

STANDING COMMITTEE ON LEGISLATION

MINING LEGISLATION AMENDMENT BILL 2015

**TRANSCRIPT OF EVIDENCE
TAKEN AT KALGOORLIE
MONDAY, 11 APRIL 2016**

SESSION TWO

Members

**Hon Robyn McSweeney (Chair)
Hon Ken Baston
Hon Dave Grills
Hon Robin Chapple (substituted member)
Hon Kate Doust (substituted member)**

Hearing commenced at 9.26 am**Mr JEREMY SAMUEL****Business Development Executive, Focus Metals, 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.

[Witness took the oath.]

The CHAIR: Could you state the capacity in which you appear before the committee?

Mr Samuel: I am appearing in the capacity of a local small business that relies on the small-scale mining sector for our business viability.

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

Mr Samuel: I have.

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 nor 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 the 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 a statement to the committee?

Mr Samuel: Thank you very much, Madam Chair, and to the committee for conducting this inquiry and for the opportunity to speak with you. As I mentioned, we are what I would call an interested observer. We are not miners or prospectors, but as a gold refiner and buyer with a local presence in Kalgoorlie, we have a very strong interest in seeing a stable and strong small-scale mining sector. We are a small family-owned business and self-funded, and as such, our market is exactly the people that we are discussing today. We are not serving the super pits and the large-scale miners. We are very concerned and very focused on servicing these small-scale miners. We have become increasingly concerned over the last 12 to 18 months through our discussions with this sector that there seems to be a widening trust gap between the small-scale miners and the department that is there to both serve and regulate them. There seems to certainly be a misalignment of expectations, and it seems to be that in some ways the department operating in Perth and the prospectors operating out—whether it is Leonora, Meekatharra, Coolgardie, around Kalgoorlie and these other sites—almost seem to be living on separate planets. When you read the submissions from the department and then read the submissions from those that the department is seeking to regulate or is regulating, they seem to be almost entirely at cross purposes.

[9.30 am]

The main reason that we wish to appear today is to represent the businesses that serve those miners. It is a very simple statement. We have been in operation as a business for nearly 37 years. We took

the initiative to invest in Kalgoorlie, to buy a property, to hire a full-time employee here in Kalgoorlie, to send myself backwards and forwards from the eastern states—once, twice a month or more—to invest in advertising, to join the local associations, because we believe in the goldfields and we believe in the importance of the small-scale mining sector. To put it as simply as I can, if those people go away, we go away. The jobs that we create go away. The businesses that we support go away, whether it is the pub in Menzies that relies on these people coming in, whether it is the fuel suppliers, whether it is the coffee shop that we eat at in Leonora when we go out to visit clients up there or the other businesses that support and contribute to this community that are based on the support of these small-scale miners. These people are a vital contributor to the goldfields' economy. Whatever the department may say, it is very clear, listening to them, engaging with them, going out on to their sites and seeing their workplace, that the department has not engaged with them adequately or appropriately and that the bill, as passed by the lower house, clearly and manifestly fails to take into account the needs and the bureaucratic red-tape burden imposed on this very important sector. So we stand as a business that serves that sector and relies on that sector for our viability to request that this committee seek to amend the bill to take into account the valid considerations of the small-scale mining sector, which we do not believe has occurred to date.

The CHAIR: Thank you. If I can just jump in there, you are concerned about the bill, but what are your reasons? What you have to do is link your concerns in the bill to what you have just told us. We understand your reasons, but relating it back to the bill, I think.

Hon ROBIN CHAPPLE: If I may, you mentioned specifically in your submission proposed sections 103AY(1)(a), (b) and (c), 74 and 103AM as, by their very nature, increasing the cost to the industry.

Mr Samuel: Correct.

Hon ROBIN CHAPPLE: Could you expand on that? Obviously, I understand that you are not industry, but a provider of services.

Mr Samuel: Yes. Thank you, Mr Chapple, for that. That is exactly right. The issues around environmental management statements, mine closure plans and many of the other sections that you have mentioned—sorry; I apologise; I do not have the specific wording in front of me at present, but the sections, according to the people who are going to have to apply them if they are not exempted from them, impose a significant burden. Again, it is important to bear in mind we are talking about operations that are run by one, two, sometimes three people. They are not corporations with head offices in West Perth with 20 people in an environmental compliance department. The issue that you raised previously, in the last session, about thresholds seems to be at the crux of this problem; that it does seem to be a one size fits all above the very small prospector. The sections you mentioned, in particular the ones that our colleagues and clients in the industry highlight as potentially increasing their regulatory burden, one of the things that seems to occur—this comes clear from reading the various submissions—is that it looks like a number of provisions that were previously scattered throughout the act have been brought together. Whereas in the past those provisions may or have not have been rigorously enforced, it looks like now bringing them into one place, applying more stringent oversight to them without a means for recourse has probably highlighted that suddenly things that may have been there—the department rightly states they have had the ability to impose fees for a number of years and have not done so, and yet now they are proposing to do so. What it seems is that things that were there scattered throughout the act have now been brought together and given a lot more focus and will be regulated and implemented much more stringently. Whilst the minister has stated their aim is to reduce compliance burden, it actually appears in reality that the unintended consequence is that they will have an enhanced burden.

Hon ROBIN CHAPPLE: Can I jump in there, because you actually just touched on an important point. The words “reduce regulatory issues” in my view, and I am encouraging you to come forward with your view, is that it might reduce the regulatory burden for the mines department but it is not

going to reduce the regulatory burden for the people who actually have to do this work on this self-reporting mechanism.

Mr Samuel: Correct. And, look, Mr Chapple, you have nailed it on the head. The department actually never states for whom they are reducing regulatory burden. It is pretty clear from reading the submissions and listening to the testimony from the actual small-scale miners that there are two things. First of all, they do not have clear information, because quite a lot of the detail is proposed to be moved over into regulation. I understand that this is a general trend across Australian governments, both federal and state.

Hon KATE DOUST: Not one that we necessarily support, I must say.

Mr Samuel: And not one that we would support either, Ms Doust. It gives too much leeway for processes to occur that change people's business environment and create uncertainty without the benefit of proper due process.

Madam Chair, I understand you have asked me to allude to specific clauses, and with Mr Chapple's assistance we have done some of that, but part of the issue seems to be what is not there, and what is not there is clarity around the tiers or thresholds in which these various activities occur. We would very clearly submit that that needs to be in the act and not the regs, because it needs to go through a proper due process and proper consultation with the people whom it most directly affects, and then it needs to be put into a legislative process that cannot be changed without due consideration by the Parliament. That, first and foremost, is effectively the white space. That is part of the problem.

The CHAIR: One of the huge concerns was about the fees that were being proposed. None of us like fees being raised, including myself and Hon Kate Doust. Most of us do not particularly like that. They were fairly steep from memory—\$6 000-odd. Have people discussed that with you, the fees? They pulled back on that and did not charge any, but in the act it does say, I think, "may".

Hon ROBIN CHAPPLE: Yes, in the future.

Mr Samuel: The issue there, Madam Chair, and what is represented to us is that the fees as proposed were applicable long before any income was attached to them. What the miners have told us is that if you have got to pay—for example, I think it was \$6 950 from memory—just to go and have a look to see if a place is prospective, then that makes it extremely restrictive. Now, if you have done some exploration and found that there is precious metal there and start extracting it, then you start to generate an income. The sense that we got from people is that they did not mind—they probably minded less, shall we say—having fees imposed at that point because there was clearly income attached to it. It should be pointed out that with this whole cost recovery notion, even the CME and the bigger end of town state in their submissions that they do not support a cost recovery model. It is fairly evident why, because the fees that are already in place should certainly cover the operations of the department.

[9.40 am]

You stated earlier that the expectations around environmental compliance have changed over the years, and they certainly have, but what appears to be happening here is that the department almost seems to be trying to solve a problem that does not really exist, because they are placing all this additional regulatory compliance burden onto the sector, but the sector, by the department's own figures, already has an exemplary record. The department's figures that keep being quoted are some 97 per cent compliance. If you spoke to the police and said, "If you got 97 per cent compliance with speeding laws, would you be happy?", I think most police would be doing cartwheels down Hannan Street. It is an exemplary record. The extra environmental impost, particularly on the small-scale miners, seems to be solving a problem that just genuinely does not exist. You can actually look back at the history of the regulatory requirements that have been imposed. I referred to Mr Phil Nolan's submission because that quite clearly outlines—and I will read from it if I may—that they

have got one, two, three, four, five, six, seven different reports that have to go in, different licences that are required for water, for dangerous goods and for chemical storage, on top of their mining licences and leases. Clearly, the burden on these small operators has risen very, very steeply for no apparent benefit. That is where it becomes very understandable that people start saying, whether this is the department's intent or not, that it feels like the tail of the environmental section is wagging the dog of the mining activities. It feels like the balance has gone way too far in that direction, and one has to ask if the ultimate intention of some of those in the environment department is not to actually cease mining activities.

The CHAIR: So, to you, is it the environmental part of the section that you think will drive the small-scale mining sector out of business? It is the small mining sector that you are focusing on and the cost.

Mr Samuel: Absolutely. Well, let me just couch that, if I may, Madam Chair: the environmental section being brought together and highlighted with mandatory penalties prescribed—not up to, but figures—without clear definitions in the act and tiering, with increased oversight by inspection officers, who, as has been said, are not really experienced in the space that they are regulating and for whom there is no recourse. If there was a clear complaints and appeals mechanism that had legal force behind its decisions, then I suspect that the industry would be far less concerned, but at present the burden is way too far on the side of the small-scale operators to have to establish innocence. I know they are not necessarily considered criminal matters, but it does seem to be that you are almost guilty until proven innocent, which I would submit to the committee goes against the general premise of Australian justice. So I think it is that combination of factors, plus the uncertainty of, “Oh, don't worry; we'll put this all in the regs but we'll talk to you about it.” The history shows that to date they have not been consulted about it and that regs can be changed relatively easily. Look, as a businessperson, I can tell you one of the most critical things about any regulatory environment is that you want certainty; you want to be able to make investment decisions into the future, whether it is a five-year or 10-year horizon, with some level of certainty. So if the thresholds and the cut-offs and the tonnage limits and all of these things are only defined in the regs without proper consultation, then what you are creating is an environment where it is extremely uncertain for people to make investment decisions. It puts us, as a service business, back in the same situation that we do not know what the business environment is going to be for our clients to operate in and therefore we have trouble making investment decisions. Do we look at going and opening an office in Leonora? Well, at the moment I would not even consider it, because the regulatory environment is far too uncertain. It has a knock-on effect down across the whole community. Let us remember that these are not communities that are currently thriving. These are not communities that currently have an excess of business opportunities. These are communities where it is very slow, where there have been lots of layoffs or a lot of the big mines have shed lots of staff, and they are struggling. I mean, if you go out and sit in a pub in Menzies or go and talk to people in Leonora, things are tough. What this act, as passed, with the “Don't worry about it; we'll look after you in the regs” approach is doing is creating more uncertainty and more fear in those communities. So, people are not making investment decisions; people are not putting on staff; people are not upgrading their facilities. We as a business are in exactly that same position. So, the outcome that we would like to see is actually a certain regulatory environment that the people in the industry are comfortable will continue to allow them to have viable businesses.

The CHAIR: Thank you.

Hon ROBIN CHAPPLE: If I may just ask a question about that, under the current POWs that exist or originally existed—they have obviously been changed by some departmental guidelines over time that do not have any legislative effect but have been going on—there is a requirement to manage the environment. Now we know that a number of prospectors in the past have got Golden Gecko Awards for their rehabilitation. So it seems to me that there was a significant environmental management regime that seemed to be working well. Your take of it is that by

moving those environmental controls out of the EPA, which is currently the case, into the mines environmental section, their argument is, “It is bringing it all under our control.” But given that the EPA was originally controlling it and seemed to be doing a good job, do you have faith in the department doing that?

Mr Samuel: Mr Chapple, we do not deal directly with the department, so it is, respectfully, not necessarily our place to have faith or otherwise. But what is clear, as I stated earlier, reading the submissions from the mining sector, is that they do not have faith in the DMP’s ability to engage with them appropriately and to understand their needs. I think, if I can touch on it, the exemplar is this move to mandatory online reporting and the guys who have to actually do the reporting saying, “Hold on a minute; many, many, many of us just don’t have the skills to do this; don’t have the ability”, and yet it is being pushed through very quickly.

Hon KATE DOUST: There is no transitional phase for that, is there?

Mr Samuel: Correct; there is no transitional phase. There is no support. It is not that the department has allocated any resources to say we will train you up on this; we will run workshops. They have run workshops on other things. I mean, when TENGRAPH was transitioned late last year, they ran a series of workshops and people would come in and get some training on the new system. That does not appear to be happening here.

Hon KATE DOUST: I would imagine that for a number of people it is not only having access to a computer, but they also have to have the appropriate software to be able to put in any maps or overlays on those maps or other software related to geological data and all that, and I understand it is reasonably expensive. So there are all those additional costs that would be incurred to be able to manage their online submissions as well, are there not?

Mr Samuel: The cost burden is clear. I have to say I have two computer science degrees, and I have looked at some of these systems and I cannot understand how they are supposed to operate. There are a couple of issues. One is the design of the systems themselves seems to have been done really without much thought to the user experience and to the user base that is going to be using them. The second is just simply access. If I may, I will just tell a quick anecdote. We went to visit some clients who are halfway between Menzies and Leonora, and it was a very sunny day, so the guys had their faces covered in zinc cream—one was green and the other sort of looked like something out of *Braveheart* with the tricolours—and I took a photo of these two guys to take back to Melbourne and I showed it to my managing director, and she said, “What the heck is that?”, and I said, “That is our clients, and you haven’t been out there and spoken to them; you haven’t seen the conditions they work in; you don’t understand.” I have to say that is the exact same impression that I get hearing the DMP speak, seeing what they put out. They do not understand. These guys probably know how to use a computer. I mean, they are under 40, these two. But they are out there in the bush and they do not have the facilities. There is no signal out there. You can set them up with a laptop, and that is great, but are you going to build the Telstra tower there so that they have 4G communications so that they can access it? Part of the problem appears to be that there is this silo mentality, so it does not take into account the interactions.

The problem, Mr Chapple, going back to your question about the EPA versus DMP, is that the EPA—we deal with them a lot in Richmond in Victoria, and it is the same thing—have to take a pragmatic approach because their environmental officers deal day in, day out with industry, and I think they have got a lot of experience. With the DMP side of it, it just does not seem to us, as an outside observer, that those people have the same pragmatic interaction with business. As I said, in the absence, then, of an appeals mechanism that has legal teeth, it is understandable, given the past experience that many of these people have, that they have a great deal of scepticism about the DMP’s ability to do that.

[9.50 am]

The CHAIR: You have hit on a very important point; apart from people not having computer equipment, it is the signal to run the computers out in Leonora and out in the bush that is really an important point.

Mr Samuel: Correct.

Hon KATE DOUST: Coming back to the discussion we had earlier around describing the type of prospector or the type of miner and putting that into the legislation rather than the regs, and I think this has come up in other discussions that we have had, if we had in the actual bill itself separate provisions that deal exclusively with the small to mid-range prospector, in your view would that provide perhaps further clarity and guidance for that group of prospectors in relation to how they work through that?

Mr Samuel: I think it absolutely would.

Hon KATE DOUST: Acknowledging how they manage their own business on their sites.

Mr Samuel: That is right. What concerns us is to go bigger rather than smaller. For example, there has been talk about what areas—are we talking about the area that is actually being worked or the total area that could potentially be worked? The thing that we would say, not being experts and not being out doing it, is go a bit bigger. If people are saying it should be 25 hectares, give them 50, and if people are saying it should be 30 000 tonnes, give them 60 000 tonnes. The reason for that, and what we would encourage within the consultation, is to actually allow people to grow their businesses. Let us remember here that we are talking about people who are entrepreneurs, who have started a business, and who are working bloody hard, if I may say. I mean, when you go out and actually see these guys, they either live in a caravan or under a humpy, they are out bush for weeks at a time, and it is pretty basic facilities, and in a whole series of operations that in a public company each area might have five or 10 or 20 or 30 people working, they do it all themselves or with one other person. They should be allowed the leeway to grow their businesses. Now there is a certain scale that they are going to get to where they are either going to have to become a bigger company, hire additional people and do that themselves, or partner with a big company, and Metals X is a great example of a group that has been very successful at joint venturing with smaller operators, and there are a number of others. That is fine. But make those limits bigger so that there is actually a path for growth for these people to grow a viable business, rather than constantly constraining them. That would be our plea to the committee and the legislators—be generous rather than tight with them.

The CHAIR: Thank you very much. I would like to thank you for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any corrections should be made because of a typographical or transcription error, please indicate these corrections on the transcript. We do not have any questions on notice. Thank you.

Hearing concluded at 9.53 am
