

# Nat -Labour women combine against mining industry

BY GRAEME SPEDEN

Mining companies face a major legal battle if they want compensation. Their chances of getting it if mining is banned on the Coromandel Peninsula are uncertain, according to legal experts.

Mining executives believe they would have a case for compensation (*The Independent*, March 24) but the legal situation is complex and unclear.

The issue arises from a private member's Bill, sponsored by Labour MP Judith Tizard, that would ban all new applications for prospecting, exploration and mining licences on Conservation Department land on the Coromandel.

The Bill is due to come before Parliament on April 5. Because of debating time, the vote on whether it should be introduced and referred to a select committee is likely to be on June 7.

Government junior whip Roger Sowry said it was unlikely National MPs would be directed to vote against the Bill's introduction. He did not see it as a major issue.

In reality, National would be unable to block the Bill. National MP Christine Fletcher, at least, will vote for it.

Fletcher was going to introduce a similar Bill herself, but passed it to Tizard. She chairs the planning and development select committee, to which Tizard's Bill is likely to be referred.

Mining industry people question whether Fletcher should remain in the chair, but she said



CHRISTINE FLETCHER

the queries were ridiculous and she would not give it up.

The Bill is silent on the question of compensation for the mining companies, which have spent millions of dollars prospecting on Coromandel conservation land. The money would be wasted if the land is closed to mining.

Law Commission president Sir Kenneth Keith said compensation was a question of political economy rather than law. Parliament ruled, and could take away mining rights if it wanted to.

However the mining companies might be able to argue for compensation as a matter of natural justice.



JUDITH TIZARD

There was a rich vein of legal argument about the property value of such things as licences and permits. If the mining companies could establish the value of their existing permits, and show the value was being taken away, they might have a case. There was a presumption in law that compensation would be paid for legally-held property taken by the state.

There was also a general presumption against retrospective legislation, which negated existing rights. Although such legislation was often passed, it was always open to criticism.

Public law specialist Mai Chen thought the mining companies had a legitimate expectation

that their prospecting investments might produce a return. If so, they had a right to be consulted about the impact of the proposed mining ban on their business.

The miners might also have a useful precedent in a 1980s case in which kiwifruit exporters sued Agriculture Minister Colin Moyle over the loss of their export licences. They received compensation in an out-of-court settlement.

Chen said if the companies were to get compensation they needed to secure agreement before legislation was passed. After that, their chances were remote.

Tizard believes her Bill is no more than an extension of existing law, which gives the Minister of Conservation a veto on miners' access to the conservation estate. The proposed ban would be a general exercise of that veto, she said. Past cases showed no compensation was payable when it was exercised.

The miners argue that while the veto means prospecting is a risk, a ban makes it a waste of money. They would never have prospected on conservation land if they had known mining would become impossible.

Tizard expects the ban would create arguments about whether certain lands should remain in the conservation estate. That was how it should be, she said.

Some land was part of the estate through historical accident, not because of its conservation value. Some areas could therefore be lowered in status so mining was possible. ■