

**MINING AMENDMENT BILL 2000**

*Second Reading*

Resumed from 16 August.

**HON N.D. GRIFFITHS** (East Metropolitan) [9.22 pm]: The Australian Labor Party supports this Bill which is of significance to many ordinary Australians who participate in prospecting. It will enable many people to have an opportunity to prospect on land on which they cannot now prospect by law. This Bill has the potential to benefit many people in the goldfields who use metal detectors, many of whom are good members of our Aboriginal communities.

This Bill will enable people to become involved in collecting minerals essentially of an alluvial deposit nature. It should not cause harm, and has the potential to create great benefit not only to many individuals keen to be involved in activity on land which is now prohibited to them, but also to the State as a whole. Anyone with knowledge of Western Australian history would be aware of the many great discoveries, and the ensuing prosperity, made by prospectors. I refer to ordinary people who try to find a bit of gold or whatever may be on offer.

I now make some observations about the scheme of the Bill. Section 20 of the Mining Act 1978, the principle Act, provides for the issue of "miner's right". That has a long and interesting history in Australia. I will not comment further on that aspect. Part 4 of the Act sets out the types of mining tenements, the major ones of which are the prospector licence, exploration licence, retention licence, mining lease and so on. The Bill deals with exploration licences. The Bill provides for circumstances for holders of a miner's right to be issued permits to enable prospecting on crown land the subject of exploration licences.

Exploration licences are dealt with in part IV, division 2 of the Act. Land the subject of exploration licences, put in shorthand, is referred to as blocks. It is sometimes referred to as an area, but this is land in a three dimensional sense. A reading of the Mining Act will make that point clear. This land is not pegged. It involves significant surface areas. A block, I am advised, is 280 hectares in surface area, and the smallest exploration licence, I am told, is about 10 blocks. The term of these exploration licences is five years with provision for an extension. They are subject to a condition that a progressive surrender of the land shall occur, as set out in section 65 of the Act. People can have access to land subject to an exploration licence; that is, they can walk across the land, and grazing can take place. I am advised the reality is that a significant amount of land is involved and, notwithstanding the law, people engage in prospecting. This Bill seeks to legitimise that practice and properly regulate it.

In supporting the Bill, the Labor Party is not interested in imposing red tape. It wants matters to be dealt with properly. The Bill relates to the issue of permits, for which safeguards apply. First, a permit can be issued only to a natural person who holds a miner's right, or to two or three natural persons, each of whom is the holder of a miner's right as a joint holder of a permit. A person cannot get two permits for the same exploration licence. The Bill provides for regulations to deal with the conditions to be attached to permits, although it sets out certain criteria for those conditions. Much of what is proposed as indicated in the media release by the minister generally and in his second reading speech is not dealt with in the Bill, but is proposed to be dealt with in the regulations.

When the regulations are printed, the Labor Party proposes to examine them very closely because we are concerned not to have this area of activity unduly fettered. At the same time, we will be very concerned to ensure that all proper interests are safeguarded.

The Bill gives the minister the power to remove crown land from land that would otherwise be the subject of the Bill. It importantly provides for the holder of a permit to have limited action in tort against the holder of an exploration licence. Those limits have regard to appropriate safeguards, namely, they do not apply when the holder of an exploration licence deliberately intended causing injury, loss or damage to the holder of a permit or had reckless disregard for the presence of the holder of a permit on permit land.

It is important I reiterate that the Bill seeks to regulate activity that already occurs and at the same time encourage proper activity which, historically, has provided great benefit to the individuals involved and to Western Australia.

To summarise, the Bill will enable controlled access by prospectors onto exploration licences to recover alluvial minerals. It will be a great encouragement to economic activity and the Labor Party is very pleased to support it.

**HON MARK NEVILL** (Mining and Pastoral) [9.33 pm]: I support the Bill. It is a fairly simple, straightforward Bill and I think it is worth a try. Hon Nick Griffiths covered its scope amply. It has had an uneasy gestation. Its operation will be reviewed in 12 months. I am pleased to see the drafting has been kept as

simple as possible. Obviously regulations will be used a fair amount to define certain aspects of the operation of this provision. It is important that we examine the regulations and ensure they are appropriate for prospecting on crown land.

As Hon Nick Griffiths said, a great many of the prospectors are Aboriginal people. This government initiative has a good chance of working and easing some of the tensions that arise due to people's access to land, particularly with detectors.

**HON HELEN HODGSON** (North Metropolitan) [9.35 pm]: The basic principle underlying this Bill is difficult not to support. Its purpose is to regulate the activities of people prospecting on exploration licences in an unregulated manner.

I see two major shortcomings in this legislation, my reasoning for which is probably a little different from some of the issues already raised. One shortcoming is the way in which the Bill fails to deal with Aboriginal heritage issues. The second is the fact that most of the provisions of the Bill will be applied by regulation.

Some form of permit system for people on exploration leases in an unregulated manner is necessary so that if damage is being done to a heritage site or environmental damage is occurring, at least we will have a fair chance of saying who was on the land. It has also been suggested to me that the Bill will create another set of legal eyes to monitor any illegal activities. That is a very valid point.

I do not feel that the whole issue of Aboriginal heritage has been addressed well in this legislation. To begin with, the Bill is silent on the matter. On reading the clause notes and the notes on how the permit system will operate, I note that that is because the Government believes the Aboriginal Heritage Act adequately safeguards those issues. However, there are also some serious shortcomings in the Aboriginal Heritage Act, particularly in the way people who cause damage to a heritage site can avoid being charged or convicted of an offence. They need only show that they did not know or could not reasonably be expected to know the Aboriginal heritage site was there.

Anyone here who has had any dealings with Aboriginal people and land issues will know there are more unregistered than registered heritage sites. One of the most common and practical reasons given to me is that in registering a heritage site, which tells people they should not enter a site, we are highlighting the fact that something may be there. This is an issue that concerns many Aboriginal people. They would rather keep their places properly hidden and secret.

On a practical level, protocols have been developed for dealing with companies and native title issues. I congratulate both the mining industry and the Prospectors Association, which are very close - they may already be in place - on developing protocols to deal with Aboriginal heritage issues. It is appropriate to have agreements in place to adopt certain protocols when an Aboriginal heritage issue arises. The problem is that this Bill will encourage people - the weekend prospectors with the metal detectors who are not necessarily aware of these protocols - to exercise their right to explore and to do some alluvial work. I have no problem with that as long as proper protection is in place.

It was suggested to me that very little damage can be done with a pick and shovel. Some Aboriginal heritage sites can be significantly damaged very easily with a pick and shovel. These sites may be a rock or a cliff face or a place of significance along those lines. If prospectors are unaware of the issue and unaware of their responsibilities and obligations under the Aboriginal Heritage Act, they can cause significant damage and may use that lack of awareness as a defence if charges are brought. It is absolutely essential, in setting up the permit system, to ensure that people know that one of the conditions of a permit is compliance with the Aboriginal Heritage Act. The explanatory memorandum refers to it but there will be no reference to it in a permit. People who do not regularly deal with these issues and who are prospecting on an ad hoc basis on a weekend must have a flag to tell them that the rights of the traditional Aboriginal owners of this country are something to which they must pay attention.

As part of this whole issue, the permit system will be structured in a way that will give notice to an exploration licence holder, usually one of the major mining companies. Those EL holders will have an opportunity to say that a particular area has Aboriginal heritage issues and should be excluded from the permit. Excuse me, but why are we expecting a third party to tell us that an area must be protected? Surely the traditional owners, the Aboriginal people who belong to the place, should have an opportunity to feed into the process and to say, "This area is one where we do not want you to go."

One of the concerns that has been brought to me by the mining companies - the big end of town as they have been referred to - is that only they currently have the information to handle Aboriginal heritage issues and only they can be held responsible if something goes wrong. Why does this have to go through them in the first place? Why can we not have a system which gives the traditional owners of the country a way of finding out that someone is on their land? To put it in simple terms, it may not even be a place. For example, some law business

may be due to take place somewhere and the community knows that a prospector is there. They can make arrangements to meet the prospector to say that they have law business in that part of the country at that time and could the prospector please pay them the courtesy of respecting their privacy during that time. Surely very few prospectors who work closely with the land would not respect a request from the community to leave a certain part of the area alone when that business is being carried out. As has been said a number of times, many prospectors are Aboriginals, although I am unsure of the relevance of that fact. Sometimes, the places where law business is carried out and the conditions that people are asked to observe are not something that can be recorded in a register. There is a need to be able to contact the community directly to address these issues. I am extremely concerned about the absence of a provision for notice to Aboriginal communities and the absence of a specific reference to the Aboriginal Heritage Act in the permit conditions.

Another of my major concerns relates to the structure of the legislation. When I was briefed last week I was told that permits will apply for only three months. Excuse me, where in the Bill does it say that these permits will last for only three months? I was told that that was referred to in the Cabinet approval; however, it is not in the Bill and will be implemented only by regulation. Why will such a fundamental matter as the maximum period of a permit which has Cabinet approval not be dealt with in the basic legislation but, rather, dealt with by delegated legislation? Why is there no natural justice mechanism in the Bill? I found particularly interesting one regulation that deals with the governing of these permits. Clause 8 of the Bill refers to the regulations which define the powers of the minister, when there is a breach, to impose monetary penalties not exceeding the prescribed amount. Even that clause will be defined by regulation, although the principal Act contains a monetary penalty.

As an aside, I found the 1978 Act, with a maximum penalty of \$5 000, to be extremely outdated. I suggest the minister address the inadequacy in today's dollars of some of the monetary penalties when considering some of the issues that arise, not only in this permit area but also throughout the Act as a whole.

Leaving that as a side issue, the minister will be able to decide the circumstances in which there is a breach of a condition, to impose monetary penalties, to cancel permits, to disqualify holders of permits from again holding or applying for permits and to describe the procedure to be followed. I may be a bit cynical, but when a Bill states that in certain circumstances a final decision is to be made by the minister by lottery - I am sure the minister wishes that provision was not there in that form - I am sceptical about how that regulation will fit into the framework of the Bill. There should be a provision which says that natural justice must be part of the process.

The whole of the notice provision will be set out in regulations, including classes of persons. Interestingly, I was given an attachment, I think at the briefing, which sets out in detail how this provision is expected to apply. However, there are no parameters in the legislation itself. It simply says that the regulations may provide for permits and that the persons or class of persons to whom notice is to be given will be prescribed in the regulations. To go back to the system that is outlined, those people appear to be the EL holders and pastoralists, where relevant. However, as I said, there is no provision in the framework to include Aboriginal people, whether they be native title holders subject to determination - there is now one of those in this State - or traditional owners whose actual native title claim has not been confirmed.

I am trying not to confuse this Bill with the native title issue as I am well aware, whether or not I agree with it, that the level of prospecting referred to in the Bill would not be considered a native title act under the federal legislation. I am therefore not approaching the matter from a native title perspective but from a need to protect Aboriginal heritage.

I believe the legislation, in its attempt to be flexible and to deal with issues in a simple way, has gone far too far the other way and has not outlined the parameters within which the regulations should be structured. It is not good legislation when one gets a very detailed two-page briefing on how the permit system will work and the legislation contains only a list of matters to be covered by regulation. It is not a practice I would encourage in this place.

Having said all that, I do not have any problems with the principle behind the Bill. I agree with the principle of having a permit system, of ensuring that we know who is out there, of ensuring that we know whether there is an issue of damage to a heritage site or environmental damage, and of knowing who is likely to have caused such damage. We will have extra legal eyes out there in people who are supposedly informed of their obligations under heritage and environmental legislation. However, I cannot say that implementing this permit system by regulation is the right way to go and I cannot say that it should be done without any consultation with Aboriginal people on heritage issues that should be excluded from the permit area.

For those reasons the Australian Democrats will not oppose the second reading of the Bill. However, I flag that I will attempt to refer this Bill to the Standing Committee on Legislation to address the issue of the framework of the legislation. At an appropriate stage, hopefully, we will be able to deal with this Bill in a multi-party manner;

otherwise we will deal with the amendments on the Supplementary Notice Paper in my name at the committee stage.

**HON GIZ WATSON** (North Metropolitan) [9.50 pm]: The Greens (WA) support this Bill in principle and welcome it. I listened with interest to the concerns raised by Hon Helen Hodgson. We have similar concerns with the Bill as it is currently. The Bill seeks to open up large parcels of land that are held by major mining companies to the legitimate activities of licensed prospectors. We support it because it has been acknowledged that a high level of illegal activity is occurring. This is not good and has led to environmental degradation in some areas where the illegal prospecting has been occurring. We acknowledge that the major mining interests have become virtually de facto administrators of large areas of crown land which they often hold by virtue of exploration licences. They often receive exemptions from the Government while they are holding that land.

From the outset there has been opposition to this Bill from, I guess, the big end of town. The push has obviously come from the Amalgamated Prospectors and Leaseholders Association. Certainly, members of the Association of Mining and Exploration Companies have come to me and expressed concern about this legislation. The Greens have not been convinced by their arguments for opposing this legislation. The first concern they raised was that any licence holder who has posted an unconditional environmental performance bond would be potentially liable for any environmental damage caused by the holder of a miners right within the licensed area. Our estimation is that that is not correct and that under the provisions of the Bill the proposed permit holder is responsible for his or her actions in regard to the environment and as such would also be subject to prosecution if he or she caused any environmental damage. As has been acknowledged, quite a large number of illegal prospectors are accessing exploration leases and risking being caught. The mere fact that legal prospecting under these provisions will now occur on otherwise inactive tenements means that there will be a de facto policing of large areas of the State. Under this Bill no registered prospector will allow an illegal operator to undermine his or her activities or ability to access an area by creating environmental damage.

On the issue of Aboriginal heritage and native title, AMEC argued that access to exploration licences by miners right holders could jeopardise carefully negotiated native title and Aboriginal heritage agreements between licence holders and the native title parties, particularly should the miners right holders be permitted to undertake prospecting activities to the depth of two metres as proposed by the Amalgamated Prospectors and Leaseholders Association. The only implements that should be allowed in the form of prospecting allowed under this Bill should be hand-held tools.

We understand that all aspects of the Native Title Act still apply to this Bill. However, I will add my voice to the concerns about dealing with Aboriginal heritage issues and express extreme concern that, as I understand it, little or no consultation over this Bill has occurred with Aboriginal groups. I am afraid it is all too typical of the way this Government develops legislation. The Bill does not provide for any notification requirements to native title claimants or native title holders before licences or permits are granted. I will certainly be listening with interest to any proposed amendments to address those concerns.

AMEC also raised the issue of occupational health and safety. It argued that under the Mines Safety and Inspection Act the licence holder as the primary tenement holder is responsible for the health and safety of any person accessing the licence area. This includes the miners right holders. Currently, illegal miners are covered by tenement holders for occupational health and safety under the Mines Safety and Inspection Act, but under proposed section 20C of this Bill the responsibility clearly falls on the prospectors who are licensed under this Bill. We believe that aspect is covered. The Bill clearly states that the activities of prospectors must be separated from any exploration activity being carried out by the permit holder.

Although the Bill addresses access to land being held under exploration permits, the Greens would be interested in legislation that expanded that further to consider covering tenements held for prospecting and mining as well, given suitable precautions, because companies are holding large areas for mining and prospecting. We believe that most of their activities are usually centred on very small portions of those permit areas and that, in fact, prospecting could occur in a suitable exclusion area, excluded in a physical sense from existing mining activities. We will consider freeing up other areas to prospecting activities.

**HON TOM HELM** (Mining and Pastoral) [9.58 pm]: I welcome this Bill. The House would be aware from actions that I have taken on other occasions that I have been pushing the Department of Minerals and Energy and the minister for this sort of legislation for quite some time. I was about to apologise to the Minister for Mines because during the time that I have been trying to encourage him to put this legislation before the House, I have been suggesting, and sometimes stating, that I thought he was the captive of the big end of town or the more conservative staff of his department. I do not think that is necessarily true.

Hon N.F. Moore: I am a captive of nobody except my wife.

Hon TOM HELM: One could agree with that. The minister acknowledged in his second reading speech the work of Hon Julian Grill and Hon Mark Nevill in using their good offices to bring about this Bill. They were doing some work behind the scenes. That sort of acknowledgment is a bit insulting when one considers the number of entries in *Hansard* that I have on behalf of the Amalgamated Prospectors and Leaseholders Association for the production of this Bill.

Hon N.F. Moore: Just so that you do not go away thinking badly of me, they were the Opposition spokespersons on this matter, which is the reason they were acknowledged.

Hon TOM HELM: That is okay. I understand that.

Debate adjourned, pursuant to standing orders.