recommendations, and we can follow that up.

The member for Kalgoorlie mentioned the involvement of prospectors. We involved the Amalgamated Prospectors and Leaseholders Association of WA. He also mentioned the prospect of erecting buildings. My advice is that the limitation on constructing the small buildings to which he referred relates only to miners' rights. It does not relate to prospecting or exploration licences, and it does not relate to mining leases. Of course, miners' rights issues involve a low-level amount of mining. We are seeking to deal with the conflict between miners and pastoralists, or at least those who have miners' rights and who then go onto pastoral stations, which can potentially cause a level of conflict.

In terms of environmental clearances, it is true that the legislation introduces new requirements in a legislative sense. However, my officers advise me that those requirements have been imposed in an administrative sense for at least a decade and that they have been accepted by the industry.

The member for Kalgoorlie raised the issue of exploration licences and whether they are valid for too long a period. The industry has different views about the term of exploration licences depending on the size of the company involved and whether the licence involves prospectors or large companies. We have had exhaustive discussions with major industry groups and we have reached agreement on the term of exploration licences. The member for Kalgoorlie also raised the issue of new requirements for mechanised equipment. Again, my officers advise me that those requirements have been in existence for some years.

The member for Alfred Cove inquired about the role we have taken in negotiating discussions with native title representative groups. I personally met with a number of native title representative groups and had extensive discussions. All six native title representative groups have been involved in the technical task force on native title. Five of those groups have been involved in the mineral title working group. The groups involved include the Goldfields Land and Sea Council, Yamatji Land and Sea Council, the Pilbara Native Title Service, the South West Aboriginal Land and Sea Council and the Central Area Land Council. There have been extensive negotiations and discussions with native title groups.

As I said in my second reading speech, this Bill arises as a result of the very extensive negotiations and discussions between industry, native title interest groups and the Government to get what I believe is a good public interest outcome, and an outcome that will provide a viable and vibrant mining industry in this State. I thank the Opposition for indicating that it does not intend to oppose the Bill.

Question put and passed.

Bill read a second time.

#### *Consideration in Detail*

**Clauses 1 to 5 put and passed.**

**Clause 6: Section 46 amended and transitional provision -**

Mr R.N. SWEETMAN: If the use of machinery is currently enforced through administrative measures, why is it necessary to legislate? What does the minister consider to be ground disturbing equipment? Is there an extent of quarrying - even when using hand-held implements - that is not permitted? The Bill prescribes the use of

implements - mechanical versus hand-held - but we have had considerable debate in this Parliament over the past three or four years about ground disturbing activities.

Mr C.M. BROWN: Given that this condition was applied administratively, it was thought that it should also be applied by statute. From time to time questions of interpretation arise and it is always wise in those circumstances to have the matter considered in relation to the statute. Clause 6 will remove references to “the State Mining Engineer” and replace it with “the prescribed official”. In terms of ease of administration within the department that is the method we are taking. Essentially it will ensure legislative backing. We have seen what happens from time to time when that is not included. This is something that is not new to the industry. It was considered wise and prudent to do.

**Clause put and passed.**

**Clause 7 put and passed.**

**Clause 8: Section 56A amended -**

Mr R.N. SWEETMAN: Will the minister advise the rationale that was used to increase the number of prospecting licences that may be held from a maximum of three to 10? How did the Government arrive at that figure? Did the industry ask for it? Does it streamline the administration of prospecting licences in some capacity?

Mr C.M. BROWN: This amendment was suggested by the Amalgamated Prospectors and Leaseholders Association, and other members of the industry agreed with it. Because prospectors essentially move from one area to another, this will provide them with an opportunity for continuity. They asked for the number to be extended and the rest of the industry accepted the suggestion.

**Clause put and passed.**

**Clause 9: Section 70 amended -**

Mr R.N. SWEETMAN: Are there any time limits within which the primary tenement holder must respond to the request for access by the applicant for the special prospecting licence?

Mr C.M. BROWN: The discretion rests with the primary tenement holder alone because he obviously has the underlying tenement. If there is a requirement for more than one in every 200 hectares, the primary tenement holder must agree to that, for obvious administrative and other reasons, otherwise it could be quite difficult for primary tenement holders. Of course, these tenements go over the top of primary tenement holders' land.

**Clause put and passed.**

**Clauses 10 to 12 put and passed.**

**Clause 13: Section 57A inserted -**

Mr R.N. SWEETMAN: How will the minister determine which areas are to be opened up to exploration under clause 13?

Mr C.M. BROWN: Essentially, this change came out of the inquiry conducted by the member for Eyre. He suggested that we should look to larger areas as a way of encouraging exploration. The intention is to have the larger areas not in known gold areas, but outside them. We are seeking to encourage exploration where exploration has not been a hallmark of those areas. Certainly the recommendation arising from the report produced by the member for Eyre was that if we could give people the larger area and an opportunity to explore more broadly, it might be a way of encouraging that.

**Clause put and passed.**

**Clauses 14 to 21 put and passed.**

**Clause 22: Sections 53 to 55B inserted -**

Mr R.N. SWEETMAN: What will be the level of the prescribed application fee for a retention status licence?

Mr C.M. BROWN: It is a simple written application to the minister. There is no fee. The legislation makes no provision for a fee. We are obviously trying to give the provision the opportunity to work, and I thank the member for the support expressed in his second reading contribution. There are clearly areas in which mineralisation may have been found but it may be uneconomic. We know of a number of those areas around the State where a mineral may be found but the current market conditions are such that the base price is very low, and there may therefore be good grounds for a retention status. My advisers tell me there may be a fee. I was leading the member astray.

Mr R.N. Sweetman: Would it be the equivalent of the charge per hectare in that area or would it be varied to some extent?

Mr C.M. BROWN: The retention status is intended for somebody who may have a very large exploration licence, and may have done all the exploration he wants to do under the exploration licence. He may have found a small area where there is a mineral resource but the mineral resource may be uneconomic at present. However, for good reason, he may wish to hang on to that resource. He can apply for retention status and if the application is granted, retention status is granted over that precise area; that is, not the whole area covered by the exploration licence but only the area that he wishes to retain. The rest of the exploration licence is then surrendered. A licence holder who has not come to the end of his exploration, but wants to retain only a portion of his lease that is uneconomic and will not fly at present, can apply for retention status for that portion. The expenditure commitments will disappear but a work program will be set by the department. That is of considerable benefit to those people who have found a mineral resource that is currently uneconomic to mine and worth retaining, but who do not want to retain the whole area under their exploration licence.

Mr R.N. Sweetman: Basically, no rental is charged per hectare for that area. What about shire rates?

Mr C.M. BROWN: The same rent that applied to the whole area covered by the exploration licence would apply to the smaller area, but the expenditure requirements would not apply. A work program would be set by the department in relation to the retention status area.

Mr R.N. SWEETMAN: I do not know whether the minister is indicating that I should repeat part of my question. I understand that the charges are the equivalent of the rent per hectare for exploration licences, and separately I assume that under the same formula municipal rates would apply to the lease.

Mr C.M. BROWN: That is correct. It seeks to do two things. First, if someone wants to hang on to one-tenth of the land, he does not have to go through a contorted process to do so. He can go through this process and release the other 90 per cent of the land for others to explore. Secondly, if he wishes to hold on to only one-tenth and there is not much exploration to do, his only choice presently is to go for a mining lease, and the land may be subeconomic, or he can keep up his expenditure commitments. If he does not do that, he can be plained. This works to the benefit of those who have done the exploration and found a resource that is subeconomic. They can hang on to it and continue to pay their rent. They do not have the exploration expenditure requirements. They have a work program but they are not subject to plaining.

**Clause put and passed.**

**Clauses 23 to 28 put and passed.**

**Clause 29: Section 74 amended -**

Mr R.N. SWEETMAN: What will be the proposed fee to either inspect or receive a copy of these reports?

Mr C.M. BROWN: I am told that it will cost approximately the same as a standard fee, which is about \$7.

Mr R.N. SWEETMAN: With regard to the timing of the reports, when will the information be made public?

Mr C.M. BROWN: It will be made available almost straight away. I do not know whether the member has seen the new systems used by the department. I am told that this information will not go onto the Internet but it will be made available almost straight away.

**Clause put and passed.**

**Clause 30: Section 74A inserted -**

Mr R.N. SWEETMAN: Will the funding to the office of the director of Geological Survey Western Australia be increased in line with his additional responsibilities? What is the proposed fee to either inspect or receive a copy of these reports?

Mr C.M. BROWN: Essentially, the fees will be about the same as I have previously indicated; that is, about \$7. With regard to additional resources, as the member knows exploration licences are issued for exploration, and mining leases are issued for mining. It is generally envisaged that the number of places at which mining is occurring or where new mines might operate involves about 100 mining leases a year. It is not considered that the amendment will involve an enormous amount of additional work. Only a small amount of work will be required to provide this information. It is not as though additional officers or office staff will be required.

**Clause put and passed.**

**Clauses 31 to 104 put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to third reading.

*Third Reading*

**MR C.M. BROWN** (Bassendean - Minister for State Development) [3.13 pm]: I move -

That the Bill be now read a third time.

I am grateful for the Opposition's support for this Bill. I acknowledge the comments that members have made. I can assure members that this Bill has been drafted to seek to overcome the backlog of applications for mining leases. Like all new legislation, the Government seeks to exercise a collective mind to try to put in place the very best arrangements to streamline mining operations and for the industry to progress and expand. Similar to all legislation, we must wait to see whether all the Government's intentions work exactly as was intended. In some instances, even with the most careful drafting, that does not occur.

This Bill seeks to overcome some highly technical drafting issues that were caught up in the 1996 Bill that was introduced by the previous Government. The Labor Party supported that Bill at the time but very technical changes have prevented parts of that Act coming into operation. A lot of work and thought has gone into this matter. I hope that the changes we have made will operate successfully.

I am particularly indebted to all members of the community who participated in the native title technical task force, which was conducted under the auspices of the Deputy Premier. I am particularly grateful to all those who served as part of the Keating report, which was chaired by Dr Michael Keating. It is worthwhile noting the other members of that committee, who included Mr Ian Burston, who is no stranger to the mining industry - he probably knows more about mining than other people have forgotten about; Mr Bill Grace, who knows an enormous amount about the mining industry; Mr Brian Wyatt, who has a very deep involvement in native title negotiations, settlement and other matters; Ms Eve Howell, who knows an enormous amount about the petroleum industry and is a chief executive officer; and Dr Sue Graham-Taylor, who has been actively involved in the conservation movement in a variety of positions. Great credit is due to the six members of that committee who were able to agree on recommendations to look after the interests of the environment and the native title holders, and also to promote the resource sectors in the State, particularly the mining industry.

I am particularly grateful also to my parliamentary colleague, the member for Eyre who I asked to take on this responsibility. The member was ably assisted by officers and industry representatives and presented an excellent report. I was extremely pleased to give Parliament a brief statement on the progress of that report. Some 31 of the 33 recommendations of the report have been acted upon. A number of recommendations have been implemented and it is proposed that a number of others will be implemented. I am optimistic that this Bill will produce the results we hope for and will benefit all concerned. I hope also to see the continuing growth and vibrancy of the mining industry in Western Australia.

Question put and passed.

Bill read a third time and transmitted to the Council.