MINING LAW IN NEW ZEALAND

PRESENT AND FUTURE

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INTRODUCTION.

Today New Zealand is witnessing the beginning of a new mining era which may well create a new dimension to the economy of this country. The early signs of this era showed themselves a few years ago and were acknowledged in the reports by the Minerals Committee to the 1969 Plenary Session of the National Development Conference. Section E of the report refers to legislation and paragraph 125 of that section states:

"The sense of purpose in the mineral industry is underlined by the request in this Section for the urgent introduction of the new Mining Bill which is expected to cover deficiencies in mining legislation. It deals also with other aspects of mining relevant to the task of facilitating prospecting and encouragement of exploitation of New Zealand's mineral resources and comes down with several recommendations."

The new Mining Bill has now been presented and submissions have been made to the Labour and Mining Committee of Parliament on it. The new Bill in many ways reresents a dramatic change in the concept of the granting and administration of mining privileges in New Zealand. until the new Bill is made law, matters pertaining to mining are governed by the Mining Act of 1926 and its amendments.

In this paper I intend to touch upon the major aspects of change which would occur if the Bill is made law in its present form, and to comment generally upon these changes. In doing this, it is necessary to make comment on the present Mining Act 1926 as there are some areas of criticism of the new Bill that it is going to far.

Notwithstanding criticism that might fairly be levelled at the new Bill, I believe that the concept of the new Bill

is sound and that with some modifications to it, it is an infinitely superior piece of legislation to the present Mining Act of 1926.

It must not be forgotten, however, that the 1926 Act and its amendments represent the culmination of legislative experience of the needs of the mining industry over more than a century. The 1926 Mining Act was a successor to a number of prior mining acts and past wisdom should not lightly be discarded for the sake of a new look.

A LOOK AT THE MINING ACT 1926

New Zealand enjoyed a mining era for a period of almost fifty years up to approximately 1915 and in that period became a major gold producer, which greatly accelerated and assisted its early economic development. This era was not particularly noted for the finding or producing of minerals, other than gold and silver, and gold was undoubtedly the prime mineral that was sought.

The Mining Act of 1926 was drafted primarily with prospecting and mining for gold and silver in mind and, in this connection, it is relevant to point out that gold and silver, as the Royal metals, were and are by virtue of the prerogative right of the Crown, owned by the Crown. Today, however, mining exploration is orientated more towards the industrial minerals of copper, lead, zinc, and indeed silver, to name just a few. While the new Bill does not take away from the land owner such mineral rights as he has hitherto enjoyed, it does in clause 5 declare that gold and silver shall be the property of the Crown, displacing by statute the old prerogative right. It is also of interest to point out that various other natural resources have been taken by the Crown, namely:

1. All forms of geothermal energy under S. 3 of the Geothermal Act 1953.
2. Petroleum under S 3 of the Petroleum Act 1937.
3. Uranium under the Atomic Energy Act 1945.
4. Bauxite in specified areas under the Bauxite Act 1959.
5. Iron Sands in specified areas under the Iron and Steel Industry Act 1959.
6. All minerals lying on the continental shelf outside the three mile limit under the Continental Shelf Act 1964.

Under the Mining Act 1926, various mining districts are set up and the jurisdiction of these districts covers roughly half of the South Island and no more than about a twentieth of the North Island, the rest of the Country being what is referred to as outside a mining district. Within these districts, wardens courts are set up, to which application must be made for all mining privileges. The wardens are magistrates who preside over all such applications and, in some of the larger districts, more than one wardens court is set up. The concept behind this is to provide an office to which application might be made by the ordinary prospector within reasonable distance of where he is carrying out prospecting, so that he can, without journeying too far, lodge his application. The districts, as they at present stand, are closely linked to the areas of the old gold mining days and bear no relation to areas of interest for other minerals. Nevertheless, the old gold mining areas are still regarded as the geologically more favourable for other forms of mineralization and the wardens courts in these areas have in consequence found themselves heavily deluged with applications for mining privileges.

Outside these mining districts, the district Commissioner of Crown Lands is declared to be the warden and applications are to be lodged in his office, in the same manner and following the same procedure as is laid down for applications affecting land within the mining districts. A considerable portion of the Mining Act 1926 is concerned therefore, with the procedures and functions to be adopted in filing and dealing with and providing objections to mining privileges. A complete code is included in the Act, which in many ways closely follows Magistrate's Court proceedure.

Not all land, however, is open for mining and many of the rights and privileges existing in the Mining Act 1926 apply only in respect of land which falls within a mining district. The new Bill sensibly does away with mining districts and the distinctions that follow.

The Mining Act 1926 provides that before any person can carry out prospecting or make any application under the Act for any mining privileges, he must first take out at a cost of 50c what is known as a Miner's Right, which is not transferable and is effective for one year. This

entitles the holder to prospect over unoccupied Crown lands and to apply for prospecting privileges over Crown and other lands in accordance with the provisions of the Act. To obtain exclusive prospecting rights over any area, the holder of a Miner's Right had to apply for one or other of the various prospecting privileges and, until 1965, the normal prospecting privilege was an ordinary prospecting licence, which required the prior pegging of the area by an applicant. When granted the licence was good for twelve months with a right in priority, upon giving due notice, to obtain a fresh grant for a further term of twelve months, without limit to the number of such further terms. The maximun area that one could apply for this type of privilege was 1,000 acres and the privilege entitled the prospector to prospect for all minerals, including gold and silver.

Another form of prospecting privilege is a mineral prospecting warrant which entitles the applicant to apply for up to 10,000 acres in one block, does not require pegging and is for a term of five years, with a right in priority to apply for further warrants of similar term, again without limit to the number of times one might apply for the area again. Until the Mining Amendment Act of 1965, the minerals that could be applied for under this type of prospecting privilege were only those named in the application and could not include the Royal or precious metals, so that gold, silver and platinum were necessarily excluded. Under the 1965 amendment, however, provision was made for the holder of a mineral prospecting warrant to apply for extension of his privilege to such other minerals as he so chose, including the precious metals. This greatly enhanced the value of a mineral prospecting warrant as a prospecting tool, particularly in the hands of the larger prospecting companies who were financially able to mount an extensive geological prospecting programme over larger areas.

The Act also provides for application for mining privileges, and the areas for these privileges are more limited, the maximum area under a mineral licence being 1,000 acres.

Ancillary to the basic prospecting and mining rights, are various subsidiary privileges that might be applied for, such as resident site licences, special site licences, water

rights, business site licences, all of which were designed to give a form of title to those involved in the mining industry where a mill and township needed to be set up adjacent to the mining operations. While most of these ancillary privileges are included in the new Bill, it is significant to note that any privileges to do with water rights are excluded and are dealt with under the Water and Soil Conservation Amendment Bill. The use of water and the ability to get rid of water after usage is essential in mining operations and the Mining Bill therefore cannot be regarded as a complete code on mining.

The provisions for partnership under the Mining Act 1926 are not included in the Bill and represent a desirable aspect of legislation which should not be so lost. This particularly applies to a prospecting partnership, where the Act covers certain facets in such a way as to minimize problems that could otherwise exist or arise where more than one person owns a prospecting or mining privilege. In particular, it provides that a majority decision binds the partnership and that any partner may sell his share of the partnership without the consent of the other partners and the purchaser thereof is deemed to be a partner in the partnership. There is also provision to enforce payment of the share of the cost or performance of prospecting. It is submitted that this provision should be incorporated under the new bill rather than relying on the provisions of the ordinary partnership Act or the preparation of partnership documents.

A large proportion of the Act covers the working and inspection of mines involving safety precautions. This necessary and desirable part of the Act is in part preserved under the Bill, but it is intended that some of the more detailed requirements are to be promulgated by regulation, which will ensure that the regulations accord with developments in modern mining practice.

It is interesting to observe, however, that the Bill is perhaps influenced by the recommendations to the Woodhouse Report; clause 205 of the Bill provides in the case of proceedings in respect of death or injury: 'that every accident occurring in a mine should be deemed to have occurred as a result of the negligence on the part of the owner of the mine in the absence of proof to the contrary'.

This may be compared to S 294 of the Mining Act 1926, which says: "Any accident occurring in a mine shall be prima facie evidence that such accident occurred through some negligence on the part of the owner."

An important facet of the Mining Act 1926 was enunciated in the decision of the Judicial Committee of the Privy Council in the Case of Miller v. the Minister of Mines, (1963), which heldthat a mining privilege takes priority over the rights of the registered proprietor of the land affected by it, notwithstanding the provisions of S 62 of the Land Transfer Act 1952. The result of this therefore, is that a purchaser for value without notice of a mining privilege is bound by the mining privilege. It also decided that a mining privilege is not a registrable interest under the Land Transfer Act 1952 and the right to lodge a caveat to protect the grantee's interest does not provide a method whereby the mining privilege can be registered. This decision is of course entirely satisfactory from the point of view of a privilege holder, but it is somewhat disconcerting to many lawyers and the new Bill endeavours to cover the situation by providing a system whereby prospecting and mining privileges can be registered against the title.

THE MINING BILL - ITS ADVANTAGES AND DISADVANTAGES.

ABOLITION OF MINING DISTRICTS.

With the abolition of mining districts the whole of New Zealand falls under the provisiions of the Bill from a procedural point of view. All Crown land is declared to be open for mining, together with public reserves, national parks and state forest lands and private lands with the owner's consent. It must be borne in mind, however, that the consent of not only the Minister of Mines, but also the Minister in charge of other Crown lands is also required, together with such other bodies as the National Parks Authority and other administrating bodies in the case of reserves. While generally widening the scope of prospecting and mining operations, therefore, there is clear and adequate provision for obtaining consents and, in doing so, having conditions imposed and included in prospecting and mining privileges to ensure that mining and prospecting do not cause unwarranted damage or undesirable results to such land. The provisions as to Maori land are a step in the right direction, because at present applications have to be made direct to the Minister for mining privileges over Maori land, who then seeks the authority of the Governor-General and, upon that authority being obtained, the application is referred to the Maori Land Court, a long and devious procedure. The new Bill would appear to streamline and bring Maori land more into line with private land for purposes of mining.

This is probably the most contentious issue raised by the new Bill in that it appears to replace a judicial system of application and grant (which gives full opportunity to objectors to be heard)by the disposition of applications administratively.

To appreciate the real extent of the change, one must realize that a warden under the mining act 1926 is only authorized to recommend that application be granted by the Minister of Mines and in some instances the Minister of Lands. Generally speaking, the Minister's consent is given without question, but there no doubt are occasions when the Minister's consent is not forthcoming for one or other reasons. In essence, therefore, the Mining Act itself provides that the grant of a mining privilege is

only obtainable with ministerial approval. The real change therefore is that the Mines Department under the Bill is charged with administering the procedural side of applications as well as acting as the final arbiter. The Bill does, however, provide for the preservation of the following concepts:

1. The right of the earlier applicant to priority in the grant of the application.
2. The right of objection to a magistrate on questions of law.
3. The right of objection to the Minister on questions other than of law which may be remitted to a magistrate for hearing before decision by the Minister if he sees fit to do so.

The most valid arguments against the concept of centralisation contained in the Bill are the following:

1. The prospector cannot find out what the position is in the area of interest without personally going to Wellington.
2. The centralisation concept heavily favours the overseas mining company or large mining company with an office in Wellington.
3. Apart from those able to apply direct in Wellington, their applications would normally be mailed.
4. The most important aspect of mining privileges under the new Bill is the need to describe the land affected accurately, bearing in mind the provision for registration under the Land Transfer Act of the mining privilege after it is granted. This contemplates searching titles which can only be done in the various district land registries and not in Wellington. Decentralisation into districts, similar to those of the District Land Registry offices is therefore desirable.
5. The Mines Department itself will rely on the service of the District Commissioners of Crown Lands to obtain the necessary searches and details of description of land applied for. It follows, therefore that insofar as the District Commissioners of Crown Land, who at present act as wardens under the present Act in respect of land that is outside a mining district, could at least from the point of view of clearly defining land descriptions, best deal with applications for mining privileges. This would give

reasonable decentralisation and enable applicants for privileges to ascertain the position of competing applications in the area of interest to them, without the need to travel to Wellington. Most District Commissioners of Crown Lands are situated in the largest town of the area over which they have jurisdiction and are readily accessible within a reasonable distance by car.

6. Insofar as the Commissioner of Crown Lands is required to report on a mining application, e.g. where Crown land is affected, that department is in itself interested in mining applications.
7. The Mines Department should not be charged with the prodedural side of the making of applications, but should be concerned with prospecting and mining and free from the burden of processing applications throughout New Zealand. The Mines Department should not only actively support and promote the mining industry in New Zealand, but should appear to do so and should not, therefore, be put in a position of having to adjudicate on applications for mining privileges.
8. A useful distinction might be introduced into this concept by allowing all prospecting applications to be dealt with by District Commissioners of Crown Lands, but all mining applications to be applied for direct to the Minister of Mines in Wellington.
   The former are applied for in the hope of finding something worthwhile and the prime necessity is to ensure that they do not overlap other claims and are accurately described, whereas the latter are made with knowledge of the existence of an ore body and involve the more technical problems of setting up an actual mining operation which would normally relate to an area which fell within a prospecting privilege already held by the applicant. For these reasons the skills and advice of the Mines Department would be more pertinent to a mining application.

MINING PRIVILEGES UNDER THE BILL.

Mining privileges were varied and many under the 1926 Act, some of them relating back to the particular era of gold mining. The new Bill streamlines these privileges and simplifies them in a desirable way. Under the new Bill, the following privileges are provided for:

1. Prospectors right.

This is similar to the old miner's right and is a neccessary requirement to prospect over unoccupied Crown land and to apply for an exclusive prospecting licence.

2. Prospecting Licences.

These are simplified into two classes, those of 100 acres or less and those for more than 100 acres up to 10,000 acres. With the smaller area, the applicant has to peg before applying, whereas with the larger one he does not, and with the small area the applicant is entitled to prospect for all minerals, whereas with the larger only those that he specifies with a right to apply for additional minerals. These distinctions tend to preserve the old Mining Act distinctions and do not appear entirely necessary. There appears to be no reason why the larger area should not be for all minerals and thereby avoiding the necessity to include a large list of minerals on application, as the right granted under such a prospecting privilege is exclusive to prospect over the areas specified. Again, I suggest that there is no need to peg on the smaller area if an adequate description such as complete title references based on existing surveys and deposited plans can be included in the application and the area is not part of a title. If this were done, applicants for the smaller prospecting areas of 100 acres or less would therefore tend to try and follow existing titles and this would assist in the concept of registration as later provided in the Bill. The problems of pegging and then relating it to titles and exact location are not easy.

Under Clause 59 of the Bill it is provided that prospecting licences for the larger areas are granted subject to various conditions as determined by the Minister. It is submitted that other than the general conditions set out in Clause 57 to carry out prospecting operations vigorously and continuously and to conform with certain other terms therein laid out, no specific conditions should be attached to prospecting licences as this will tend to stultify exploration programmes to the level of that laid down by the Minister's advisors, who may or may not be as knowledgeable or as competent as those employed or engaged in the actual exploration for the particular area concerned. This appears to be an undesirable, unnatural condition, contrary

to the flexibility that exists under the present Act. It also contemplates that the applicant will negotiate with the Department before an application is granted as to the programme of work intended, methods of prospecting and expenditure of money, which may suit the large corporate mining enterprise but not suit the smaller company of prospector.

TERM OF PROSPECTING LICENCES.

The Mining Act of 1926 provides that mineral prospecting warrants shall be for a term of five years with rights of renewal in priority to the holder; no limit is expressed as to the number of terms that a holder may renew for. Under Clause 55 of the Bill, prospecting licences are to be for a period of only three years with a right of renewal for only one further period of three years and no provision for any further extension. This is consistent with the tenor of the Bill in endeavouring to enforce more intense exploration by the holder of a privilege, but is unrealistic and in many ways again greatly favours the large corporate mining company as against the local prospector. It is submitted that the term of a prospecting licence should initially be for a period of five years with further rights of renewal of three years and the minister should have the power to grant more than one right of renewal; in fact, no limit should be set as to the number of renewals for the following reasons:

1. Some areas are far more difficult to prospect than others by reason of various factors such as access, establishment of camps, the employment of sufficient geologists; also certain areas are snow bound and are totally unworkable for six months of the year. This particularly applies to areas of Westland and the southern part of the South Island, which under the present Mining Act are protected and do not need to be worked for the winter months of the year. This practical aspect of prospecting has been entirely lost in the new Bill.
2. Prospecting can be done by knowledgeable people who are not necessarily qualified as geologists and they, as individuals, should not be unduly penalised if they are carrying out satisfactory work and reporting progress to the Mines Department.
3. After prospecting reveals an economic ore body which

justifies mining, it can take many years before mining operations can effectively commence, during which time feasibility studies and the design of construction and processing mill may need to be carried out. It can be fairly said, therefore, that six years from the time of the original grant of a prospecting licence to the ultimate proof of an economic ore body and then to the completion of the establishment of an actual mining operation ready to commence mining would prove to be inadequate. This period should be covered by prospecting licences and only towards the latter stages when the holder is about to commence mining should it need to apply for the necessary mining licence, under which a minimum royalty and ground rent is payable. Furthermore, it is often desirable for the holder of a mining licence to protect his mining area by continuing to hold prospecting rights over surrounding ground even though prospecting over this area is entirely subservient in importance to actual mining operations. In order to preserve the possibility of future ore reserves extending beyond the area in mind, it is important that there be provisions for the holder of a mining licence to hold reasonable surrounding ground under prospecting licences for as long as the mining licence is current. The importance of this aspect can not be over-emphasized, but no provision is made in the Bill.

The right of renewal provided for in Clause 55 is unduly onerous in that it provides that the application must be made not later than seven days after the date of expiry of the licence and include a statutory declaration of work done and money expended during the term of the expired licence. The preparation of such a declaration, the completion of it before a J.P. or a solicitor and the transmission of it to Wellington by post, make it a practical impossibility to comply with. It is submitted that no such statutory declaration is either necessary or warranted as regular reports have to be put in to the Department of progress of work during the term of licence, and if further information is necessary from the date of the last report, then it seems preferable that on making application for a renewal, the Minister or the Secretary can request such further specified information as they may reasonably require.

EXPLORATION LICENCES.

This is a new concept which is quite foreign to the provisions of the Mining Act 1926 and envisages prospecting rights over very large areas of land up to a maximum of 200 square miles for a term of two years. The interesting aspect of this concept of exploration licence is that it does not require the owner's consent and can be likened to a blanket over the top of all existing mining privileges.

The Bill, I submit, creates a conflict between prospecting licences and exploration licences. Prospecting licences are stated under Clause 61 (2) to entitle the holder to the exclusive right to prospect over the area granted. The conflict arises in that an exploration licence incorporates the authority of Clause 44 by virtue of which the holder of an exploration licence is entitled to enter any land. This would imply that the holder of an exploration licence, granted without the consent of the owners, would be entitled to prospect an area already granted to another under a prospecting licence. My view is confirmed, I submit, by Clause 72 of the Bill, which reads as follows:

"Every exploration licence shall be deemed to be granted subject to the condition that the licencee will not interfere in any way with any mining operations or prospecting being carried out under the mining privilege, other than a prospector's right."

If the Bill is not altered to remove exploration licences or to limit their overriding authority, it could cut across the rights and security of the holders of prospecting licences.

Worse than this, the favoured few who are granted exploration licences, could invoke the provisions of Clause 38 of the Bill, under which any person may apply in the prescribed manner to the Minister for the taking of any land under Clause 39 of the Bill. On such application being made, the Minister is obliged to call for a report and if from that report it appears that the land contains any mineral in payable quantities, or is of geological interest, he may take the same under the Public Works Act. I submit that this leads to a situation where the large overseas mining company gains a considerable advantage in that only those companies could mount a programme of exploration in the short period of two years to do justice to areas as large as 200 square miles. The point that I would wish to

to bring out is whether or not New Zealanders wish the mining exploration scene in New Zealand to be totally taken over by large overseas companies, or whether they wish to preserve a reasonable opportunity of participation in exploration. I submit that, in view of the present considerable interest in exploration existing in New Zealand, that there is no justification to extend the maximum area to be prospected beyond 10,000 acres bearing in mind that any applicant can apply for as many prospecting licences as he so wishes.

Exploration and mining are risky, but considerable exploration can be done within the financial limits of New Zealand risk capital, as the rewards for success can be great. The opportunity should not be lost by New Zealanders through legislative action to participate effectively in exploration, in the hope of gaining those rewards, so that they can be later converted into a reasonable share in the equity of a large, viable mining operation. It appears to me clear that if a large scale economical ore body of any mineral is found in New Zealand, it is almost certain that the capital required to set up the mining operations that would follow would not be able to be found entirely in New Zealand and that, therefore, overseas capital will necessarily have to be brought into New Zealand at that stage. The exploration licence as set out in the Bill at present so favours overseas interest that I fear that, through these licences, New Zealanders will rapidly find themselves without any worthwhile stake in the future of mineral mining in New Zealand.

MINING LICENCES.

In this connection the Bill provides for one type of licence for mining activities, doing away with the multifarious types under the 1926 Act. Under Clause 90 of the Bill, returns are to be made by the licensees under mining licences before the 31st January in each and every year in respect of the year ending 31st December. Bearing in mind the New Zealand practise of Christmas holidays, it is suggested that the timing of these requirements be varied to coincide with the financial year commonly adopted, viz, the 31st March, so that reports might be provided by the 30th April as a more practical date. In other aspects, the same lack of appreciation is shown elsewhere in the Act, where dates are specified which are substantially impractic-

able and a review of the times within which certain things must be done and the dates upon which they must be made could be usefully done. The Bill incorporates all the necessary ancillary licences necessary in establishing a mining operation and improves certain aspects, particularly relating to the need to acquire easements to access, and otherwise.

There was one grave omission however which has been adverted to earlier and that is the complete omission to include in the Mining Bill provisions to water rights. There is presented to parliament a Water and Soil Conservation Amendment Bill which is intended to provide the procedure for the grant of these types of rights. However, this Bill has various provisions which could cripple an otherwise viable mining proposition. It is important to appreciate that water is an essential ingredient to the processing of minerals in connection with their extraction; the party charged with the granting of privileges relating to the useage of water for mining purposes must in the interests of mining, have some reasonable understanding and appreciation of this essential need. The body charged with the granting of the water rights under the Water and Soil Conservation Act 1967 is an ad hoc body which is basically charged with the duty of ensuring the purity and non-contamination of streams and other waterways. The Water and Soil Conservation Amendment Bill creates the situation where the Board to determine the grant or otherwise of water rights for mining purposes will be in a postition of being a judge of its own cause with no right of appeal to an impartial authority. As an instance of the attack against mining and its essential requirement for water, it is pertinent to point out that under S126 of the Mining Act 1926, it is provided:

"It shall not be lawful to pollute the water in any water race or in any water course of which such race is connected or by which it is fed, if such race is held by local authority for purposes of supplying water to the inhabitants of any city, town, or township."

This is entirely reasonable, and mining operations must respect the interests of others in the community; however, in the Water and Soil Conservation Amendment Bill, the following is provided:

Section 9 (a). It shall not be lawful to allow the water

in any water race, or any watercourse with which any such race is connected or by which it is fed to be used for the carrying off of any tailings, mining debris, or waste water from mining operations within the meaning of the Mining Act 1970, if the race is held by a local authority for the purpose of supplying water to the inhabitants of any borough or town.

The distinction is that, under the old Mining Act, pollution is not permitted, whereas, under the new Bill, water is not allowed to enter a river or stream. Many of the provisions of the Water and Soil Conservation Amendment Bill are repugnant to the mining industry and while it is conceded readily that proper steps have to be taken by any mining operation to avoid pollution or other damage as a result of mining operations, nevertheless, there will be occasions when some compromise must be adopted if mining is to develop in New Zealand in the interests of the country's economy. There are likely to be occasions, where some damage could be suffered to rivers or streams, but if this is to be permitted it could only be done by an impartial and responsible body.

In my submission, the new Mining Bill is incomplete without the provisions relating to water rights being contained therein and being granted by the same authority, namely the Minister of Mines or the Magistrate's Court.

FORFEITURE OF MINING PRIVILEGES.

The new Bill provides for forfeiture, but only at the suit of the Minister on receipt of a report. Under the 1926 Mining Act, similar provision is made entitling an Inspector of Mines to apply to the warden for forfeiture on basically the same grounds as outlined in the Bill. It is significant, however, that it is not often that an Inspector of Mines has taken any such steps.

One of the best methods of ensuring reasonable work is carried out, is that employed in the Mining Act 1926, whereby the holder of a miner's right can apply directly to the warden for forfeiture on the grounds that the holder of a particular mining privilege is not working it as therein provided; in the event of the warden ordering that the privilege be forfeited, the particular applicant has priority to apply for the area himself, provided he makes application within

seven days of the forfeiture order.

There appears no reason why this provision, which has, I believe, proved most useful in the past, should not be incorporated in the new Bill. Prospecting today is already beginning to encompass far greater areas than were ever prospected in the years gone by, and it would be an impossible task for the Mines Department to carry out adequate inspections to ensure that all privilege holders were carrying out reasonable work. It follows, therefore, that the intention of the Bill is to rely on written reports submitted by the holders themselves, as to the work they have done and to rely on the accuracy and authenticity of such reports. This is frankly unrealistic and the forfeiture provisions contained in the 1926 Act should be incorporated in the new Bill.

THE TRANSFER OR MORTGAGE OF A MINING PRIVILEGE.

Clause 145 of the Mining Bill provides that no mining privilege granted under this Act shall be transferred, leased, mortgaged, pledged or otherwise dealt with without the written consent of the Minister. Is this desirable? In considering this question, it is important to realize that many important mineral finds are found by individual prospectors, some of them prospecting part time as a hobby and unable, financially and otherwise, to adequately develop their find; as a result, in order to capitalize upon their finds and gain the reward that they so richly deserve, they can only sell their mining privilege to someone more able to carry out the further work necessary. At a further stage it is conceivable that a reasonably large company could carry out exploration to a point where it has established a promising anomoly but is unable to financially carry out an expensive diamond drilling programme and feasibility study, and its only alternative is to sell an interest in its mining privilege or to sell it outright. This type of transaction is often known as a farm-out deal and is common practise throughout the world. Unless the freedom to negotiate mining privileges is preserved, the whole basis of prospecting and mineral exploration is going to be undermined, particularly if the Minister, through his departmental officers, endeavours to attack the profit motive which is so essential in the mining industry. It

is also relevant to point out that the Bill imposes more onerous conditions and greater governmental control, in the manner and financing of prospecting operations; any sale or transfer of an interest in a mining privilege does not in any way detract from the obligations cast upon the holder of a privilege to carry out adequate work on the area.

Even more unreasonable is the provision of Clause 137 (4), which expressly provides that no person shall transfer, lease, mortgage, encumber, or otherwise dispose of or deal with any existing mining privilege. This petains to the transition period after the passing of the Bill as law and totally prohibits the dealing with or transfer otherwise of a mining privilege granted under the 1926 Act after the new Bill becomes law. It is not even possible to deal with such a mining privilege with the consent of the Minister. This provision is harsh and unreasonable and contrary to the development and best interests of the mining industry.

RECORDING OF MINING PRIVILEGES.

The new Bill, as already stated, contemplates registration of mining privileges in the District Land Registries against the titles affected and for the reasons previously indicated, arising out of the decision of Miller. v The Minister of Mines, (1963) NZLR 560, these provisions are to be commended from the point of view of giving notice to the purchasers of land affected by mining privileges.

WORKING REGULATION AND INSPECTION OF MINES.

The provisions in the Bill very largely follow the provisions in the 1926 Act and provide for the supply of information and reports to the Mines Department and also cover qualifications of those working in mines and the granting of the necessary certificates of competence and other technical requirements.

SUMMARY.

The new Mining Bill is to be commended as a recognition of the growing awareness in Government circles of the re-

awakening of mining as an industry, which can and, I am sure will, prove of great economic significance to New Zealand as a whole. Insofar, however, as the 1926 Mining Act represents the accumulation of a wealth of legislative experience from past mining days, care should be taken not to reject it out of hand without a careful analysis into the reasons why the various provisions therein contained have evolved.

Mining is a risky and hazardous industry and makes immense demands for capital expenditure, but in those instances where exploration is successful, the rewards are great. In New Zealand, however, the industry is still very much in its infancy and requires encouragement at all levels of activity and not just to the large heavily capitalized corporate body. It is abundantly clear that large scale mining operations in New Zealand will demand considerable overseas capital and this will flow into New Zealand inevitably as economically viable mining prospects are proved. The area in which encouragement is most needed is at the early prospecting stages to those individuals and local companies, prepared to spend their capital on the risky business of exploration with the certain knowledge that if they do find an ore body of economic mineral significance, they must sell out their rights or take in overseas capital to develop a mining operation worthy of the size of their find. Any departmental restriction on this concept will stultify prospecting in New Zealand by New Zealanders, quicker than anything else and leave the field entirely open to overseas companies to take over our mineral mining industry without any reasonable opportunity for New Zealanders to participate in the rewards that will inevitably result. While the new Bill has much to commend it, it is, I submit, aligned too much toward bureaucratic centralisation and, at the same time, favours the large overseas mining corporation to the disadvantage of local interests. On the basis of this concept, therefore, I submit that the following aspects of the Bill might be usefully re-examined with a view to further amendment before the Bill becomes law:

1. That all applications for prospecting licences be made to the District Commissioners of Crown Lands, who may grant them without the need for ministerial consent, but after due regard has been given to reports or submissions from the Mines and other government departments, where applicable.

2. That the Commissioners of Crown Lands have the power to refer questions of law to the Magistrate's Court for decision.
3. That mining licences be applied for direct to the Minister of Mines, as envisaged in the Bill.
4. That the forfeiture provisions be available to the holders of a prospector's right as well as to the Minister of Mines, with the right to the applicant to have priority to apply for the area if it is forfeited, as is provided under the Mining Act 1926.
5. That the provisions as to water rights, as provided under the Soil and Water Conservation Amendment Bill, be re-examined and included in the Mining Bill as more relevant to the Bill with adequate provision for determination by a Magistrate's Court as an impartial arbiter.
6. That the transfer or other disposal of mining privileges be permitted as in the Mining Act, 1926, without the necessity for ministerial consent.
7. That the provisions as to mining partnerships as set in the Mining Act 1926 be incorporated in the Mining Bill.
8. That both types of prospecting licences entitle the holder to prospect for all minerals and that prospecting licences for under 100 acres need not be pegged where they coincide with a land transfer title or titles and can be defined and described in terms thereof.
9. That prospecting licences be initially for five years with rights of renewal for successive periods of three years, applications for such further renewal or renewals to be made to the Minister.
10. That exploration licences be removed from the Bill.