

WESTERN AUSTRALIAN MINING AMENDMENT BILL 1985 — AN UPDATE

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The Mining Amendment Bill ('the Bill') was introduced into the W.A. Parliament by the Premier on 6 March, 1985 and given a second reading by the Minister for Minerals and Energy on the 13th March, 1985.

The Bill incorporates many of the recommendations contained in the Report of the Inquiry into Aspects of the Mining Act, 1983 ('Hunt Inquiry'). The most controversial aspect of the Bill was the proposed removal of the landowners' effective 'right of veto' on mining on private land used for agricultural purposes in the South West of the State.

The Bill successfully passed all stages in the Lower House. However when referred to the Legislative Council it encountered some opposition centred on the proposed changes to the landowners' right of veto.

SELECT COMMITTEE'S DELIBERATIONS

The matter was referred to a Select Committee of the Legislative Council, chaired by the Hon. Ian Medcalf. The Committee tabled its report on 22 October, 1985.

The three significant recommendations brought forward by the Committee's report were:

- (i) that for purposes of the veto the exploration and mining phases be separated with the farmer retaining his veto over the mining phase but being required to negotiate with the miner in respect of the exploration phase. A period of 6 months should be allowed within which time the farmer could indicate the terms upon which his consent to exploration only would be granted. If his consent was not forthcoming within that time then the question should be referred to a Tribunal which would decide whether a licence for exploration only should be granted;
- (ii) standard compensation terms should be included in the legislation. Amendments could be made, if necessary, by the Tribunal after hearing submissions from the parties; and
- (iii) against the principle of reaffirming that minerals in the ground were the property of the Crown the Committee expressed strong criticism of current practice for determining compensation to landowners on a basis akin to royalties for minerals extracted. To quote the Committee: 'Royalties should be outlawed as this clearly implies that the landowner or occupier is seeking to profit from the Crown's minerals'. In this context the Committee also recommended that all compensation agreements be registered with the Department of Mines.

GOVERNMENT'S ACTION

In response to the Committee's recommendations the Government has decided to defer for the time being any alteration to the landowner's current right of veto and to proceed with the balance of the Bill so that it may pass all stages prior to Parliamentary recess at the end of this year.

OTHER ASPECTS

The other significant aspects of the Bill which do not appear to be contentious and are likely to pass all Parliamentary stages are the following:

1. The existing Special Prospecting Licence and Special Mining Lease will be renamed 'Special Gold Prospecting Licence' and 'Special Gold Mining Lease' and will apply only to gold prospecting and mining.
2. The holder of a Permit to Enter will be liable to compensate the landowner or occupier for any damage caused by him in exercising his rights under the Permit to Enter.
3. The holder of a Mining Lease will be able to apply for exemption from expenditure conditions and an exemption may be permitted where:
 - (a) economic or marketing problems currently render mining not viable;
 - (b) political, environmental or other conditions render mining impracticable; and
 - (c) several tenements comprise one project and the expenditure on one or more of the tenements would be sufficient if apportioned over all of the tenements.
4. An option of renewal of the Mining Lease for a further term of 21 years will be conferred upon the holder.
5. Dealings in equitable interests in mining tenements such as Farmins and Exploration Agreements will be expressly recognized and provision made for their registration.
6. An instrument creating assigning, affecting or otherwise dealing with a legal or equitable interest in a mining tenement will require registration by the Department of Mines. Any instrument requiring registration will not be effectual to pass any legal or equitable interest in or charge, encumber or otherwise affect or deal with an interest in a mining tenement unless it is registered.
7. The prohibition on transfer of Exploration Licences within the first year of grant will be extended to any other dealings in connection with legal or equitable interests in Exploration Licences.

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