Standing Committee on Legislation - inquiry into the Mining Legislation Amendment Bill 2015

ADDRESSING THE TERMS OF REFERENCE FOR THE UPPER HOUSE REVIEW COMMITTEE ON THE MINING ACT AMENDMENTS BILL 2015

Submission by Goldfields First

Goldfield's First are a group of concerned prospectors, leaseholders, small miners and downstream service providers and small business people, working and living in regional Western Australia who are becoming seriously concerned about an increasing range of issues, impediments and bureaucratic impositions effecting the viability of their businesses.

Goldfields First web site provides a comprehensive overview of the organisation:

Web link: http://goldfieldsfirst-2.com

General background to this submission

There are five main broad areas of concern:

A. **Issues surrounding the preparation of the Mining Amendments Bill 2015**
B. **Particular concerns relating to specific clauses and provisions contained in the amendment legislation.**
C. **General background to other issues relating to the legislation**
D. **General concerns relating to the Mineral Titles Division management**
E. **A partial solution for the professional prospector and small miner**

A. Issues surrounding the preparation of the Mining Amendments Bill 2015

One of the main concerns is that the DMP have failed to follow the rules of procedural fairness in formulating the 2015 mining amendments. As a result sections of the industry will be unfairly disadvantaged or forced out of the industry.

The attached document "**Procedural fairness/natural justice" in decision making**" (Attachment One), outlines the legal basis for this argument. Particularly relevant points have been highlighted. The main issue here is the "Hearing Rule".

The hearing rule requires a decision-maker to inform a person of the case against them or their interests and give them an opportunity to be heard.

In essence therefore, “procedural fairness” is the duty cast on administrative decision-makers to act fairly when making decisions which may affect people’s rights, interests and legitimate expectations.

In this instance proposed Mining Act Amendments financially and practically discriminate against the small scale mining industry by not consulting them and taking into account their rights, interests and legitimate expectations.

The small miners are being forced, by virtue of these legislated conditions, to compete on the same terms and conditions as considered appropriate for the larger corporate miners. The larger corporate miners had significant input in determining these terms. This is akin to comparing large commercial farming businesses with small market gardeners and applying the same rules. Small mining is not just a scaled-down version of large corporate mining. The Corporate miners are involved in generally large, deep, hard-rock ventures, as opposed to small shallow, soft-rock, scrape and detect or alluvial operations run by small miners, some small shafts and small open pits. The same rules (legislative processes) cannot be fairly applied to both. Imagine the situation in reverse, trying to apply prospector/small miner conditions on large corporate mines.

Scrutiny of the legitimacy of any Bill involves applying certain Fundamental Legislative Principles:

- Does the legislation have sufficient regard to the rights and liberties of individuals of those being effected?
- Is the Bill consistent with principles of Natural Justice?
- Is the bill dealing fairly, impartially and equitably with all parties?
- Have all groups effected by the legislation had an opportunity to have their interests and concerns identified and considered?

This Bill, for the professional prospector and small miner, fails on all of these counts and may well be struck out as seriously flawed legislation on that basis alone.

B. Particular concerns relating to specific clauses and provisions contained in the amendment legislation.

There are a large number of specific issues related to particular clauses in the amendments legislation. There are far too many to offer detailed analysis here in any meaningful submission of this type. However a selection of some 30 issues in dot point form (see Attachment Two) are presented to give some impression of particular concerns within the detail of the amendments legislation.

There is no way this Standing Committee can handle any detailed discussion of all the failings of the amendments legislation. All of the deficiencies would need to be addressed in a special session of prospectors with the DMP policy makers, devoted to this topic at some future occasion. These failings need fixing, to produce a workable Act that professional prospectors and small miners can operate under and live with.

Two specific examples are outlined in more detail

Section 103AZC of the amendments act, will make it a condition that **for every Mining Lease and Miscellaneous license**, the tenement holder must maintain an **environmental management system** (**EMS**). This is largely irrelevant for small operators with minimal ground disturbance. This is a direct result of scaling down this imposition from what the large miners are required to submit. The net effect of this will most likely require the largely sole operators to have to engage specialized consultants, at prohibitive costs, in order to comply. Quoted costs for specialized consultations and reporting of this type are in the tens of thousands of dollars.

In contrast prospecting/small scale mining and exploration activities will not be subject to an EMS on prospecting licenses and exploration licenses, even though they are undertaking the same activities that on a mining lease will require a EMS. This is a significant financial burden on a prospectors and small-scale miners operating on mining leases. Rather than reducing red tape (a major claim of the DMP), this significantly increases it for the small operator.

Section 103AM of the guidelines, will give powers to the DMP to set requirements as to consultation to be undertaken by mining tenement holders in respect of activities proposed. In other words it allows the DMP to impose an additional eight (8) individual very onerous requirements. For example such as the biological significance of native vegetation to be cleared, identification of each type of native vegetation to be cleared, and further environmental studies or surveys in relation to a small scale mining or prospecting activity. The small end of the industry has not been isolated from the onerous requirements of this section. While this clause is relevant to new mining proposals, in vast areas of the state it is potentially a crippling cost burden on small scale miners, operating in what could be considered permanent "mining heritage areas". The DMP as a matter of urgency needs to allocate such permanent mining heritage area's for intensive permanent mining use, and to be exempt, or exempt small scale mining from this clause in such heavily disturbed areas

A further example of DMP bungling is the **Number 2 Mining Regulations Bill 2015**, which set out to introduce very onerous and unwarranted fees for programs of works and mining proposals (activities that up until then had no fees attached). This bill is now "said" to be killed off as announced by the Minister. An inquiry needs to be made into where this bill presently sits and the Ministers future intention in regards to this bill and associated fees.

C. General background to other issues relating to the legislation

1. The amendments bill is generally favoured by the bigger miners represented by AMEC & the CME, because they were adequately consulted, had all their concerns addressed, and would not be adversely effected by the issues affecting the small miners contained in the legislation.
2. The DMP have given effectively only a very small number (1), small miner the opportunity to contribute in the early days of drafting of the legislation. This individual failed to recognise the complexity of the issues involved, and failed to disperse this information to the wider prospecting and small mining community, which would have addressed all the currently outstanding issues. As a result there has been virtually no adequate consultation with this sector. Each tenement holder (some 3500 tenement holders) is contactable by email from the DMP data base and should have been individually informed of the proposed changes. Just as not all companies belong the CME or AMEC, most prospectors do not belong to APLA or any other group.
3. So poorly coordinated has the process been that there are still many small operators out there who still are unaware of the Mining Act Amendments Bill existence.
4. If fulltime professional small miners should have no reason for concern over the new legislation, why have hundreds, who have hundreds of thousands of dollar investments and their livelihoods depending on it, and who have read the full version of what is proposed, and fully understand how it is likely to affect them, still express extreme concern.
5. Of the prospectors and small operators affected, most at the very small end can work within the new system at their very small scale. However there are significant numbers (around 500 individuals) of larger operators amongst the professional prospectors and small miners who fall just beyond this "**low impact" threshold**, who feel their small business will be crippled with costs, compliance, and other unnecessary impediments that they will be incapable of complying with, or will be cost prohibitive.
6. The small operators most affected by this legislation, are the bigger producers within the prospecting/small mining community, with the most tenements, most expenditure commitments, most invested, and who produce most of the gold from this sector. Past estimates suggest small miners produce well over one tonne and up to four tonnes of gold per year, worth over $50-200 million to the regional economy, and most of this comes from those who will be affected most by this legislation.
7. If small miners cannot operate under the new economic environment, then illegal mining will inevitably fill the void, without any management, overview or control and no rehabilitation, with devastation consequences on the natural environment. This is perhaps what the DMP expect

with the significantly beefed up investigative and punitive powers they have provided in the new Act.

8. The small-scale miners have been lumped in with far larger corporate miners and simply cannot compete. Large corporate miners benefit from economies of scale. Small miners need shallower, more easily located and worked, higher grade and consequently much smaller deposits to survive. They are generally using unique prospecting, mining and processing skills honed for operating in this niche market. Because the larger miners could not economically develop these same gold deposits that our members exploit, such resources would remain unfound, unworked and a loss to the economy of Western Australia. These same deposits once developed by small miners then often form the basis for the discovery of deeper, lower grade but larger economic deposits below or adjacent that the large miners follow up.
9. The vital link in the finding of most orebodies by prospectors has been largely overlooked and is unappreciated, and may disappear if these proposed changes become law. Mining companies cannot and do not do what prospectors do. This important sector is where most of our ore bodies largely come from, but perhaps not for much longer if the DMP gets its way. Another $4 billion Bronzewing orebody left in the ground, undiscovered by prospectors, benefits nobody. Company geologists do not go out on a daily basis scouring the countryside, turnover every rock and boulder, sampling and assaying like prospectors. Removing the prospector in exploration, is like removing general practitioners (GP's) and expecting the medical specialists to go out and find all their own patients. It just wouldn't work. The billion dollar ore bodies found by prospectors include, Gold – Bronzewing & Jundee Mark Creasy, Nickel - Kambalda George Cowcill, iron ore – Hammersley Ranges Lang Hancock, Copper-Au Telfer - Jean-Paul Turcaud, and just about every other worthwhile discovery. A multi-billion dollar prospect like Bronzewing, left undiscovered in the ground by a prospector does nobody any good.
10. The main changes in the amendments reflect a new expanded environmental compliance environment. The small miners "market garden – round peg" business model has been suddenly replaced by a "large corporate farmer – square peg" business model without any consultation. The big companies have the resources, expertise, time and personal to address and accommodate these new provisions. The sole operator at the small end has none of these advantages, must abandon the successful round peg model and replace it with an inappropriate square peg vision, and cannot afford to change or employ the expertise required to accommodate the scaled- down square peg operating procedures.
11. Past environmental compliance exceeds 97% from this sector (documented in other submissions), and the threat of excessive investigative and punitive policies seem entirely unjustified in light of such a spectacular compliance figure. They are intimidating, inordinately expensive for the small footprints involved, and designed only it seems specifically for internal revenue raising purposes (for services that previously warranted no fee) within the DMP environmental division.
12. Recognise that the nature of ground disturbing work is immaterial when effective rehabilitation follows.
13. An acceptable definition of "**low impact**" activities that would allow small operators to function. Low impact to the DMP seems to mean no impact.
14. The economic, employment and social flow-on to the wider regional community from any downturn in effectiveness or profitability of this important small mining sector may have serious consequence for whole regional communities already facing difficult economic circumstances. These people's dollars are important and support many hundreds of downstream jobs and other parts of the economy in regional Western Australia.
15. If changes to the Bill aren't taken onboard to separate the small miners from corporate miners, then there will be no viable business model operating at this level and this industry demographic will collapse and the people with it. A new mining classification has to be made, changes need to be implemented if they are to survive and continue to contribute to benefit of Western Australia. A new division inserted into the head powers of the mining act is required to protect and further the interests of this overlooked and forgotten but very important sector.
16. We suggest the insertion of a whole new division into the Mining Act, by way of amending the proposed Mining Act Amendments 2015, to specifically facilitate professional small miners and prospectors needs. We request that our assistance and input be used for the drafting of this new division into the Mining Act. This would ensure that the needs of prospectors and small miners within the mining industry are incorporated and protected without adversely affecting the larger corporate miners. With a proper redrafting of the amendments the needs of all sectors of the mining industry can be covered.

17. The need for the newly introduced schedule of fees to be permanently removed (Mining Regulation No.2 2015). Furthermore we request the ability to charge a fee to be removed from the Mining Act being Section 46 (aa)(iia), Section 63 (aa)(iia), Section 70H(aa)(iia), and Section 82 (1) (ca(i).
18. If small miners cannot operate under the new economic environment, then illegal mining will fill the void, without any overview or control and no rehabilitation, with devastation consequences on the natural environment. This is perhaps what the DMP expect with the significantly beefed up investigative and punitive powers they have provided in the new Act.

D. General concerns relating to the Mineral Titles Division management

1. An acknowledgement and recognition of the economic value and contribution of the professional prospector/small miner to the WA and regional economy and the important role of the prospector on the ground in mineral exploration and resource development.
2. Need for more data collection and statistical analysis of prospector activity
3. The need for the DMP to be far more responsive to the widespread dissatisfaction felt by professional prospectors, small miners and many others in relation to its delivery of services in this area.
4. The total lack of feedback from the two whole day sessions prospectors had with Phil Gorey in Kalgoorlie to do a “line by line” analysis of their concerns with the amendments legislation.
5. general concerns involving the increasing input from the environmental division within the DMP in policy making.
6. A thorough assessment of the Mines Ministers (Bill Marmion’s) conduct in insisting on introducing this legislation despite ample evidence of its unsuitability.
7. The progressive erosion and complication of small miners and prospectors viability over a number of years, particularly related to the Low Impact Mining Operations (LIMO) process.
8. Bias and inconsistent approaches in the development of this Bill and the negative/detrimental results and consequences.
9. Inappropriate and inexperienced advisors in senior policy making positions.
10. Poorly qualified and inexperienced environmental officers within the Department who know far less than the operators with whom they are dealing, but being responsible for determining day-to-day operational procedures to be implemented by these experienced operators.
11. There seems to be a serious lack of knowledge and information available from the DMP on the extent and nature of environmental concerns and what constitutes rehabilitation best practice. A great deal could be learned from the wealth of existing knowledge accumulated over a great many years of hard-won small miner experience.
12. Some proper definition of what is to be in the Act and what is more appropriately handled in the Mining Regulations. The Mining Regulations should not be the place to fix up deficiencies in the Act. The mining regulations needs to be read in conjugate with the Act for a more comprehensive overview and are presently not available. These two documents would be better read in tandem for a better understanding.
13. A recommendation that in future fully marked up versions of all proposed legislative changes to be made widely available to stakeholders.
14. A full review of problematic past experience and case histories with genuine accountability for the DMP’s past performance.
15. Genuine concerns over speaking up and registering complaints and concerns to DMP officers, by many stakeholders, fearing discrimination and retribution from the Department.
16. The need for a parliamentary inspector with appropriate investigative powers and authority to examine and resolve complaints and to oversee the DMP in terms of its conduct and behaviour and who can make legally binding decisions on the DMP and even on the Minister.
17. So serious are many of the concerns raised that a more details examination of the conduct of sections of the DMP and its management to the extent of a full Royal Commission may be justified.

F. A partial solution for the professional prospector and small miner

Many of Goldfields First concerns could be rectified by the insertion of a new section within the Mining Amendments Bill 2015, specifically to cover professional prospectors and small miners. This new section would recognise the distinctive role of the professional prospector and small miner. This could be achieved by incorporating a 25 hectare threshold (or operating footprint open at any one time) to differentiate the prospector and small miner from the large corporate miners. New legislative conditions more relevant and appropriate to small miner's circumstances could be agreed to following consultation and introduced specifically for this important sector and would not adversely affect other users of the Mining Act.

A number of submissions to this Standing Committee specifically on this issue have been submitted by other individuals and groups, containing more detailed discussion and specific content for such a change. The DMP need to harness some of this content and discuss more widely with those parties having particular expertise and experience in this area in order to make much needed progress on this matter.

To avoid unnecessary delays to the implementation of those parts of the amendments legislation not in dispute (those that AMEC and the CME are happy with), We might suggest that the threshold between the present Low Impact provisions and a new threshold (defining what the professional prospectors require) be established and that the review committee might confine itself to examining in detail the impacts of the amendments legislation in that sector. The remaining amendments that are not in particular dispute perhaps can continue uninterrupted for the benefit of AMEC, the Chamber and the low impact end of prospecting.

LEGAL PRACTICE NOTE

PROCEDURAL FAIRNESS/NATURAL JUSTICE LPN 17 (31 January 2013)

BACKGROUND

This practice note covers the right to procedural fairness (a term that is often used interchangeably with "natural justice"). Procedural fairness is an implied common law duty to act fairly in decision-making by the exercise of statutory powers which may affect an individual's rights, interests or legitimate expectations. The High Court has said:

> *"The law has now developed to a point where it may be accepted that there is a common law duty to act fairly, in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention."*

In essence therefore, "procedural fairness" is the duty cast on administrative decision-makers to act fairly when making decisions which may affect people's rights, interests and legitimate expectations. The recognised categories of "right" or "interest" are broad, and include personal freedom, status, preservation of livelihood and reputation.

RULES OF PROCEDURAL FAIRNESS

There are three recognised rules of procedural fairness:

1) **the Hearing Rule** – the right to a fair hearing;

2) **the Bias Rule** – a requirement that the decision-maker is impartial; and

3) **the No evidence rule** – the requirement for decisions to be based on logically probative evidence, not on mere speculation or suspicion.

Hearing Rule

The hearing rule requires a decision-maker to inform a person of the case against them or their interests and give them an opportunity to be heard. The extent of the obligation on the decision-maker depends on the relevant statutory framework and on what is fair in all the circumstances.

The concept of a person's 'interests' is broad and includes things such as legal status, business and personal reputation, liberty, confidentiality, livelihood and financial interests.

The High Court has recognised that procedural fairness may be breached where a person has a 'legitimate expectation' that a decision-maker will act in a certain way but fails to do so, to the person's detriment, although the ultimate question remains whether there has been unfairness in all the circumstances of the case, not whether a representation has been departed from or whether an expectation has not been met.

The requirements for procedural fairness have developed primarily through the common law and it is important to note that a statute can limit the hearing rule expressly or through necessary implication. The common law duty to act fairly in the making of administrative decisions is subject only to the clear manifestation of a contrary legislative intention.

The National Law has several requirements for people to be heard, for example:

- in registration, if the imposition of a condition is proposed or refusal of a registration is proposed, there must be an opportunity for the applicant to make submissions about the proposal.
- in the notification process, the practitioner about whom the notification is received is entitled to know the case put against them, see the evidence, and be given the right to be heard in any hearing.

Notice and Adverse information

An affected person should be provided with notice of a proposed decision that may adversely affect them. They should also be provided with details of any credible, relevant and significant information which the decision-maker has, and which may affect the decision to be made, and be given an opportunity to respond. This applies to both oral submissions and occasions when decisions are made solely on the basis of written submissions, although note there are limits to this obligation, i.e. it does not extend to a requirement to provide investigator reports – see LPN 15 for further discussion of this topic.

Adequate time should be given to the person to prepare for an oral presentation (if there is one) or prepare written submissions before a decision is made (where reasonably practicable).

If a person has already responded to some material, but further information comes to the attention of the decision-maker before a decision is made, then the person should also be given an opportunity to respond to that extra information.

Urgent decisions/Immediate action

Sometimes urgent decisions have to be made and, in such situations, the requirements under the hearing rule may be reduced to almost nothing.

(However, courts do not look kindly upon decisions that are made urgently due to the decision-maker's delay.) This is likely to happen only in rare circumstances and such decisions should generally be short-term and allow the person to submit reasons to the decision-maker as to why the decision should be overturned. Examples of such decisions are those made by the Immediate Action Committee. The Explanatory Notes to the National Law provide further explanation.

> *The stated time in the notice from the board to the practitioner or student about the proposed immediate action may be a matter of hours. A practitioner's or student's response to the notice issued under clause 157 may be written or verbal, and a National Board is to take the submission into account in deciding whether to take immediate action in relation to the practitioner or student.*
>
> *The purpose of the show cause process is to afford the practitioner or student natural justice prior to a National Board deciding whether to take immediate action. It is not intended that this process delay or impede a National Board from taking immediate action, when it is warranted.*

Breach of the hearing rule

Breach of the hearing rule will usually, though not always, amount to jurisdictional error and void the decision. In cases of a minor breach, the court may consider that the breach of the hearing rule made no difference to the decision. In these rare circumstances, breach of the hearing rule may not be fatal to a decision.

BIAS RULE

The bias rule of procedural fairness requires that a decision-maker must not be biased (actual bias) or be seen by an informed observer to be biased in any way (apprehended or ostensible bias) in the hearing of or dealing with a matter during the course of making of a decision.

Bias may arise from:

- interest - pecuniary or proprietary;
- conduct;
- association;
- extraneous information; or
- from some other circumstance.

NO EVIDENCE RULE

The no evidence rule requires that a decision that is made
must be based on logical evidence (proven on the balance of probabilities - that is, the alleged behaviour is more likely to have occurred than not).

It is also important that in making decisions, administrative decision-makers:

- take into account relevant considerations;
- do not take into account irrelevant considerations;
- act for a proper purpose; and
- that the decision is not unreasonable in the sense that no reasonable decision-maker could have reached such a decision.

What satisfies the rules of natural justice and procedural fairness will depend on the facts and circumstances of each individual case.

ATTACHMENT TWO

MINING ACT AMENDMENTS SOME SPECIFIC CONCERNS

Here are a selection of 30 specific items in the Mining Amendments Bill 2015 & associated legislation listed with a short comment. The 10 most critical are highlighted with a yellow star. Full-time prospectors and many others will find these, unnecessary, inappropriate, and financially crippling with far reaching, adverse flow-on effects. These should be read in conjunction with a marked up version of the legislation. A PDF file of the marked up version of the legislation (with each of the following sections highlighted with "sticky note" symbols and explanation) can be downloaded from Goldfields First web site:

http://goldfieldsfirst-2.com/amendment-bill-download-pdf-copy

This is by no means a comprehensive listing of the amendments legislation shortcomings and may be enlarged upon in Goldfields First verbal testimony to the Standing Committees hearings in Kalgoorlie on the 11th of April.

☆ **1. Section 8 (1)** - Removal of the definition of ground disturbance equipment. **Outcome: No flexibility for machinery to be used and potential requirement for the serial number of the machine undertaking the activity to be recorded against the POW. The definition of ground disturbance equipment has now been replaced with Part IVAA Division 2, which is now 27 pages of amendments.**

☆ **2.** In the case of a prospector holding a granted prospecting licence with a annual expenditure requirement of $2000 per annum that is in the final year of its term. The holder is now required to lodge a **mining proposal** which will incur a **$6,950 fee**. This amount is greater than the annual expenditure and would force many to drop the tenement. This would happen in the 4th year. **AN EXTREME INCREASE IN COSTS** Even small miners need larger POW's often covering large tenements for short periods and will have to face a disproportionate burden compared to large miners for same fee.

3. Section 158 (4) - A person who refuses or neglects to comply with a direction commits a offence $10,000 fine. (6) - A person may be arrested without a warrant. **Outcome- This could be determined at a department officers discretion and no opportunity for an lesser fine to be imposed. No arrest without a warrant, more power to the department officers. Such a fine would be potentially ruinous to a small operator.**

4. Section 162 (2) (vii) - Department officers take and remove samples of any substance at a mine without paying for them. **THIS SEEMS EXCESSIVELY HEAVY HANDED Outcome- Department inspector could arrive a minesite and confiscate gold nuggets or bullion.**

☆ **5. Section 103 AY (1) (a)(b)(c)** - Where native vegetation is cleared an additional area is required to establish and maintain native vegetation to offset loss of land from clearing. Tenement holder may be required to make monetary contributions to a fund for the purpose of establishing and maintaining native vegetation. **Outcome- Similar to a carbon offset program and will be cost prohibitive for tenement holders. What other industry has to pay to clear native vegetation? Farmers do not have to do this – why miners? DIRECT INCREASE IN COSTS**

6. Section 162 (2) (xi) - The DMP inspector has the right to interview any person and record the interview with or without their consent. **Outcome- Not even DMP mines inspectors in the case of a fatality have these powers or the police. THIS SEEMS EXCESSIVELY HEAVY HANDED** Everyone has a right to silence. This is over the top!

7. Section 103 AR (1) (2) (3) (4) - A revised POW or Mining Proposal may be required to be lodged. **Outcome- If a department inspector does an onsite inspection of a operation and deems it different to the POW or Mining Proposal he can order a revised POW or Mining Proposal to be lodged with an attendant new fee. Operations would have to cease until this complied with?**

☆ **8. Section 103 AZC (1) (2)** - A environmental management system required for mining leases and miscellaneous licences. **MORE REGULATORY RED TAPE Outcome- This is a new layer of regulatory burden that industry cannot afford.**

9. **Sec 40D**. More stringent control on Miners Right holders re permits.

10 **Sec 46**. Certain rights to use ground disturbing equipment taken away from the condition of grant –attached to every PL.

11. **Sec 46(b)**. More Stringent terminology – 'may endanger' – yes any hole can endanger…

12. **Sec 74**. Mining Proposal needed for every Mining Lease application attracting huge fee. Why not allow an ML application if you already have an active Low Impact or POW in place on your PL (similar to what we now enjoy) – why go to all the extra trouble and rewrite and reapprove what you are already allowed to do? – **Can only be so the DMP can get the extra money**.

13. **Sec 103AD**. $20,000 fine - Draconian environmental law that penalises for giving misinformation – A first in the Mining Act. What about degrees of severity and honest mistakes? – **who and what process dictates the guilty**? **One such fine has the potentially to wipe out and bankrupt a small operator**.

14. **Sec 103AE**. Prospecting' is a '***Relevant Activit***y' – To undertake a 'RA' you have to give a notice of Low Impact Activity. So unless the regulations specifically define Prospecting to be other than a Low Impact Activity you will have to lodge a Low Impact notice [or even a POW - 103AE(3)] every time you go "Prospecting" - This could be taken to extremes and say that Metal Detecting (prospecting) needs a LI notice. Bottom line is how do we know this wont be the case without seeing the complete picture – the whole Act and Regulations in mark up form is needed and presented together. **This is Russian Roulette and we're the only ones playing**.

15. **Sec103AJ**. Mine closure plans are a condition of grant - every three years but subject to review. – greater hassles and paperwork particularly if mine closures will be many years away. Some closure plans are a requirement when you lodge a mining proposal (either small or big). More cost and regulatory burden for the small miner.

16. **Sec 103AM**. Guidelines for environmental accountability are over the top. Difficult to satisfy the conditions - you will likely need an environmental expert to write up reports for you to satisfy the DMP…**at considerable additional cost and drain on management resources**. **This section will be a huge burden**

17. **Sec 103AO(6) and Sec 103Ap(6)** Draconian powers given to the Director General. unacceptable impact" on environment – then the DG must not approve… All Mining has an impact – it is now up to one person who could shut you down on a whim…

18. **103AQ** Mining will always have an impact on the environment. We cant allow this much lee-way to the DG or for him to designate these powers to his staff as suggested here.

19. **103AS** Changing the goal posts re already approved POW's

20. **103(AW)** Now includes environmental harm amongst other new issues. What is "reasonable". Powers to the local Mining Registrar to determine environmental harm?

21. **103AY** Offsetting! – What the hell is this? Same as an airline ticket to offset carbon emissions…crazy.

22. **103AZA** Draconian reporting requirements on environmental monitoring. Especially after you have paid large fees to get approval.

23. 1**03AZC** Enviro's taking over the management systems. **Too many reporting conditions such as EMS's are killing the small guy**.

24. **162** **Draconian inspection empowerment** – on what basis? Totally too far. What are the penalties for refusing.

25. **23** so you don't get a choice – straight into the new regime for POWs approved?

26. **162(2)(e-k)** This clashes with the DMP's proposal to adopt "Electronic Pegging". A proposal with which most prospectors do not agree.

27 **162(2)(d)(ac)** 100% draconian and unacceptable.

28. **162(2)(f)(lb)** Does not tally with DMPs proposal for "electronic pegging". Why go to "EP"

29. **Trans23(1)(d) & Trans23(2)(a) & Trans23(2)(b) & Trans23(3)(a) & Trans23(3)(b)**

Unacceptable! It reads as if any POW issued prior to the commencement day is now subject to rules that were not applicable at the time of issue. This is "retrospectivity".

30. **Trans24(1)(a) & Trans24(1)(b)** As per previous comments on POWs above.

The issues with the Mining Act Amendments Bill listed here are more than being inappropriate for small mining operations, the increased financial, reporting, punitive and compliance burdens and will create adverse economic flow on effects to regional WA and other small business in the regions if significant numbers of **full-time prospectors and others,** with substantial investments in capital and experience are forced to pull out of the industry.

Prospectors inject considerably more than $50 million (including more than one tonne of gold) into regional economies annually and many small businesses and services in regional centres rely heavily on this economic injection for their own survival.

END OF SUBMISSION

GOLDFIELDS FIRST

Signed _____ **Date** 22/3/2016

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Name

As this is a large and complex submission, it is the wish of Goldfields First that an appearance before the Committee of Review is required. Can you please allocate an appearance time for our Goldfields First at your Kalgoorlie session on Monday 11th of April.

Representing Goldfields First will be Steve Kean, Mike Charlton, Bob Fagan and Andrew Pumphrey.