

MINING AMENDMENT BILL 2023

Second Reading

Resumed from 22 June.

MS M.J. DAVIES (Central Wheatbelt) [12.19 pm]: I rise as the shadow Minister for Mines and Petroleum to contribute to the second reading debate on the Mining Amendment Bill 2023. I note that this bill, unusually, started its journey in the Legislative Council. That is not unheard of, but it is unusual, given that the minister responsible for the bill is sitting opposite me. I thank the minister's office and the department for providing a number of briefings over a period of time.

This bill has had a long genesis. I had some contact from the industry a couple of weeks ago, asking when the bill was going to be brought on for debate, so I think the industry will be very happy for this bill to pass through Parliament. I attended a briefing some time ago, on 2 May, and then again in August after the bill had passed through the Legislative Council. I have also spoken to a number of stakeholders along the way. The Association of Mining and Exploration Companies, in particular, has been very engaged, and there has been contact with the Pastoralists and Graziers Association also, as members would expect. The parliamentary secretary in the Council, in the briefings and also during debate in that place, provided some detail on who the government consulted in its preparation of the bill. I am very pleased to report to the minister that this legislation has no showstoppers or significant issues for the opposition. We had a couple of questions and I think our members in the Legislative Council did a good job of canvassing most, if not all, of them.

Interestingly, representatives from the mining sector put forward that this legislation was not something that they had particularly asked for. Although it is a clear indication of the government's long-held position of having multiple uses for crown land, it will not necessarily altogether prevent objections to exploration in the event that there is carbon farming on pastoral or diversification leases. There were some questions about why it was required. We could probably get around those things if we really wanted to, so for me it is more a signpost from the government that there needs to be very clear outcomes for the mining and resources sector in respect of crown land uses.

As I understand it, the bill will prohibit people from lodging a notice of objection in the Wardens Court if the basis for the objection is that the activities authorised by a mining tenement would affect an offsets project. The term "offsets project" has been used, as I understand it, to align with commonwealth legislation—namely, the commonwealth Carbon Credits (Carbon Farming Initiative) Act 2011, which defines carbon farming projects. A significant number of such projects are either commencing or under investigation by investors. It is rare for a week to go by without hearing about the development of a new project to take advantage of this legislation.

The legislation will not prevent the public from objecting to a mining tenement on public interest or environmental grounds. Perhaps the minister could comment on the Department of Mines, Industry Regulation and Safety consultation paper on charges for objections; I think it is around the \$800 mark. That has not been in place previously and I do not know how it will operate when objections are raised. I understand that that consultation is underway at the moment, so I am happy to take advice from the minister as to how it will intersect with this legislation if objections are raised. I presume it will cover all objections to mining tenement applications.

It is intended that carbon farmers on crown land should coexist with mining projects. In my previous capacity as Minister for Water, we navigated some of these issues with pastoral leaseholders and, as I said, it is a long-held principle of government. There is a fine balance between trying to create opportunities and certainty for investors and developers on crown pastoral leases, and maintaining the right of the Crown to make sure there are broader opportunities. That is not always the easiest path to navigate and I imagine there will be a few test cases along the way once this legislation is passed. Maybe the minister would like to outline situations in which some of those concerns have been raised—that this could be an impediment, from the mining industry's perspective—and how much that drove the decision to bring this bill forward.

The aim is for carbon farmers on crown land to coexist with mining projects. Any interaction or intersection will require negotiation between the two parties, and if agreement is unable to be reached, the matter can be resolved through the normal avenue of the Wardens Court. Of course, it would be far preferable for these things to be determined by the two parties through negotiation, but that is not always possible. The government has taken great pains to point out that crown land has already been subject to multiple land uses. We have seen uses by the resources industry and the pastoral industry and we have seen water developments. As far as we can see, this legislation is in line with the government's policy position.

It was very clear in the briefing offered by the Department of Mines, Industry Regulation and Safety that weight was to be given to the benefit of mining for the state of WA versus the benefit of carbon farming. That was crystal clear, and is probably a little tone deaf in respect of balance as a whole-of-government approach, as there have been strong drives from previous ministers for agriculture, hydrogen, carbon farming and opportunities around

carbon. Having worked with the Department of Mines, Industry Regulation and Safety, I can understand that that is the singular focus, but the presentation struck me as being very pointed about how much wealth is generated by the mining sector—that is not in dispute—and why this is important. It is pointed out in the briefing paper that the resources sector provides around 125 000 jobs, including in the regions; about \$12.5 billion annually in royalty payments; and about half of the state's GSP. There is also a compare and contrast with carbon farming, in which it is pointed out that carbon farming does not pay royalties; creates an unknown but likely small number of jobs; and that the top 12 local government areas in WA's rangelands will potentially sequester, on average, about eight tonnes per hectare over a 25-year period.

It was very clear, from that department's perspective, why this is important legislation. That is not in dispute, but those who are interested can contrast this information with some of the government's past media statements and public commentary on carbon farming. I also take the minister to page 20 of the government's 2020 climate change policy. The statement at the top of that page reads —

Western Australia's significant land mass and extensive coastline provide enormous potential for carbon sequestration (storage) in vegetation and soils. Our rangelands occupy about 2.2 million square kilometres and can sequester large amounts of carbon, improving rangeland conditions and financial resilience for pastoralists.

It is not in dispute that the government is saying that these can coexist, but it was a stark reminder that, as usual in Western Australia, there seems to be a significant weighting of the mining industry over other pursuits.

There is a case study at the bottom of that page of the climate change policy, and a number of actions over the page, from recollection, that outline what the government is doing to promote and encourage carbon farming and storage. However, in a couple of lines in a briefing note by the Department of Mines, Industry Regulation and Safety that is diminished to no royalties, unknown but likely small number of jobs and just a small amount of storage to be achieved. It is an observation. There is a lot going on in various departments. I make the point that statements like that on the importance of climate change policy and carbon sequestration cannot just be lines in a document like that in a situation whereby another piece of legislation is being brought forward that might diminish some of that importance. When the government came to power, it said that it was going to strengthen and streamline communication across government. A number of departments were merged. It might pay to have a look at some of those media statements and announcements on carbon farming, particularly from the previous Minister for Agriculture and Food, that mining trumps agriculture.

I will briefly touch on the discussions we had with the Pastoralists and Graziers Association. Obviously, most of its members fall within the remit of the impact of this legislation. I think it was more of an observation, but the PGA felt that perhaps rather than being consulted, it had been told about the legislation. We have seen a few examples of where that has occurred over the last six years. The PGA was appreciative that advice had been provided that this bill was coming forward, and I have the submission it made. The PGA holds concerns that by not allowing an objection to a mining tenement application solely based on the fact that it may impact carbon farming projects, carbon farming proponents, including pastoral and diversification leaseholders, may be disadvantaged. Although mining tenements can be excised from carbon farms with very little adverse effect, the PGA still has concerns over the timing and awarding of compensation for lost earnings, as well as delays to future restoration. It also pointed out that pastoral leaseholders who have carbon farms have legally binding contracts with the state government, and their rights need to be recognised.

Perhaps the minister can spend a little time talking about those interactions. I remember a number of Venn diagrams and charts were put forward about how this will apply, what excisions will need to occur, who will be liable for compensation, and how and in what time frame that compensation will be exercised so that those who are already in the space of carbon farming on pastoral leases will not be disadvantaged. I seek clarification on the compensation mechanism—who will pay, how will it be calculated and how will it be regulated—and whether that will be through policy or simply subject to negotiation between the two parties. I also seek clarification on how carbon farming contracts will be amended, and what role, if any, the state government will play in that amendment so that the contracts will accurately reflect what is being sought by this legislation. I understand that the mechanism through which carbon farmers seek compensation will be through the Department of Primary Industries and Regional Development. I am happy for the minister to provide some commentary on how that will work practically once this legislation has been passed.

I ask the minister to also confirm that the government has made a commitment to pay compensation to impacted carbon farming proponents. In the first instance, has that commitment been made? Will that compensation be only in the first flush when we see impacts being realised or will it be in perpetuity? I understand that when seeking compensation, carbon farming proponents will need to provide independent and verifiable evidence that clearing has led to a loss of eligible vegetation for the project or for that designated area that would otherwise have generated the Australian carbon credit units that come as part of those projects. I still find those projects

a relatively complex area. I am watching pretty closely, because a number of them are in progress in various different iterations. It certainly is an amazing opportunity for those in the pastoral industry to diversify, create value and provide rehabilitation.

I understand the importance of the mining industry and why the government may be seeking to make sure there is a very clear pathway for those in that sector to be uninhibited in their progress, or, at least, have an argument to say that a project cannot be objected to solely on this ground. But it appears to me that there are other ways to get around this, and this legislation should probably just be seen as more of a marker or a policy indicator as opposed to something that will provide any real show stoppers for either party.

With that, I am happy to take the minister's comments on those issues and anything that was raised through the debate in the other house. I will allow the member for Cottesloe to speak, who I believe has a few comments as well on this matter.

DR D.J. HONEY (Cottesloe) [12.36 pm]: I have a brief contribution to make on the Mining Amendment Bill 2023. It is a short and simple bill, but I think it is an important bill for the state of Western Australia. I note the comments that the previous member made on the requirement for the bill. I have a general concern about pastoral land. Traditionally, the industries established on pastoral land have been exclusively, if you like, growing cattle, and, then, of course, mining in much of that area, but increasingly we see that land being turned to other purposes such as carbon farming. Of course, we also see large tracts of land stations being purchased by various hopefuls for renewable energy generation. I think it would be a great shame to see the traditional cattle industry activity disappear. We also have goats on those pastoral stations.

I am also interested in the future of carbon offsets. I am certain that the minister and the member for Central Wheatbelt are aware that there is a lot of rethinking going on about carbon offsets and whether they are a permanent way of sequestering carbon or are in fact a temporary use. In any case, as I indicated before, I think this is a sensible change being brought forward by the minister to ensure that we do not conflict with the mining activity. We know the old saying; certainly my father used to tell me even when I was a boy: a mine begins to end the day they take out the first shovel of ore. Our mining industry critically depends on a continuous stream of new projects being brought online. It is the backbone of not only the Western Australian but also the Australian economy.

As was pointed out in the notes provided by the minister, there are objections and they are tested in the Wardens Court. This bill is important because it will remove that uncertainty and make sure it is very clear that these mining exploration activities should occur. As was noted in the report, and it is something for people to remember, there is a lot of public concern and controversy about mining, but the actual footprint of mining activity is typically a very small percentage of the lease and, in particular, the state. If we look at the land occupied by mining and the wealth it generates for our economy, despite the concern that people express, we would see that mining occupies a very, very small part of that land. I will not go on. As I said, this is a very sensible bill and is worthy of support. Again, I commend the minister's officers who prepared the explanatory memorandum. The minister and his staff provide the benchmark in explanatory memoranda. They are very clear and thorough.

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [12.40 pm] — in reply: I will get some notes passed from the back of the room in a minute to help me with answering specific questions about the Mining Amendment Bill 2023 from the member for Central Wheatbelt in particular. Hopefully, my answers will satisfy her interest in this matter.

I address something raised by the member that is not related to the bill, which is charging for objections. I think the figure is \$827 or something like that. We have not charged for objections before, so we are looking at what the structure should be. Objections are a very important part of the mining industry, and the number of objections has been exponentially increasing and is disproportionate to the issues being dealt with by the Wardens Court. As the member knows, we appointed a second Mining Warden to try to smooth the challenges in the sector, but because of the exponential growth of objections it is not working in the way we expected, so a small charge for objections will be introduced. We are looking to see who needs to pay because there may be classes of people who we would exempt. For example, traditional owners objecting to issues regarding their own land are clearly a group of people we might exempt from needing to be charged because they are in a different position.

Of course, sometimes objections are made by other mining companies for tactical and strategic reasons, and it is a bit unreasonable that they are able to do that and spoil somebody else's proposal, literally at no cost to themselves. We are trying to work out how the Wardens Court can be strengthened, and charging for objections is clearly part of that. That is a very reasonable step forward.

Many people in the industry have been asking us for some time to charge for objections, including the Association of Mining and Exploration Companies—I think that is right. We do not intend to stop objections, because they are an important part of the process, but rather to help manage them, given that the Wardens Court is in an unusual position in that it has to be funded entirely from the Department of Justice and not the Department of Mines,

Industry Regulation and Safety because of the need to have transparency and independence. We will not benefit from the charging; it is more about managing the Wardens Court process. That is just to deal with that matter at the front.

I move to the bill. I emphasise that the principle of coexistence exists on crown land in Western Australia, including on pastoral leases. There is always an intersection of interests on crown land. The department is not aware of anybody raising an objection on the grounds of carbon farming. I first emphasise that the grant of tenure is not the grant of approval to take action. It is about a delineation of the economic rights of the holder of the tenure. Often, there is a confusion that the grant of an exploration title, for example, means that there would be mining activity on the land. This legislation will unlink those two actions. Of course, when a mining or exploration company wants to do something on the land, they have to separately apply for a whole set of approvals from DMIRS and elsewhere, commensurate with the impact they will have on the ground. But the grant of the tenure is not an approval to take action. That is why it was foreshadowed in the consultation about the Land and Public Works Legislation Amendment Bill 2022 that the interaction between diversification leases and mining tenure would need to be clarified. In fact, we hoped that that clarification could be included in the bill brought forward by the Minister for Lands; however, the advice we had at the time from Parliamentary Counsel's Office was that we could not do that and we had to have a separate bill, which is the one we are now debating, to make the amendments to the mining legislation.

The Land and Public Works Legislation Amendment Bill 2022 has not been fully implemented because we are waiting for these changes so, that those matters can be resolved before the other bill is fully implemented. Again, I emphasise that this is about the grant of tenure, not the approval to take action. There will be no impact on carbon farming by the grant of the tenure because it does not authorise any activity that conflicts with carbon farming. This legislation encourages carbon farming because, for example, where there is already a mining tenure, the carbon farming could proceed as well. Otherwise, the mining tenure owner might object to the carbon farming, which is not what we want. We want to see more carbon farming. Carbon farming is an important contribution to fighting climate change. Of course, in low-rainfall areas of the state, sequestration is much, much slower, which is the issue that the member for Central Wheatbelt highlighted with DMIRS. DMIRS does its job well—let me put it that way. Its job is to regulate the mining industry, so it makes its position clear on its responsibilities to do that regulation.

These provisions do not relate to freehold land. Where carbon farming is done on freehold land, like it is in most other states of Australia, there are existing rules for the interaction between mining tenure and freehold. Many carbon sequestration projects are not impacted at all because they are on freehold land. This is about rangeland and unallocated crown land, where this principle of coexistence has been long in place. Indeed, the member for Cottesloe raised the question of the interaction between mining tenure and these large renewable energy projects supporting potential hydrogen export projects. That is a live issue and we deal with that regularly. I emphasise that when there might be approval for action, so mining activity, compensation would become relevant, not at the grant of the tenure. I think the example given in the briefing was of 100 000 hectares of land being used for carbon farming and 70 000 overlapping hectares that have been applied for as an exploration title. There would be no impact of that on the carbon farm because it would just be the grant of tenure.

If at a later stage the explorer wanted to do rock chipping of outcrops, there would again be no impact on the carbon farm because all they would be doing is harvesting rock chips from exposed rocks; they would not be clearing anything. The explorer might then want to do a drill hole, and would need to build a road and a drill pad. There would now be an impact and the mining company would need to pay compensation to the carbon farmer to the extent that it impacted on the carbon farm. If the road covered 10 hectares and the drill pad covered one hectare, that would be 11 hectares of compensation because that would be the impact from the mining activity. If the drill hit the mother lode and the miner now wanted to build a mine, that would obviously have a bigger impact. The compensation for the carbon farm would now be much larger because the mine would occupy a larger proportion of the land. Again, only the impact on the carbon-sequestration activity would be compensated and not the rest of it, because there would be no impact on the rest of the carbon-farming activity.

Compensation will be paid only when there is an actual impact. As happens now, compensation agreed to between a mining company and a pastoralist will be paid by the mining company and not by the government, as the government is not the beneficiary; apart from royalties, jobs and all the other benefits to the state, the government is not the direct investor and will not get a direct return. This legislation will simply reinforce the process of compensation.

An answer given in the other house to a question asked by Hon Colin de Grussa during the debate on 20 June states —

The preferred option for carbon farmers, and indeed pastoralists holding pastoral leases, is for there to be a compensation agreement negotiated between the carbon farmer and the mining applicant.

Of course, if there is not agreement, the warden can assist in that matter. The quote from the upper house goes on —

This was most recently recognised by Warden Cleary in a case she decided in December 2022 called *Telupac Holdings Pty Ltd v Hoyer*. To quote the warden —

... the objection of the pastoralist that there is the potential for damage or loss arising from mining operations, there being a general principle that such an objection will not stand in the way of mining activities, the resolution of that risk being rested in the compensation provisions under the *Mining Act*, and in the imposition of conditions.

That is paragraph 67 of the decision; the citation is 2022 WAMW 26.

The existing process for compensation is well understood in mining and pastoral circles. This legislation will underpin increased carbon-farming activity on the rangelands that otherwise would not be able to occur. It will reduce the conflict between mining and carbon farming because it will allow overlapping tenure. The question about the disturbance of carbon farming will be dealt with through compensation, which is an existing arrangement. If a pastoralist has existing infrastructure that needs to be moved for a mine, there is already a process in place to deal with those things. Of course, there are limits to how close a mining activity can be to a residence. All those things are already dealt with in legislation and will continue; there is no change to those. This is just about the grant of overlapping tenure.

Does the member for Central Wheatbelt have anything else that she wants to call out to me? Otherwise, I am happy to go into consideration in detail; it is entirely in the member's hands.

Ms M.J. Davies: No, I think that is it.

Mr W.J. JOHNSTON: Excellent.

I will finish by thanking the staff of the department for putting this together, and my office. I am pleased that the member for Cottesloe was so generous in his praise of the quality of the work being done by the Department of Mines, Industry Regulation and Safety. I will finish by pointing out to members that there is often a misunderstanding in the community about the role of DMIRS. People forget that it is the Department of Jobs, Tourism, Science and Innovation that promotes investment in Western Australia. The job of DMIRS is to regulate the mining industry, whether through the granting of tenure, regulation of health and safety, issuing of land-clearing permits or with mine planning, mine closures and mine rehabilitation. That is its job. It is a regulator. The department does that effectively. The planning process for mine closures in Western Australia is outstanding; it is seen as a model around the world. It is an example of the work that is done by these clever people. Of course, the Geological Survey of Western Australia plays an important role in supporting mining activity by unlocking the geological information of the state. An immensely talented group of people are down there. However, the principal job of DMIRS, as the name suggests, is to regulate the mining industry, such as through the granting of tenure. That is where its responsibilities lie.

I thank the opposition for its support of the bill and commend the bill to the house.

Question put and passed.

Bill read a second time.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [12.56 pm]: I move —

That the bill be now read a third time.

MS M.J. DAVIES (Central Wheatbelt) [12.57 pm]: I am conscious that we are about to consider another bill, so I will just give the member for Vasse five minutes to gather herself. There are a few things going on this morning.

I thank the minister for responding to the questions that were raised in the debate on the Mining Amendment Bill 2023 and for providing clarity about the Department of Mines, Industry Regulation and Safety's position and responsibilities. As I said in my contribution to the second reading debate, there were no show stoppers for us in this bill and we were provided with briefings on a number of occasions. I express my appreciation to the staff who made themselves available and for the minister's explanations on this matter. As I said, I had a number of questions from industry about how this bill would progress before the end of the year. I am sure that they will be pleased to have that clarity as a result of the bill's passage through both houses of Parliament.

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [12.57 pm] — in reply: I thank the member for Central Wheatbelt. I also thank the staff. Because the Mining Amendment Bill 2023 has already been through the upper house, it can now go to the Governor and become law, so we have acted very efficiently!

Question put and passed.

Bill read a third time and passed.

