STANDING COMMITTEE ON LEGISLATION

MINING LEGISLATION AMENDMENT BILL 2015

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 APRIL 2016

SESSION FOUR

Members

Hon Robyn McSweeney (Chair)
Hon Donna Faragher
Hon Dave Grills
Hon Robin Chapple (substituted member)
Hon Kate Doust (substituted member)

Hearing commenced at 1.49 pm

Mr SIMON BENNISON
Chief Executive Officer, Association of Mining and Exploration Companies, sworn and examined:

Mr GRAHAM SHORT
National Policy Manager, Association of Mining and Exploration Companies, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or affirmation.

[Witnesses took the oath.]

The CHAIR: You will have signed a document entitled "Information for Witnesses". Have you both read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing for the record, and please be aware of the microphones and try to talk into them. Ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you now like to make an opening statement?

[1.50 pm]

Mr Bennison: Thank you, Chair. Yes, I would like to make an opening statement if I could. Thank you for the opportunity to appear before the committee in respect of the Mining Legislation Amendment Bill 2015.

The Association of Mining and Exploration Companies is the peak national industry body representing hundreds of mining and mineral exploration companies, many of which have projects in Western Australia. AMEC has had a direct interest in ensuring that development approval processes are efficient and effective. The objective is in taxpayers' interests, as more efficient processes will stimulate investment, exploration, discovery, growth and productivity, and generate significant social and revenue dividends to the state and the nation. The amendment bill is in the public interest. AMEC has been directly and constructively involved in the government's reforming environmental regulation agenda since its commencement in 2011. AMEC has supported the implementation of a robust, transparent, efficient and best–practice environmental regulation model, which would be risk based, outcome focused. In doing so, AMEC has contended that the introduction of risk based, outcome-focused assessment and compliance processes should result in efficiency improvements within the Department of Mines and Petroleum and not result in additional

resources or costs to the taxpayer or the industry. We believe that the Mining Legislation Amendment Bill meets those objectives.

During the comprehensive consultation that has occurred over the past five years, AMEC has been able to drive a number of recommendations and concepts, including the establishment of clear and appropriate environmental objectives; defining a low impact threshold for the risk–based assessment approach; designing and implementing the mine rehabilitation fund; extending the duration of programs of work from one year to four years, avoiding the need for annual renewal and assessment; a review and reduction in the number and types of standard conditions on approvals; a review and removal of duplication and overlap between the Department of Mines and Petroleum and other approval agencies; improved time lines and efficiency performance indicators and reporting across government approval agencies; and combined compliance reporting and online lodgement and tracking of applications. Some of these recommendations have received action and are ongoing, and others will be effected through the passage of the Mining Legislation Amendment Bill 2015. As stated in our submission to the committee, AMEC is supportive of the current amendment bill before the Legislative Council, subject to some outstanding issues being finalised: firstly, the definition of "low-impact activity" for the risk-based approach; secondly, the removal of the proposed prescribed assessment fees for programs of work and mining proposals; thirdly, confirmation that exploration and prospecting activities are excluded from the requirement to prepare an environmental management system; fourthly, the removal of reference to statutory guidelines; and fifthly, confirmation that AMEC will be closely consulted on the development of the associated regulations following the passage of the bill.

Thank you very much, Chair. I would like to answer any questions that the committee may have.

The CHAIR: Thank you. Just getting back to the threshold of 10 hectares per tenement per year be included in the definition of low-impact activity: some people suggest that it should not be on hectares; it should be just on the activity. How did you come to the 10 hectares?

Mr Bennison: Originally we made reference to the Environmental Protection Regulations 2004. Within there is the definition of a low-impact impact, and attached to that is a schedule around what constitutes that low impact. So for us it was literally a no-brainer to take that regulation and say, "Why don't we, for consistency's sake, just transpose that across to the low-impact threshold that would exist under the changes within the bill?" That is effectively the position that we have adopted.

The CHAIR: I remember the EPA bill. I took it through Parliament in 2004 and I think it had 170 amendments. It was a good act, that one. You request removal of fees for program of works and mining proposals. If this refers to the fees purported to be introduced by regulation last year, those fees are not in place. What do you suggest DMP should do to respond to concerns about the fees?

Mr Bennison: We originally have been opposed to the whole cost recovery process within the DMP. That is based on the public good component, which is taken from the revenue generated by the industry, and other aspects of it, which are fed back into the community, and believe there is a very good case for that to not justify the sort of fees that were being approached for mine proposals and programs of works. We were seriously questioning the calculations that underpin those fees as well, and the time and effort required to do it. The department was very forthcoming and discussed those in some detail with us. On that basis, we went back to the minister and suggested that there were other options, and that the justification for those fees, which in part was going to go to quite a number of FTEs that would be put on the ground for environmental inspection —

The CHAIR: I would never agree to that!

Mr Bennison: I guess it underpinned our philosophy of improving efficiencies within the agency, and that was a big concern to us. We could see the agency growing at quite an alarming rate.

The whole journey we have been on for the last five or six years has been to improve the efficiencies across the agency—not just DMP, but others—where we are actually cutting back on staff requirements. We are getting smarter at how we are doing the whole environmental assessment work and we are getting smarter about the time required and the administrative work required for all the online applications, and the reporting requirements that follow through. Whether they are POWs or AERs or whatever the case may be, the intent of this whole exercise has been to improve efficiencies. So to then go out and whack us with fees and say, "Well, this is going to be for more staff, because we need more to do this sort of activity", we just said, "Hang on now; that is right against the grain of why we have gone down this path." So that has really underpinned our approach back to not only DMP, but also the ministers and cabinet, to say, "Look, there has got to be a better way of doing this. If DMP need more resources, then justify those resources to us."

Hon KATE DOUST: Can I just step in here. A little while ago you said that there are other options instead of fees. What are those other options that you might have canvassed?

Mr Bennison: There is tens of millions of dollars that comes in from the collection of rents and other revenue streams from the industry, let alone royalties and other taxes and so forth, that go into consolidated revenue. I think if the government is truly intent on encouraging investment in this state, particularly in new discoveries, particularly in greenfields exploration, of which POWs are a key component, it should be looking at accessing, for example, consolidated revenue to make up any differences that the department may need to really meet those changes that have eventuated through this whole process that vindicate further resourcing. I am not sure, having said that, that the addition of, say, a dozen FTEs, or whatever numbers are required to meet further inspectorial requirements of the department, are necessarily the most efficient use of those sorts of funds.

Mr Short: Just to add to the comment regarding tens of millions of dollars, as I understand it, the last time we inquired it was somewhere around $80 million a year in terms of collection that goes into Treasury—not through the Department of Mines and Petroleum's accounts, but through Treasury and into the consolidated account. That is through tenement rentals, through application fees and other charges that are raised through the process.

[2.00 pm]

Hon KATE DOUST: It is all right, we do not know what they are doing with the money either!

Mr Bennison: I will not go there!

The CHAIR: It is going on hospitals and schools.

Mr Bennison: Glad to hear it.

Hon ROBIN CHAPPLE: I just want to go back to the 10 hectares, if I may. When you talk about the 10 hectares, are you talking about 10 hectares of active work or a lease of 10 hectares?

Mr Bennison: That is a good question, because when you look at the definitions under the discussion paper on the low-impact threshold, it is an area we raised with DMP as to where the degree of disturbance is actually going to be, I guess, captured by the definition of low-impact threshold. In the original documentation, the actual disturbance itself was, by definition, an issue for us. Having said that, there are a very wide number of areas, depending on their sensitivity, where the low-impact threshold will not apply. We are talking about the least sensitive areas that exist out there, mainly on UCL, and, from our point of view, for us the 10 hectares is a fair and reasonable area. We worked through this when we were tossing around the same situation with the threshold for the mining rehabilitation fund, and the same situation in that particular instance, so we have been quite comfortable with that 10 hectares as being a fair and reasonable benchmark.

Hon ROBIN CHAPPLE: Ten hectares of actual physical impact.

Mr Bennison: Correct.

Hon ROBIN CHAPPLE: So would you see that 10 hectares being uniform or diverse—two hectares here, two hectares there, and two hectares over there, in maybe a 200-hectare area?

Mr Short: We have suggested 10 hectares per tenement, per financial year.

Mr Bennison: There have been issues around that, particularly from cumulative issues and program of works and how frequently they are applied for. We think all the caveats and safeguards can be put around that without any dramas, and we have discussed that with DMP.

Hon ROBIN CHAPPLE: Would you like to see those in the act, as opposed to following on in the regulations?

Mr Bennison: No. As far as the detail of the conditions, we would have liked to have seen 10 hectares included in the act, but we were also conscious of a review process that has been floated by the department in the context of, if the areas of sensitivity need to be changed, and if we have not quite got whatever figure we land on right, and if, over time, there is reason to increase or decrease, depending on the sensitivities of those areas, then do we need to raise all that through legislation? Why not be able to do it much quicker and faster under regulation? It appears to be a vexing question—you like things enshrined in legislation in certain circumstances, but you must be smart enough to say that there are reasons why you would not.

Hon KATE DOUST: Can I just ask about that review period that DMP has hinted at.? There are actually no provisions in the legislation for a review process, so what sort of discussion have you had with them around that?

Mr Bennison: It has really been the informality around the low-impact threshold itself that we have been discussing with the minister, and that was in the context of why we would land on a particular area. If, for example, we got it wrong, all of us, for whatever reason, both government and industry, then how could we provide for making any changes? So, as a consequence, we looked at a review period. We do that in a lot of instances, obviously, because if there is the opportunity to improve the boundaries around which the regulations will sit, then we are quite happy to sit down with the government and look at making those improvements.

Hon ROBIN CHAPPLE: Would you do that via a sunset clause?

Mr Bennison: In what context?

Hon ROBIN CHAPPLE: Would you actually enshrine it in the legislation that this legislation will be reviewed after a certain period?

Mr Bennison: No. I guess we have accepted that there has been a fairly minimalistic approach to the legislation. There are downsides to that—we accept that—but, no, we have not thought that it should be enshrined. We would like to think that the collaboration between the industry and the government is strong enough to make sure that if some aspect needs review, then we will be able to sit down and work through that process.

Mr Short: And encourage the review to happen.

The CHAIR: Now you have to encourage the new minister.

Mr Bennison: We will encourage the new minister to do that.

The CHAIR: Glad to hear it.

Hon DAVE GRILLS: You requested that exploration and prospecting activities be excluded from a requirement to prepare an environmental management system. Proposed section 103AZC of the bill provides that environmental management systems are a requirement only for mining leases and miscellaneous licences. Is that still a concern?

Mr Bennison: No. I think from our perspective we have appreciated the fact that EMSs really were going to apply to significant activity—I do not want to try to define “significant”, but usually once

you go to an ML stage, or a miscellaneous licence stage, you have upped the ante to a fairly significant level, out of a PL. For us, we were quite comfortable with the fact that EMSs are part and parcel of the industry, and our operations, and there are varying degrees of EMSs. I think, as Graham mentioned earlier, we have been looking at how you can generate a template for low environmental activity on a particular tenement versus something that is obviously far higher in the context of mining activity.

Hon ROBIN CHAPPLE: Just on that one, obviously, when you have a mining lease or an exploration lease and you are a major corporation, you quite often have a prospector come along and say "Look, can I have access to your ground? I want to do a bit of prospecting." Sometimes it works, and sometimes it does not, but the original proponent—the person who owns the EL or the ML—has the conditions ascribed to it. So, if you then have a prospector coming along and saying, "Look, I want to work your patch a little bit; I might find a bit of gold for you that you might be able to get out" or whatever, would that not put a greater onus on the corporation that has the ML or the EL to then report on what the prospector is doing, and will that not inhibit the ability of a prospector to maybe get onto MLs and ELs?

Mr Bennison: My understanding at the moment is that there already is, on occasions, tension between prospectors and the owners of those tenements, and their adherence to the conditions that apply to those tenements. You will always have that. To try to make sure that there is good collaboration and communication and that the prospectors abide by the conditions of those tenements is always a challenge for the owners of those tenements.

Hon ROBIN CHAPPLE: I am just asking whether this will make any difference.

Mr Bennison: If their prospecting activity is going to escalate to a level that is requiring an EMS, which means it will take them out of that prospecting licence situation, I think there is a general industry view—I say it is very general, because I know there are some people opposed to it—that a degree of EMS and reporting back to the agency, assuming that disturbance is relatively significant or else in a very sensitive area, needs to be considered in line with those activities. We have just agreed with the department that we should be able to draw up EMS templates electronically that enable companies or prospectors, depending on their circumstances, to quite easily, without high administrative costs and without time-consuming exercises, sit down and fill in that template and give a fair and reasonable account of that activity back to the department.

Mr Short: I think, carrying on with that, the Department of Mines and Petroleum, when they were making their introductory comments earlier, made reference to "proportionate", and I think that is exactly the case with an EMS. It needs to be proportionate with the environmental liability that goes along with it and community expectation.

Hon ROBIN CHAPPLE: I hear what you are saying there. The key issue in what I am trying to get to is that if you have got an EL or an ML and you allow a prospector on, the prospector does not do that; the corporation that actually has the lease does that. Now, because there might be greater controls or need for controls over the prospector, is that going to make it less likely that you, as a major miner, might say, "Oh, God, this is another load of paperwork we're going to have to fill in here. No, Fred; we don't want you on our tenement"? I do not know who Fred is, by the way.

[2.10 pm]

Mr Bennison: Look, I could not honestly answer that categorically. It may, but I think there has been a fairly good relationship between those prospectors and those companies that have genuinely tried to play. The situation of environmental impacts and the implications for that company I think means they probably try to do it in a reasonable fashion, but it does highlight the need for prospectors—no matter whoever or wherever they are—to be conscious of their responsibilities back to the community as a whole. It is not just to that tenement holder. We all expect everyone to

act responsibly out there and prospectors, no matter who they are, I think are no different to any part of the industry.

Mr Short: Picking up on that, off the top of my head, I think that the department already produces a guideline on special prospecting licences anyway, which describes the process, which is separate to this exercise, but will no doubt carry on as is.

Hon ROBIN CHAPPLE: I am just wondering how it is going to carry on as is.

Mr Bennison: I think, as has been mentioned before, the devil is in the detail with some of the regulations. There is no question about that. It always concerns us when we see legislation going through and we have not had the chance to look at any regulations, right across the board.

Hon ROBIN CHAPPLE: Welcome to our world.

Mr Bennison: We would assume —

Hon KATE DOUST: I think, Mr Bennison, with this bill, as we have found today, it is not just the regulations. There is also significant reference to guidelines that will be established; it is even that step further away. If you took away the proposals around regulations and the proposals around guidelines, you would actually find this, as a piece of legislation, to be relatively stripped bare and perhaps not with the level of detail that we would normally like to see in a bill like this. I do not know how comfortable AMEC is with that step-away process.

Mr Bennison: We are comfortable. We live 24/7 by those guidelines and those arrangements. It has been a culture within the agencies to go down this path. Our biggest reservation is if that guidance material—we made it in our submission you—comes into a statutory commitment. That really does worry us. Why we say that is because we have so many guidance documents now—not only in EPA, DER, mine safety and right across DMP—that some of those agencies are now building these guidance materials into a statutory provision.

The CHAIR: They always have.

Mr Bennison: That is the worst thing for us. I just got a document today on how to submit a mine proposal. It is 90 pages of guidance material. We have a similar one with mine closure. We have guidance material that is now just getting so voluminous it is *War and Peace*. This is part of one area of government at the moment that we have got to reform. We are now trying to convince the department that less is better and that we get smarter about how we put this guidance material together. We have obviously, as legislators, met your requirements, but as people on the ground out there spending the dollars in shorter times and actually trying to meet those legislative requirements, keep that guidance material to an absolute minimum. That is a challenge for both of us but, at the moment, we have gone too far in one direction. I remember EPA having this with its train wreck. We used to put anywhere between 1 000 and 5 000 pages in under ERMPs and PERs and all the rest of it. We have now got the same sort of culture, unfortunately, encroaching in on other agencies that we have to change. That is high on our agenda these days.

Mr Short: Carrying on from that, of course, for the vast number of guidelines that are available, as well, you have to say, as a proponent, log on to the DMP website and see if you can find it. I certainly invite you to have a look.

Hon ROBIN CHAPPLE: Do not worry. I use TENGRAPH; I use it all.

Mr Short: It is just about impossible to identify how many guidelines there are on a particular topic, what they are and, more importantly, which of them are important.

Hon ROBIN CHAPPLE: Are we not actually seeing—this is a bit of a philosophical question—that over-regulation, spread over several agencies, now coming back into the DMP, which is, itself, becoming over-regulated? I do not mean “regulated” because that must be the wrong word—“over-prescribed”?

Mr Bennison: I think there is a risk of that in a serious way. I think the documentation that we could put on the table here now, with all the guidance material, genuinely reflects that. That is sad because we are working as hard as we can to get away from that model and we do this in every state and territory. When we sit down in similar situations to this in every other state and territory, we have the same sort of discussions: how are we getting away from this huge amount of documentation that is extremely costly and time-consuming and at the end of the day, it actually does not have a very good outcome?

Hon ROBIN CHAPPLE: I think, in 1996, an NOI was a five-page document. That was about it.

Mr Short: Of course, the other issue is—I know Mr Chapple raised it earlier when the department was here—in terms of the consultants. Obviously, some of the consultants, I might add, are associate members of ours as well, so they are in our mix, but they are the winners. They are winners out of this process. I know we have moved into mining proposals and mining closure, which is separate to this particular bill, but nevertheless, once you establish statutory guidelines they become a must. It is not "may"; they are a must. You have to deal with it; you have to deal with every word in the 100 pages or in the 90 pages. You have to make sure you have covered off, otherwise you are faced with an EPA Roe 8–decision issue.

Hon KATE DOUST: That is a concern of a lot of the prospectors about the additional costs they may incur because they may have to hire a consultant to comply.

Mr Short: Understood, but this is at the other end. What you are talking about now is where the low-impact threshold comes in and that is why it becomes so important as part of this particular process. It is for the low-impact threshold that does not cut across the environmentally sensitive areas that they tell you that you need to go through the process.

Mr Bennison: Do not get us wrong; we are not advocates for putting more administration and accountability onto the prospectors because a number of prospectors or a number of companies that hold prospecting licences are members of ours so we are very cautious of them. But, again, I guess it is between the government and the industry in finding that balance. We are just trying to make sure, also, that we do not go too far in the direction, as you say, of prescriptiveness and that whatever is required is the basics—the minimum—and that it is kept simple and affordable and with the least administration to it.

The CHAIR: The guidelines that you have now, are they prescriptive, statutory; or is this proposed section 103AM, which states, "The Director General of Mines may approve guidelines for the purposes of this Part"? Before this bill, are the guidelines just guidelines that the department has put out, or does this apply or not?

Hon ROBIN CHAPPLE: There are hundreds of them.

The CHAIR: They actually do—they are statutory?

Hon ROBIN CHAPPLE: No, not statutory. There are a whole range of guidelines —

The CHAIR: That is what I am asking. There are, but are they statutory or is this something new?

Hon ROBIN CHAPPLE: No, they are not statutory in the sense that —

The CHAIR: They are taken as.

Mr Short: It is an interesting question.

Mr Bennison: I think it is a very interesting question. I understand your response in this area because we have watched it with Roe 8 and we have actually raised it with—be careful how I answer this, but it is an interesting question. Some people who have gone down this issue about legalities of guidance material have not been willing to test it in a court of law because of the implications. If you want to get your approval through and you want to go out there and start drilling or mining, the last thing you want to do is be contesting guidance material in the courts. I think a lot of that has not been tested, so we do not know, sometimes, where that guidance material sits in a statutory sense. Needless to say, the industry is extremely compliant. I like to think

that 99.99 per cent of it is, anyway, in the context of the guidance material that is issued. We just know that we have far too much of it and we just have to work diligently with the agencies and make sure that we cut it back to something that is sensible.

[2.20 pm]

Mr Short: If I can add, Chair, we raised this particular issue back in 2014, I think it was, when we saw the first draft of the legislation. From what I recall, the DMP advice at the time was that they could already make, for example, the mining proposal guidelines and the other documents, statutorily based. But we still do not see, as part of this particular bill, that that section needs to be there. It can be taken out and straightaway I think that would reduce some of the inefficiencies that would cause—as well as the cost, as well as the delays and as well as, as Simon referred to—the paper train wreck that just builds up. Then it becomes even more difficult when it comes to the assessing. When it comes to the assessing from the department's point of view or from the regulator's point of view, some of the stuff they ask for, we are not necessarily convinced that they all know what they are assessing.

Hon DAVE GRILLS: We are moving further away from a bit of commonsense and into, "Let's wrap it up and regulate it and do everything as well", and we keep putting bandaids and guidelines and that on this end. Who does it better? Who does it where we can see that somebody is doing it a bit better?

Mr Bennison: We thought originally —

Hon ROBIN CHAPPLE: Disbanding government! No; all right. Sorry.

Mr Bennison: It is a very good question. It is a pity I am on the record! There was a time when South Australia was the benchmark with the way they do it through State Development and the creation of a one-stop shop. We are now seeing that there are issues within the South Australian system. They have introduced fee structures that are very prohibitive on capital expenditure and so forth, and their processes have become a little more convoluted, according to our experience with our members in South Australia. This is a bit of a crusade for us across all the states. I do not think there is anyone that we would hold up as, "Here's the flagship of legislation and regulation particularly around the environmental provisions of minerals exploration and development." I just cannot think —

Hon DAVE GRILLS: Basically we had it, like South Australia, and we keep moving further away from it.

Mr Bennison: I believe so, yes.

The CHAIR: You stated that you expect to be consulted on the development of the regulations to follow the bill. Do you expect to be consulted? How widely should they consult on regulations?

Mr Bennison: I think all those stakeholders directly affected should be consulted. We have rarely had a problem with the consultation process with the Department of Mines and Petroleum. We are quite comfortable with our working relationship and look forward to the development of the regs and being able to sit down and work through them. We did it in great detail with the mining rehabilitation fund, which is something we are very proud of. We believe that the agency really appreciates the input that we are able to provide. We have lived it, we have experienced it, and we do pick it up from other states from an AMEC point of view. So they get the opportunity for us to lift all the good stuff and try to avoid all the bad stuff and help them put it into regs where it is necessary.

The CHAIR: On behalf of the committee, I would like to thank you both for appearing before us; it has been very beneficial.

Mr Short: Thank you very much for the opportunity.

Hearing concluded at 2.23 pm