MINING AMENDMENT BILL 2008

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Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.25 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill be now read a third time.

The shadow Minister raised a number of issues during the debate in the other place. Let me start by outlining my response to those issues. First, the shadow Minister asserted that the bill increases duplication. I can state that in fact it will lead to reduced duplication for the mining industry. The amendments do not increase the number of agencies involved in any approval, nor do they increase the number of approvals required. The bill allows assessment processes under the Mining Act to recognise other agencies' assessment processes; it does not repeat those processes. That means that exploration and mining companies will not have to prepare the same material for a number of agencies leading to reduced duplication and improved integration.

Second, the shadow Minister raised the mining industry's concern about the possibility of multiple prosecutions. It is important to note that the Government is not intending to conduct multiple prosecutions in relation to any one incident. Rather, prosecutions will be coordinated across agencies wherever possible. However, different agencies may undertake enforcement actions, such as remedial notices for the same incident to ensure different impacts are remedied. This is entirely appropriate. The process for dealing with prosecutions will be further set out in an enforcement policy and guidelines. The Minister is committed to delivering those guidelines and other supporting materials by the end of 2008. This has been communicated to the industry through correspondence between the Department of Primary Industries and the New South Wales Minerals Council.

Third, the shadow Minister has expressed confusion as to how the principles of ecologically sustainable development will apply to the mining industry. The Government is committed to ecologically sustainable development in all industries. The bill supports this commitment in relation to the mining industry. The integrated approval process is the primary means of achieving ecologically sustainable development. However, the Mining Act as a whole contributes to achieving this objective, from assessments and approvals through to management and regulation of exploration and mining activities. The bill requires decision makers to have regard to the impacts associated with the mining activity itself. The bill recognises that further approvals and controls regulate the use of resources once extracted from the mine site.

Fourth, the shadow Minister sought more clarification of provisions relating to regulation of off-title impacts from mining. I am not sure how much further clarification the shadow Minister needs. A rehabilitation and environmental management plan will be the primary instrument used to manage potential off-title impacts and the Department of Primary Industries has approved the plan. The department will have the power to issue directions to a titleholder to remediate damage caused outside title areas.

The shadow Minister also asked what would constitute a "reasonable belief" by an inspector that illegal mining activities are taking place. Guidelines will be developed in consultation with key stakeholders to set out clearly the circumstances in which these compliance and enforcement powers will be used. These guidelines will be consistent with the substantial body of existing case law on this issue. The shadow Minister raised several other issues that were dealt with in reply in the other place. I seek leave to have the remainder of the second reading speech incorporated into *Hansard.*

Leave granted.

The Mining Amendment Bill will put in place a number of important amendments to the Mining Act. These amendments will ensure the Act is consistent with contemporary environmental standards, community expectations and recent developments in the New South Wales environmental regulatory framework. The amendments are the result of a long and extensive period of consultation and development and will greatly improve the regulation of mining in New South Wales.

The Mining Act has several important roles. It sets up a system of licences and titles to enable exploration for, and production of, minerals in New South Wales.

These "authorities", as they are also called, give the holder of the authority permission to mine Crown-owned mineral

resources.

The Mining Act also provides that authority holders must meet certain operational and environmental requirements.

The environmental provisions of the Act work in conjunction with approvals under the Environmental Planning and Assessment Act and the Protection of the Environment Operations Act.

The current environmental provisions of the Mining Act have not been updated for some time.

Therefore, one of the key aims of the Mining Amendment Bill is to amend the Act so that it is consistent with other environmental legislation that applies to the mining industry.

Mining is a significant and important industry in New South Wales. It contributes over $12 billion to the New South Wales economy each year, and directly and indirectly employs over 75,000 people in this State.

In 2006, royalties from all minerals, including coal, paid under the Mining Act totalled over half a billion dollars. Mining is clearly a major source of income for the State.

At the same time, mining operations must be managed to minimise long-term impacts on the environment and communities.

The Mining Amendment bill will reform regulation of the mining industry in three main ways.

First, as mentioned already, it will update environmental regulation of the mining industry so that it is consistent with contemporary environmental standards. A significant number of the provisions in the bill relate to this issue and I will discuss these in detail.

Second, the amendments will improve the enforcement provisions to ensure that companies that do the wrong thing can be appropriately penalised.

Third, the amendments will improve the overall administration of mining in New South Wales.

Turning first to the proposed amendments relating to environmental regulation of the mining industry.

The bill will introduce an objects clause into the Mining Act. The objects outline what the Act is intended to achieve.

The amendments will identify that encouraging ecologically sustainable development in the mining industry is a key object of the Act.

The Government is committed to developing an approval regime for mining and exploration that effectively integrates economic and environmental considerations.

This integrated approval process is the primary means of achieving ecologically sustainable development.

The amendments make it clear that the environmental impacts associated with the exploration and mining of minerals will be assessed prior to these activities being approved and carried out.

This assessment will take place in an integrated fashion, to reduce red tape for industry. Aspects of the assessment may be approved under the Mining Act or may recognise another environmental approval process such as a Department of Planning approval that has been or will be undertaken.

The assessment and approval process will have regard to the needs of both present and future generations. It will take into account, not only the impacts that such activities have on the natural environment, but also impacts on the built environment and communities.

The bill requires decision makers to have regard to the impacts associated with the mining activity itself.

The bill recognises that further approvals and controls regulate the use of resources once extracted from the mine site

This is consistent with the Government's commitment to reducing red tape by streamlining the assessment process while still ensuring that environmental impacts are appropriately assessed and considered.

The Mining Act seeks to deliver a balance between development of minerals for the economic benefit of the people of New South Wales and appropriate management of the environmental impacts of mining. The new objects clause clearly reflects this balance.

The bill also introduces a number of key changes to definitions in the Act.

The bill broadens the definition of "environment" in the Act. It adopts the definition of "environment" that is used in the Environmental Planning and Assessment Act 1979.

This definition takes into account "all aspects of the surroundings of humans" and therefore allows consideration of both environmental and social impacts.

This definition is intended to be a broad definition, covering all aspects of the natural environment, including flora,

fauna, land, surface water and groundwater, as well as all aspects of the built environment and any social impacts of mining, both negative and positive.

Guidelines will also be prepared to further define the requirements for environmental consideration.

These will also assist industry by identifying the supporting documentation that must be provided when lodging applications.

The new objects clause identifies the important role that the Mining Act plays in ensuring that land and water affected by mining is appropriately rehabilitated.

The amendments will introduce a definition of "rehabilitation" to provide additional guidance in achieving this object. Rehabilitation will be broadly defined as a process of treating disturbed land and water (including groundwater) and will allow rehabilitation for a range of post-mining uses.

The Act currently requires that mining activities (other than for privately owned minerals) must be undertaken in accordance with a mining authority issued under the Mining Act. These authorities include exploration licences and mining leases.

Authorities can be issued subject to conditions that regulate impacts from mining during development, operation and decommissioning of mines.

Certain environmental and rehabilitation conditions will also be able to be varied during the course of mining.

This will mean conditions can be updated to reflect improvements in rehabilitation techniques over time and changes to requirements under other legislation.

Breach of a condition of title will now be a strict liability offence, consistent with other environmental legislation in New South Wales.

The bill will introduce a number of new standard title conditions. One of the new standard conditions of title will be the requirement to prepare a "Rehabilitation and Environmental Management Plan."

This plan will replace the Mining Operations Plans that mines are currently required to prepare.

The Rehabilitation and Environmental Management Plan will be prepared by the titleholder and will identify how operations are to be carried out on a mine site. Further, it will show how the mine will manage rehabilitation of areas disturbed by mining.

The plan will be reviewed and re-assessed at least every seven years, to ensure that rehabilitation and environmental management practices take account of changing circumstances.

The plan will be the primary management tool used by the Government to ensure that mining operations are carried out in a manner that will enable effective rehabilitation of disturbed land and water. Accordingly, compliance with the plan will be closely monitored.

The bill will also enable conditions to be imposed to require titleholders to provide a regular Environmental Management Report. This report will demonstrate how the mine is delivering against the Rehabilitation and Environmental Management Plan.

This amendment facilitates a whole of Government approach to compliance reporting by mirroring other statutory reporting requirements. This will enable a move towards a single report that satisfies the requirements of a number of regulatory agencies.

The bill strengthens the requirements for environmental management even further. It introduces new provisions to enable regular mandatory audits of mining operations to be carried out by accredited auditors.

Again, these requirements are consistent with requirements under other environmental protection legislation and will enable a coordinated Government approach to auditing.

There will also be provision for mining titleholders to carry out voluntary audits of their operations to enable them to monitor their compliance with regulatory obligations and implement any necessary changes. These voluntary audits will be protected documents. This approach is consistent with other environmental legislation.

With the introduction of consistent audit provisions, the New South Wales Government is reducing red tape for industry.

Securities provide an important protection for the community to make sure that money is available to allow all mines to be rehabilitated once mining has finished, even if a company defaults on its obligations.

Mining titleholders are required to provide security to cover the estimated costs of rehabilitating the mine site.

Securities can be used by Government to undertake rehabilitation where the mine operator has abandoned the mine before meeting its rehabilitation obligations.

The provisions relating to securities are currently scattered throughout the Mining Act. The bill will introduce a new Part

in the Act that will bring together all the existing provisions relating to securities.

The amendments will also clarify a number of rules regarding the provision, management and use of securities under the Act.

The environmental management provisions under the Mining Act currently apply only to the mining title area.

This means that the Department of Primary Industries has limited authority to regulate areas affected by mining operations outside the title area.

The bill will make it clear that the environmental management provisions under the Act apply to areas outside the mining title, which are disturbed by mining operations carried out on the title area.

This is particularly relevant where a subsurface lease for underground coal mining may impact on the surface of the land.

Rehabilitation and Environmental Management Plans will be the primary instrument used to manage potential off title impacts. The plan is approved by the Department of Primary Industries. The Department will have the power to issue directions to a titleholder to remediate damage caused outside title areas.

It will be possible to require the payment of securities by the titleholder to cover the costs of rehabilitation of off-title impacts.

A practice has developed in the mining industry of subleasing parts of mining leases. This generally occurs in relation to coal mining, where a coal seam overlaps two adjacent mining titles and it is more efficient to extract the resource by accessing the adjoining lease area.

The bill will introduce amendments to clarify the arrangements for subleasing mining titles. A sublease register will be set up, and subleases will need to be approved by the Minister for Mineral Resources before they can be registered.

Once a sublease is registered, all leaseholder obligations under the Mining Act will also apply to the sublessee, and can be enforced against the sublessee.

If a sublease is not registered, the primary titleholder will be solely liable for a breach of title conditions, even where the sublessee caused the breach.

These amendments will ensure that mining carried out under private sublease arrangements is appropriately regulated.

Most minerals are owned by the Crown. However, some land titles give the landowner title to certain minerals. These are called "privately owned minerals."

Where privately owned minerals are mined, royalty is payable to the landowner.

At present, private mineral owners seeking to mine their minerals do not require a mining title and instead must only notify the department of their intention to mine. These operations are subject to some controls specified in the Regulations.

Despite the potential to have significant environmental impacts, private mining is generally not subject to the same environmental management requirements as other mining operations.

The bill will change this by introducing new types of mining titles specifically for land owners who want to explore for and mine their privately owned minerals.

These mining titles will be subject to the same environmental requirements as other mining titles.

Requirements will include preparation of a Rehabilitation and Environmental Management Plan, provision of security, and preparation of regular Environmental Management Reports.

These amendments will also assist private mineral owners. The amendments will provide private mineral owners with greater certainty regarding their ability to access and mine their mineral resources.

The new arrangements will be phased in for existing private mines over 12 months from the commencement of the Act.

As I have outlined, the bill introduces a number of important improvements to the environmental regulation of the mining industry. These provisions are aimed at minimising impacts on the environment and streamlining processes without adding unnecessarily to the regulatory burden on the industry.

The amendments also seek to minimise the risk of residual rehabilitation liabilities from abandoned mines. These days, the payment of security is the means of providing protection against this risk. However, environmental regulation and requirements to pay securities have not always been as comprehensive as they are now.

In New South Wales, there are a number of sites where mines have been abandoned in a partially rehabilitated state.

The Government already provides around $1.8 million every year for a Derelict Mines Program. This money is used to

undertake rehabilitation activities on abandoned mine sites to minimise threats to public safety and the environment.

The bill introduces a statutory basis for this program, and establishes a Derelict Mines Fund. The fund will incorporate monies provided by the Government for the Derelict Mines Program. As well, it will incorporate certain forfeited securities and funds from the sale of unclaimed plant and equipment.

In summary, the bill introduces important reforms to the environmental regulation of exploration and mining in New South Wales.

These reforms improve consistency with other environmental legislation that applies to mining. The reforms also recognise the increased community expectations for environmental management of mining.

I turn now to the second main area of reforms. These relate to the enforcement of the requirements under the Mining Act. The main changes to the enforcement provisions aim to bring the Act into line with other New South Wales environmental legislation, particularly the Protection of the Environment Operations Act and the Environmental Planning and Assessment Act.

The Director General of the Department of Primary Industries and inspectors appointed under the Mining Act will now be able to issue directions to remedy a breach of any condition of title.

This will help to manage risks to the environment by identifying potential problems early and working with titleholders to overcome these problems.

The Director General will also be able to suspend operations at a mine where the titleholder has failed to comply with the conditions of title, or directions, or has failed to pay royalties, maintain security or comply with landholder access or compensation arrangements.

Inspectors will have a broader range of powers to enter mining title areas and to collect documents and information.

Inspectors will also have powers to question people and enter land that is not subject to a mining title where the inspector reasonably suspects that illegal mining activities are taking place or where there has been a serious breach of an environmental protection provision in the Act.

These powers will facilitate the collection of evidence where there has been a breach of the Act. More importantly, these powers will enable inspectors to better understand the nature of a breach of the Act and issue appropriate remedial directions to minimise any environmental impacts from the breach.

Guidelines will be developed in consultation with key stakeholders to set out clearly the circumstances in which these compliance and enforcement powers will be used.

The investigation powers are consistent with those set out in other environmental protection legislation. This will facilitate a whole of Government approach to enforcement of environmental management requirements.

The administrative arrangements associated with the implementation of these amendments will reduce duplication of Government processes.

The time limits in which prosecutions must be commenced will be extended from 12 months to 3 years for serious offences. This will provide inspectors with enough time to collect the required evidence, once the Department of Primary Industries becomes aware of a breach of the Act.

As well, directors and managers of mining companies will be deemed to be liable for offences committed by the mining company, subject to a due diligence defence.

This amendment reinforces the Government's view that companies and managers must take environmental management seriously.

Directors and managers must take appropriate steps to ensure that the companies under their direction and management are operating in an environmentally responsible manner.

The bill also introduces a broader range of court orders for convictions under the Act similar to those available in relation to offences under other New South Wales environmental protection legislation.

While the Act will strengthen the enforcement powers available in the event of the breach, the Government is aware of the importance of other non-punitive enforcement actions. These non-punitive actions include warning letters and remedial advice.

The amendments will complement these non-punitive enforcement measures by providing the State with a wider range of enforcement options that can be applied based on the seriousness of the breach.

Turning from the enforcement proposals, I will now outline a number of amendments that will improve the administration of the Mining Act.

The Government is committed to reducing red tape for industry, and a number of these amendments will simplify requirements for industry.

The bill will introduce amendments to better integrate the operations of the Mining Act and the Petroleum (Onshore) Act with the Environmental Planning and Assessment Act.

The bill updates the definition of development consent in the mining legislation to include approvals under Part 3A of the Environmental Planning and Assessment Act.

The bill also removes requirements to duplicate assessments already undertaken pursuant to the assessment and approval process under the Environmental Planning and Assessment Act.

The amendments will enable conditions of authorisations to be varied to ensure consistency with planning approvals where these are varied during the term of the authorisation. Exploration activities will be able to be approved in stages.

Exploration activities that have minimal environmental impact will be able to be approved from the date of grant of an exploration licence.

However, further approvals will be required before undertaking more intensive exploration activities. The aim of the amendments is to provide more certainty to the industry and the community about the extent of exploration proposed.

This staged approval process will streamline the assessment material required to comply with Part 5 of the Environmental Planning and Assessment Act so that it is commensurate with the scale of the activity being proposed. This will improve the efficiency of the exploration approval process.

A further administrative amendment will provide for a statutory fund to be set up to centrally manage compensation payments to landholders in the opal mining area of Lightning Ridge. This will not significantly alter the existing administrative arrangements, but will recognise these arrangements in the Act.

The landholder can seek a group assessment by the mining warden and collect compensation payments in accordance with this assessment from the statutory fund.

These amendments aim to reduce red tape and improve the administration of the Act. They are therefore important amendments.

The Government has undertaken an extensive process of consultation on the amendments included in this bill over a period of about three years.

In 2005, the Government released a position paper for public comment that outlined the proposals in detail.

Thirty-three submissions were received from industry and community stakeholders. The majority of submissions strongly supported the proposals, recognising the need for consistent and contemporary legislation to regulate environmental impacts of mining.

The bill makes improvements in the area of environmental management of exploration and mining. It strengthens the enforcement provisions in the Act, to provide a strong basis for implementing the environmental requirements.

It should be recognised that most mining operations do a good job of managing their environmental impacts.

However, these amendments will ensure that all mines meet contemporary environmental standards and that, where mining operations do the wrong thing, there is scope to fix the problem and, where appropriate, penalise offending parties.

This legislation is sensible and practical.

It will improve environmental management of mining in New South Wales without adding unnecessarily to the regulatory burden for industry. The legislation has broad stakeholder support.

I commend the bill to the House.