MINING AMENDMENT BILL 2000

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon N.F. Moore (Minister for Mines) in charge of the Bill.

Clauses 1 to 4 put and passed.

Clause 5: Sections 20A, 20B and 20C inserted -

Hon HELEN HODGSON: I move -

Page 2, line 28 - To insert after "permit" -

for a period not exceeding 3 months

I addressed this issue in the second reading debate. The Government has said throughout the debate that it intends to provide permits with a maximum duration of three months. I understand from the briefing notes that cabinet approval of the Bill was on the basis that permits would be granted for a maximum period of three months. I am concerned that these provisions will be made completely by regulations, as indicated in clause 8. I am concerned that the maximum duration of the permits is not delineated in the legislation itself, but will be prescribed by regulation. If this is such a fundamental issue, it should be specified in the legislation proper and not in the regulatory process. Everybody has said it will be for a maximum period of three months. This amendment will make it absolutely clear that the Government's stated intention will proceed, and I commend the amendment to members.

Hon N.F. MOORE: The Government does not support this amendment. I thought I explained during my response to the second reading debate that this will be a trial period. The Government has given a strong commitment that this legislation will be reviewed within 12 months. With respect to the duration of the permits, the Government could have fixed any period between seven weeks and six months, or whatever. The Government believes three months is a fair and reasonable period, but it may transpire in 12 months that the period should be four months, six months or even one month. The Government wants the flexibility to change that period by regulation, without needing to come back to the Parliament for such a minor amendment. That would be a ludicrous waste of the time of Parliament.

Hon N.D. Griffiths: It would be a great debate.

Hon N.F. MOORE: It could be a long debate. As the member knows, Parliament has the capacity to defeat regulations. Members can vote against regulations, in which case they do not apply. When members say that the Government is trying to legislate by way of regulations, they ignore the fact that regulations can be disallowed. I repeat - I will not repeat it ad nauseam - that it is the intention of the Government to review this legislation quickly and to make any changes that are obviously necessary once the review has been completed. The Government wants maximum flexibility to make changes quickly in view of circumstances that may or may not arise. This amendment is unnecessary, unless the member has a special reason that the three-month period should be specified in the legislation rather than, say, two months or four months. The member has not given any reason, but is simply saying that because the Government thinks three months is a preferable period, that should be in the legislation.

At the moment the Government thinks it is a good period. It may be that in 12 months it will decide that a different period is more appropriate.

Hon N.D. Griffiths: A future Government might as well.

Hon N.F. MOORE: I do not think it will worry a future Government.

Hon N.D. Griffiths: You should be more positive.

Hon N.F. MOORE: I just said that it will not worry a different Government in the future. It will not worry us because it is a good program and we will review it properly. That is the intention of having the 12 months' trial period and giving the absolute assurance that at the end of 12 months the whole thing will be reviewed.

Hon MARK NEVILL: I cannot see that specifying three months adds anything to this clause. I suppose the right is a cross between a prospecting licence and the general right to prospect on crown land with a miner's right. It is not necessary to specify a term here. It can be done by regulation.

Hon N.D. GRIFFITHS: The Australian Labor Party agrees with the proposition that this amendment should be defeated. The matter will be dealt with by regulations. As the minister has pointed out, the regulations can be disallowed. This regime needs a bit of flexibility. It needs a period to be trialled. The next Government will not want to be tied down by three months. It may think in some cases that it is appropriate that it be a greater period

and in other cases a lesser period. In this clause and, may I say in passing, in many of the proposals to follow, we are not in favour of imposing Australian Democrats' red tape on what should be a very flexible piece of legislation.

Hon GIZ WATSON: The Greens (WA) have considered this amendment and do not feel that it is necessary. I guess we also have a concern about the potential additional cost and inconvenience to prospectors by being bound to apply for a new licence every three months. There should be flexibility to allow that period to be extended if that is seen to be adequate. For the average prospector, I envisage that the imposition of a requirement to go through the paperwork every three months is unreasonable. Therefore, we will not support this amendment.

Hon HELEN HODGSON: Following on from Hon Giz Watson's comments, I seek clarification from the Government that it is its intention that permits will have a duration of three months, so that even if it is done by regulation, the comments about being required to apply every three months will be applicable.

Hon N.F. MOORE: It is my intention that permits be for three months. If a person wants another one, he will apply for another three-month permit.

Amendment put and negatived.

Hon HELEN HODGSON: I move -

Page 3, line 8 - To insert after "(1)" -

—

(a)

Page 3, after line 11 - To insert the following paragraph -

(b) before the requirements of subsection (4) have been met.

Page 3, after line 18 - To insert the following subclause -

(4) At the time of lodging an application under subsection (3) —

(a) the terms of the application must have been published in a newspaper circulating frequently in the State, or in the district enclosing the land subject to the application; and

(b) not less than 7 days must have elapsed from the day on which publication was made under paragraph (a).

These amendments all relate to the question of Aboriginal heritage and protection, and notification of Aboriginal people about whether these permits have been granted. I spoke extensively about this matter last week during the second reading debate. I notice that the minister made a number of comments when summing up the matter. I understand that since then those comments have been referred to some of the indigenous people who will be affected by this legislation. Specifically, I have a copy of a letter from the Western Australian Aboriginal Native Title Working Group. I stress that I am not approaching this from a native title perspective. However, this group has some knowledge and understanding of the way in which land issues are handled, whether it be native title land or Aboriginal heritage-type matters.

I would like to hear from the minister about whether he envisages any system being put in place which will ensure that Aboriginal people are aware of these permits being issued, and whether the minister intends to introduce any system under regulations which will ensure that Aboriginal people are advised of these permits being granted to prospectors when custodianship or native title determinations are in place.

Hon N.F. MOORE: This proposal could be described as *The West Australian* newspaper clause that is sought to be put in by the Democrats. I do not know whether they have shares in *The West Australian*. I guess that is probably an unfair question. However, it seems that this proposal will probably add significant costs for those people who are applying for these permits because they will be required to put an advertisement in the newspaper every time they apply. We have already said that it will be every three months if they want to continue to do that.

The member fails to understand that we are dealing here with exploration licences which cover relatively small areas of Western Australia, although they are the most highly prospective parts of Western Australia by virtue of the fact that they already have exploration licence tenements over them. There are vast areas of vacant crown land in other parts of the State where there are no exploration licences and where a holder of a miner's right can

willy-nilly do what he or she wants to do without a permit and without having to give any notice to anybody. The member is saying that if people want to have one of these permits over a relatively small part of Western Australia, they must give notice to Aboriginal stakeholders. Frankly, I think that is totally unnecessary. Apart from the cost, which I have already indicated, I do not see what purpose it will serve. There are no native title implications in respect of this, because the use of hand-held tools does not affect native title. We are trying to regulate what already happens.

Dealing with Aboriginal heritage - I will talk about that in a moment - I have already indicated that we will take steps to ensure that people are aware of what the Aboriginal Heritage Act requires them to do. This is just an onerous and very expensive requirement on anybody applying for one of these permits, bearing in mind that many of the prospectors who might take advantage of this are not wealthy, and the last thing they want to do is to feed money into the coffers of *The West Australian* newspaper.

Hon N.D. Griffiths: Many of them are Aboriginals.

Hon N.F. MOORE: Quite right. Perhaps they have to tell each other what they are doing.

Hon Helen Hodgson: Perhaps they should.

Hon N.F. MOORE: Perhaps they should not either. One of the things that the member also forgets is that very large areas of Western Australia are under Aboriginal native title claim, but there is no way in the world that those claims will translate into actual title. One of the great problems with the native title legislation is that people have the capacity to do all sorts of things as claimants, almost as if they were native title holders.

It is unnecessarily onerous to require prospectors who want to take out this permit to go through this process, and it will achieve nothing in the long run. For those reasons, we do not support the amendment.

Hon N.D. GRIFFITHS: It is appropriate to put on record the Australian Labor Party's comments on the Australian Democrats' proposal. The Democrats are trying to introduce red tape and cause greater expense to those who will have the advantages under this legislation. It seems to me to be a bit of revenue raising on behalf of the newspaper industry. Exploration licences are already affected by the Native Title Act, so the processes have already been safeguarded to a considerable degree. The Aboriginal Heritage Act issue will be the subject of a further discussion. What the member is proposing is simply a grandstanding with a view to getting some kudos somewhere. It will not make better law. It will just impinge on what people can do, in particular many people who are involved in the mining industry.

Hon MARK NEVILL: This is a rather odd amendment. We will need a new supplement of the *Kalgoorlie Miner* just to document all these things. I am sure it will drive land councils silly if they have to try to follow these published applications, let alone interested title holders who will have to go through reams of published applications to find out whether their area is under claim. There is not a lot of difference between prospecting on vacant crown land in the middle of the Great Sandy Desert and moving more than half a kilometre away and prospecting on an exploration licence, because exploration licences are not pegged out on the ground but are just lines on maps. However, people who cross that line will need to advertise in the local media. That is unnecessary. If we extrapolate from this, the next step is that people who want to have a picnic, drive along the Canning stock route or go onto crown land over which there is some claim will need to notify the claimants. If people need to notify the claimants in a situation like the one set out in this Bill, I cannot see why people would not need to notify the claimants in myriad other situations. Prospecting is not an invasive activity. It is mostly just running a metal detector over the ground or having a look around. It does not involve earthmoving equipment. This amendment is completely unnecessary and goes over the top, and I will not support it.

Hon GIZ WATSON: As we said during the second reading debate, the Greens (WA) share the concerns which have been expressed by Hon Helen Hodgson with regard to notifying native title holders or claimants and alerting them to possible Aboriginal heritage issues. However, I am not necessarily convinced that this amendment is the way to resolve this matter. I am concerned about the costs to prospectors if permit holders are required to readvertise every three months, at a cost of probably $70 per advertisement. Would it be possible to partially address this matter by listing the applications in the same way that the Department of Minerals and Energy causes prospecting, exploration and mining tenement applications to be advertised, which I believe it is in a block? If these applications could be added to those applications, would that address the issue to some extent? I am not familiar with the mechanism, but there is already a process of lodging a public notice; and it might be possible to list these applications in the same way.

Hon MARK NEVILL: A process is already in place whereby an exploration licence holder must notify everyone that exploration activity is taking place on that ground, and the permit holder must have the permission of the exploration licence holder; so there is already a mechanism of accountability back to the traditional owners or claimants of that land. A doubling up on that process will not add a great deal to it, other than extra

cost and extra paper, and will not provide much greater security to people who feel their rights are being violated or feel vulnerable.

Hon N.F. MOORE: I correct one comment made by Hon Mark Nevill. The purpose of this legislation is to remove the requirement to get permission from the holder. However, the person applying for the permit will still be required to notify the holder. I understand that the member knows what I am talking about; I say that so there are no areas of uncertainty. I do not support the Government's paying for people's advertising any more than I support the prospectors paying for the advertising. The cost to the Government is no more nor less than the cost to the prospectors. If the Government were required to advertise in the *Kalgoorlie Miner* or *The West Australian* to list all these applications, it would cost the Government a heap of money as well. I am not prepared to spend money for no good purpose. As I have already explained, we are not required to do this anywhere else in Western Australia. If we agree to this amendment, the only people who will need to notify by advertisement Aboriginal claimants or native title holders that they want to use one of these permits on their land will be the people who are applying for exploration licence permits. It does not make any sense. We should rapidly dispatch this amendment to the boundary.

Hon HELEN HODGSON: The minister says that this is *The West Australian* clause. I draw the minister's attention to the wording, which states "a newspaper circulating freely in the State, or in the district enclosing the land subject to the application".

Hon N.F. Moore: Do you know who owns the *Kalgoorlie Miner?*

Hon HELEN HODGSON: I suspect the *Kalgoorlie Miner* would do better out of this than *The West Australian*.

Hon N.F. Moore: Do know that the *Kalgoorlie Miner* is owned by West Australian Newspapers Ltd? It owns just about every newspaper in Western Australia anyway, so we could quite comfortably call this *The West Australian* clause.

Hon HELEN HODGSON: However, the intention is to ensure that it is a public notice that is circulated widely. For that reason, the fact that the owner of that newspaper is West Australian Newspapers Ltd is immaterial . I listened with interest to Hon Giz Watson's proposition about a listing in the paper. I am sorry the minister has dismissed that alternative proposition, because it is one that had not occurred to me. The amendment I have put on the Supplementary Notice Paper is very much a compromise position, because we were unable to find a way of drafting my preferred position. The proposition is that a copy of the notice that goes to the EL holder should also be sent to the relevant native title representative body, the native title holders, if there are any, and registered claimants. Given the changes to the native title system with the federal Wik legislation, that would at least provide a conduit. It is clear that this is just a courtesy and management measure and will not confer any special rights that will enable a person to prevent access. That is where we had difficulties with the drafting, which made me decide on the compromise of an advertising clause. If the minister were willing to make a commitment to implement a process along these lines, it would resolve the issue quite neatly.

I want to respond to comments about exploration licence holders having the knowledge and information and passing that on. That is the method that the Government currently relies on. The EL holder has the opportunity to explain to the prospector that certain areas are protected. That does not acknowledge Aboriginal people and their need and desire to protect their heritage. The fundamental position, particularly when there may be a native title determination, is that the Government plans to recognise leases and other forms of ownership rights but not the people who hold native title, which is a particular type of title right. That is a backward step, because we need to involve all levels of ownership in these sorts of notification decisions. I had hoped to receive more support for this principle. It will give me some comfort if the minister can say that some sort of procedure will be implemented. However, at this stage I cannot see any way in which people with an interest in land either as traditional custodians or with a native title determination will be part of the loop. I feel that is wrong.

Amendments put and a division taken with the following result -

Ayes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon Giz Watson	Hon J.A. Scott *(Teller)*
Hon Norm Kelly			

Noes (20)

Hon Kim Chance	Hon B.K. Donaldson	Hon Mark Nevill	Hon W.N. Stretch
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon M.D. Nixon	Hon Bob Thomas
Hon M.J. Criddle	Hon Ray Halligan	Hon Ljiljanna Ravlich	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Murray Montgomery	Hon B.M. Scott	Hon Ken Travers
Hon E.R.J. Dermer	Hon N.F. Moore	Hon Greg Smith	Hon M. Patterson *(Teller)*

Amendments thus negatived.

Hon HELEN HODGSON: I move -

Page 4, after line 7 - To insert the following new paragraph -

(f) shall comply with the *Aboriginal Heritage Act 1972*.

The purpose of this amendment is to ensure that prospectors are aware of their obligations under the Aboriginal Heritage Act. Suggestions were made in the debate last week that this was an attempt to rewrite the Aboriginal Heritage Act. That is not the case. No matter what its shortcomings, that Act is in place and people must work with it. It is important that the people who are affected by it know of its existence. This amendment will ensure that compliance with the Act becomes a condition of the issue of the permit, and non-compliance carries sanctions. Administratively, under the regulations, the minister will have the power to impose penalties, such as cancelling permits or disqualifying permit holders from holding permits. If a person has not complied with the Aboriginal Heritage Act, it would be inappropriate for him to be issued with permits in the future. The minister said in debate last week that he was unaware of any instances in which this sort of damage has occurred. I have spoken to prospectors as well as to Aboriginal people in the past week, and they assure me there have been a number of cases. The problem is that they are often not reported simply because they cannot find the person who has offended and therefore it is not possible to take any action under the Aboriginal Heritage Act. It is happening and there is damage relating not only to heritage issues but also to the environment. I hope that the environmental issues will be dealt with under the other conditions in clause 6 - that is, the depth of works and the use of explosives and of tools other than hand tools. We are receiving reports of damage occurring and we need to make sure that a person who has a permit is aware, firstly, of his obligations and, secondly, that if he breaches those obligations, his permit can be removed. That is an appropriate sanction in this situation. I commend the amendment to the Chamber.

Hon N.F. MOORE: The Government does not support this proposition. As I indicated the other day, it is not necessary to put this into the Bill. It is a requirement for anybody who is involved in any mining activities to comply with the Aboriginal Heritage Act 1972. It is a nonsense to include this in this Bill in a sense, because if one is involved in any sort of mining activity, including what is proposed under this Bill, one is required to comply with the Aboriginal Heritage Act. That is the law of the land. Putting it in here does not make any difference at all, as people are already required to abide by the Aboriginal Heritage Act. We could include a requirement to abide by all sorts of other legislation. Why not include compliance with the Criminal Code, in case someone decides to do something criminal? It is unnecessary. As I indicated to Hon Helen Hodgson in my second reading speech, I am happy to make sure that we specify on the permit that the holder should be aware of the requirements of the Aboriginal Heritage Act. It may be that down the track the department could produce a booklet outlining what sorts of things are required and what is appropriate.

The Government is anxious for this to work. I am keen to ensure that prospectors who go onto an EL for this purpose do not breach the Aboriginal Heritage Act. We would rather them be aware of their obligations. At the same time, if they do breach the Aboriginal Heritage Act, they will be taken to task. If things are happening now, the Aboriginal Heritage Act is in place to deal with that. I did not say to the member the other night that this never happens; I said that I was not overwhelmed by complaints that Aboriginal heritage is being defaced by prospectors crawling all over Western Australia. It is not brought to my attention on a regular basis, if at all. It is unnecessary and inappropriate to include this proposed paragraph.

Hon N.D. GRIFFITHS: The Australian Labor Party agrees with the proposition that this amendment is absolutely unnecessary; in fact, it is ludicrous. Why not say that a person shall comply with the Criminal Code? The proposed regulations will enhance Aboriginal heritage issues, and I understand that it will involve education. The law of the land applies. Given that this amendment is unnecessary, it shows that the Australian Democrats

are trying to find somewhere to exist in the political marketplace by unnecessary grandstanding. I wish the Democrat members would desist from this grandstanding.

Hon MARK NEVILL: That comment inspired me to get to my feet! This appears to be an amendment for the sake of amendment. If we are to include reference to the Aboriginal Heritage Act, we may as well include the Firearms Act, the Local Government Act, the Conservation and Land Management Act, the Dog Act, the Sandalwood Act, the Sheep Lice Eradication Fund Repeal Act, plus a few others. The amendment would insert an absolutely unnecessary provision.

Hon N.D. Griffiths: I foreshadow that if this amendment is passed, I will move an amendment to include a reference to the Dog Act.

Hon MARK NEVILL: I would support that amendment if this proposed paragraph were successful; it adds nothing to the Bill or the debate.

Hon GIZ WATSON: The Greens (WA) support the sentiment behind the amendment. I am torn between the argument, as eloquently put by Hon Nick Griffiths and Hon Mark Nevill, that this represents an unnecessary addition. The Greens certainly agree that prospectors should comply with the Aboriginal Heritage Act. I am pleased to hear the minister state that this requirement will be clearly printed on the permit. That is most important. This process is about making this aspect clear to people with a prospector permit, and placing it on the permit is a positive move. I hope the permit will also make clear the obligations regarding environmental damage. I err on the side of supporting the amendment as it makes it clear that prospectors should comply with the Aboriginal Heritage Act, and I am only partially convinced that it is an unnecessary amendment.

Hon HELEN HODGSON: I find it interesting that members say that if we want to make reference to the Aboriginal Heritage Act, all the other Acts should be included also. The Mining Act is subject to the Environmental Protection Act. There is inconsistency in the argument. The AP Act reference makes nonsense of the argument that cross-referencing should not occur. Although I would prefer to see the requirement entrenched in legislation, I accept the minister's assurance that it will be dealt with by regulation and be printed on the permits. My amendment, which is bound to be defeated, has achieved my intention of giving notification to prospectors.

Hon N.F. Moore: It is not being done this way because you said that it should be the case; it was always going to be done this way.

Hon HELEN HODGSON: It was not mentioned in the briefing notes I received. That is why I raised it in this forum. The Australian Democrats will still vote for the amendment, debate on which in this place has clearly progressed the issue.

Amendment put and negatived.

Hon HELEN HODGSON: I move -

Page 4, line 31 - To insert after "land" -

at any time

Page 5, line 1 - To insert after "licence" -

does or

Page 5, line 5 - To insert after "thing" -

is or was dangerous to the holder of the permit and is or

Page 5, line 8 - To delete "for the presence" and insert instead -

to the safety

Page 5, after line 15 - To insert the following definitions -

"Holder of a permit" means the person or persons to whom the permit was issued and his/her/their employees, servants, agents or contractors and the executors, administrators, estates, heirs and dependants of each of them.

"Holder of an exploration licence" means the holder of that licence and his/her/its employees, servants, agents or contractors and the executors, administrators and estates of each of them.

"An action in tort" includes any for breach of statutory duty and any claim whether for contribution and/or indemnity or otherwise under the *Law Reform (Contributory*

> *Negligence and Tortfeasors' Contribution) Act 1947*, the *Law Reform (Miscellaneous Provisions) Act 1941*, the *Fatal Accidents Act 1959* or the *Occupiers Liability Act 1985*.

These amendments relate to the clause dealing with torts. These amendments are not new to the minister as they have been circulated broadly in the past.

Hon N.F. Moore: I know who drafted them.

Hon N.D. Griffiths: Was it the Native Title Working Group?

Hon HELEN HODGSON: No.

Hon N.F. Moore: They were drafted by the Chamber of Minerals and Energy - the big end of town. You have been mixing with the wrong types!

Hon HELEN HODGSON: Obviously! We adopt an open-door policy, which means that all sorts of people walk through our door.

These amendments deal with technical issues. We move the amendments because the argument that the Government's drafting will not meet intentions has some merit. This block of amendments addresses some additional elements; namely, complaints about conduct that is dangerous to the permit holder, and the holder of the exploration licence having reckless disregard for the safety of the permit holder. Also, it defines various parties more closely, including employers, servants, agents and contractors. These are significant definitions in the context of the mining industry, which has much of its work performed by agents and contractors.

Hon N.F. MOORE: These amendments are surprisingly similar, if not identical, to a set of amendments proposed to me by the Chamber of Minerals and Energy, and drafted by its legal firm. I have a significant degree of respect for the big end of town, with whom I have had a battle over this issue. When it proposed these amendments, I had them thoroughly checked out by the Crown Solicitor's Office. I was genuinely seeking to accommodate the concerns of the chamber. To put that in context, the Chamber of Minerals and Energy indicated that it did not support the principle of the legislation or the issuing of permits. Bearing in mind that I had determined to proceed, I said that if the chamber wanted to be part of the debate, it had to work on the basis that this legislation would be brought to Parliament. If it was thought it could improve the legislation, the chamber should submit any proposals. The amendments proposed by Hon Helen Hodgson were considered thoroughly by the Crown Solicitor's Office; in fact, three different officers considered them. I was anxious to keep the Chamber of Minerals and Energy happy. The advice from the Crown Solicitor was not to proceed with the amendments. The Bill as drafted covers all the concerns of the chamber and is better worded than the proposals before us. I do not intend to go through them in detail as they are technical and legalistic. I have taken all the advice I could obtain on this matter, and the Crown Solicitor's Office advises that the Government not agree to the amendments.

Hon MARK NEVILL: These amendments add nothing to the Bill. It is interesting to see the Australian Democrats doing the bidding of the mining industry. I hope the Greens (WA) members can see the way they have sold their soul in this place tonight.

Hon Giz Watson: Always!

Hon MARK NEVILL: Yes. However, I will remain as objective as ever and when the mining industry trots out amendments that are unworthy of support, they will not get it. When they are worthy of support, they will get it. In this case they will not get support. The amendments add nothing to the legislation; they would clutter it up and I oppose them.

Hon GIZ WATSON: The Greens do not support these amendments either. Amendment No 3/5 on the Supplementary Notice Paper is a dangerous proposition in relation to the requirements for having regard for permit holders on permit land. The amendment would remove the words "reckless disregard for the presence of the holder on the permit land" and substitute "is or was dangerous to the holder of the permit". That is definitely a lesser requirement. Being required to have regard for the mere presence of permit holders is a bigger safety margin than having regard for when an action is dangerous to a permit holder. The Greens believe the amendment would lessen the requirement to have regard for permit holders. We do not support the other amendments moved by Hon Helen Hodgson.

Hon N.D. GRIFFITHS: The Australian Labor Party does not support these amendments. Hon Helen Hodgson has failed to take advantage of the opportunity to explain to the Committee how these amendments will improve the legislation.

Hon N.F. Moore: Don't provoke her. I think she is just trying to save us about four hours of legal argument, for which we are very grateful.

Hon N.D. GRIFFITHS: We may have four hours of argument; however, I will leave it at that.

I note that the Minister for Mines sought advice on these amendments from the people from whom Governments should properly seek advice. He received that advice from public servants on behalf of the people of Western Australia. In the absence of any argument, let alone any compelling argument, from the Democrats, save for the fact that they are now after support from the mining industry as well as trying to con Aboriginal people, the Labor Party will adhere to the legal advice given to the Government. It values proper legal advice at all times, particularly advice given in a professional way. The Committee would not be fulfilling its duty if it were to vote for this set of amendments.

Amendments put and negatived.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Section 162 amended -

Hon HELEN HODGSON: I move -

> Page 6, line 33 - To insert after "(v)" -
>
> > but any procedure so prescribed is not to be read or construed so as to diminish or abridge the rules of procedural fairness that would otherwise apply.

One of my concerns about the regulations is the extent of the minister's power and the lack of natural justice procedures. A number of matters brought before this Chamber have involved administrative decisions that have been made without consideration for due process and natural justice. Natural justice is a matter on which the Standing Committee on Public Administration spends a fair bit of time and about which it has published full reports. The fact that the issue is raised so often indicates that the intention of this place when it passes legislation will not always translate through the regulation process into a proper system of natural justice for people who are affected by decisions.

In this instance we are considering giving the minister the power to deal with a breach of conditions and other prescribed circumstances, which means that regulations will be involved. Although it is true that we will be able to scrutinise those regulations, we do not yet know their breadth. The minister will have the power to impose monetary penalties not exceeding the prescribed amount, to cancel permits and to disqualify holders of permits from again holding or applying for permits. All those situations would have a serious impact on permit holders and the way in which they pursue either their livelihood or hobby and the way in which they proceed about their business. A system of natural justice must be part of the procedures the minister must follow when making decisions in these matters.

Hon MARK NEVILL: This is another totally unnecessary amendment. A requirement already exists for ministers to follow the rules of procedural fairness, as the member referred to. A full body of law in the Warden's Court covers matters in which the minister does not exercise that fairness. If someone believes the minister has not acted properly in his interpretation or administration of the Act, or if the person believes the minister has not acted fairly, has failed to take action or has taken action outside his powers, that person can issue a prerogative writ to challenge the minister's decision. There is therefore ample case law and requirements for this end to be achieved. This amendment would clutter the Bill with unnecessary words.

Hon N.F. MOORE: For the reasons outlined by Hon Mark Nevill, the Government does not support this amendment. It is inherent in the minister's powers that he must exercise procedural fairness. As the Minister for Mines, I have been involved with a number of issues in which the courts have required me to ensure that procedural fairness takes place. For example, in the Bronzewing South issue, I spent three days reading material so that I could make a judgment based on my understanding of it. The reason that there was so much material was that all parties concerned were given three or four opportunities to put forward their points of view. The same applies with the Mundijong question; I must decide whether the Warden's Court decision should be upheld. Again, everybody who wants to have a say on this matter is able to have a say; then the poor minister must read the decision so that when he makes a judgment he can demonstrate procedural fairness. The Bill contains plenty of procedural fairness and to include this amendment would make absolutely no difference to the way in which the system works.

Hon HELEN HODGSON: I considered the application of the Warden's Court and I understand that the jurisdiction of the Warden's Court is specified. If I am wrong about that, I am happy to be told so. As that specified jurisdiction does not include permits granted under section 20A of the Act, the Warden's Court would not have jurisdiction in this situation. That was the reason for my concern, as the original draft of the Bill I read ensured the Warden's Court would have jurisdiction.

Hon N.D. GRIFFITHS: I do not want to clutter up *Hansard*.

Hon N.F. MOORE: I used the Warden's Court example in respect of the matter raised by Hon Helen Hodgson to indicate that procedural fairness is a very important part of the processes that take place. By virtue of a number of decisions made by the court, the minister must display all possible procedural fairness.

With the granting of these permits, the warden gets involved in mining tenement issues only when there is a dispute. I am not sure whether it would be the case if somebody disputed somebody else getting a permit. If a person applies for a permit and it is granted, no dispute will be entertained.

Hon HELEN HODGSON: I thank the minister for his clarification of that point. I was addressing Hon Mark Nevill's comments about the Warden's Court having jurisdiction, rather than the example the minister used. Having clarified that point, it is clear that it really is a matter of the minister's discretion. While I appreciate that this minister has learnt a lot about natural justice from proceedings that have occurred -

Hon N.F. Moore: I always knew a lot about natural justice.

Hon Kim Chance: He is a veteran of government agencies.

Hon HELEN HODGSON: Exactly. Was the minister a veteran of the government agencies committee when it started investigating the Rindos matter?

Hon Kim Chance: No, well before that.

Hon HELEN HODGSON: However, I think it raises the issue of ensuring that awareness is followed through into the actual procedures as they are developed.

Amendment put and negatived.

Clause put and passed.

Title put and passed.

Bill reported, without amendment.