MINING AMENDMENT BILL 2000

Second Reading

Resumed from 10 October.

MR GRILL (Eyre) [3.58 pm]: I indicate at the outset, as is my usual procedure, that the Opposition supports the legislation and intends to vote for it in this House as it voted for it in the other place. I appreciate that there is opposition to this legislation, mainly from the the largest section of the mining industry; that is, all the large organisations represented by the Chamber of Minerals and Energy of Western Australia and the Association of Mining Exploration Companies. They tell me, and they told the minister in a letter, that they strongly oppose the legislation. A small section of the mining industry strongly supports the legislation; namely, the Amalgamated Prospectors and Leaseholders Association, which is a much smaller and poorer group when compared with the bodies opposing the measure. APLA represents the battlers in the industry. I am pleased, despite the opposition from the larger and smaller mining companies, that we are prepared to do something for the battlers who have had a hard time for a long period. Many of them have lived hard lives out in the bush on the job without a lot of money for much of the time. They do it hard. I am pleased to support true battlers' legislation. That does not mean that I do not respect the views put forward by the Chamber of Minerals and Energy and AMEC - I do. Their arguments are right in a highly technical sense; however, one must look at the legislation pragmatically, and we are doing the right thing in a pragmatic and practical sense. I will discuss in a moment the opposition from the larger sections of the mining industry.

The Bill will set up a permit system to allow small prospectors to search for alluvial gold on exploration licences. It will go beyond alluvial gold technically, but it will apply practically only to alluvial gold. As most members realise, exploration licences are large tenements used by the big end of town in the mining industry for exploration purposes. They tie up large tracts of highly prospective and sometimes highly mineralised ground across this State. The new permit system is built around the old miners' right. Miners fought about the miners' right back in the days of Eureka. A miners' right has been entrenched in our legislation since 1904, when the Mining Act was enacted in our predecessors' Parliament. The miners' right has always been highly valued by prospectors. When the new Mining Act was introduced in 1978, the Government of Sir Charles Court considered dispensing with the miners' right. There was an outcry from the prospecting fraternity, which was a bigger and healthier number of people in those days than it is today, about the possible loss of that miners' right. That right is steeped in history. Principally, it allows a person, simply on the payment of a fee in the mining registrar's office, to prospect on crown land across the State. It does not distinguish between sets of crown land so long as a mining tenement is not pegged on it. It does not distinguish between a pastoral lease and land with no pastoral lease over it. It is almost a universal right for a prospector to prospect for gold or any mineral he or she considers worthwhile.

The permit contemplated under this legislation will extend the operation of the miners' right to exploration licences, which are exploration tenements taken out by major mining companies and cover huge areas of lands. In extending the operation of the miners' right to exploration licences, the operation of the miners' right on those tenements will be regulated because it can operate only when a permit is granted. A permit can be granted only when a prospector makes application to a mining registrar or warden for such a permit.

I have a great deal of sympathy for prospectors. By a variety of means, they have been excluded from prospecting in most prospective mineral areas of Western Australia. That process has been in place for some time. It happened because the 1978 Mining Act set up exploration licences as the major exploration tool for big mining companies. It also put in place a smaller type of lease called a "prospecting lease". These are taken out largely by the small mining companies and prospectors. The mining leases still operate as they did under the old Mining Act. Also, a new animal was put in place in 1978 called "retention leases", which allow mining companies to sit on potentially valuable mining deposits. When the application for a retention licence is taken out, the deposits are considered to be sub-economic. The big mining companies can use another tool to tie up land; namely, the exemption from working condition application. Many tools can be used by the major mining companies to tie up large sections of highly prospective land. This is mainly because they have the necessary capital.

One form of tenement is counterpoised to that; namely, a tenement put in place since 1978 in acknowledgment of the fact that prospectors have been virtually excluded from big areas of the State. I refer to the "special prospecting licence", which can be granted to prospectors on exploration licences for exploration for gold when an application is made to a mining warden for such a tenement. That licence can be granted only when the primary tenement holder does not object. If he does object, that objection becomes a veto and the special prospecting licence is not granted. Therefore, what was intended to be major tool to allow prospecting to go ahead - that is, to allow battlers to do something on the ground on the huge exploration licences - has not been as

successful as people thought it would be. The Amalgamated Prospectors and Leaseholders Association has pressed for the permits we are discussing today. APLA would have liked a much more liberal permit than the one contemplated by the Bill.

It had its eyes on the sorts of permits that can be and are applied for in Victoria. Those permits allow prospectors, so long as they are looking only for alluvial gold, to search for that gold almost anywhere in Victoria with nothing more than what amounts to a miner's right.

Mr Barnett: Including freehold?

Mr GRILL: I am not sure about that.

Mr Barnett: I doubt it. There is not that much land that is not freehold in Victoria.

Mr GRILL: There is a lot less, although I am often surprised at the amount of wilderness area in Victoria, especially in the highlands areas. The Victorian permit has only been described to me by the Amalgamated Prospectors and Leaseholders Association. Initially, that is what it wanted the Government to do in this State. The Government has not gone that far down the track.

Mr Barnett: I had not heard that point before.

Mr GRILL: The minister is probably right; it probably does not apply to freehold land, but I am not sure about that.

Mr Barnett: I was just curious; I was not debating it.

Mr GRILL: What we in this State are prepared to grant is a quantum less than what has already been granted in Victoria and appears to work fairly well in that State.

The objections that have come forward from the mining industry over some months amount to about five objections. First, the mining companies feel that they will be liable for accident or injury that might befall a prospector on one of their exploration licences, pursuant to working one of these permits. Secondly, they believe that the environmental obligations of the major mining companies, pursuant to their exploration licences, can be transgressed by the prospectors and, in turn, will make the companies liable. They have very similar concerns about their obligations under the Native Title Act and about Aboriginal heritage. The Government has tried to address some of those concerns in this Bill. A clause relating to public liability on the land has been included in the Bill, and we have yet to see how it works in practice. However, the parliamentary draftsman is very hopeful that it will definitely limit the liability of the primary tenement holder for loss or injury sustained by permit holders. Only a highly qualified lawyer can give a definitive decision on that, and even then, at the end of the day, it will be determined by the court. It appears to me that the Government has gone as far as it can to limit that liability; therefore, it is at least worthwhile taking the risk.

I have a letter from the Association of Mining and Exploration Companies, which clearly sets out its objections. On the environment, it said -

> . . . where any Exploration Licence holder, who has posted an unconditional environmental performance bond, would be potentially, ultimately liable, for any environmental damage caused by a Miner's Right permit holder within the licence area.

As I said, technically I think that is right. However, there is an overriding factor with that concern; that is, those environmental considerations are in place whether a prospector is on the lease legally, pursuant to one of these permits, or illegally, pursuant to his own whim. The truth is that there probably will not be any greater level of activity on these exploration licences by prospectors as a result of this legislation than there is currently. There is an environmental liability, pursuant to the various conditions on the exploration licence and pursuant to various Acts of Parliament. However, it appears that the granting of one of these permits does not extend that liability at all.

On Aboriginal heritage, the Association of Mining and Exploration Companies said -

> . . . where access to Exploration Licences by Miner's Right permit holders could jeopardise site clearances and relationships with Aboriginal groups and individuals, often achieved after great expense.

Once again the association is technically correct, but whether there will be any practical difference in the final analysis is very much a moot point. As I said, the Australian Labor Party is prepared to take a chance on that as well.

AMEC also commented on native title. It said -

> . . . where access by Miner's Right permit holders, not bound by the same strictures as the Exploration Licence holder, could upset carefully negotiated Native Title Agreements, again achieved at considerable monetary cost.

A highly technical argument is involved in that. The association might be right in a very technical sense, but we believe that, in practical terms, it will not make any difference. These prospectors have been travelling over the same exploration licences day in, day out for a long time. There has never been a claim. There has never been a problem with native title, Aboriginal heritage or the environment. We do not see why there should be any greater problem simply because the situation will be regulated. Consequently, although we do not deny that the association might be right in a technical sense, the truth is that the risks are minimal. If the rights of a prospector, a battler and the ordinary person to find some minerals are balanced against the rights of the unlikely prospector, some greater liability could be placed on the exploration tenement holder at the end of the day. However, we think the scales come down very decisively in favour of the battler.

We are in favour of the legislation. We hope it will work. In saying that, we understand that it will be in place for only one year before there will be a review. If it is not working during that time, no doubt the Government can either desist from the exercise and pull out of it altogether or amend the nature of the exploration permit.

There is a further safeguard in that the legislation we are discussing today provides a big ambit for regulations to govern the situation. In the first instance, the regulations will ensure that the way in which the prospectors deal with the land will be very light indeed. Prospectors can remove only 20 kilograms of ore, pursuant to any one permit. They can use only hand-held tools and can dig holes only 2 metres deep. They are restricted to 10 blocks on each EL and, pursuant to the regulations, there will probably be a restriction on the number of these permits that can be issued for any one exploration licence. There will also be restrictions on the scope of the operation of such a permit within an EL. The prospect holder will not be able to go within 100 metres of any current activity by the exploration licence holder.

Having read the Act, I am of the view that the regulations can be written in such a way as to prescribe further conditions on these permits. Therefore, I think the Government has gone a long way to assuage the concerns of the big mining companies.

I believe it is worthwhile taking a risk with this legislation. I think the battlers deserve a go as they have been excluded from much of the territory for a long time. They make the point that the great majority of mines are found by prospectors. They have a proud record in Western Australia and I would hate them to be excluded from the land. I believe the legislation should be supported for a trial period. I hope it is successful.

MS ANWYL (Kalgoorlie) [4.20 pm]: Like the member for Eyre, the Opposition and I support the Bill's contents. The principal issue is how prospectors and prospecting can be facilitated. It is encouraging that the legislation is back before the House, albeit late in the session. The Amalgamated Prospectors and Leaseholders Association has been waiting for this legislation for a long time. The regulations will be the key to this Bill. I am not sure when members will be able to get details of the regulations; they are not available at this stage. I presume the Minister for Resources Development has carriage of this legislation. I hope members can obtain details of the regulations at an early date. While the Opposition supports the intent of the legislation, the legislation does not give a great deal of detail as to how some of its provisions will be put into place. Implementation will be prescribed by the regulations. The sooner they are introduced, the better. I hope the relevant prospecting and mining peak bodies have the opportunity for some input.

It was not possible for me to scrutinise the legislation until it was introduced into the House. It caused some frustration as the lead-up period to its introduction was lengthy and I was lobbied by a significant number of small, medium and large exploration companies as well as by APLA. The member for Eyre was also lobbied and the Opposition's position is that it is extremely important for prospectors to have greater access to ground. Prospectors located a large percentage of the major finds that are currently being mined. Members would be aware that there is a lot of concern about the future of exploration and prospecting. Larger companies often raise specific issues about legal liability. Such liability may be through torts or matters of Aboriginal heritage. If people are not involved in prospecting, they can often overlook the fact that prospectors are subject to fairly onerous requirements from the Department of Minerals and Energy. It is not the case that anybody can take up a metal detector and go out and about. As a digression, I advise members that many people would like to be prospectors and go out with their gold detectors. They are often the ones that cause the most headaches. At the recent mining expo in Kalgoorlie-Boulder in October, I had the opportunity to look at the literature that was available from the Amalgamated Prospectors and Leaseholders Association's stand. It reported that its information brochures are always out of print because there are so many calls for them from the tourist bureau in Kalgoorlie-Boulder, its own office and the Department of Minerals and Energy. It constantly receives inquiries from people who want to have a go at gold prospecting. It is not hard to see why. Only a few nights ago, while the shadow Federal Cabinet was in Kalgoorlie-Boulder, I was having a drink with colleagues in a local pub and

someone produced a large gold nugget. Needless to say, it was not a member of the Federal Opposition. He was a prospector who had picked up several ounces in a find. I find it amazing that people carry such things around in their pockets. They will take every opportunity to pull them out in a bar and give the other patrons a good look. It was something that interested all the visitors, most of whom were from the eastern seaboard.

Prospectors form a very important part of my community. My community welcomes visitors. I believe the concerns of the big end of town will be somewhat ameliorated as the activities of prospectors will be more transparent. Who better to monitor any illegal activities than the prospectors themselves? If people have prospecting leases, they will be extremely careful about unauthorised use of the leases. The nuisance prospecting that occurs may interfere with Aboriginal heritage. If more bona fide prospectors are on the leases, it is likely that they will be able to police the land.

There has been an interesting debate within mining circles in my electorate about the Prospectors and Miners Hall of Fame. For some people, the title is a bit of a mouthful. Some promotional and advertising material has been generated that refers to it as the Mining Hall of Fame. It caused a great deal of consternation in the prospecting community. I was told that the idea for the hall came from prospectors. It is an important point of intellectual property. There is a strong feeling that the tourism potential of the Prospectors and Miners Hall of Fame would be demeaned if people did not realise how much of it related to prospectors. That is borne out by the number of tourists who travel to the goldfields who are interested in prospecting and its history.

Letters have been sent by the Government to 2 250 holders of exploration, prospecting and mining applications about the Premier's announcement on 16 June that the Department of Minerals and Energy had decided to exempt some native title requirements from certain types of applications over pastoral leases, subject to proof of enclosure. Other conditions, such as the previous grant of a mining lease were also involved. At the end of the day, I do not know what will be the level of financial accountability from the State for the processes it has adopted. Issues such as compensation have been transferred from the Government to those prospectors, explorers and miners. However, it seems that the process to be adopted could leave the Government financially accountable for some of the measures. The Government made the announcement on 16 June, but in mid to late August, 2 250 letters were sent to the applicants for those three types of leases. The letters said that it was important for the applicants to apply, with supporting evidence, to the Department of Minerals and Energy if they wanted an exemption from native title.

There is nothing inherently wrong with that, given that the Government is relying on the law as it stands; that is, the Federal Court case of Miriuwung-Gajerrong, which is also known as the Ward case. Some problems could be created if the appeal before the High Court, to which the Government is a party, results in a different reading of the law. However, the process I find odd is that followed after letters were sent out asking the 2 250 recipients to respond within 60 days. Only 1 per cent responded to take up the offer. That seems to be a large vote of no confidence in the method. I started to receive calls at that time because a further letter was sent to the 99 per cent of would-be leaseholders who did not reply. That letter suggested that their applications for leases could be forfeited if they did not take up the exemption. Members can understand the consternation of these people, particularly those in the middle of sensitive negotiations with representative bodies and native title claimants. Some of the prospectors involved in these sorts of negotiations were reluctant to apply under the other process because they felt they could achieve a satisfactory outcome and maintain goodwill with the Aboriginal claimants in their area. Ninety-nine per cent of the original 2 250 applicants received these letters; those who did not take up the option received yet another letter from the Department of Minerals and Energy, notifying them that they had 30 days to apply, after which there would be no further extension of time. That letter also said that a failure to apply might result in a refusal of their application or, effectively, a forfeiture.

This way of proceeding does not seem to be conducive to negotiation and settlement. Rather, it seems to be a deliberate effort to sabotage some of the negotiations. I have no criticism of individuals or companies who take up the option. There is no reason that they cannot do that. It might or might not expose the State to potential liability, but I am confident the Department of Minerals and Energy and the Minister for Mines have received detailed Crown Law advice on this issue. I am not foolish enough to think I could get access to that - although it might be a different story after the election. Sending out 2 250 letters and having 1 per cent take up the option suggests a vote of no confidence in the Government's actions. It is not appropriate for the Government to then threaten the 99 per cent who did not take up the option with the forfeiture of their leases. Prospectors are keen to move forward with the future acts process. They have done that to a large degree but, unfortunately, their efforts have not been supported by the State Government. I am sure that will change after the election.

I am keen to know when the regulations will be available. The detail in the Bill is not that great, and much of this process will depend on those regulations. The minister will be aware that prospectors and explorers have expressed the need for clarification of issues such as liability and so forth. Some prospectors believe more exemptions than usual have been granted to companies holding exploration licences. I know that the peak

explorer bodies do not share that view. It is important to scrutinise that, because it is reasonable to suggest that without prospectors, the ore bodies necessary for a vibrant mining economy will not continue to be found.

MR BARNETT (Cottesloe - Minister for Resources Development) [4.35 pm]: I thank members opposite for their support for this Bill. There is not a great deal that I can add; it is a self-explanatory piece of legislation. I note the member for Kalgoorlie's comments about regulations, and I agree with the point she made. Members explained that the Bill extends existing miners' rights so that miners and prospectors can go into areas over which the larger companies hold exploration leases. As has been discussed in this House, the larger companies obviously do not want anyone, albeit prospectors, going across their tenement areas. I understand that view. It has been put to me and, I am sure, to members opposite that the concern is not so much that the prospectors might discover bits of alluvial gold - good luck to them if they do - but that there might be environmental damage, conflicts with pastoral operations if, for example, gates are left open, or inadvertent damage to Aboriginal heritage sites. A company with a large area under a prospective lease does its best to make sure that environmental integrity is maintained and there is no conflict with or damage to Aboriginal heritage sites. The ability of those companies to maintain that standard could be compromised by prospectors going over those areas. That is a slight risk. However, the Minister for Mines has been conscious of that, and both parties have responsibilities. The regulations will need to be strong in that regard.

Mr Grill: We did not say there was no risk. We understand the risk, but we also support the legislation. In practical terms, we think the risk is worth taking.

Mr BARNETT: There is a risk, but I was not suggesting that the Opposition did not agree. However, the minister has attempted to get the balance right, and everyone would agree with the principle of allowing prospectors to go into the areas, fossick around and hopefully find some alluvial gold that could, in theory, provide licence holders with information. It will inevitably lead to some discoveries, in the same way that some of the original deposits were found. However, it will depend on the regulations. I cannot answer the member for Kalgoorlie's specific question about when the regulations will be available, but I undertake to ensure that the Minister for Mines provides her with an update on their progress. Regulations need to be in place and discussed by the industry before the legislation comes into operation. This will depend on goodwill between the companies, the prospectors and those administering the legislation. Problems will occur if people abuse the prospectors' rights or do not make proper notifications or go through the proper processes. As the member for Eyre pointed out, people generally wander over licensed areas anyway. In a sense, this may normalise much of what happens.

It is important that the Amalgamated Prospectors and Leaseholders Association make sure that its members comply with this and treat the companies, the land, the environment and heritage sites with care and respect. When this Bill was being debated I made a suggestion which I think has some merit. It occurred to me that there may be two types of prospectors: The first is the professional or quasi-professional prospector who is serious and understands the environmental and heritage issues and knows that he must shut the gates behind him. That person will fit well within this legislation. The other type of prospector is the occasional holiday maker who wanders about with some equipment, perhaps with little knowledge and little chance of finding anything. That prospector, who may go to the goldfields almost like a tourist prospector, must be accommodated.

I suggested that there would be some merit in making available some reasonably large areas of land held by the Department of Minerals and Energy with no licence holders over it to be kept as a tourism prospecting area. Members opposite may think that is a silly idea. Some people go to areas such as Kalgoorlie to fossick. If some substantial areas were designated for them to prospect - perhaps 10 000 or 20 000 hectares of land without environmental or heritage issues - the more serious prospectors would go to the tenements.

Mr Grill: I am not denying that there would not be a demand - there would - but people would hotly debate the area that would bring them within that ambit.

Mr BARNETT: I have suggested to members that it is something that the local tourism industries should pursue.

Mr Grill: They are interested in going down that road.

Mr BARNETT: The visitors could be shown the designated areas where they could prospect to their heart's content without running into conflict with the mining companies or anyone else. The more serious prospectors who had applied for the permit and met the obligations could go harmoniously into the tenement areas. I had many thoughts about this legislation. I was lobbied by the industry and I can understand its concerns, but the Minister for Mines has the balance right. With goodwill on the part of the mining companies and prospectors it can work well.

I thank members for their support. As I said to the member for Kalgoorlie and the member for Eyre, if he is interested, I will give them an update of where and when the regulations will be available.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and passed.