## MINING AMENDMENT BILL 2021

*Second Reading*

Resumed from 9 August.

**HON NEIL THOMSON (Mining and Pastoral)** [12.27 pm]: I rise on the behalf of the opposition to speak to this bill. In speaking to this matter, I would firstly like to say that the opposition is supporting the bill.

**Hon Kyle McGinn**: Are you the lead speaker?

**Hon NEIL THOMSON**: So that people are aware, I am the lead speaker on the bill.

There has been some commentary, and members have probably received emails recently from some parties. I think there has been some misunderstanding about some matters. I am sure the parliamentary secretary—I am assuming he will be speaking on —

**Hon Matthew Swinbourn**: I think I have received the same correspondence.

**Hon NEIL THOMSON**: I would say there has been some correspondence, and I am sure that will be explained.

**Hon Matthew Swinbourn**: Just to be clear, I have received that in my capacity as the Attorney General's parliamentary secretary.

**Hon NEIL THOMSON**: Right. That did sort of lead to a statement. I will read out a position on the matter, which is more formal, I suppose, from the opposition's point of view. I think that is clearly for the public record. It states that the bill offers a range of necessary and advantageous updates to what is an ageing document. The bill is expected to help ensure a more consistent and predictable assessment process, which may result in more efficient approvals and improve oversight of projects. The bill will not alter the grounds by which projects will be approved or rejected. The improved interface between mining proponents and the approvals process will not equate to a reduction in oversight or rigour in the analysis of applications for mining, as placing projects in a clunky and inefficient approvals system does not protect the community or environment from negative outcomes. That response has been circulated by some of our members on this side, so that should give some comfort to the government that we support the proposal.

In saying that, I note that there will be an opportunity within this process to ask questions and clarify points. I think that is a useful process for the public record. In a general sense—this is just a comment, I suppose—some elements of the explanatory memorandum may have been taken out of context and certain words within it probably fed into a certain narrative that might have led to a misunderstanding that the bill might erode certain rights and protections that currently exist. I am not saying that it will erode them, but people might have got the impression that there would be some erosion. The process in the Parliament today will be useful insofar as it will provide a bit of clarification around elements of the bill and what it will achieve.

As part of my commentary about explanatory memorandums, I think there is an opportunity for the government to be a little more careful in its wording of them. I am just providing some gratuitous advice to the government, because I have seen this in the past with some explanatory memorandums that may not have been clear about what the bills were trying to achieve. We will probably get into that in a bit more detail shortly.

We know that a number of factors led to this bill coming about. The bill will make a considerable number of amendments, but they are largely administrative. Some concerns were raised by industry at various stages of the development of the bill and I think they are worthy of being discussed today. My understanding is that this is part of an overall process that has been underway for some time; we have seen the whole process of red-tape reduction as a general trend across government. We see a tendency for governments, probably of all persuasions, to move towards having acts being defined in a fairly generic sense and providing something more akin to an industry-managed process within a regulatory framework, if that is a way of describing it. That means that the level of prescription within the act is reduced, and through the regulation-making process, some requirements and onus are put back onto industry to manage certain things when the risk is lower. I think that probably sums up what this bill is trying to achieve, because it is within a risk framework that these things are managed. We are all hopeful that this will reduce the level of interaction that mining or exploration companies, in this case, will have with a regulator on an ongoing basis. We have seen this tendency in other spaces as well, not just in the portfolios I am more familiar with, such as planning. A risk-based framework has been achieved and certain plans have been developed and endorsed. That gives industry the flexibility to get on with the job of dealing with low-risk activities, but it also provides the necessary protections so that, if something goes wrong, the government has a process for managing it.

The proposed low-impact activity framework for prospecting and exploration was developed in 2015, which I assume was part of the genesis of this bill. The COVID period has led to a number of challenges to getting approvals done on time, as has the massive growth in the mining and exploration sectors, putting incredible pressure on our regulatory agency.

The explanatory memorandum sets out the three fundamental components of this bill. The first element is the low-impact notification process, as it was previously termed, though I think the terminology is different now. The second element is the introduction of a single approvals statement for mining operations, which seems to include the closure plans. In the committee stage, we will discuss mining operations and closure plans and how they link up. The third element is the consolidation of approval conditions within a single part of the Mining Act 1978. A number of provisions will be deleted from the massive tome that is the Mining Act 1978 and the conditions will be consolidated in a new part.

I flag the risk of some duplication in the committee stage of the bill later in the day. No doubt we will work through it, but it has been quite challenging to go through all the deletions and then the consolidation in clause 34. On behalf of the opposition, I ask for forgiveness if there is any duplication as we go through the process of scrutinising the bill. I had to create a rather large table to work through what is in and what is out. The marked-up copy of the act was useful in that process, but there are a number of quite administrative changes. Hopefully, we will not need to spend too much time on them during the committee stage and we can get to the nub of the issue: the fundamental reason for the changes, the consequences the changes will have for industry, and how they will play out in industry land and on the ground. I am sure that is what the industry is interested in and I am sure that is what the community is interested in.

I am here to represent the opposition today while one of my colleagues is on urgent parliamentary business, but I make this comment because, in my relatively short exposure to this particular bill, I have noticed the need for clarity around how this will ultimately work out. Will it actually achieve the goal of reducing the amount of red tape in the system and the unnecessary interaction with regulators? I think that is the question. I have heard comments from people in the industry—this is not from a peak body but from my interaction with people in the industry—who all hope that this bill will result in less prescriptiveness; however, there is always a risk that it could actually be more prescriptive. I think that is a reasonable concern. The area I am most familiar with is the planning space. I have said in this place that I was involved in the development of the strategic assessment process for the rezoning of land in my previous life. The negotiation process with the federal government started back in the period of the Carpenter government and, in my opinion, it ended up being a red-tape reduction process that is still to be finalised today. Once those processes are effectively taken over by well-meaning bureaucrats, they sometimes end up becoming more complicated than intended.

I will explain myself further as we get into those more detailed components of the act. I will specifically ask about how those programs of works—they were both statements—will be prepared and managed to actually result in a reduction of interaction with the regulator, as opposed to any upcoming, more prescriptive, interaction than is contained in the very legislation that we are putting lines through and deleting from the act.

We know that Western Australia is involved in probably the largest mining boom in its history. It is phenomenal what is happening in my region—the Mining and Pastoral Region; the amount of exploration that is underway is absolutely phenomenal. We know that there have been in the order of 4 000 work applications a year and a large percentage of those are low impact and low risk—for example, an auger drill mounted on a four-wheel drive. We know that there are rigs operating out there, to a large extent, across the state. I understand that these amendments target those sorts of applications to some extent. The small-scale operations that add to the administrative workload of our regulator can sometimes be disproportionate, and could, effectively, be managed through standard conditions defined by the regulations.

I would like the parliamentary secretary to comment on that because I think the fact that we will have an automated application process has created some concern; people have just assumed that an automated process will result in a lot of activity. I think there is confusion between the application of a licence and the approval for specific activity within the licence. Again, I think that the government probably needed to provide a better explanation of that to the community to avoid the concerns that were raised.

As I said earlier, a massive investment is going into mineral exploration. According to the Australian Bureau of Statistics, in the June 2022 quarter, we had a massive investment of $673 million. To put that in context, Queensland had the next highest investment into mineral exploration at $129 million. Mineral exploration in WA represented 63 per cent of total mineral exploration investment in Australia, which is a massive amount. A huge investment process is underway, and we know that employment is a massive component of this. The mining sector plays a critical role in employment, and we should not curtail that if it does not impact negatively on our communities and the environment in particular. That issue is at the heart of what the government is trying to achieve today.

The royalties component that flows from this has been much to the benefit of the Western Australian government and the Labor government that has been in place —

**Hon Kyle McGinn**: The Western Australian people benefit.

**Hon NEIL THOMSON**: I am getting to the Western Australian people, honourable member. I totally agree with the member's interjection. This is something that has been driven by markets overseas; we have seen that drive here. The opposition will do everything it can to help facilitate this within a proper parliamentary process, as we are today. It will make sure that a level of scrutiny is applied and that we have the clarity that the community demands and the outcomes that we hope will benefit all Western Australia.

The bill will introduce eligible mining activities, EMAs; the automated authorisation of low-impact activities, subject to standard conditions; and, as I have mentioned, the single approvals statement, which I think is important to comment on. My understanding is that the single approvals statement will combine a number of requirements into a single mining development and closure proposal, and provide approval for activities relevant to the environmental conditions across multiple tenements. We will go into that more in Committee of the Whole House, as we do.

I want to raise briefly some of the industry concerns that were mentioned previously at various stages. Again, these concerns could be addressed further in the committee debate. Clearly, the industry is concerned about the backlog of approvals. This is a big issue for the industry. Clearly, the government is concerned about the ability to deliver on the backlog. We saw some effort by government to provide additional funding, I believe, to help deal with some of these. An approvals response plan was to direct some regulative functions and resources to support the assessment process, and the Minister for Mines and Petroleum outlined in a press statement—in, I think, March this year—how some of those would be moved through more quickly. We know that the regulator has had some challenges to deliver all the approvals in time, and that has been a challenge to industry.

In taking this approach of removing prescriptions out of the act and moving them into what would be regulations—then defined through these single approvals statements—concerns were raised. There were concerns about the process being automated for eligible mining activities. There were concerns about an overly prescriptive approach that might be applied after legislation in regulations, and there were concerns about the possibility of a one-size-fits-all assessment approach. I think the intent is to move away from a one-size-fits-all approach, but then the challenge and question for approving those programs of work and approvals statements is how they will be assessed and defined. I assume that will have to be dealt with through the regulatory process. Guidelines will have to be developed if they have not already been developed. From the industry's point of view, a level of discretion will be needed about how those are put together. That raises the important question of how it has an impact on an operator's resourcing requirements. We know that the industry has many different types of operators. We have small operators and we have larger operators. Some are more prepared and organised than others. Some are more capable of producing those plans than others. I guess the onus will go back to industry; industry will need to be more prepared and drive that process. There might be some interpretation of that when those plans are assessed. The concern is about the potential transfer of compliance responsibility to operators, based on what might be prescriptive conditions. We do not see that because, effectively, a line will be drawn through a lot of those in the legislation. We assume that some definition will come through regulations and guidelines, and we hope that that will result in the bill's intent being achieved.

There was a concern about the potential lack of detail about what eligible mining activities are and how they will be defined. We saw that in some of the discussions about the Aboriginal Cultural Heritage Bill. The modern design process of legislation seems to be that we kick the can down the road into the future—so to speak—and end up having those details dealt with in the regulation process. We know that right now the government is trying to define activities within the Aboriginal Cultural Heritage Act through the regulation process. In this place, I predicted that it was going to be a difficult process to achieve that outcome. Will that achieve the government's goal? Will the same process be undertaken in this case? There will be questions about how long it will be before that clarity will be provided, either through regulation or guidelines, so that those eligible mining activities can be defined more clearly.

There was concern about the potential conflict with the Aboriginal Cultural Heritage Act, and I note that there will be some interaction between the two pieces of legislation. Some definitions certainly seem to be the same, so I will be interested to hear to what extent there will be some harmonisation of the ground disturbance activities that are effectively going to be managed.

As I mentioned earlier, the industry is made up of very different players and, as we know, some are very big players. The larger companies are very ably managed. They have large regulatory compliance units within their operations and are probably well placed to provide the level of detail that might be required going forward. But the smaller operators might find that they have more work to do, as they may have previously relied on a regulator to tell them what to do and effectively complied, but did not have to produce much documentation. In saying that, I certainly have heard commentary that a lot of documentation has been provided in the past and there is a feeling within the industry that sometimes that documentation was not always necessary. When the department or the regulatory body has a very busy and stressed workforce, often the documents for some of the minor activities might not serve much of a purpose.

Another concern that was raised was about the capacity to change and adapt, and hopefully we can draw that out a little bit during the committee process. The single approval statement might impact on multiple tenements, for

example. The question is whether there will be a level of flexibility for reassessment when operational processes and plans change and how that will impact on the single approval statement. There might be technical changes within a company's operations, so that may impact on its requirements in its interaction with the regulator. That issue has been raised.

There is also an issue about the timing of the operations currently authorised under a mining proposal. The approval will continue for a period of six years following the commencement of the bill. I think the Association of Mining and Exploration Companies said in its submission on a previous iteration of the bill that six years was too short. There was some desire—I do not know whether it was the Chamber of Minerals and Energy or AMEC, but I have it in my notes that the issue was raised—to have that transition to the end of the life of the approval. Obviously, a transition time is outlined in the process, so it will be interesting to get an explanation of the time line for the finalisation of the regulations, when the bill will come into full effect, the adjustment process, the support that the industry might get from the regulator to adjust and make the necessary changes, and how the process will work in practice.

The new mining development and closure proposal will allow the Department of Mines, Industry Regulation and Safety to work with the Environmental Protection Authority.

*Sitting suspended from 1.00 to 2.00 pm*