MINING AMENDMENT (IMPROVEMENTS ON LAND) BILL 2008

Page: 9800

Bill introduced on motion by Ms Lylea McMahon, on behalf of Ms Verity Firth.

Agreement in Principle

Ms LYLEA McMAHON (Shellharbour—Parliamentary Secretary) [5.10 p.m.]: I move:

That this bill be now agreed to in principle.

The Mining Amendment (Improvements on Land) Bill 2008 contains important amendments to the Mining Act 1992 needed to help secure the future benefits of mining in this State. Mining is a significant and important industry in New South Wales. In 2007-08 it contributed production worth $14.3 billion. It provided direct employment for about 20,000 people and indirect employment for at least three times this number. The Mining Act 1992 establishes the regulatory framework for exploration and production of minerals. It establishes a system of licences and titles that confer permission to undertake exploration and to mine Crown-owned mineral resources.

The system of licences and titles is particularly important because these authorities underpin the investment required for the exploration and production of minerals. The need for this bill follows a Court of Appeal judgement handed down on 8 August 2008 in the case of *Ulan Coal Mines v The Minister for Mineral Resources and Moolarben Coal Mines Limited*. The judgement considered the operation of section 62 of the Mining Act. Section 62 prevents a mining lease from being granted over land on which certain dwellings, gardens and improvements are located without the consent of the landholder. The bill only deals with issues that arise from this judgement regarding consideration of improvements under the Mining Act.

It is therefore appropriate to explain how the current provisions of the Mining Act have been used to identify improvements. Before the court's decision the Minister relied on the claim and objection process in clauses 23A and 23B of schedule 1 to identify improvements that would prevent a lease from being granted under section 62. This process operated by requiring the applicant for a mining lease to notify landholders of the application. Landholders then had 28 days from the date of the notice to make a claim that their land contains valuable works or structures that would trigger the section 62 prohibition. The mining lease applicant could object to such a claim. In this case the matter was referred to the mining warden for determination.

Claims for improvements where there was no objection by the mining lease applicant or that were determined to be valuable works or structures by the mining warden then triggered the section 62 prohibition. The Department of Primary Industries, the Minister, and landholders and lease applicants relied on this process to provide a clear and final determination regarding the existence of improvements. Mining leases were then granted on this basis. This interpretation of the Act ensured that once a lease had been granted on the land work could commence without fear of further objection or litigation. The Court of Appeal found that the schedule 1 claim process is optional for landholders.

This has the effect that failure to make a claim within the 28-day period does not unequivocally determine the existence of improvements for the purposes of section 62. A relevant improvement may exist on land over which a lease has been granted even if the improvement has not been identified by the operation of schedule 1 to the Act. This in turn raises the possibility that additional claims or litigation may be brought with respect to existing leases, effectively casting doubt over the validity of these titles. The Court of Appeal decision also delays the consideration and granting of new leases. This is because further work is now required to determine the existence of improvements on land affected by mining lease applications.

The benefits that the mining industry provides to New South Wales are clearly placed at risk because of uncertainty about the validity of mining leases or other authorities issued under the Mining Act. The Mining Amendment (Improvements on Land) Bill 2008 simply amends the Mining Act to ensure the process set out in the legislation to deal with improvements reflects the existing practice in relation to mining lease applications. This amendment will provide certainty for mineral exploration and mining in this State.

I turn now to the specific amendments in the bill. Improvements that prevent the granting of a mining lease under section 62 are now defined in the dictionary to the Act. The new definition of significant improvement uses the existing wording from section 62 (1) (c). The use of the phrase "significant improvement" reflects the fact that

works or structures must be both substantial and valuable to qualify as an improvement that can prevent mining. This definition is consistent with the 2000 Court of Appeal decision in *Kayuga Coal Pty Limited v John Earl Ducey and Ors*. The key feature of this bill is the amendment to section 62 (1) (c). The amendment now makes a direct link between the schedule 1 claim and objection process and the identification of improvements for the purposes of section 62 (1), that is, improvements that have the potential to prevent a mining lease from being granted.

The bill does not create any new arrangements or procedures in addition to those that were followed by the Department of Primary Industries, miners and landholders before the Court of Appeal decision. The bill restores certainty to existing mining titles in New South Wales that were granted in accordance with the process in place before the Court of Appeal decision and clarifies the way that section 62 (1) applies to pending lease applications. It provides that where the 28-day period for lodging a claim regarding an improvement expired before the Court of Appeal decision, that is, the claim period expired on or before 7 August 2008, then the absence of such a claim is taken to constitute the landholder's consent for the purposes of issuing a mining lease under section 62 of the Act as it existed at that time.

This means all existing leases are deemed to have been granted in compliance with section 62 of the Act and their validity cannot be challenged on this basis. It also means that pending applications where the claim period was completed before the Ulan decision can be determined on the same basis, that is, the absence of a claim is taken to constitute the owner's consent to the granting of a lease over the land. In the case of pending applications where any part of the 28-day claim period falls on or between 8 August 2008 and the commencement of this amendment bill, the full 28-day claim period will start again when the amendments to the Act commence. Restarting the claim period in this way avoids unfairly penalising any landholder who elected in good faith not to lodge a claim based on the Court of Appeal decision. For all other pending applications, the amendments introduced by the bill will regulate the process for identifying the existence of improvements on land.

The bill does not deal with the issues identified by the Court of Appeal regarding interaction between the Mining Act 1992 and section 75V of the Environmental Planning and Assessment Act 1979. On this point I note that the member for Pittwater has previously raised concerns about the interaction of mining and planning legislation during debate on the Mining Amendment Bill 2008. Accordingly, I am sure he will be interested to know that the Court of Appeal judgement means that, while section 75V of the Environmental Planning and Assessment Act 1979 overrides certain discretionary provisions in the Mining Act, it does not override non-discretionary provisions such as those in section 62.

I am sure the member for Pittwater will also welcome plans by the New South Wales Department of Primary Industries to undertake a comprehensive consultation process with relevant agencies and stakeholders to improve the relationship between mining and planning legislation. It is intended that the consultation will get underway later this year or early next year. It will canvass arrangements to resolve conflicting land use issues during the assessment and approval process and to properly compensate those who are affected by the grant of a mining lease.

Mining is clearly a major source of income and jobs for the community and a significant generator of wealth for this State. The investment needed to secure these benefits will only occur if there is confidence that arrangements and titles that authorise mining remain secure. The bill contains sensible and practical amendments to address an issue that otherwise erodes confidence in the validity of a mining lease or other authority issued under the Mining Act. The bill restores certainty that is vital for securing future investment in New South Wales, and it does this without unnecessarily interfering with existing arrangements. I commend the bill to the House.