WESTERN AUSTRALIA*

LEGISLATION

MINES SAFETY AND INSPECTION BILL 1994

The *Mines Safety and Inspection Bill* 1994 (WA) (the "Bill") will repeal the *Mines Regulation Act* 1946 (WA) (the "existing Act"). The aim of the Bill, as expressed in the preamble, is to consolidate and amend the law relating to the safety of mines and mining operations and the inspection and regulation of mines, mining operations and plant and substances supplied to or used at mines, as well as to promote and improve the health, safety and welfare of persons at mines and for connected purposes.

The Bill redrafts and reorganises the provisions of the existing Act. The main difference between the Bill and the existing Act is that the Bill will apply to exploration and prospecting, not just mining operations as does the existing Act.

The Bill was introduced to Parliament on 22 June 1994. It will not be proclaimed until new regulations have been prepared. New regulations are being drafted but not yet publicly available. The new regime is expected to become law as from 1 January 1995.

Schedule 1 of the Bill provides for the transition from the existing Act. In general, all persons, things and circumstances appointed, created or established under the existing Act which have effect immediately before the commencement of the Bill are to have the same status, operation and effect for the purposes of the Bill (except where inconsistent with the Bill).

Application

The definition of "mine" is replaced with a new definition of "mining operations". This phrase incorporates the definition of "mining operations" as under the *Mining Act* 1978 (WA) and includes residential and recreational facilities on a mining tenement and support facilities such as canteens and administration offices as well as exploration activities. Most of the exclusions under the old definition of "mine" still apply.

General Duties Relating to Occupational Health, Welfare and Safety

The duties of employers in Pt 2 of the Bill are substantially the same as in the existing Act, except that an employer who contravenes any of the duties commits an offence and is liable to pay a fine of $100,000 for a corporation or $10,000 for an individual, effectively doubling the existing maximum penalties.

The duties of employees are also substantially the same as in the existing Act. An additional duty requires an underground worker on leaving work at the end of a shift to report to the person in immediate authority on the site of that part of the works where the employee has been working.

The provisions relating to the reporting of dangerous situations or occurrences, the duties of employers and self-employed persons, principal employers and managers and manufacturers are also substantially the same as under the existing Act.

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Part 7 of the Bill imposes a number of specific duties upon employers and managers including the requirement that all employers on a mine site must establish and maintain a system for the surveillance of the health of their employees, provide information to the State Mining Engineer on the surveillance of the health of their employees and, where a person suffers injury in an accident at a mine and is disabled as a consequence in a way which prevents that person from pursuing her or his ordinary occupation, provide notice of this occurrence to the district inspector and the relevant trade union (if requested). The manager must also record certain of these occurrences in the record book and report potentially serious occurrences, and the accident location must not be disturbed.

Administration of the Act

Division 1 of Pt 3 of the Act provides for the appointment of district inspectors, special inspectors, employees' inspectors (this being substantially the same as the workmen's inspectors) and assistant inspectors.

Division 2 concerns inspections. Inspectors' powers are effectively the same as under the existing Act, although certain powers have been expanded or clarified. Clauses relating to the liaison between employees, inspectors and health and safety representatives and the use and misuse of information by inspectors and assistant inspectors also substantially reflect the existing Act.

Procedures concerning notifications and directions relating to inspectors are substantially the same as under the existing Act, except that there are penalties of $100,000 for a corporation and $10,000 for an individual for non-compliance. The Bill clarifies certain other duties owed by a person, namely: no person shall fail, without reasonable excuse, to comply with the lawful request of, or answer any question given to them by, an inspector; a person must not use threatening or insulting language to an inspector; a person at the mine must not hinder, obstruct or interfere with an inspector lawfully acting in the performance of her or his functions; and employers and mine managers must provide an inspector with the means of making an entry, inspection, examination or inquiry at the mine.

Management of Mine

Division 1 of Pt 1 of the Bill adds to the duties of employers and managers. Thus, in addition to the already existing obligations, principal employers must: provide their name and address in writing to the region's District Inspector before mining operations commence; where the registered manager is to control and supervise the mine in accordance with a commute schedule, appoint an alternate registered manager and inform the District Inspector of the appointment; ensure that at all times there is a registered manager appointed for the mine; if a mine manager requests, confirm in writing any instruction given by or on behalf of the principal employer to the mine manager; not hinder the mine manager in the performance of a duty; ensure that in every mine employing any person underground, an underground manager and alternate manager is appointed; and ensure that such financial or other arrangements are made as are necessary to ensure that the mine is planned, laid out, managed and worked in accordance with relevant statutory provisions.

The Bill provides that a registered manager need not be appointed if mining operations are carried out by a syndicate of persons so that no person is employed

at the mine, or if mining operations consist only of exploration (unless a State Mining Engineer directs that such an appointment must be made).

Broad duties and responsibility of the manager of a mine are also provided for in the Bill. Essentially, the mine manager has the management and control of the mine subject to any instructions given to the manager by or on behalf of the principal employer. The Bill also includes clauses relating to the situation where more than one certified manager may be required, the requirement that managers notify assumption of control, the commencement or suspension of mining and the fact that it is an offence to work a mine without an appointed manager. Any person appointed by a mine manager to perform duties must be appointed in writing and the principal employer or manager must supply that person with a written summary of responsibilities and duties. Further, a registered manager must appoint competent persons to assist the manager in the performance of her or his duties. The fact and nature of each appointment must be recorded in the record book and the person appointed must acknowledge the fact within seven days.

The Bill also requires an exploration manager to inform the senior inspector for the region as to the location, scope and nature of the exploration operations. This person must take steps to liaise effectively with the district inspector for the region where the exploration activity is taking place as to their location, nature and scope.

Miscellaneous

Divisions 1 to 3 of Pt 5 of the Bill, which deal with health and safety representatives, committees and discrimination, are substantially the same as under the existing Act. The Bill also contains no important alteration of the resolution of health, safety and welfare issues.

However, Pt 8 of the Bill makes provision for the establishment of the mine's Occupation Health and Safety Advisory Board to advise the Minister on occupational health, safety and welfare for the mining industry. Specifically, the functions of this newly established board are to inquire into and report upon health, safety or welfare matters referred to it by the Minister; make recommendations to the Minister as to laws and regulations in this area; recommend the adoption of codes of practice, guidelines and standards for the purpose of assisting employers and other relevant persons; advise the Minister on relevant education, training and publications; and liaise with the Occupational Health, Safety and Welfare Commission to co-ordinate related functions and maintain parallel standards.

Where a penalty is not specifically provided for an individual offence, a person who commits an offence against the Bill is liable to a fine of $25,000 (corporation) or $5,000 (individual). Each proceeding must be commenced within 12 months of the offence being committed.

MINING AMENDMENT REGULATIONS (NO 2) 1994

These regulations amend the second schedule to the *Mining Regulations* 1981 by providing that the cost of an exploration licence is now $400 for one block and $824 for more than one block; and by increasing the cost of registration of certain dealings.

These regulations came into operation on 1 July 1994.

MINING AMENDMENT REGULATIONS (NO 3) 1994

These regulations amend regulation 23H of the *Mining Regulations* 1981 to refer to the Australasian Code for Reporting of Identified Mineral Resources and Ore Reserves as published, not by the Australasian Institute of Mining and Metallurgy and the Australian Industry Council in September 1992, but by the Joint Committee of the Australasian Institute of Mining and Metallurgy, Australian Institute of Geoscientists and Australian Mining Industry Council in September 1992.

These regulations came into operation on 9 September 1994.

PETROLEUM ROYALTIES LEGISLATION AMENDMENT ACT 1994

This Act amends the *Petroleum Act* 1987 and the *Petroleum (Submerged Lands) Act* 1982 by substituting a new definition of "royalty value" that takes account of "federal duty" as defined. It was assented to on 15 April 1994.

PETROLEUM AMENDMENT REGULATIONS 1994

These insert reg 8 in the *Petroleum Regulation* 1987, which provides that certain imposts are excluded from the new definition of "federal duty" in s 144A(3) of the *Petroleum Act* 1987 (insert by the *Petroleum Royalties Legislation Amendment Act* 1994). Excluded imposts include all taxes, duties, fees, levies and charges already included in the purchase price of goods or services purchased by the permittee, holder of a drilling reservation, lessee or licensee; departure tax, fringe benefits tax, deductions from salary or wages or prescribed payments as required under the *Income Tax Assessment Act* 1936, customs import duty, aircraft landing charges, training guarantee charges, superannuation guarantee charges and contributions under Pt 4.2 of the *Higher Education Funding Act* 1988.

These regulations came into operation on 20 May 1994.

PETROLEUM (SUBMERGED LANDS) AMENDMENT REGULATIONS 1994

These regulations make similar amendments to the *Petroleum (Submerged Lands) Regulations* 1990 as are made to the *Petroleum Regulations* 1987 described above.

These regulations came into operation on 20 May 1994.

SUPREME COURT DECISIONS

EX PARTE NOVA RESOURCES NL; EX PARTE GILES

The Warden's decisions in *Warwick John Flint v Nova Resources NL*[1] and *David Barry Giles v William James McLarty*[2] are both the subject of prerogative writ proceedings before the Supreme Court. The *Nova* case will be heard in November 1994. No hearing date has yet been set for the *Giles* case.

1. (1994) 13 *AMPLA Bulletin* 65.
2. (1994) 13 *AMPLA Bulletin* 116.

WARDEN'S COURT DECISIONS

PETER PAUL SPITALNY v TRENT PATERSON STEHN
(Coolgardie Warden's Court, 10 May 1994)

In this case the plaintiff applied to the Warden for the forfeiture of the defendant's mining lease on the ground that expenditure conditions were not being met by the defendant pursuant to s 98(1) of the *Mining Act* 1978 (WA). The Warden held that the plaintiff had not provided sufficient evidence to satisfy him that there had been no expenditure carried out on the relevant mining lease. The Warden made the point that it is not sufficient that the plaintiff genuinely believe he could do a better job than the defendant in working the tenement.

ERNEST RICHARD JOHN GALLAGHER v WARWICK JOHN FLINT
(Perth Warden's Court, 15 June 1994)

On 19 August 1990 an exploration licence was granted to Sunny Star Pty Ltd. On 16 August 1993 a partial surrender of this exploration licence was lodged. On 17 August 1993 Mr Gallagher (the "Applicant") marked out four prospecting licences covering the surrendered area, which he subsequently applied for. Objections to the applications were lodged by Mr Flint (the "Objector") on 18 October 1993. Despite these objections being 18 days late, the Warden allowed their lodgment.

The objections alleged that the applications for the prospecting licences breached s 69 of the *Mining Act* 1978 (WA).

The Warden held that s 69 contains two prohibitions; the first prohibiting application by the original licence holder of a surrendered exploration licence, or someone on her or his behalf, and the second prohibiting application by someone who had an interest in the surrendered exploration licence, or someone on that person's behalf. Here the second prohibition was relevant, since the Applicant had previously been a director of Sunny Star Pty Ltd. The issue was whether it could be said that the Applicant, as director of Sunny Star Pty Ltd, had an interest in the prior exploration licence.

The Warden held that there is a distinction between an interest in the holder of the prior tenement, and an interest in the prior tenement itself. He considered that the second prohibition in s 69 related to the tenement itself, and relied upon the decision of Warden Reynolds SM in *New Holland Mining NL v Francis and Photios*[3] to conclude that the objections should be dismissed on the basis that a director of a company does not have an interest in the property of that company.

MICHAEL JOHN LYNCH v POSGOLD (BIG BELL) PTY LTD
(Perth Warden's Court, 9 September 1994)

In this case Mr Lynch (the "Applicant") filed an application for a prospecting licence on 7 April 1994. On 28 April 1994 Posgold (Big Bell) Pty Ltd (the "Objector") filed an objection to the grant of the prospecting licence on the grounds that the ground sought was not available for pegging, having previously been amalgamated into Exploration Licence 21/39.

The background to the case is as follows:

3. (1987) 6 *AMPLA Bulletin* 109.

1. on 12 February 1992 Exploration Licence 21/39 was applied for by Placer Exploration Ltd;
2. on 22 July 1992 Prospecting Licence 21/438, which was situated wholly within the boundaries of the area the subject of the application for Exploration Licence 21/39, was surrendered;
3. on 13 October 1992 Exploration Licence 21/39 was granted to Placer Exploration Ltd;
4. on 14 October 1993 Exploration Licence 21/39 was transferred to the Objector; and
5. on 5 November 1993 the Objector lodged an application to amalgamate Prospecting Licence 21/438 into Exploration Licence 21/39, which application was granted by the Minister for Mines on 10 December 1993.

Counsel for the Applicant argued that the relevant land was available for mining because the Minister was not able to grant the amalgamation. This was on the basis that, pursuant to s 105(2) of the *Mining Act* (WA) (as it was then), the Objector was not the holder of Exploration Licence 21/39 when Prospecting Licence 21/438 was surrendered (that exploration licence not having been granted at the time of the surrender).

The Warden rejected this argument, preferring to give the section a wider interpretation. He considered that the relevant time was the time at which the Minister considered the application, and at that time the Objector was the holder of the relevant exploration licence. On this basis the Warden refused the application for Prospecting Licence 21/509 on the basis that there was no ground available for mining.

The final remarks of the Warden were that he had grave reservations as to whether he had authority to review a Minister's decision but made his decision on the basis that he did.

AUSTRALIAN CHALK AND MINERAL RESOURCES NL v ALLAN NEVILLE BROSNAN
(Perth Warden's Court, 9 September 1994)

This case concerned Australian Chalk And Mineral Resources NL's (the "Applicant's") application for exemptions in respect of Mining Leases 70/783, 70/784 and 70/804 and Exploration Licence 70/1063. Mr Brosnan (the "Objector") objected to the exemptions in respect of Mining Leases 70/783 and 70/784 and Exploration Licence 70/1063 on the basis that exemptions had previously been applied for and granted in respect of each of the relevant tenements. These prior exemptions were granted on the basis of undertakings given by the Applicant that future expenditure requirements would be met, which undertakings were breached.

The Warden nevertheless granted further exemptions on the basis that the Applicants had been prevented from raising money for the project because of a Supreme Court action between shareholders of the company. Further, an option agreement dated 3 February 1994 involving the company and the Hogan Syndicate made provision for expenditure by the latter. On this basis the Warden concluded that there was some hope that the expenditure requirements would be complied with in the near future.

WILGA MINES NL v JOHN TREVOR WATTS AND GARY ALLAN FLETCHER

(Coolgardie Warden's Court, 12 July 1994)

In this case Mr Watts and Mr Fletcher (the "Applicants") sought a special prospecting licence over a tenement known as Quigley's Tenement, which is situated within an exploration licence held by Wilga Mines NL (the "Objector"). The main issue was whether the granting of such a licence would cause detriment to the holders of the exploration licence.

The Warden considered the report submitted to the court by S C Swindles, acting director for Geological Surveys, under s 70(4) of the *Mining Act* 1978 (WA). The Warden rejected the conclusion in the report that, as the exploration so far undertaken on the tenement was limited, the onus should be on the Objector to establish that approval would be detrimental to future exploration. The Warden considered that the function of the report was simply to assist the Warden's Court and that the court was not bound by it. On the facts the Warden found that there would be detriment, albeit small, caused to the Objector, and on that basis rejected the application for the special prospecting licence.