

**DUTIES AMENDMENT (FARM-IN AGREEMENTS) BILL 2022**

*Second Reading*

Resumed from 17 August.

**MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition)** [5.29 pm]: I rise to speak on behalf of the opposition on the Duties Amendment (Farm-in Agreements) Bill 2022. At the outset, I thank the Minister for Finance and his advisers for providing a briefing on the bill. I was not able to attend the briefing, but some very comprehensive notes have been provided. This is technical and complex legislation, so I appreciate that some good information was provided for our team to go through.

The Duties Amendment (Farm-in Agreements) Bill will amend the Duties Act 2008. It has come about because there is a disparity between what is done in practice and what is prescribed in legislation. In November 2018, a commitment was given by the then Minister for Finance that amendments would be worked through. It is now September 2022, so obviously it continues to be a complex issue. Both the Association of Mining and Exploration Companies and the Chamber of Minerals and Energy of Western Australia support the legislation, although AMEC, as a representative body of smaller organisations and exploration entities, would appreciate some guidance on the technical issues, which the government has committed to after the changes are introduced.

By way of background, a farm-in agreement has nothing to do with a farm, which is very misleading. When I was first getting my head around the bill, I thought it would be something that I would have some understanding about, but it indeed has nothing to do with the agricultural sector. A farm-in agreement is an agreement between a holder of a mining tenement or a derivative mining right—that is the farmor—and another person, the farmee, which entitles the farmee to acquire an interest in the tenement or right after spending an amount on exploration. The bill is trying to make that process easier and to streamline the ability of people to conduct exploration because we know that that is the beginning of the pipeline of the development of mines and the royalties that we rely on so heavily here in Western Australia. It is very important to look after that part of the pipeline in terms of exploration throughout our state, because that exploration leads to future mines that create jobs and investment.

At the moment, a nominal duty of \$20 applies to an eligible farm-in agreement if there is no consideration for the transaction other than the exploration amount. According to circular 19 issued by the Department of Finance and RevenueWA on 17 August this year —

Duty does not apply to the transfer of an interest in a tenement or derivative mining right under a farm-in agreement if the specified exploration amount has been spent. A duty concession has applied to eligible farm-in agreements for over 25 years.

This has been in place for some time. As I said, some issues have been identified in the interpretation of the legislation and there has been an inconsistency in the way in which assessments have been made as matched against the legislation. The Commissioner of State Revenue's assessment practices are now being brought into being through these amendments. The circular also states that further consultation will be conducted with industry to prepare customer guidance materials on how the new provisions will be implemented.

I also understand that amendments that benefit the taxpayer will be backdated to July 2008. I am not sure how usual that is and whether it is normal practice, but other amendments within the legislation will apply from the date of their announcement. I do not propose to go through those because there is quite a number of them, but perhaps in his reply the minister will explain the financial implications of that and why those amendments will be backdated and whether that has been done in the past, just for the record.

I understand that there has been consultation; in fact, there have been three iterations of the bill. As I said, the concerns raised predominantly by AMEC, one of the stakeholder groups, are around the complexity of the legislation and how prescriptive it is, particularly for its members when adhering to the legislation or understanding what it means to them.

The presentation provided to the opposition was unclear on the financial implications to the state's bottom line and industry. I am not even sure whether that is in terms of hundreds or thousands or millions of dollars. I do not imagine that we are talking about a significant amount from a \$20 duty, but I am prepared to hear the minister explain what that will be, understanding that the size of the projects or the applications and the frequency with which they occur vary considerably. I understand that there has been some difficulty with that, but it would be good to have a better understanding of what that might be for the state's bottom line and also for the industry.

After going through the briefing note, I have questions about the resourcing that the department will require for applying and managing the transition. Although there appears to be a longstanding practice, will the department require additional resources to transition or manage the application of the changes provided for in the bill? How and when will the guidance materials that have been promised by the government for industry be developed and who will be consulted and how will those materials be made available? Given the amendments that benefit the

taxpayer are to be backdated, will entities likely get an unexpected bill from that backdating? I am not clear about the process in that part of the legislation.

Our party room discussed this bill. I am sure that Hon Dr Steve Thomas will interrogate the bill in the Legislative Council in more detail, but there was agreement in both the Nationals WA and Liberal Party rooms that this bill is uncontentious and something that industry is very comfortable with after our discussions with those whom it will impact.

With that, I will sit down and allow the minister to respond to my brief questions. The only other question we have is: will there be changes to the regulations? As I said, the bill is relatively uncontentious, although it is a complex piece of legislation, and we did not plan to spend a significant amount of time going into it in depth or detail. However, if the minister would like to provide a lesson on farm-in or farmor, all the complexities of exploration and mining tenements and the Department of Finance amendments, I would be happy to have a lesson about how that will benefit the state of Western Australia in an industry that is very important to the state.

**MR R.S. LOVE (Moore — Deputy Leader of the Opposition)** [5.38 pm]: I, too, would like to contribute to the second reading debate on the Duties Amendment (Farm-in Agreements) Bill 2022. I will not keep the house very long. Like the Leader of the Opposition, I am anxious to hear from the Minister for Finance and I am sure that he will respond to all the questions that she asked.

As we know, this bill deals mainly with concessions. A nominal amount of duty, \$20, is charged when a farm-in arrangement takes place, provided that the expenditure involved is purely for exploration and is not capital funds for mining activity. As I understand it, this bill will backdate the legislation to 2008 in order to validate the decisions that have been made since that time. It will ensure that the nominal \$20 fee is valid and that miners will not be subject to having to pay duty on the full cost of exploration as a result of the farm-in provisions.

I want to ask the minister whether he is aware of the concern in the Western Australian mining industry around exploration licences generally. I also wonder whether this may prompt the Minister for Mines and Petroleum, who does not seem to be doing much in this regard, to ensure that certainty is returned to our exploration sector following the decision of the Warden's Court in True Fella Pty Ltd v Pantoro South Pty Ltd. That decision has led to some uncertainty about the requirements for an exploration licence. The minister stressed immediately after that decision that the current practices would prevail. However, as we know, no legislation has been introduced, and we are not aware of any statement from the department on that matter. I know that miners and explorers are concerned about this situation going forward. I implore the minister to do what he can to raise this very important issue with the Minister for Mines and Petroleum.

Along with the Leader of the Opposition, I am certainly happy to support this bill. We do not see it as a contentious bill. I ask the minister to make some inquiries with his fellow ministers about what might be done to shore up certainty for the Western Australian mining industry about exploration permits going forward.

**DR A.D. BUTI (Armadale — Minister for Finance)** [5.41 pm] — in reply: I thank the Leader of the Opposition and the member for Moore for their contributions to the second reading debate on the Duties Amendment (Farm-in Agreements) Bill 2022. This is a very technical bill. The farm-in aspect may mislead members. I am sure that those members were very excited when they saw those words!

The idea behind the genesis of this bill is to try to retain the status quo that has been in operation for many years. The government has received advice that the act does not permit the current practice of farm-in arrangements to be included within its legislative framework. Therefore, we have brought in this bill to ensure that the status quo can continue to operate.

I will now go specifically to the questions asked by those two members. I will start with the member for Moore's question about the concerns about exploration generally. The member might want to address the specific concerns that relate to the Minister for Mines and Petroleum directly to him. In my backyard, in respect of what I am responsible for, not in the finance portfolio but in the Aboriginal affairs portfolio, we are going through the co-design of the regulations for the Aboriginal Cultural Heritage Act. That is obviously of some concern, especially for members of the Association of Mining and Exploration Companies. They have been engaged throughout the co-design framework and consultation. We are in phase 3 of that at the moment. I have had a number of meetings with AMEC and other stakeholders. There are concerns in one of my portfolios, and we are seeking to address them. With regard to the other issues raised by the member for Moore, it is best to address those to the Minister for Mines and Petroleum.

The Leader of the Opposition asked three questions: one about backdating, one about the financial implications and one about whether extra resources will be required.

**Ms M.J. Davies:** And also about whether there will be any regulatory changes.

**Dr A.D. BUTI:** Yes.

With regard to backdating—I think the member for Moore answered the Leader of the Opposition's question—the need for it is to try to ensure that people who would have been given the concession will still be given the

concession. It is not unusual to provide retrospective legislation if that will benefit the taxpayer. As we all know, the general principle is that we do not provide retrospective legislation if that will disadvantage the taxpayer. In this case, it will advantage the taxpayer. That is why it is important that we have this bill passed as soon as possible, because anything that has been assessed under the current law but may not be legally valid will create an issue.

I am advised that this bill will have little financial impact on the state's finances. We will just be aligning the current legislation with the longstanding assessment practice. The current practice will continue. Obviously, one could argue that it should not continue, because the legislation does not allow that to happen. Through this bill, we will ensure that it will happen. I suppose the member's question is: if what we are doing is not within the powers of the current legislation, and we did not bring in this legislation to make that legislative change, what would be the financial impact? The advice is that it should not make too much difference. Two farm-in agreements were entered into before the former minister made these announcements in 2018. Therefore, the industry has been aware of this since 2018. Those agreements involve capital expenditure totalling \$19.5 million, which would have resulted in revenue of around \$990 000. That is not insignificant, but in the overall scheme it will not have any great impact on the state's finances.

With regard to the member's question about regulations, there will not be any requirement to change the regulations that are attached to the Duties Act. Basically, the transitional provisions will ensure that people who would have received the concession will still receive the concession. That is the number one point.

One question that I thought members were going to ask, and that I have asked myself, is: why is there a nominal duty of \$20? The reason is that people will then have to put in an application to RevenueWA to allow it to assess it. If there was no nominal duty, people would not have to put in an application, and the concession might then not apply. I am told that no additional resourcing will be required for the assessment of these transactions. I hope that has answered the member's questions. I am sure that the member's financial spokesperson upstairs, Hon—what is his first name?

**Ms M.J. Davies:** Steve.

**Dr A.D. BUTI:** I am sure that Hon Dr Steve Thomas will have some further questions. It is quite complex and technical. The purpose of the bill before us is to try to ensure that longstanding practices can be maintained within a legal framework.

Question put and passed.

Bill read a second time.

[Leave granted to proceed forthwith to third reading.]

*Third Reading*

**DR A.D. BUTI (Armadale — Minister for Finance)** [5.48 pm]: I move —

That the bill be now read a third time.

**MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition)** [5.50 pm]: I am not sure I have a great deal more to say. I wanted to say thank you, minister, for answering those questions. As I said, we were not planning on spending a significant amount of this chamber's time on a bill that we know has the support of industry. I appreciate the minister answering those questions—even the ones I did not ask! As I said previously, Hon Dr Steve Thomas will no doubt delve into some of the detail, including how many of these agreements are in place and the like. I will leave that to my colleagues in the Legislative Council to follow that up. I am appreciative of the assistance that the minister's office provided our office and the very comprehensive briefing notes that were provided for me in my absence from the briefing.

Question put and passed.

Bill read a third time and transmitted to the Council.