MINING AMENDMENT BILL 2004

Second Reading

Resumed from 26 August.

MR R.N. SWEETMAN (Ningaloo) [12.37 pm]: At the outset, I indicate that I am not the opposition lead speaker on this legislation; the Leader of the Opposition is. However, he has another engagement at the moment, so I am speaking first for the Opposition. The Opposition does not intend to oppose this amendment Bill through the Parliament. However, we wish to make some comments, and I believe my colleagues in the upper House will reserve their right to make some additions to the legislation when it gets to that place.

On the face of it, from the briefings I have had, my scrutiny of the minister's second reading speech, the explanatory memorandum and information that has been provided by a range of people, including from the Association of Mining and Exploration Companies, the Amalgamated Prospectors and Leaseholders Association and the Department of Industry and Resources, it is clear that many of these changes are necessary to make sure that the Mining Act remains modern and relevant to today's mining industry. It must be of some consolation to my colleague the member for Eyre that he now sees some reward for the time and effort he put in to try to clear some of the obstructions in the mining industry, particularly on the exploration side of the mining industry in this State, of which he represents a substantial part.

It is clear that of most concern is the backlog of 5 250 mining leases. I ask the minister, either by interjection or in his response to the second reading debate, to indicate what percentage of those 5 250 will revert back over the 12-month period to exploration licences; in other words, the number of those licences that are genuinely for the purpose of mining, and people want to upgrade the tenure to that of mining lease. I suspect from the anecdotal evidence or the information I have received that it is a substantial number of those 5 250 mining leases. That in itself would remove a huge amount of the backlog from the system. I inquired of the minister during estimates hearings perhaps two or three years ago, when I made reference to the Keating review and the Bowler inquiry, why the Government had not prevailed on the federal Government, or at least some of its colleagues in the federal Parliament, to make changes to the Native Title Act. I am not suggesting that we should repeal the Native Title Act to disadvantage Aboriginal people. I, like any reasonable person, can accept the notion of native title. We on this side of the House have difficulty understanding why many of the rights of native title claimants seem to be manifest within claims, and are from people who are lodging claims over vast tracts of the Western Australian crown estate and who have yet to prove their case. One of the classic all-time examples would be the three claimants for a section of the Burrup Peninsula. To clear that obstruction and to ensure that developers had certainty, the Government took it upon itself to pay the claimants out with an amount of $15 million. Ultimately, when that claim went to court it was deemed that those claimants did not have a claim over or a connection with that tract of land. However, the $15 million that had been handed over was not redeemable. It had been handed over to those claimants as though they had a legitimate interest in that estate. That is the problem. We must be mature enough to be able to say, "Hang on, there are people with genuine interests and people who have demonstrated their connection with the land through the courts and have then had their claims legitimised and sanctioned, but there are other claims still pending." Those claims in particular are causing problems in the mining industry as far as native title compliance issues are concerned. This is something that needs to be placed on the public record. This is a convoluted way of developing legislation that is more workable, but it skirts the obvious issue; a bottleneck or logjam is caused because of complications with the federal Native Title Act. We are now going to this elaborate extent to ease the bottleneck by amending our state-based legislation to further enshrine and preserve the rights of Aboriginal claimants to exert influence over areas of land for which they are yet to establish title or recognition.

The most worrying aspect that the Opposition will proffer in this debate is that now, when an application is lodged for a mining lease, applicants will have to prove that there is significant mineralisation. There are two gateways, I understand. The alternative is for a mining proposal to be lodged with the application when applying for a mining lease. That triggers certain things as well.

It is the Opposition's job to have a fertile mind. If someone within the department decides that the person who is applying for the mining lease is not the required person and is not a fit and proper person for whatever reason, it does not take a whole lot to decline the application to convert from exploration tenement to mining lease. That is a worrying aspect. Obviously the peak industry bodies are not as worried about this as some members of the Opposition, but it needs to be placed on the public record and the minister and the department should be made aware of it. Such a scenario would be unacceptable. In his summing-up the minister may be able to advise the House what would be deemed to be significant mineralisation. It may include lodgment of data in relation to a resource. The minister will understand the difference between resource and reserve. For something to be

classified as a reserve - that is ounces of gold and such things - there is a requirement for certain spacing of drill holes. I think it is every 25 metres. I do not know what the requirement is for a resource. It is obviously a multiple of that 25 metres. It may be 100 metres by 100 metres, or it may be 200 metres by 200 metres. I know there are minimum expenditure requirements and things like that, but I would be anxious if those expenditure requirements were ramped up as a consequence of mineralisation data that the department may want before it seriously considers a mining lease application. In his second reading speech the minister states that this will bring about one of the most far-reaching and fundamental changes to the State's mining legislation in more than 100 years. I agree with that. It is a very significant change. Previously, a lot of miners were very keen to keep their cards close to their chest. They did not want a lot of information about the size of the resource or mineralisation to be placed on the public record. That has serious implications for native title claimants and their expectations for compensation or royalty-type payments from a particular development. The minister further said that details of mineralisation and information about the likely method of mining and infrastructure needs provided with new mining lease applications will establish a basis for native title claimants to assess the potential impacts on native title rights, thereby providing a strong foundation on which the parties can negotiate the grant of the title.

A modern example of that might be Rio Tinto's Yandicoogina iron ore operation, when it negotiated a very successful outcome with the local indigenous community. From memory, it was $60 million over three years, which is a significant amount. It was amicably resolved. Both parties were content with the settlement. Rio Tinto then decided that there would be Yandicoogina stage 2, so it probably made sense for it to embark on the approvals process now. Perhaps also in the back of its mind might have been that if things change, there might not be the same group within the Aboriginal community with which the first negotiations were conducted. It made sense to get the approval for stage 2 then to avoid that complication some time in the future. I think the negotiations went something like this: when Rio Tinto's people then sat down with the local indigenous community to start those negotiations, one of the first things they were told by the indigenous folk and their representatives was not to expect as good a deal as they got last time. That is about where the negotiations broke off. They may have re-entered those negotiations since that time and amicably resolved their proposal for the extension of the Yandicoogina mine. However, it goes to show that it is not just related to potential impacts on native title rights. Clearly, Aboriginal people negotiate on the basis of what is the pain threshold for the local company with which they are negotiating. If they are legitimate bona fide native title holders, that is different. I accept a deal that is done between two parties. I refer to what the Government did when settling with the three claimant groups on the Burrup Peninsula. That indicates that the current process is presenting opportunities in which the rights of some people in this whole process are highly questionable. It may ultimately be found in court that they do not have a connection with the land over which they have been negotiating compensation. In the event that they receive payouts, compensation, royalties, or whatever one calls it, and the court finds the people are not connected to the land, none of that money is repayable to those who paid the money in the first instance.

It is a very positive move that mining or exploration tenements will go to a five plus five plus two plus two basis. Previously, exploration tenements were for five years. However, after three years, 50 per cent of the tenement area was lost, and 50 per cent of the remaining area was lost in the following year. After five years, the rest of the tenement area was surrendered. This amendment will give certainty to investors and explorers. They will lose land after five years - that is, 40 per cent - but it is assumed that sufficient activity will be conducted in the five-year period to be confident to nominate that the 40 per cent of area to be lost has less prospect than the area to be retained. That is a real positive.

In saying that various peak industry bodies supported the legislative amendments, I have a letter from prospectors that certainly raises some concerns. It was mentioned in the minister's second reading speech that the Amalgamated Prospectors and Leaseholders Association had approved of, and were agreeable to, the amendments. Obviously, these people had either some second thoughts or -

Mr M.J. Birney: They weren't even consulted.

Mr R.N. SWEETMAN: They are listed as being part of the consultation. Maybe they were consulted indirectly.

Mr C.M. Brown: They were consulted; you don't know what you're talking about.

Mr R.N. SWEETMAN: For what it is worth, I am sure APLA has written to the minister, as it has written to the Opposition, in the following terms -

> APLA opposes sections of the Bill relating to the backlog.
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> The Government told APLA there would be no amendments to the Act until Aboriginal Heritage Protection Agreements were in place and there was a proper process to deal with heritage protection for all sectors of the industry, including prospectors.

Clearly that organisation feels that aspects of the matter were not resolved to its satisfaction. Not fully understanding everything objected to, I am reluctant to pursue further concerns on its behalf. I place on the public record that an organisation representing prospectors is not totally content with all the provisions of this legislation.

The provision regarding retention status is also a positive. That reflects the inadequacy of the previous tenure arrangements for exploration licences. It also must give some comfort to mining exploration companies that ascertain that a resource is in an area, but perhaps is not viable at that time. An example might be - albeit a bad example - Precious Metals Australia Ltd, which in 1987 or 1988 concluded that a significant vanadium resource existed at Windimurra. It was a long time before the company decided that it was viable at the margins. We know the story: it started up and it is now shut down. In such situations, some resource developments take time to reach fruition. The retention status to be given to the licences is likely to give those exploration tenement holders some comfort; that is, they can discover a resource and demonstrate to the department the significant mineralisation. For many commercial reasons prevailing at the time, the company may be unable to proceed to mining lease and to mining. It seems reasonable and fair after spending time and capital that retention status should apply.

[Leave granted for the member's time to be extended.]

Mr R.N. SWEETMAN: It is only reasonable that such people retain the status of owner, for want of a better word, of that resource. It is hoped that in a reasonable time, it will be commercially viable to mine it. That is another positive aspect. I know provisions in the Act previously allowed that situation to occur, but this amendment will streamline that process.

I know we touched on ground disturbing work when considering the prospector legislation in this Parliament several years ago - during the last year of the coalition Government, I believe. There was a great to-do about what was reasonable ground disturbing work for a prospector to undertake on a prospective lease or a mining tenement. A commonsense approach, as prescribed in the amendment, should be adopted for what will constitute ground disturbance. Basically, it is anything other than that created by hand-held implements. A motor-driven post-hole digger would probably fall into the hand-held implement category. It is a reasonable approach to take on ground disturbing. However, will the new Environmental Protection Amendment Act 2003, as proclaimed, impede greater activity and convert exploration licences into mining leases? Implications clearly arise in relation to native vegetation and such things. We will find that out in time. It might be a good move to have a regular review of this Act to ensure that it meets all its suggested targets.

The provision of various samples and data to be collected from time to time through part 8 of the Bill will add to the information at the core libraries in Kalgoorlie and Perth. That is a good move. It may be said that the tenement holder has gone out there and expended money on the lease, and it is his prerogative to volunteer that information. However, reason exists for the Crown to insist that the information ascertained on the lease is provided. In the event people relinquish title to it in the future, their time on the lease should not be wasted to the Western Australian community. That is a good move.

In relation to the Warden's Court and other such matters, I have not been able to inquire of my colleague in the other place Hon Peter Foss whether the Liberal Party is comfortable with the provisions.

I pose a matter in relation to form 5s that I hope the minister can advise on in reply to the second reading debate. Form 5s will apply only to mining leases. There will be an ability for the minister to call on the tenement holder to produce an audited statement regarding amounts claimed to have been expended. I am told that form 5s are provided only for mining leases. If not, I may be in strife: I have not submitted a form 5 for any of my mining tenements in the past.

With those few words, the Opposition is pleased to see the amendments to the Mining Act before the Parliament. I recognise my colleague John Bowler for the work he did with his task force, and I am sure he will be disappointed by the toe in the water approach by the minister.

The ACTING SPEAKER (Mr A.P. O'Gorman): The member should be referred to as the member for Eyre.

Mr R.N. SWEETMAN: Of course. I am sure the member for Eyre would like to have seen more in the legislation pertaining to the recommendations his task force made to the minister. This Bill may go some way to appease his concerns and those of the Keating review. It may ease a lot of concerns in the mining industry as well. Resource development in this State is going very well, but we cannot take anything for granted. We must look at what is happening on the ground. If my electorate is any indication of what is going on in the electorates of the members for Eyre and Pilbara, more mines are being closed than are being developed. That is certainly so in my area. Shortly before I was elected to Parliament in 1997, seven goldmines were productive within a 100-

kilometre radius of Meekatharra. Within 12 to 18 months only one was operating; the St Barbara Mines Ltd operation at Meekatharra. That is now on a care and maintenance program, and I understand that fewer than a dozen people are employed there. For security reasons, crews are monitoring its leases and tenement areas. It is a sad set of circumstances. I hope that this legislation not only clears some of the backlog of native title claims but also is the catalyst for increasing expenditure particularly on exploration, because production follows from exploration. For a variety of reasons, we have not seen enough exploration. One of those reasons, significantly, is the number of native title claims. To some extent, the Bill is inadequate legislation. I hope it goes some way to addressing those issues and that expenditure for exploration and productive mining is increased. The royalties from that will come back to the State to improve the circumstances for the whole community of Western Australia.

MR M.J. BIRNEY (Kalgoorlie) [1.01 pm]: This is indeed a very significant Bill. It will affect my electorate almost on a daily basis. I say to members, and to the minister, that this Bill contains some atrociously bad parts. However, to be fair to the Government, it also contains some reasonably good parts. Quite frankly, I am ambiguous about my support or otherwise of this Bill. Notwithstanding that, I will outline a few issues of concern I have and perhaps even touch on a few of the things that I think will be mildly beneficial to the industry.

The biggest single issue in this Bill, and the one that shines out at us like a beacon, is the requirement for mining companies, when transferring an exploration lease into a mining lease, to disclose the nature of the resource that has been found. At face value that requirement sounds like a reasonable proposition for anyone who wants to relinquish an exploration lease, turn it into a mining lease and start mining. It sounds reasonable to expect people to prove that they have a resource that can be mined. The issue of concern is native title. For many years, native title claimants have been requesting Governments to require mining companies to tell them the size, nature and economic viability of their resource during the negotiation stage. Of course, in the past, certain individuals have resisted that course. However, this Labor Government has capitulated to the Aboriginal industry, if I can put it that way, to the point at which multimillion dollar native title claims are likely to be made simply because native title claimants will know the size of the resource when negotiating their agreements.

Native title is not about gold or nickel or whatever else is in the ground or the value of the ground. I understand that native title is about historic land use and spiritual matters associated with the relevant land. The amount of gold in the ground should be completely and utterly irrelevant to the claims. Yet the Labor Party is requiring a mining company to disclose the size and nature of its resource during native title negotiations. Let me predict here and now that the relevant clause in this Bill introduced today by the Labor Party will result in the magnitude of native title claims escalating, the likes of which we have not seen in the past 10 or 20 years. I hope the Labor Party is proud of that. It will set a precedent for the mining industry. As soon as a native title claimant knows the size of the resource, the amount of compensation requested will increase.

Mr A.D. McRae: That is what the Liberal Party has been saying for 30 years: the end of the world is nigh!

Mr M.J. BIRNEY: For the benefit of my poor friend here from Riverton, I say again that native title is not about how much gold is in the ground; it never was and never should be. Sadly, it is becoming that way. Native title is about historic land use and heritage issues. It should not matter one iota how much gold or nickel is in the ground. Why does the Labor Party want mining companies to disclose that information? If we want to move from an exploration licence to a mining licence and return to a situation in which exploration and mining licences truly reflect the nature of their activities on a piece of ground, it may well be fair enough for companies seeking mining leases to disclose, to perhaps the department of mines, the size and nature of their resource. It is entirely unreasonable and unfair to require a company to disclose that private information to a third party; namely, a native title claimant, which will use that information to screw the company to the ground. That is exactly what will happen now as a result of the passage of this Labor legislation. This is one of the atrociously bad parts of the Bill.

In many respects, I guess this provision is in keeping with the Labor Party's socialist mentality. The mining companies spend the money to find the resource but then they must give part of it away. I guess it almost amounts to communism. I suppose members should not be too surprised that this is the sort of rubbish that the Labor Party is peddling.

I remind members of the Wongatha claim, which has been a long and ongoing claim over the past 10 years in the goldfields region. Thankfully, the Wongatha claim has now had its day in the Federal Court. Based on the evidence before it, the Federal Court is about to decide whether the Wongatha people have a legitimate native title claim. As members can imagine, everyone in my electorate is awaiting the outcome of that claim. In many respects, it will be a watershed. What has the Labor Party done in the meantime? The Deputy Premier, who is responsible for native title, has snuck through the back door and offered the Wongatha claimants a secret

multimillion dollar out-of-court settlement. Why on earth is the Government giving taxpayers' money that could be spent on schools and hospitals in my electorate, and perhaps even yours, Madam Acting Speaker, to a group of individuals who are about to hear a decision on a claim that has been legitimately heard in the Federal Court? I will tell members why, and perhaps we can find the answers in the *Kalgoorlie Miner* of 14 August 2004. The article reads -

Mr A.D. McRae: What's the title on that article?

Mr M.J. BIRNEY: I think the member for Riverton fell out of the stupid tree and hit every branch on the way down. That is not an unreasonable thing to say about him. The article reads -

> Mr Ripper; that is, the Labor Party's Deputy Premier, agreed the Wongatha claim, which first surfaced about 10 years ago, was likely to fail.

The minister in charge of native title said that the Wongatha claim is likely to fail. He did not say that off the cuff. He has obviously had very serious legal advice to that effect. He said that he knew the claim would fail and that the claimants would not be able to prove the legitimacy of their claim in the Federal Court. He then offered them a multimillion dollar secret out-of-court settlement. Let us move on and ask why the Government has done that when it has suggested that the claim would fail. The answer is simple: it is buying Aboriginal votes three or four months out from an election. It should be almost illegal for the minister responsible for native title to offer to pay compensation to a group whose claim is likely to fail in the Federal Court. Who can forget what happened on the Burrup? The same thing happened on the Burrup. The Labor Party offered the claimants on the Burrup $15 million of your money, Madam Acting Speaker, and mine, which they gratefully accepted, only to find out that they did not have a native title claim at all, because the Federal Court of Australia made a decision on that topic. They had no claim, Madam Acting Speaker, and yet they are enjoying $15 million of your money and mine.

Mr A.D. McRae interjected.

Mr M.J. BIRNEY: I have gone through the freedom of information application process for the Deputy Premier's office and for the Premier's office.

Point of Order

Ms S.E. WALKER: I heard the member for Riverton say that the member for Kalgoorlie was telling lies. He said it twice. That is unparliamentary.

The ACTING SPEAKER (Ms J.A. Radisich): The member for Riverton is aware that all interjections are out of order. In particular, one should be careful in one's use of words that are accusatory of any other member in this place. Although no member was called a liar, the reference to the word "lies" is skating on thin ice and I encourage the member to cease and desist.

Debate Resumed

Mr M.J. BIRNEY: I have been to the member for Riverton's electorate and I can tell members that out there he is marginally more popular than the bubonic plague. That is no understatement. I have done a fair bit of work in his electorate and the view that seems to be coming through is that he is marginally more popular than the bubonic plague.

I will continue by telling members that I have been through the FOI process. I have done everything within my power to find out the size and the nature of the out-of-court settlement that the Labor Party has offered to the Wongatha native title claimants. The Deputy Premier, in his capacity as the minister responsible for native title matters, has done everything in his power to stop me from finding out. He does not want me to find out that this is a Burrup size out-of-court settlement, and is perhaps somewhere in the order of $15 million. We all know that that $15 million could be spent on the schools and hospitals in my electorate. For instance, the Kalgoorlie Regional Hospital has been crying out for an $8 million upgrade for the best part of four or five years; yet the Labor Party is willing to hand over multimillions of dollars to a claimant group whose claim will probably fail. It should be almost illegal.

The mining industry has been strapped by environmental regulations for some considerable time now. First, the Labor Party's Environmental Protection Amendment Act was passed through the Parliament, which imposes a raft of very onerous regulations on the mining industry in the course of its duties. If that were not bad enough, this Bill contains more onerous environmental regulations. For members who are not aware of it, the current situation is that the holder of a prospecting or exploration licence is able to carry out exploration work on that licence, provided that the person does not need to clear the land. That means that people can get a drill rig onto their prospecting or exploration licence tomorrow and start drilling, hopefully to prove up a massive ore body

that will ultimately benefit the City of Kalgoorlie-Boulder and the State of Western Australia. Provided that people do not clear any ground, they can drill tomorrow. The Labor Party has now added a third layer of bureaucracy under this Bill. It is now saying that people who want to engage in those sorts of activities, the likes of which would normally be engaged in by people with a prospecting or exploration licence, must now apply to some environmental nazi within the mines department for further approval. How long will that take? Drill rigs are parked up now because of native title claims. Labor's Environmental Protection Amendment Act has added further hoops to the equation. Now we find that if people want to drill a couple of holes on their exploration licence, they must apply to an environmental person within the mines department. Could the Labor Party put any more hurdles before the mining industry? I do not think it could. Realistically, I should not be surprised, because the Labor Party engages in the politics of envy. It hates anybody who has ever made any money or who has ever tried to make any money. Of course, to the Labor Party the mining industry represents part of that group of people who are prosperous and industrious. The Labor Party has a philosophical aversion to those sorts of people. Now that the mining industry must apply to some environmental nazi in the mines department to put down a few holes, we can rest assured that there will be fees associated with that application. Not only will people have to wait as they go through the bureaucracy once again, but also the Labor Party will take the opportunity of extracting a few bucks from them at the same time. Simply having a prospecting or exploration licence should be enough. When a licence is granted, it conjures up an image of somebody prospecting or exploring. It would be hard to conjure up that image without visualising a drill rig putting down a couple of holes on the lease; yet now there will be additional hurdles.

I will deal with the issue of prospectors, because I believe that prospectors have been overlooked in this legislation. Interestingly, I read the minister's second reading speech, in which he said -

> I wish to place on the record my strong appreciation of the patience and willingness to participate of representatives of the Association of Mining and Exploration Companies, the Chamber of Minerals and Energy of Western Australia and a number of native title representative bodies in what have been detailed and comprehensive negotiations.

One very important group is missing from that list; that is, of course, the prospectors association. How on earth can we pass a piece of legislation such as this, which impacts on the day-to-day lives of those prospectors, particularly in my electorate of the goldfields, who are trying to make a buck and trying to make ends meet, without firmly and solidly consulting with them? I know that the minister has said that he has had a word or two with a couple of prospectors. The reality is that members of the Amalgamated Prospectors and Leaseholders Association of WA were not invited to the negotiating table and, as a result, their concerns have not been allayed by this legislation.

A number of issues in this Bill will be somewhat difficult for prospectors to swallow. For instance, at the moment a prospector who is looking for gold in some godforsaken harsh terrain is allowed to build himself a little dwelling. A lot of prospectors build a little shack to keep the sun off their heads and perhaps the rain off their backs during the winter months. They can cut timber and start a fire, which is what they want to do when they are out in the bush. This Bill will now prevent prospectors from erecting a dwelling. It will allow them to camp, but that is the only reference in the Bill - they are allowed to camp. They cannot build themselves a little shack or a shanty to give themselves some home comforts while they are thousands of miles from civilisation. The Labor Party says that they can camp, and that is it. Under this Bill they will no longer be able to cut or remove timber. What does the minister want them to do - rub their hands together and have a group hug during winter while they sit around a camp fire with no fire in it? This is utterly ridiculous. The prospectors are concerned that exploration licences will be granted almost ad infinitum. The current situation for an exploration licence is such that a prospector is granted a licence for five years. There is a view in the industry that five years is not long enough.

[Leave granted for the member's time to be extended.]

Mr M.J. BIRNEY: I am now moving into territory that I can live with to some degree. There are some reasonable parts in the Bill. The minister has said that at the expiry of a prospector's five-year exploration licence, on application he will be given another five years and thereafter two years plus two years almost ad infinitum. There are varying points of view about the length of exploration licences. Some people think that five years is adequate and that if a resource cannot be found in five years, the land should be handed back. Others think that 10 years is more realistic. I could probably live with either. However, it is the two-year plus two-year extension ad infinitum that I and prospectors are concerned about. That extension will effectively allow a mining company to keep an exploration lease almost ad infinitum. The land will never be turned over. People will be able to sit on land without genuinely exploring it. There will be issues with prospectors who are genuine explorers and who are out on the land every day of the week. They might not be able to get their hands

on reasonable land because some of the bigger and richer mining companies will lock up land ad infinitum under the Labor Party's two-year, plus two-year infinitum clause.

Currently, when an exploration licence expires after five years, a person or company can apply to turn that licence into a mining licence. A mining licence lasts for 21 years. I am sure that members would agree that that is a long time. It is entirely reasonable that a mining licence lasts for 21 years if the company or person is, in fact, mining. If the company is only exploring, 21 years is excessive because, as I said, it will allow people to sit on land and do nothing with it. The Labor Party has got it slightly wrong insomuch as it is saying that when an exploration licence is converted to a mining licence, the company will get 21 years anyway and that is why it is including the two-year ad infinitum clause. The reality is that companies need 21 years for a mining lease because some mines can operate for 21 years. If a company that is exploring has not found anything in 10 years, either it has not tried very hard or there is nothing to find. The reality is that, either way, the land should be handed back. The Government has got it slightly wrong.

The part of the Bill that allows owners of current exploration licences who are attempting to convert those licences to mining leases to convert them back to exploration licences is a good thing, because there is somewhat of a native title backlog in converting an EL to an ML. Of course, a lot of those people are trying to convert an EL to an ML because they still want to engage in ongoing exploration activity. Making that licence an EL and giving those owners another five years will have an effect. I am happy to congratulate the Government on that clause. Notwithstanding that, many other issues remain unresolved in this legislation.

Another issue is that prospectors will now be required to keep records of the amount they spend on labour while on a lease. If that is not ivory tower stuff, I do not know what is. I do not know whether the minister has ever met a true prospector. True prospectors do not have much time to keep records. All they want to do is get out into the bush, get their hands dirty, find enough nuggets to feed and support their family and get on with it. Requiring prospectors to keep records of every single minute and hour of labour they spend on their lease is entirely unreasonable. The inclusion of that provision in the Bill depicts a Labor Party that is not in touch with people on the ground.

Currently the Mining Act requires that security bonds be lodged by tenement holders. That bond is required, presumably, to ensure that tenement holders comply with all the rules and regulations associated with their particular tenement. Currently the bond for prospectors stands at $500. The Labor Party is increasing that to $5 000. Some prospectors would be lucky to make $5 000 in three, four, five or six months, and yet the Labor Party has decided to take $5 000 from them as a security bond. Once again, that is an entirely unreasonable imposition on prospectors.

The retention clauses in the Bill are also worthy of support. They will have my support. The situation at the moment is that if a person or company proves a subeconomic resource - that is, a resource that is not able to be mined at this stage - it can apply for a retention licence that will be granted over the top of that resource. A retention licence will basically put that resource in limbo. It will also eliminate the need to expend money on the ground. That is a good idea. However, when a company or person moves from an exploration licence to a retention licence, native title provisions are invoked. As I understand it, the Labor Party has decided that that will be changed and a particular resource will now be granted retention status, thereby not invoking the Native Title (State Provisions) Act. That has my wholehearted support. It is quite a reasonable proposition.

One of the other issues is that mining companies with an exploration licence must find large amounts of money to explore. There will now be an issue raising that money. If companies do not have a firmly granted mining lease, some financiers will baulk at the prospect of providing multiple millions of dollars to companies wishing to explore ground. It is already difficult for companies to approach financiers and ask for $10 million or $15 million to engage in a massive exploration program when they have only an exploration licence. If they do find something, to turn that exploration licence into a mining lease, they will still have to get through all the new hurdles that are being proposed by the Labor Party. For those members who are not completely up to speed with the way the mining industry works, there are basically three different leases. The first is a prospecting licence, which lasts for about four years. Under a prospecting licence, about 500 tonnes of dirt can be moved a year. The second lease is an exploration licence, which lasts five years. Under that licence, about 1 000 tonnes of dirt can be moved. The third lease is a mining licence, which allows an unlimited amount of dirt to be moved. It is a much more expensive form of tenure. The Labor Party is saying, quite rightly, that if a company has an exploration licence, it should be exploring and that if it has a mining licence, it should be mining. I support that concept, notwithstanding the fact that I have quite a number of concerns about this Bill.

In closing I will highlight my two major concerns. My first concern is the requirement that mining companies disclose the size, nature and economic value of their resource during native title negotiations. That is a particularly retrograde step, and one that will lead to multimillion dollar native title claims. If it reaches that

point, some mining companies might walk away. The current situation whereby everyone is required to negotiate in good faith - although there is a specific clause in the Mining Act that states that mining companies do not have to disclose the size and nature of their resource when converting from an EL to an ML - is more preferable to the Labor Party's proposition that a mining company has to tell a native title claimant the size of its resource.

My second major issue is with the additional environmental regulations that will be imposed on the mining industry. If the minister were to travel to the outback and goldfields, he would notice that it is all bush. The reason we live out there and endure 45-degree temperatures during summer is so that we can work and be industrious and prosperous. If an environmental nazi looks over our shoulder every five minutes, or every time we want to cut down a tree to determine whether there is a gold nugget underneath it, the very reason that people like me and others in my electorate choose to live and work in regional areas will be undermined. There is no need for additional environmental regulations in the Mining Act. The fact is that the Labor Party just passed a ridiculous environmental Bill that catches the mining industry and now it is loading it up again to the point at which some companies are saying "Where do we start?" On some occasions it is pretty easy to go to the market and raise some money; a person would think that would be the hard part. However, the hard part is actually complying with all the regulations that have now been placed before the mining industry. Sadly, the Labor Party stands condemned for its antidevelopment environmental-nazi approach, particularly in the mining industry.

With those few words, I will be very interested to watch the passage of this legislation and how it affects people in my electorate, and particularly the mining industry.

DR J.M. WOOLLARD (Alfred Cove) [1.30 pm]: I have a couple of questions for the minister to which I hope he will reply. My questions concern consultation. The member for Ningaloo said that it was his belief that peak industry groups felt they had not had sufficient communication and consultation with the Government. What level of consultation has occurred with the indigenous groups? I appreciated the briefing I was given from members of the minister's department. During that briefing I was told that the communication had been extensive. In fact, as part of the minister's second reading speech he said that -

> The purpose of this Bill is to implement important and strategic amendments required to the Mining Act . . .

He also said that the amendments are -

> . . . the result of extensive negotiations with key industry stakeholders, including peak mining industry, prospector and lawyer groups, native title representative bodies and government.

In concluding, the minister said -

> I wish to place on the record my strong appreciation of the patience and willingness to participate of representatives of . . .

Then the minister lists a number of native title representative bodies that have been involved in what he says have been detailed and comprehensive negotiations. I ask the minister what level of consultation has occurred with indigenous groups. Since having that briefing with members of the minister's department, I have met with indigenous groups at Kalgoorlie and discussed this legislation with them. They were very unhappy that this Bill was coming before the House. They are aware that the Legislative Council intends to discuss this legislation when it holds its regional sitting in Kalgoorlie. Some people have said that the people who signed off on the agreements were not the correct people to be doing that, and I was asked to ask the minister how many members of that council who signed off were Labor Party members. There is a lot of ill feeling about this Bill within indigenous groups. Does the minister really believe that the consultation process was encompassing enough to represent indigenous people, and can the minister detail in his reply just what consultation has taken place? These comments are coming from people who believe that they have not been adequately consulted on this legislation.

MR C.J. BARNETT (Cottesloe - Leader of the Opposition) [1.34 pm]: I will make a few brief comments because the members for Ningaloo and Kalgoorlie have been through some of the detail of the Bill and raised some of the issues. In the mining industry, there is general support for this legislation. They recognise it as an attempt to speed up the processes in exploration, prospecting and mining lease applications and to get rid of some of the backlog. Although I was not in the Chamber when the member for Ningaloo spoke, I am sure he would have made the point that this is essentially an exercise in trying to circumvent the processes and delays that have resulted from the native title legislation. As people have gone from one type of mining tenement or title to another, they have triggered native title processes. There has been a growth in the backlog under the native title legislation, which has seen some changes taking place in our industry. Although the resources sector is growing in this State, it is obvious that the expansion in this State is essentially the expansion of existing

operations as iron ore companies use satellite ore bodies, and as the petroleum industry develops further trains for liquefied natural gas. Although the Ravensthorpe nickel project and the Sally Malay project are new projects, we have equally seen other projects close, and we are not seeing the level of exploration needed to sustain and develop this industry into the future. Indeed, the mining industry is lacking champions to advocate for it, from within both the industry and the political arena. This is a genuine attempt to improve the processes, and I agree with the comments by the member for Kalgoorlie; it is appropriate that exploration licences be used for exploration, and mining licences be used for mining.

I do not want to go through the Bill again, because we will go through it in consideration in detail. However, there are a number of concerns, and I agree with the comments made concerning the hurdles for obtaining a mining lease, which will be made higher; a mining lease cannot be used as a de facto exploration licence, which makes some inherent sense. However, imposing the extra hurdles, particularly for an intention to commence mining or the provision of a mineralisation report, could raise all sorts of unforeseen situations, which will be received with some trepidation by people in the mining industry.

The proof of the pudding will be in the eating as to whether this legislation improves the operation of the industry. I hope it can succeed in reducing some of the backlog of applications largely attributed to native title. We will see how this proceeds. We are willing to make constructive comments to this legislation. I think every member of this House would like to see our great mining industry work as efficiently as possible. However, there is a broader concern. Increasingly, I hear comments from the mining industry and other industries that it is becoming more difficult to do business in Western Australia. For a long time there was a view in this State that we had these great mining resources and that it was a politically stable and legal environment; therefore, mining companies would necessarily just explore and develop. We have seen a drop in exploration activity. The amount of proven reserves is diminishing all the time - we are not adding to that - and most of the proven reserves for the future are surrounding existing ore bodies that are known and mined. We are not finding the great new ore bodies that the industry needs for the future, which is a great long-term concern. Indeed, some of the less-developed countries competing for our mining industry are proving to be very well endowed with minerals. Although they may not have the levels of democracy that this country enjoys, mining companies are, one way or another, finding it fairly easy to do business there. They tend to go in with a shorter time frame for evaluating the economics of a mining project, and, increasingly, Australian and Western Australian companies are shifting their exploration and development activities out of this State and out of this country. They are doing more work in Africa and some of the developing nations of South America than they are doing in this country, and that is of great concern. It is not enough just to have the minerals or the mining and exploration companies; we also need a fabric of law and administration that is supportive and conducive to mining. In a functional sense, native title has made that fabric of law in this State very difficult in which to operate. Most of the measures in this legislation try to address that. However, some of them raise other concerns, but I guess those are issues we can explore during consideration in detail. At least this is an attempt to move in the right direction.

MR J.J.M. BOWLER (Eyre) [1.39 pm]: I support the legislation. I will discuss a few of the points raised by the members for Kalgoorlie and Ningaloo and the Leader of the Opposition. The Leader of the Opposition generally supported the legislation, and most of his comments were right on the mark. The member for Kalgoorlie raised a few points that need clarification, or at least a different perspective. First of all, he said that we should have mining leases for mining, and exploration leases for exploration, and then he queried why big companies and financial institutions will not come into Western Australia and fund exploration if they are only granted exploration leases. He cannot have it both ways. Either we have mining leases for mining and exploration leases for exploration or we do not. In Western Australia we have seen land banking and real estate trading by St Georges Terrace miners who go out and convert to mining leases on land they have no intention of mining, and then hold them for 21 years in the hope that either there will be an upturn in the market for gold or nickel, or a new mining boom - these usually come about once every 20 or so years - and then they can sell those leases with never any intention of exploring or even mining particularly. In fact, one entrepreneur during the nickel boom told his friends that if he ever looked like opening a mine on any of the mining leases he held they were to tap him on the shoulder and wake him up. Those sorts of people have no intention of mining, and they realise that they would never make money out of the game.

The member for Kalgoorlie criticised the fact that, under this legislation, having to indicate the size of the economic resource of a mining body at the application stage would somehow open up a Pandora's box of native title. The fact of the matter is that that process already exists in every other State of Australia. An applicant wishing to convert to a mining lease must indicate that a mine exists. That is not unreasonable, and it will not make any difference at all to native title, although the member for Kalgoorlie may think that saying it will can buy him some votes. Talking about votes, he says that the State's attempts to resolve the Wongatha claim in the north eastern goldfields is an attempt by the Gallop Government to buy votes. Without taking those votes for granted - most of them are in my electorate - I can say that 90 to 95 per cent of them already vote Labor. What

are we trying to buy? The other five per cent? Talking about that sort of level is absolutely ridiculous. It makes a mockery of that claim. The member for Alfred Cove was in my electorate the other day, and she would know that, if we had the five per cent and we wanted to get a slice of the 95 per cent, there may be some commonsense in it. Claims of a multimillion-dollar payout to buy votes that we already get are also absurd. I am getting a little off the track, but on the matter of trying to resolve native title in the north eastern goldfields, I am sure every prospector, mining partnership or syndicate, major mining company and shire in that area would welcome the fact that a regional agreement can be reached so they no longer need to go individually to attempt to resolve native title. The member for Kalgoorlie believes that, once the matter passes through the Federal Court, that is the be-all and end-all. I doubt that that will be the case. Once the Federal Court brings down its decision, there will almost certainly be an appeal to the High Court, which could go on for several years. If a resolution can be reached by way of a regional agreement in the north eastern goldfields, there is not a company, prospector or business person dealing in land in that area to whom I have spoken, who does not welcome it. In one fell swoop, the native title problems they face will be gone forever.

Mr M.J. Birney: Will you take an interjection?

Mr J.J.M. BOWLER: Yes, unlike the member for Kalgoorlie, who would not take mine, I will take an interjection.

Mr M.J. Birney: I would have taken it if I had heard it.

Mr J.J.M. BOWLER: The member should clean the wax out of his left ear.

Mr M.J. Birney: The Deputy Premier has acknowledged that the Wongatha native title claim is going to fail. Given that he had acknowledged that that claim is going to fail, why should the Government give them anything?

Mr J.J.M. BOWLER: First of all, the Deputy Premier is not one of the Federal Court judges. If he is totally right - I doubt that he is - parts of the region will get native title and parts of it will not. There will straight away be an appeal, probably on both sides, and it will be tied up in the High Court at even higher litigation levels for the companies and shires the member says he is protecting. If he thought it was expensive at the Federal Court level, he should wait until he gets to the next level, and see how long that takes, just on one area claim. I do not know whether the State Government will succeed - it is a holy grail it is trying to achieve, and every mining person I know hopes that its succeeds.

Mr M.J. Birney: What do the taxpayers say?

Mr J.J.M. BOWLER: What happens now is that every time a prospector wants to deal in land, he must negotiate native title. Now the mining companies will be able to say that that problem has gone forever. If the member does not like that, he is playing politics and not trying to help the prospectors, mining companies and shires that have to deal with that land.

Mr M.J. Birney: The Labor Party paid the claimants in the Burrup $15 million and it was subsequently found that they had no native title. If the secret deal being offered by the Labor Party to the Wongatha people is anywhere in the order of $15 million, don't you think that money would be better spent on schools, hospitals and tangible things for everybody in our town?

Mr J.J.M. BOWLER: No, I do not. I do not even know what the sum is. That is a trick question. However, whatever money we spend will mean that, not just for the next 10 years, but for the next thousands of years, native title is extinguished forever, for prospectors, small syndicates trying to work the land and big companies. Every claim would be wiped forever, and that would then be a framework for doing the same thing around Kalgoorlie-Boulder. If the member does not want to achieve that, he just wants to play politics instead of trying to reach a resolution that will help the industries in his area. Every mining company supports this measure, and when I talk to them about it, they tell me to go for it. They know it is the holy grail, and they want it.

Mr M.J. Birney: Can you name the companies that said that they support this?

Mr J.J.M. BOWLER: No.

Mr R.N. Sweetman: Won't the federal Government put in 75 per cent of the cost of a settlement, if you are able to negotiate a settlement, under future acts?

Mr J.J.M. BOWLER: I do not even know whether the money is on the table. The member for Kalgoorlie obviously knows. He said it was a multimillion-dollar settlement, but can he tell us how much is being offered?

Mr M.J. Birney: Because the Deputy Premier will not tell me, I can only assume that it is the same as the Burrup, which was $15 million.

Mr J.J.M. BOWLER: So, the member is just guessing?

Mr M.J. Birney: I can only assume it is the same amount,

Mr J.J.M. BOWLER: Could it be $1.5 million or $150 million?

Mr M.J. Birney: The precedent was set at the Burrup.

Mr J.J.M. BOWLER: So the member is just guessing. He should say whether or not he knows.

Mr M.J. Birney: I do know that they paid $15 million at the Burrup, and I know that that is a precedent that will more than likely be followed by the Labor Party.

Mr J.J.M. BOWLER: As I said, the member for Kalgoorlie was also critical of the fact that somehow or other we would not get big financing companies to come in if mining companies could not have mining leases instead of exploration leases. He cannot have it both ways. Either we have mining leases for mining and exploration leases for exploration, or we do not. When I conducted my inquiry at the behest of the Minister for Mines - I still use that term - I found that Western Australia, as we all knew, had a huge bottleneck of applications to transfer from exploration leases to mining leases. I talked to the staff at the Department of Mines - I will use that name because it has changed its name three or four times in the past three years - about how this bottleneck was created. They were pretty glum about it. The answer was that the previous Premier tried to find a way through native title. In the end he could not, so therefore once a bottleneck started he ran everything into that bottleneck, so that he would be able to turn around and say, in the political sense, "I told you so". It was bad luck for the mining and prospecting industry and the people in my area. The member for Ningaloo has raised a very good point. In 1996, he was saying, there were seven goldmines operating in and around Meekatharra, and now there is none. That is symptomatic of the whole goldfields. The region has been going down since those years, because the Court bottleneck did exactly that. It prevented companies from exploring because they were tied up in the mining leases when they did not need to be at that stage. The main thrust of this legislation is to clear that up. I am not blaming the current Liberal Party for that bottleneck. It was Richard Court being petulant. Once he was proved wrong on native title and in the efforts he tried to make, once a bottleneck was there, he made it tighter and harder. Then he could turn around and say to everyone "There, I told you so." I will not name them, but it was embarrassing for some staff of the then Department of Mines. I said to them that they had sat by and let this happen, but they asked what else they could do. They said that they could not blow the whistle because the Government would know exactly where the noise was coming from. They had to sit there, shut up and watch the bottleneck being created in the last three to four years of the Court Government. I am trying to resolve the problem, and this legislation will do exactly that.

In fairness to Richard Court, many in the mining industry - St Georges Terrace real estate agents, as I call them - welcomed that bottleneck. There is no doubt there was a downturn in sentiment in the real estate market for both nickel and gold from 1997 onwards. The gold boom had started to end and nickel had been off for about 12 years. There was therefore no sentiment in the market for them to sell their leases or float companies. They were quite prepared to go along with the Richard Court bottleneck and ram their exploration licences into that bottleneck well before they had to be there. That then froze any application money, taxes or rates to local government that they had to pay. They let the bottleneck stay.

Mr M.J. Birney: It all resulted from the federal Act. It got caught by the federal Native Title Act.

Mr J.J.M. BOWLER: Exactly, and we will free up the bottleneck. Why could it not be done before? The Court Government could have fixed this up if it had wanted to. It either did not have the bottle or did not want to.

Mr R.N. Sweetman: There was always a problem with the federal Native Title Act.

Mr J.J.M. BOWLER: It was caused by that. Richard Court tried to resolve the question of native title in different ways. When that failed he showed almost petulance by saying to people that he would prove himself right and that he would not try to find ways around the problem or change the Mining Act, as we will do, to try to resolve it. It was probably a positive for him politically. People in the bush saw him as having tried and failed. They thought that the huge bottleneck caused by native title was the result of the federal Act, as the member for Kalgoorlie has pointed out.

The member for Kalgoorlie said that prospectors are opposed to this legislation. I have had several meetings with members of the Amalgamated Prospectors and Leaseholders Association in probably the past three years, particularly since this legislation was brought forward. Some of them have expressed concern about some aspects of the legislation, but in general they support the thrust of it. One of their major concerns is that they do not believe that they have an acceptable regional agreement on heritage. In many cases native title has not been the problem; heritage has been the problem. If there is a regional agreement on a claim, heritage and not native title is usually the real stumbling block.

People can always get through native title on two time lines of six months, but under the current Aboriginal Heritage Act there is no time line and a heritage issue could indefinitely hold up an application to get on the land. I signal today that if I am elected to this House at the next state election, whether I am part of a Government or not, my next step will be to revisit the Aboriginal Heritage Act. There is no doubt that it is a bad Act in two ways. First, it does not give land users access in time lines to deal with their issues. They can be held to hang around indefinitely, unlike the position under the Native Title Act, which gives some surety in the time lines. Once genuine heritage sites are identified under the current Act, no real protection is provided. The position is similar to that underlining the Native Title Act. Indigenous groups have refused to deal with mining companies because they have found in the past that as soon as they have dealt with them over a sacred site, or a major sacred site has been identified, the mining companies have used it for an application under section 18 to wipe it off. If a St Georges Terrace mining company wants to sell a block of land, the land will have far more value if it has no encumbrances or caveats, such as those applying to a heritage site. Therefore, indigenous people have said that they will not tell mining companies where a site is, because as soon as they do it will be wiped off. They have said that they will not deal with the mining companies. There is no way to make them negotiate under the current Act.

In the Aboriginal Heritage Act I would like to see there would be time lines, so that other land users, whether they are the mining industry, local government, State Government or federal Government, have time lines to deal with an application for heritage clearance. However, if a heritage site is identified as genuine as a result of that process, genuine protection would be given to it. There would therefore be surety and certainty on both sides. Currently there is neither.

Mr R.N. Sweetman: The Yamatji Land and Sea Council contract was signed by a representative of the Yamatji Land and Sea Council. On the limited heritage survey, to back up what you are saying, it says that nothing contained in the contract entitles the grantee to information about the significance under Aboriginal law and custom of any particular Aboriginal site, nor its precise location. It is nebulous to say the least.

Mr J.J.M. BOWLER: Why do it? The current Act does not give either side the protection or security that they really deserve. People tell me not to go there. They say that they thought it was bad enough going back to the Mining Act to change it, but that changing the Aboriginal Heritage Act will be far worse. We cannot run away from it. We must deal with it for all land users, including indigenous Australians.

Mr M.J. Birney: Do you think it supports the environmental requirements that are placed on mining companies under this Act?

Mr J.J.M. BOWLER: I do not think it does. Mining companies comprise good people. They do not mind in a genuine case dealing with genuine legislation like that. I do not think it will be a major impediment. Time will tell.

There is talk that this legislation will increase the amount of exploration in Western Australia. I have no doubt that it will. The other aspect, which I hope we will see in three weeks, is the election of a Mark Latham Labor Government. The Labor Party federal Opposition has promised, after many years of the current federal Government saying no, to introduce flow-through shares. The introduction of flow-through shares by a Latham Labor Government would free up the financial aspects. I have no doubt that if a Latham Government is elected, such a scheme will come in. Everyone says that it will be good for the economy of Australia. It will be good for the mining industry, as the member for Ningaloo has said. Exploration in the mid 1990s will lead to goldmines in 2005. What we do in 2005 will lead to new nickel mines and goldmines in the following decades. I urge all people in the federal electorate of Kalgoorlie to ensure that they are aware that after several years of - the state member for Kalgoorlie should be embarrassed about this - the John Howard Government refusing to introduce flow-through shares and rejecting the proposition despite the fact that such shares have been an outstanding success everywhere else in the world where they have been used, a Latham Government will introduce them. Just as this legislation will free up the technical side of mining, that legislation will make sure that the financial side is secure as well.

MR C.M. BROWN (Bassendean - Minister for State Development) [1.59 pm]: I thank members for their comments. I will make a few observations in the available time before question time. The member for Ningaloo said what he thought the numbers might be of the people who would seek to revert from mining lease applications to exploration licences. A number of mining companies have sought mining leases simply to continue exploration, which was their primary goal. There is no doubt that those companies will take the opportunity - in fact there is incentive in the Bill to do so - to convert back to exploration licences. We will see that occur. Importantly, it will be possible to focus resources on those companies that want to pursue mining leases in particular because there will be fewer mining leases. The Government will not have to deal with 5 000 mining leases and devote to them all the financial, legal and other resources that entails. We will be able to

focus on those companies that want mining leases as opposed to exploration licences. In my judgment, a significant number of companies will seek to convert back from mining lease applications to exploration licences.

Debate interrupted, pursuant to standing orders.

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