STANDING COMMITTEE ON LEGISLATION

MINING LEGISLATION AMENDMENT BILL 2015

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 APRIL 2016

SESSION TWO

Members

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

Hearing commenced at 11.01 am

Dr TIM GRIFFIN
Deputy Director General, Department of Mines and Petroleum, sworn and examined:

Dr PHIL GOREY
Executive Director, Department of Mines and Petroleum, sworn and examined:

Mr DANIEL MACHIN
General Manager, Department of Mines and Petroleum, sworn and examined:

Ms JANE HAMMOND
Legal Manager — Reform, Department of Mines and Petroleum, 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 the affirmation.

[Witnesses took the oath or affirmation.]

The CHAIR: You will have all signed a document entitled "Information for Witnesses". Have you 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 and, for the record, please be aware of the microphones and try to talk into them. Please 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 like to make an opening statement to the committee?

Dr Griffin: Yes, please. I represent the department and, in particular, the director general, Richard Sellers, who is travelling overseas this week unfortunately. He offers his apologies. With me here today are Dr Phil Gorey, whose permanent role is executive director in the environment division; Dan Machin, who is general manager, minerals south, and has been heavily involved with stakeholders and working with the legal team to ensure operational aspects in the field are consistent and reflected in the legislation; and Jane Hammond, legal manager, reform, who worked closely with the parliamentary legal team in drafting the legislation.

The Department of Mines and Petroleum appreciates this opportunity to appear before the committee to answer questions regarding the Mining Legislation Amendment Bill 2015. As the Mining Act has evolved to reflect community and government expectations to minimise the impact that exploration and mining activities have on the natural environment, it is now appropriate to consolidate these changes into a separate part of the act. In recent years, DMP has taken a proactive role in addressing this increasing interest in the opportunities offered by new research to limit environmental impacts, particularly with respect to rehabilitation. The introduction of legislation for

the mining rehabilitation fund is a clear example of this proactive approach, and this mining legislation bill is another such case. DMP also recognised the need to move to risk-based and outcomes-focused regulation, which is reflected in the bill. The bill ensures compliance requirements are proportional to the impact to reduce the regulatory burden on the mining sector and to reflect the varying scales and complexities of an activity. The bill also addresses unnecessary duplication with the Environmental Protection Act. This bill does not introduce significant new clauses that will disadvantage prospectors and small miners; in fact, it makes it easier for prospectors and small miners by reducing the regulatory burden. In preparing this bill, the level of engagement with all key stakeholders that started in 2012 has been extensive and second to none, as is clearly highlighted in our submission to this committee. Thank you.

The CHAIR: Thank you. What are the key differences of operation under the old act and the amended act? I know you have just gone through some of it, but I suppose in layman's terms, for the record, what are the differences?

Dr Griffin: I might ask Dr Phil Gorey to respond to that.

Dr Gorey: Thank you very much. Perhaps what I will do is just refer to our submission document to the Standing Committee on Legislation's inquiry into the Mining Legislation Amendment Bill 2015. Section 5 of that submission breaks up into four key parts—what the main changes will be at the high level. The first is, as Dr Griffin mentioned, that the Mining Legislation Amendment Bill has evolved over 30-odd years to reflect some changes in practice and changes in government. That has resulted in provisions relating to environmental regulation existing throughout the document, throughout the actual act. One of the key parts of this amendment bill is to take those existing provisions and relocate them into a separate part of the Mining Act. In essence, that will not necessarily change the administration of the act; it will simply make more coherent what the environmental obligations are. Beyond that, there are a couple of provisions that relate to modernising the legislation. The Mining Act at the moment is quite effective in regulating exploration and mining, albeit that it is somewhat prescriptive in how it does it. What some of the changes throughout this bill will do is to move to an outcomes-based regulatory system and that is part of a theme for the Department of Mines and Petroleum, across its mining and petroleum areas, that it has been implementing for a number of years now.

[11.10 am]

It also reflects some changes that have been happening to environmental regulation over about the last 20 years around the world. The principles around that are rather than government holding all the answers for how environmental matters need to be regulated on a site, it moves to government and the regulator setting out what the environmental objectors and outcomes need to be and allowing the regulated community to determine exactly how they will meet those environmental outcomes. They are the provisions that allow licensees to apply their own innovation, their own technical knowledge and their own skills to whatever environmental matter they face. They can then find whatever is practical and relevant for their own location.

The other parts of the bill relate to removing some duplication. The duplication that is currently required for native vegetation clearing permit approvals under the Environmental Protection Act, which currently exist with the approvals required under the Mining Act, is one area. The other area that is probably going to be quite obvious to a few of our clients would be the introduction of a low-impact threshold. Very briefly, the way the Mining Act is structured at the moment, any activity that results in ground disturbance requires the mining tenement holder to make a submission to government in the form of an application. That is then assessed by environmental officers and approval is then granted or not. But if an approval is granted, the mining tenement holder is then obliged to maintain a record of that approval and report against it. All our approvals go through that same general process. We get about 3 000 a year. We have identified that a reasonable number of those, particularly the small exploration and small prospecting activities, are fairly similar in what is

proposed. The variability of their activities is fairly limited and the conditions and assessment that we apply are also fairly similar. This amendment bill would also allow for those low-impact activities that can be described in a certain way in regulation to be subject to essentially an automated approval process, meaning that we are not compromising the environmental outcomes but we are avoiding the need for essentially a 30-day individual assessment to happen on every one of those applications, which is currently the case.

Hon ROBIN CHAPPLE: One of the most contentious things is the notion of consultation. Quite clearly, there are people within the prospecting industry who do not feel they were consulted meaningfully in the early stages. There has now been some consultation. I am advised that the minister indicated to one of those consultations that he had been advised by the department that there was adequate consultation and they were sorry that there had not been. Given that you had some meetings with APLA, did you have any broader consultation other than with APLA; and how long ago was that with APLA?

Dr Gorey: We have taken the liberty in our submission to set out, hopefully in some detail, the consultation and the process we did for that. If it is okay, I will refer to that as I step through the process.

Hon ROBIN CHAPPLE: When was the last meeting with APLA, before, in essence, the shit hit the fan? Excuse my expression.

Dr Gorey: I will step through this process, just to let the committee know. The department has a number of formalised consultation processes. It has a committee called a mining industry liaison committee that meets, as I understand, quarterly, which is chaired by the director general, and has representatives of APLA at that meeting. The last meeting of that would have been within the last few months. We also have an advisory panel for the environmental reforms in particular. That is a committee that we termed the reforming environmental regulation advisory panel. That met approximately every quarter as well. APLA was represented on that committee as well. We have finished that committee because in late 2015 the committee resolved that the reforms had substantially been completed. In its place we have put in another formalised committee called the environment division liaison committee, which APLA is also represented on, and that has already met this year. As well as the ongoing one-on-one engagement the department has with APLA, we also still have those formalised committees.

Hon DAVE GRILLS: What part did you play in that consultation? Were you involved in that yourself?

Dr Gorey: The reforming environmental regulation advisory panel is a committee that I chair.

Hon DAVE GRILLS: So you spoke to APLA and stakeholders?

Dr Gorey: Yes.

Hon ROBIN CHAPPLE: Was there just one member of APLA?

Dr Gorey: Each organisation had one representative on those formalised panels. MILC has two.

Hon ROBIN CHAPPLE: APLA represents the prospectors and obviously we are well aware that there are mid-level miners and small miners, which are, in essence, prospectors, yet APLA seems to represent the weekend show more than anything else. Was it ever obvious to you that you might have been talking to the wrong people?

Dr Gorey: APLA has been around for a long time and has been a member of the Mining Industry Liaison Committee for quite a while. When we started this process way back in about 2012 with the industry advisory panel, which APLA was represented on as well, the main industry associations were APLA, the Chamber of Minerals and Energy and AMEC, so through that process. As we went through that consultation, some people would have contacted the department and some individuals

decided to make their own submissions into particular consultation processes as well. Some of that is because they were not members of one of those associations. We continue to engage with those.

We maintain things like a list of subscriptions. We have about 1 800 individuals registered on our subscription list. Through that process, if people are able to register with us, we will also keep them contacted throughout that process as well.

Hon ROBIN CHAPPLE: There was correspondence going out that there were amendments. They went out to about 1 800?

Dr Gorey: Yes. We would have talked about that in our quarterly newsletter, which is what we sent to those 1 800 people.

The CHAIR: I guess the criticism comes from a certain group of miners, being those small-scale miners, bigger than recreational prospectors and fossickers and smaller than large miners—that they were overlooked in that consultation process. What is your response to that?

Dr Griffin: Could I just make a comment? My understanding from what happened was that we were very open about what we were trying to do from the beginning. MILC is one area in which information does get circulated. As Phil said, a newsletter goes out. At no time were we being secretive about this. We were quite open to any input. We invited input. We prepared draft materials and put that out for consultation. It was not restricted in any way. Our sense was that the prospectors from the APLA side were generally okay because when we asked for feedback, we got very little input and got the sense that there was not an issue.

[11.20 am]

It was not until right at the end of the process that there was concern about it from some members, and perhaps some members who were not represented by APLA. I guess what happened there was the minister said, "If that's the case, can you make a bigger effort to go and talk to those people and have some more meetings?" which we did. It was not as though there was a group that we deliberately left out. It was a group that had not shown their hand up to that point; and, when they did, we made extra effort to go and talk to them, and there was a lot of work done around that process to understand the issues, to explain the way the bill was working, and to go back and look at the recommendations that came out from the committees, which were not challenged in the early days, but when the legislation came to hand there were some challenges.

The CHAIR: I can see from your very good submission that 23 formal meetings have been held between January 2014 and February 2016 between members of DMP and various representatives of the prospecting community. But I guess it is like everything—sometimes people are busy, they are out bush, they do not necessarily see these things until they are actually right upon them, and that is where it gets a little difficult. I know myself with different things that I have come across that I am in Parliament and right there and think that I am right on the ball, but there will be something out of left field and I think where did that come from. So I know that you have been trying to do your best. But with the mining community, a lot of them are out in the bush, and I know that is not your fault, and I am not suggesting that it is, but probably the reason why we are getting all these submissions as a committee is because people feel that they have not been heard.

Dr Griffin: I think the other aspect is that the way an amendment bill is presented is that it takes a clause and moves it to another part of the act, and that does not help. If, as you say, you are coming in at a late stage and you start to read this one thing as a time, you think, "Oh, crikey, what's going on here?" Unfortunately, I guess there was not a preamble that explained what the intention was and how the bill was going to work, and a lot of the clauses that raised some concern were already existing clauses in the act but they have just been moved to a different part of the act.

The CHAIR: Yes, and people get very nervous when they see that the EPA is involved. Coming from a farming family, I get very nervous myself when I have a look at these things.

So, you can understand mining people. That is their living, and they need to be across this bill, and sometimes departments do not explain it as well as they could.

Hon DAVE GRILLS: I tend to agree with the Chair with regard to that. What happened was when the mining community came and spoke to us as members of Parliament and what have you and suggested that the bill come to a committee, we thought if the bill is going to a committee, what have we not done in our consultation phase, what have we not looked at, who have we not listened to, or why are we not looking at this, and now the bill has come here? Do you guys see now, from what you have done previously, that you might have been able to do something a little bit different?

Dr Griffin: I guess in hindsight you can always identify things that you would do differently if you had another crack at it. I suppose the only thing that I can think of that we could have done differently is that we could have made a bigger effort right from the start to have the contact addresses and emails of everybody who might be affected by the bill and make sure that they were emailed on a regular basis about how we are moving forward. But, as I said earlier on, there was no secrecy about what we are doing. We invited a lot of input. I suppose it was particularly because we did not see that the changes would disadvantage the small miners and prospectors. In fact, we saw the changes as being advantageous, which is what the committee said. So we did not sense that there was any serious, or likely to be any serious, concern with the amendments.

Hon DAVE GRILLS: You just gave me part of my second question, which is how would you do things differently from this process? You said that you need to listen to more people. Is that something that you would take on board and something that you would consider going forward from what you have done previously, with that knowledge?

Dr Griffin: Most definitely, and I think every time we go through a process like this, we do make some learnings. But I point back to the mining rehabilitation fund that we progressed through. That was a case where we had a very deliberate process of engaging, and we thought we had adopted the same process in this case, but, as we know, there was concern at the end of it.

Hon DAVE GRILLS: That is a good project. Thank you.

Hon KATE DOUST: You referenced in your earlier statements low impact activity thresholds. Although I find in part IVAA a very narrow definition, which simply refers you off to another clause of the bill, it does not actually tell you in the bill what that threshold will be. Why is there not a clearer definition of "low impact threshold"?

Ms Hammond: I can probably address this, I think. What is a low impact activity will be defined in regulations, and the department is considering policy and will be consulting on that, and is in fact consulting on that now. The reason that the thresholds will be in regulations is that we envisage it will be to some extent a movable thing. There will be at this point some spatial elements to it. So there will be areas in which it will not be possible to have an activity that is a low impact activity because by definition the areas will not support it. Then there will be a size threshold. But we envisage that these are things that may need to be changed and tinkered with and adjusted over time to ensure that the risk to the environment is minimised and the benefit to the proponent is maximised. We feel that putting those sorts of details in regulations gives us a more responsive tool to be able to manage those sorts of outcomes.

The CHAIR: Just on that, for me personally, I do not think that is good enough. Those miners out there have to know what a low impact threshold is, which is where my colleague Kate was coming from, and it is no good you saying that it could be tinkered with because —

Hon KATE DOUST: That is not language we like to hear.

Hon DAVE GRILLS: Tinkering with what?

The CHAIR: I know that we always do regulations after the bill has passed. But if some indication could be given by your department to us about the sorts of things that you are going to put parameters around, that would be helpful.

Ms Hammond: I would like to apologise for my language. "Tinker" is a bit different to what I meant. I meant adjusted in order to address emerging issues, whether they are environmental issues or issues on the proponent's side.

The CHAIR: "Tinker" means something that I would use, too. But you have got a group of miners sitting behind you who want something more specific, and the committee would like probably something more specific, too.

Hon KATE DOUST: I agree with you. My preference would always be to have a much clearer definition in the act. I think everyone then knows where they stand on that. In relation to how you frame those regulations, one of the concerns, I think, particularly from the prospectors in the goldfields first group, and APLA, has been around is this a one-size-fits-all bill that is sort of more geared to the top end, if you like, rather than accommodating the smaller or the individual groups. When you are framing your regulations around what is the appropriate threshold, will it be geared more towards the larger organisations, or will it be tiered, if you like? How would that work to accommodate all those different players, or not necessarily the players, but the nature of the type of mining they are doing?

Dr Gorey: Just to cover off on the last question, which I do not think was answered, which was is there some indication about what those definitions might be, in recognising that the structure of this bill would have those definitions in regulation, and they would usually not be drafted prior to when the legislation is passed, recognising that is the general approach, the department at the start of last year prepared a proposal paper to describe what we thought that definition might be. So we consulted on that in the first half of last year.

Hon KATE DOUST: Has that been provided to our committee?

Dr Gorey: It is actually one of the appendices.

Hon KATE DOUST: Thank you.

Dr Gorey: It relates to appendix 10 in our submission. We did the consultation on that, and we got some useful feedback to that; and to also let all of our stakeholders know what the feedback from that consultation process was, we released a response to comments, which is appendix 11, and we have actually updated that document, which is attached here as well. We have also given a commitment—hopefully, this is of no surprise—that, as we go through the process, if Parliament passes the legislation and regulations are required, we would consult on the exposure draft of the regulations as well, because that would be very important what the actual words are. So I just wanted to close off on that.

[11.30 am]

On the question about how will it take into account the scale of the industry—the larger versus the smaller—very broadly, the amendment bill will allow low-impact notification for prospecting, exploration and some mining activities, which the larger end of town is probably keen to have a look at. The process we have adopted is to say that we will not be looking at that issue just now. We will focus on the low-impact notifications, particularly suited for small exploration and for prospecting, recognising that that is where we think the greatest benefit in removing red tape is going to be. For those smaller activities, all those low-impact activities, which are generally low impact in nature, in both scale and environmental impact, they relate to small prospecting activities and small exploration activities. Our sense is they are probably going to be the greatest beneficiary of this provision, people undertaking small exploration and small prospecting.

Hon KATE DOUST: You have just made a reference to red tape. I know that red tape is something that everyone talks about in very generic terms, but in relation to this particular bill, and probably more geared towards the prospectors, exactly what red tape, if you are talking about forms or paperwork, exactly what changes will occur to benefit them with the removal of the so-called red tape? Exactly what will that mean in practical terms?

Dr Gorey: When I was using the term "red tape", I was thinking in my mind "unnecessary administrative burden". That is what I was using as that phrase. In this case, if a prospector or an explorer is working on an exploration licence or a prospecting licence, instead of completing what they have to do at the moment—a program of work—and submit that, they will be able to put in a notification, which will be tailored to the scale of that operation, because at the moment those exploration and prospecting applications that they have to put in have to take into account the whole scale of the potential operations. By having the notification system that is particularly targeted at a low impact, it means that the types of information that they need to provide is more targeted, because we know they are not going to be a large-scale operator. So for them, the amount of information is going to be simpler and the reporting will be simpler as well because they will not then have the same obligations that apply for exploration or rehabilitation reporting, for instance.

Hon ROBIN CHAPPLE: Just on that, say you have got a 100-hectare prospecting lease. You are working two hectares at a time. At the moment, you are doing immediate rehab; you have just got your POW. What is going to change between now and the future? Is there a requirement in that for evidence—that is, is the prospector going to have to provide documentation vis-a-vis a management plan, vis-a-vis a closure plan for things like that, which they currently do not do?

Dr Gorey: I am not talking about the transitional provisions; I am just talking about that scenario.

Hon ROBIN CHAPPLE: Now and in the future.

Dr Gorey: Yes. There will not be an extension of the mine closure plan provisions, so if they do not apply now, they will not be applying in the future under this amendment bill, for instance.

Hon ROBIN CHAPPLE: Okay, I am very aware of proposed sections 103AY(1)(a)(b) and (c), 74, 103AM, 103AZC, 103AE and 103AM. Surely they mean that, in terms of management plans and things like this, these are going to have to be created, and that usually involves a consultant and a significant amount of money.

Dr Gorey: So the provisions that you referenced—the environment management system, is that the one you were mentioning?

Hon ROBIN CHAPPLE: Yes—any of those.

Dr Gorey: The environment management system does not relate to prospecting licences or exploration licences, so if you have a hundred —

Hon ROBIN CHAPPLE: How do you define that by size or application?

Dr Gorey: The amendment bill will not apply them by their licence type, so a prospecting licence will not be subject to the provisions of an EMS.

Hon ROBIN CHAPPLE: So all prospecting licences, irrespective of ground disturbance, will not have that application associated with them?

Dr Gorey: Can you just clarify the answer?

Ms Hammond: We are talking just here about proposed section 103AZC, which talks about environmental management systems. There will be a requirement to have an environmental management system on a mining lease, a miscellaneous licence and, by extension, a general-purpose lease sometimes, but never on exploration licences and never on prospecting licences. If you would like to go through those other provisions that you specified, then we would have to do those one by one, but we are happy to do that.

Hon ROBIN CHAPPLE: Okay; right. So you are saying there is no provision for environmental management plans in relation to prospecting or exploration leases?

Ms Hammond: That is correct.

Dr Gorey: Licences—prospecting and exploration licences.

Hon ROBIN CHAPPLE: You do refer to a lot of regulation making in this area, and you are leaving a lot of the definition up to regulations. You are obviously aware that previously we had the 2015 regulations, number 2, that were out there and being discussed and obviously people jacked up about them and they were all repealed. Are we going to have the same situation again, where regulations are going to be put up which are not going to be in the best interests of what are called the mid-tier miners or the ones that are large prospectors? I think that is the issue.

Dr Gorey: I think probably all we can say to that is that we will go through a process as we have done, that is demonstrated through hearing the submission of, taking into account the views of, stakeholders and presenting to the government recommended regulations.

The CHAIR: The DMP has policy guidelines and frameworks already in place operating for many years titled "Low-impact mining operations". You have already got that—the low-impact and the policy guidelines—are they going to be any different under this act? Are you changing anything about those policy guidelines under low-impact mining operations—low-impact thresholds?

Dr Gorey: The process you are talking about is that there is a requirement for mining proposals for mining activities, and the act as it currently stands refers particularly to mining proposal guidelines. As part of that process, activities which are of a minor nature, but are still captured by the act, are able to have a cut-down mine proposal, which is fit for purpose, essentially. The guidelines themselves will need to be updated if the amendment bill goes through but the concept of having fit-for-purpose applications will remain.

[11.40 am]

The CHAIR: All I am trying to get at is whether the small footprint of less than five hectares is going to remain. I know that you said you were looking at different acreage and different things but is that going to remain or not? Small-scale operations with a small footprint; that is deemed as prospecting, really.

Dr Gorey: It depends somewhat on what is in the bill and the regulations that are passed. What I can say is that when we go through the process of updating a mining proposal and consulting on it, we take into account the views of stakeholders. I am not sure whether I can give a commitment at this stage that that number would not change in the guidelines.

Hon DAVE GRILLS: With section 40D, "Authorisation under miner's right", the point was raised with me that the term "likely" has been changed to "may". It was criticised that it is now any prospecting activity "may endanger". I was just wondering, with the regulations you have said, is that one of the things that you have worked on through the regulations—what the definition of "may" will be and how that will actually impact on different operators and their different sizes?

Ms Hammond: I can respond to that. There would not be any regulation-making power for us to be able to make regulations of the kind that you have just described.

Hon DAVE GRILLS: Okay, so can you tell us why the words are being changed from "likely" to "may"?

Ms Hammond: That was done as part of the aspect of the project that went through and updated and revised some of the wording of some of the older provisions in the Mining Act. It was considered at the time that the words "which are likely to" were less subjective and it was considered at the time that the restatement in terms of "may cause a danger to the safety of a person or animal"—as I recall it—clarified the obligations on holders of section 40D permits. I should

point out, though, that section 40D does apply to people who hold miner's rights; it is not a provision that applies to prospectors or explorers.

The CHAIR: I will just ask about fees. Some time ago, you were going to charge $6 950 for a mining proposal. I know that the minister listened and that was certainly dropped. Does the department intend to change or introduce fees? Can you make a statement to that effect?

Dr Griffin: The department is not in that position. I guess we will respond to government in terms of fees and charges, so the department itself does not have any plans to introduce fees and charges.

The CHAIR: No. That is really up to Treasury, whether the government —

Dr Griffin: It is up to the government to make decisions.

The CHAIR: Yes, I understand that.

Dr Griffin: We react to them. That is, unfortunately, the case where we are asked to provide some material around introducing fees and charges and governments will say, "What are the likely thresholds and what is the justification if we did it?" We do that scenario work, but it is up to government to decide whether they want to progress it or not.

The CHAIR: There has also been a bit of angst about inspectors' powers. Does the DMP consider it appropriate for inspectors to have all the granted powers in this bill, including powers such as to covertly record persons, surveillance devices et cetera? It is just surveillance and the grant of powers. They also took issue with proposed section 162(2)(aa)(vii), which states inspectors could "take and remove samples of any substance … at a mine without paying for them" and suggested this would result in —

Hon KATE DOUST: Chair, I might just say that that is not an uncommon provision for inspectors. It reflects, I think, some of the role and functions of a health and safety inspector where they can do a similar thing. The only difference, I think, is that this is actually stipulated in the act, whereas the proposals here around the extended powers of the inspector would be under the regulations, which I think was leading to my next question: if you are going to expand the capacity of the inspector to perform certain functions, why is it not expressed in the act rather than in the regulations?

Ms Hammond: I think there are two questions there, so maybe I will do both of them.

Hon KATE DOUST: There are.

Ms Hammond: Your question, member—yes, that is correct. Taking samples of things is a fairly standard provision in terms of inspectorates and I would not expect it to lead to unlawfulness. It is simply a provision that allows inspectors to gather evidence as appropriate. I do not think that any regulations made under the proposed new provisions would allow covert surveillance. The regulations would be able to be made to allow an interview that is being held to be recorded but that would never be done covertly because the Surveillance Devices Act does not let you do that and I do not think regulations under the Mining Act would be able to displace that legislation in any event. I think that your concerns there might not be founded in a correct reading of our powers.

To move to the next question as to why proposed inspectors' powers would be set out in regulations rather than being contained directly in the act, the answer is that that reflects the schema we have at the moment. Currently, there are inspectors appointed under the Mining Act. They largely carry out environmental-type functions. They are lacking in the capacity to investigate incidents of unlawful mining because they are only allowed to carry out their investigative powers on mining tenements, not other places, so all of that is pretty much lost to us. However, at the moment, all of the investigators' powers are set out in regulations so we would propose to augment those powers by way of other regulations, rather than have provisions in the act that talk about inspectors' powers and then another set of existing provisions in the regs that are already there that talk about another suite of investigators' powers.

Hon KATE DOUST: Why would you not just have it all laid out in the primary legislation rather than in the regs? I am not even saying you should have it in the regs; I am saying you should spell it out quite clearly in the act.

Ms Hammond: It would be possible to take what is in the regulations at the moment and put it in the act. However, the way that the bill is drafted is that it reflects the division of legislative arrangements that we have at the moment. There is no reason we could not do it the way that you have described it.

Hon KATE DOUST: If the committee was to propose a change to that effect, it would not be something that you would find obnoxious?

Ms Hammond: There is no legal reason not to do it. However, we are aware that a fair amount of consultation needs to be undertaken before we establish those legislative powers and we have not done that consultation, as yet, in the detail that it would demand for regulations.

Hon KATE DOUST: I think, from memory, for a number of departments where inspectors exist, their roles and functions are spelt out quite clearly in the relevant act rather than the regs.

Ms Hammond: It is perfectly usual to have it that way. It is not unknown to have them in the regs. We currently have them in the regs, which is why we are proposing to put any augmented powers in the regs, but there is no legal reason it cannot all go in the act. However, we have not consulted on it and I do not know what the procedural outcome of that is. It does not mean we cannot do it.

Hon KATE DOUST: It may be that as we work our way through these hearings that we will ask a number of people about their preference. I just would have thought that people would have wanted everything on the table.

Hon DAVE GRILLS: Yes, defined.

Hon KATE DOUST: Absolutely, defined.

Hon DAVE GRILLS: Absolutely, yes. Can I ask you: did you actively take part in any of the consultation with stakeholders?

Ms Hammond: No. I am a lawyer in the department. I am the instructing officer for the bill. I have given advice on aspects of the bill and I have worked with Parliamentary Counsel and other people.

Hon DAVE GRILLS: All right. As a lawyer, whose directions did you take with regard to the feedback from the stakeholders?

Ms Hammond: I act on instructions from people within the department; I am an in-house lawyer.

Hon DAVE GRILLS: So you acted on instruction from people within the department —

Ms Hammond: Certainly.

Hon DAVE GRILLS: — and not specifically what you knew of what the actual bill was about?

Ms Hammond: Could you clarify the question because I am not really sure that I understand it?

The CHAIR: Departmental people take their instructions from the minister.

Ms Hammond: Yes.

Hon DAVE GRILLS: Yes. I was not trying to be—I was just asking; I was just trying to find out where you got your information from because you said that "we might put this in the act". I was just trying to think, when we asked the question before, if you had the opportunity to do this again, how would you do this better? It was more of a lesson of exactly that: to try to tease out whether there was something that we could do better or something that we might have done. I think other than that, it was just that straight-out question like that. If it came across any other way, I apologise.

Ms Hammond: No, not at all. I was trying to clarify what it was that you are trying to find out. As a department, we take our instructions from the minister. I work with people within the

department and take instructions from them as to how the bill and regulations of whatever is to look. At some point, we would have come to the conclusion that the structure we had was not broken so we would use that one.

[11.50 am]

Hon DAVE GRILLS: That is all right. I was just trying to get that level of consultation where you talk about "we consult"—and I asked the same question before about did you—because sometimes consultation to some people is different things. A consultation somewhere might mean something different to someone that might be relevant to somebody else. That is where that level of consultation breaks down. That is exactly where I was trying to get to, that part. It might not be seamless; it might be a bit disjointed, in regards to consultation. That is all.

Dr Griffin: Just one other comment on that: I think that everybody uses their professional background and their experience in putting this stuff together, so I think that in all cases people are talking to their colleagues, they are talking to other people and talking to parliamentary draftspeople to have their opinions on how things should be structured and worded. It is not that we cannot influence that, but on occasions we tend not to push back if we do not see it is going to be a serious impact.

I think the other thing is that in doing this bill we have tried to minimise the change. It is largely been bringing things into one area and just keeping things as they were and not making those dramatics changes. It was seen as something, as somebody said, that was not broken and we did not need to fix it, and I guess we have just adopted the process we have had in place for some time to move forward.

In terms of interaction, I think Dan has probably had the most interaction with the prospectors and miners in the field in terms of talking to them about the impact of the legislation and those sorts of changes. Certainly he has been able to bring that detailed knowledge of working in the field back into the drafting of this bill.

Hon ROBIN CHAPPLE: When did you first start working on this as a department?

Dr Gorey: The concepts themselves, the principles underlying the amendment bill, probably had their origin shortly after the Auditor General's report into the department's compliance process back in 2011.

Hon ROBIN CHAPPLE: So the Department of the Premier and Cabinet's correspondence, which says that indeed we want to go down this path in 2008, was not what led you to this?

Dr Gorey: I am not sure which correspondence you are referring to, sorry.

Hon ROBIN CHAPPLE: I will bring it to the attention of the committee. The Department of the Premier and Cabinet "Improving the Approvals Process", December 2008. The document is readily available.

Dr Griffin: I think that is referring to the election commitment of the government.

Hon ROBIN CHAPPLE: No, this is the industry working group.

Dr Griffin: Okay.

Dr Gorey: The Auditor General's report in approximately 2011, as I recall, was the impetus for government to make these changes. The concepts around reducing unnecessary administrative burden and moving to a risk-based and an outcome-based environmental regulatory framework have been around for decades. It does not surprise me that there is earlier correspondence that is consistent with the principles of this legislation. Maybe there were many seeds of thought back then that this would be the way to go.

Hon ROBIN CHAPPLE: Certainly the document identifies reviewing mining tenement conditions, conservation reserves and other DEC lands to address the outdated mining tenements

and review the clearing conditions and make sure they go into the DMP as opposed to the DME. It goes on. A number of times it deals with it so I am really surprised that given the fact that some of your former members were on the committee that you are not particularly aware of it.

Dr Gorey: What I am not aware of is the specific document you are referring to, sorry.

Hon ROBIN CHAPPLE: I am more than happy to let you have a copy.

Dr Gorey: That would be great. But what I can say is that the principles of—and perhaps reiterate my earlier comment—outcome-based and risk-based environment regulation are approaches that have been around the world for 20 or 30 years. So the fact that we are consistent with that again does not probably surprise me too much.

Hon KATE DOUST: In the definitions there is a definition of "ground disturbing equipment" that is actually being deleted. I was trying to find out where it had been picked up somewhere else in the bill and I was wondering why it had been moved from that part.

Ms Hammond: I can certainly answer this question. The definition is being repealed altogether because that phrase is not used in the new environmental part. Although the use of machinery to disturb ground is still going to be a trigger for the submission of programs of work and mining proposals, that particular phrase and the associated list in the Mining Act of what specifically "ground disturbing equipment" is will not be used. The removal of the definition does not mean that it will not be lawful to use mechanical equipment though and I am aware that there has been some discussion around that if that is what you are trying to —

Hon KATE DOUST: The definition that is currently there is quite specific about the type of equipment.

Ms Hammond: It is very specific.

Hon KATE DOUST: So given that people regardless of the nature or the size of activity are obviously still going to be using that equipment, where is it picked up? I mean, where is there some sort of descriptor about that type of equipment elsewhere in the bill?

Ms Hammond: I will give you one of the examples if that would assist. There is a series of provisions, as you will have seen, in the new part that specifics the conditions that apply to particular types of tenements. The one that I have just picked up, which is a model really, is proposed in section 103AH, which occurs on page 26 of the bill, but there are a series of other provisions that correspond to this one. As you will see, it starts out by defining the types of activity that are going to require particular types of approval. If you look at the definition of "relevant activity", and this is talking about activities that are carried out on a mining lease, it means that you will require approval for clearing for prescribed mining operations and then —

(b) using machinery to disturb the surface of the land ...

Hon KATE DOUST: It is very, very general in terms of the type of machinery that can be used.

Ms Hammond: "Machinery" would take its ordinary meaning, which means something, I suppose, that is articulated and potentially powered—I would not want to be quoted on that, but it will not just be a shovel.

Hon KATE DOUST: I am not saying it is a negative. I am actually saying it is probably better, because you are quite specific in the older definition.

Ms Hammond: At the moment, it says —

(a) mechanical drilling equipment; or

(b) a backhoe, bulldozer, grader or scraper; or

(c) any other machinery of a kind prescribed ...

I do not think anything is currently prescribed. It will be anything that is machinery that disturbs the land will trigger a requirement if the disturbance is being undertaken for the purposes of a relevant activity. So, that is how that works. That phrase is just not going to be used and so it is no longer defined.

Hon KATE DOUST: That is great. I was just trying to work out what the change was.

The CHAIR: Does the DMP intend to allow miners to lodge their notices of low-impact activity on paper or only online? It is an important question because it has come up in quite a few departments now. They are only going online and it puts pressure on a lot of people who do not have the skills to do that. I am just wondering what the DMP is going to do. You had not thought about it?

Dr Gorey: I might just —

The CHAIR: I am making you think about it.

Dr Gorey: We are both passionate about this subject. What I might just quickly talk about is in direct answer to the question, the intention is: yes, applications will need to be online. So, we propose not to receive paper applications. Just for some background for that, there are a couple of reasons for that. There are a couple of things that make us somewhat comfortable or at least confident in that. The Mining Rehabilitation Fund Act, which was passed sometime around 2013, that was the first fully online lodgement process that us as a department actually did, and it required those mining tenement holders of approximately 20 000-odd tenements to lodge material online.

[12 noon]

Over the implementation period, with the support that we provided—that includes setting up computer kiosks in our regional offices, supporting and doing travelling roadshows to assist people, organising help and so forth—we received a very high percentage of compliance with lodgement. As I recall, for those mining tenement holders who hold prospecting licences, approximately 97 per cent in the last year submitted their applications on time. So those tenement holders who are prospecting licence holders were in fact the highest proportion of compliance in submitting online. We feel reasonably comfortable that, with support, we will be able to support people to use this online.

The other reason for looking to an online system is, in order to protect and maintain the same level of environmental management, there are a number of checks that will need to happen when these applications occur and, because we want it to be reasonably automated and instantaneous—somebody will be able to log in, do their work and get an instant notification—that information needs to be online. If we do not do it online, we cannot run the automatic spatial overlay checks. We would require somebody essentially at the back house of the department to enter that data, which would simply maintain the delay. In order to get that instantaneous and to maintain the same level of environmental management, we need to have an online system.

The CHAIR: Yes; I understand the need why departments do this, but I am sure you do not hear the swearing of the people who have to do it. I did a gun licence not so long ago. I have been a minister and I have got a few pieces of paper with my name on them and I had to do this thing three times. I was absolutely horrified, not at the amount of work, but at how difficult it was for me, who is very au fait with computer technology. I just put it to you that it is something to think about; that is all.

Dr Griffin: It is something, I think, that we all are being encouraged to do across government—to use more computer systems.

The CHAIR: I do not like it though!

Dr Griffin: No; I understand, and we all have difficulty from time to time. I must admit, with the mining rehabilitation fund, I was actually not entirely surprised, because particularly the small miners and prospectors are using a lot of smart systems in their work in any case and, by and large,

the ones that are doing it all the time are pretty good at it and understand it. It is maybe the odd one that needed some support, and we are able to offer that. I think that is the challenge—when we go online with these systems, providing a high level of support for people so that if they are having difficulty, we can actually help them through the process very quickly.

The CHAIR: I think I have lost the argument!

Hon ROBIN CHAPPLE: If I may, I have three questions, but let us cut it to two. Just on that particular one involving the drivers' licences, remote Aboriginal communities did not have an online facility, so when they brought in that online system, they actually had to completely change it after they realised that half the people could not apply for licences. Remote communities and remote miners out at Nullagine and Marble Bar and places like that are going to have a lot of trouble.

The bilateral agreement between the state and the federal government under the commonwealth Environment Protection and Biodiversity Conservation Act actually says that land clearing is the domain and responsibility of the Department of Environment Regulation and, as such, we have just had that department in and they said there will have to be a new bilateral agreement between the mines department and the EPBC act to cover land clearing because you cannot bring that one agreement over, which is with the federal government. So, is that underway at the moment?

Ms Hammond: We are aware of the issues that you refer to and we are considering how best to resolve it.

Hon ROBIN CHAPPLE: If this act goes through, at the moment you are actually going to create another level of management areas because, notwithstanding that you will be going through your process under this bill, until you have actually got that bilateral agreement in place, the federal EPBC act suddenly comes into play over land clearing on prospectors' country, which is going to increase the regulatory burden, surely.

Dr Gorey: There are a couple of things, if I may, for the committee. The assessment bilateral agreement that is signed between the federal government and the state allows the assessments undertaken essentially for part 4 of the Environmental Protection Act and the native vegetation provisions in part 5 to have standing under the EPBC act. They are only for the assessment stage of course, because the Western Australian government and the federal government have not signed an approvals bilateral. The latest update of the assessment bilateral included a native vegetation clearing process, as you have mentioned. We have been talking across government and also with the federal department and, as my colleague was saying, have commenced the work to look at the assessment—so, whether the Mining Legislation Amendment Bill, once passed, would enable the Mining Act to be included in the assessment bilateral.

Hon ROBIN CHAPPLE: You have got to get commonwealth approval for that.

Dr Gorey: Yes, of course, the commonwealth needs to sign off absolutely on the assessment bilateral. Not surprisingly, one of the issues we need to deal with through that process is the fact that the bill has not passed yet, so we can only get to a certain stage with our federal bureaucrats. Until the legislation is passed is until they can finalise their assessment. So what we intend to do is, if Parliament decides to pass this amendment bill and it is enacted, we would look at finalising that process with the federal government to put a submission up to the government about whether they would like to extend —

Hon ROBIN CHAPPLE: How long do you think that process will take, given how long the original bilateral agreement took?

Dr Gorey: I do not think the time frame will be based on technical aspects that we need to resolve; I think it will just be the timing for the various matters that are happening at the state and federal levels that will impact the most on the time frames for amending the assessment bilateral.

Hon ROBIN CHAPPLE: But, in the meantime, until such an agreement is in place, land clearing under your bill might need to be referred to the EPBC act.

Dr Gorey: It might be, but, again, I think it is worth the committee realising that it would only be that clearing that is likely to be a controlled action under the EPBC act.

Hon ROBIN CHAPPLE: Under part 5 of the EPBC act?

Dr Gorey: It would need to be considered to be a controlled action under the Environment Protection and Biodiversity Conservation Act in order for the federal government to be involved. The small-scale operations, by their nature, are unlikely to be matters of national environmental significance. So, across the state, very few of our native vegetation clearing permits, by themselves, relate to matters that are controlled actions under the EPBC act.

Hon ROBIN CHAPPLE: There are a lot of salt lakes out in the north east goldfields all caught by the EPBC act.

Dr Gorey: This bill also does not affect the assessments that happen under part 4, so, by practice, the majority of our assessments in the state, which are also matters of NES, go through the part 4 process.

[12.10 pm]

Hon ROBIN CHAPPLE: Had you looked at this at all before you introduced the bill?

Dr Gorey: Absolutely, yes.

Hon ROBIN CHAPPLE: So you have had ongoing discussions with the federal government in relation to the EPBC act? I am getting a nod. Is that a yes?

Dr Gorey: Yes.

Hon KATE DOUST: Earlier today we had a discussion with the environmental regulation office about the definition of "environment", and I understand that there were some discussions between your office and theirs about the definition.

The CHAIR: "Environmental harm", it was.

Hon KATE DOUST: Environmental harm; my apologies. We understand there is an inconsistency between their definition and your definition that is now in the bill. Can you explain why that is the case?

Ms Hammond: I am happy to. In terms of the definition of "environmental harm", the definition is different in the Environmental Protection Act from the way it appears in the proposed bill. The reason for that is how that phrase is used in the Environmental Protection Act is quite different. In the Environmental Protection Act, the phrase "environmental harm" forms the basis for various offences of causing environmental harm, which is not the case in our proposed mining bill. It also, I think, defines the situations in which certain directions can be issued under that act, and when there is a requirement to notify of discharges and other things under the Environmental Protection Act. It is a very specific definition that is designed for the purpose of triggering those specific provisions in the Environmental Protection Act, and it is moderated by reference to the words, I think, "material" and "serious" environmental harm. The mining bill, however, does not aim to replicate the Environmental Protection Act in those particular aspects, because those offences and other things will continue to apply as they always do. In the bill, environmental harm only comes in in terms of a mining leaseholder's obligation to ensure that he or she does not cause environmental harm. So it is doing a different job in each of the different acts, and this bill is not supposed to replicate the Environmental Protection Act in terms of that provision.

The CHAIR: So it is to do with revegetation more, is it, in the mining bill?

Ms Hammond: I do not know whether that is an accurate way of describing it.

The CHAIR: No; we have to be very careful with these definitions, because people have been taken to court through processes that are in bills and they certainly have not done what has been said. I am not going to go into any more detail, but I am concerned that if it is not set out properly there is going to be some crossover between the EPA definition and the definition in the mining bill. That really does need to be clarified; maybe it will when we go back in with our committee.

Ms Hammond: I would be happy to clarify it, except that I am not quite sure that I understand the question well enough to be able to clarify it as well as you would want me to.

The CHAIR: Okay. Environmental harm: so if I am on a farm and somebody comes in and says I am doing environmental harm because there is a chemical run-off down into Blackwood River or whatever, I am doing environmental harm and I can see I am doing environmental harm.

Ms Hammond: If that person is from the EPA then you should be concerned; if they are from DMP, then you should be less so —

The CHAIR: Exactly.

Ms Hammond: — that might be the answer.

The CHAIR: That is not the example I had before, but some people have definitions of environmental harm that I perhaps would not have. It might be a normal farm practice, and some zealot thinks I am doing environmental harm. If I have a mining tenement and I do something, some zealot might think I am doing environmental harm when in actual fact I am not. What I am saying is that the definition between the two needs to be really well stated, because these things sometimes end up in courts and they use the definitions for whatever purpose they want to.

Ms Hammond: I can understand that. The fact of the matter is, though, that the definition for the purposes of the Environmental Protection Act does not affect or in any way colour or influence the way those words are used in the Mining Act, because that is simply how legislation works, aside from the fact that they both talk about the environment and damage to it.

Hon ROBIN CHAPPLE: I would like to touch on that, if I may. You obviously have major corporations operating in the north east goldfields—KCGM might be one of them; I say "might". They might have had a number of spills over many years and they have committed to never having another spill again and they just got a slap on the wrist. Yet with a guy like Eric Stein, who has a minor leak on a smallholding, gets taken to the cleaners. There seems to be a complete and utter disparity between the way you treat the big end of town and the small end of town in relation to "environmental harm". I am a member of the Greens, you know.

Ms Hammond: I am not in a position to comment on particular situations in this context.

Hon ROBIN CHAPPLE: No, but Mr Gorey might be able to.

The CHAIR: Perhaps we had better just generalise.

Hon ROBIN CHAPPLE: He knows what I am talking about; I am sure he does.

Dr Gorey: Unfortunately, I am actually not sure of the case you are talking about, but in either way I am not quite sure whether you did want me to go into specific detail about matters.

The CHAIR: No; only if it refers to the bill.

Hon ROBIN CHAPPLE: I am trying to say that when we are actually dealing with environmental harm, the DMP tends to use that subjectively from time to time depending on the nature of the person creating the environmental harm.

Dr Gorey: I would say that the enforcement action—the compliance action—our department takes is, and should be consistent with, the policies we actually have in place that take into account the matters to consider and what may be an appropriate response. My view would be that it is not the case that the size of the company is a driving factor in any compliance action.

Hon ROBIN CHAPPLE: Thank you for your comment.

Hon DAVE GRILLS: With regard to inspectors and what have you in regard to the definitions of it, if an inspector comes on somebody's site and sees environmental harm occurring and it is one of your inspectors, do they deal with it? Do they have the authority to deal with it under the act, or do they need to put it off to the environmental people? How do you define the difference between that? Without a correct definition, how do you define who works with that one?

Mr Machin: It depends.

Ms Hammond: These are existing powers of the inspectors currently under the Mining Act and regulations. It is not something that we propose to change in the bill.

Mr Machin: It is case by case. Usually the case would be if it is on Mining Act tenure, the Department of Mines and Petroleum will often take response. But if there are off-tenure impacts, it is often better for the DER to actually undertake the investigation because they have powers to actually follow those on, and we will look more broadly. I can talk about a particular case where there was a dusting tailings storage facility and we worked with DER and the Department of Health to deal with those matters because they have better powers to undertake the prosecution and to undertake enforcement action to get the outcome we needed for the state.

Hon DAVE GRILLS: Yes, I get that. Having been a police officer, I understand things like that. That is why I definitely asked, because you can live and die on definitions, and you could fill this room with case law on definitions. That is specifically one area where I think people would like to know who they need to deal with if they have a particular incident.

Hon KATE DOUST: I just want to look at proposed new section 103AM which deals with guidelines. We have already had a discussion around regulations versus the act, and now we are moving into an area of guidelines that could be established. You have been really specific in the bill, putting in the various matters that would be considered as part of guidelines. I am just wondering whether that is one step away from even regulations, if you like, and how do you enforce guidelines? You are quite clear here about the parameters of what you would have guidelines around, but how would you enforce those guidelines?

Ms Hammond: Proposed new section 103AM continues in force and expands upon, in a limited manner, the requirements of sections that are being repealed elsewhere in the bill. This is an example of where we have taken stuff that is about the environment that is in earlier parts of the bill and put it all in a new provision. At present we make guidelines about the content of mining proposals. If this bill is passed, we will be able to make those guidelines in terms of the content of programmes of work as well, and there is a bit more specificity around the contents of guidelines particularly in terms of clearing native vegetation, so we can ensure that proponents include the level of detail that we need in order for us to be able to perform the functions that DMP currently performs under delegation from the EPA.

[12.20 pm]

Hon KATE DOUST: I suppose my concern is that whilst we have capacity for high scrutiny to regulations and to legislation, we have no capacity to apply that to any guidelines a department may establish. Whilst you have got broad parameters here, the specifics could be altered from time to time in the department, and the Parliament has no capacity to oversight them or to take evidence or to determine whether they are appropriate or workable. I am just wondering—I imagine that this is something that you have had in place for a while, but is this a mechanism that you would want to continue to have in place, or given you have put the detail in the act, is this something you would actually want to strengthen in the legislation rather than just a set of guidelines? Is that something that was given consideration?

Dr Griffin: It is always given consideration when we are drafting legislation and to make that decision, what goes into the act, what goes into regulation, what would be a guideline. I think the

issue is that guidelines, the way that we have adopted in most cases where it is not legally binding, provide an explanation of how people need to do it and to meet the requirements of the act, basically. They have proved to be very useful tools. and once again they are guidelines they we actually put together with a lot of consultation with the major stakeholders to find out what sort of things they feel they need added to the information they have got so they can comply with the act. It is really about assisting them complying with the act, not actually the act itself.

Hon KATE DOUST: I was just going to say that one of the key issues and one I think we have all had raised with us is the concern mainly from the smaller groups of prospectors and the individuals that this new legislation will in fact impose some additional costs, particularly around the matter of the environmental management programs. I know you have had the earlier discussion about reducing red tape, but there is a view that it will actually increase the burden, if you like, in other ways. Was there any consideration given in the drafting of this bill to a tiered structure to engage different levels of miners, if you like, in terms of how they are dealt with under these new provisions, rather than the one-size-fits-all approach?

Dr Gorey: Yes, there was. There are a couple of ways that I think we feel reasonably confident about where we have landed with that. Firstly, we probably feel we have adopted a tiered approach because those provisions, say, for the environment management system only apply to those mining leases, general purpose and miscellaneous licences by default. So, recognising those other activities, exploration licences and prospecting licences, they do not apply to. In some degree we have adopted a bit of a tiered approach there. The other aspect of that is that with the amendment bill, in our advice to government, we did not want to be prescriptive in what an EMS needed to be, because that probably will not work for a whole range of the sector. Our view would be it is impractical for the type of EMS we would apply to a multinational to apply to a small family business.

Hon KATE DOUST: I will just say to you there that one of the concerns is that whilst those multinationals may have specific staff on board already who can fulfil the requirements to do these reports or these assessments at no additional external cost, for those smaller miners, they would have to actually go out and source that assistance, which may actually cost them more.

Dr Gorey: I think you are right. The larger companies tend to do that in house. For the smaller operations and the smaller companies, the advantage is that if the EMS is fit for purpose, then the scale and requirement for that is a lot less. For very simple operations, where the activities are predictable, there is maybe not a lot of processing on site. Then the categories of environmental impacts can be fairly narrow, and therefore some simplified process. It is a suggestion that was suggested by APLA, and one of our discussions was: if and when this amendment bill is passed, there is an opportunity for an industry-based template to be provided, which we think is a great idea.

Hon KATE DOUST: I think that there just seems to be a gap there, and if the template suggestion—I am sure it is a matter that has been canvassed with others as well. If there was some way of providing that reassurance to that particular group, if the template is one mechanism to do that, I think that would be a positive. Would that template be attached to the back of the legislation as a schedule?

Dr Gorey: No, probably not. What the EMSs will need to cover is that they will need to have certain characteristics. They would be things like it would need to identify what the activities are; it would need to identify what potential environmental risks might be; it would need to have actions that need to have ownership, a review process. The way that this is structured, that would then sit with the responsibility of the tenement holder to keep it up to date. One tenement holder might like a particular template; another tenement holder might like to do it in Excel; and the larger companies might buy proprietary software to do it. We do not want to prescribe the actual form.

Hon KATE DOUST: I just think there needs to be that bit of assistance given to those organisations that do not have that expertise in house.

Dr Gorey: I absolutely agree with you. That is a template arrangement that we would look to.

Hon ROBIN CHAPPLE: You are expecting an outcome.

Dr Gorey: Yes.

Hon ROBIN CHAPPLE: Depending on what that outcome might be is going to be where the increased costs and process might be incurred. Just on that, I want to go back to new section103AM again, where it actually states —

(1) The Director General of Mines may approve guidelines for the purposes of this Part.

We have got a whole range of things that could be included, but the director general could include whatever he likes, which could be either positive or negative to the small miner. That gives me a great deal of concern that we are actually passing legislation that gives the director general the ability to just about do anything he likes into the future, and it could be quite draconian or it could be quite positive. That is my point on that one. I am interested in your comment.

Dr Gorey: I suppose my comment might be that these guidelines set out what is required in a proposal.

Hon ROBIN CHAPPLE: No, they "may."

Dr Gorey: They may set out what is required in a proposal, and it builds upon the provisions that have existed in the Mining Act for a while now. I understand the same provisions relating to my proposal guidelines, which the DG may approve, which exists in the Mining Act now—it has been there for about 10 years—and my closure plan guidelines, which reflect the same model, have been in place for about five years. In the reviews of those, we have gone through a consultation process with industry and stakeholders to sign off on those. That would be a process of—I suppose we would look at —

Hon ROBIN CHAPPLE: How long do you think that process will take?

Dr Gorey: Some of them have taken many months to do, depending on the scale of the amendments. Some of them have taken six months or more to do. We would probably stand on our process and our record with that consultation with those existing guidelines and look to apply the same process.

[12.30 pm]

Hon ROBIN CHAPPLE: I serve on another committee called the Joint Standing Committee on Delegated Legislation and one of the major concerns that we have had for a long while is this whole use of guidelines, because if they are not disallowable by Parliament, they have no oversight and you become, to a large degree, a law unto yourselves, and it is the poor old prospector in this case who potentially is going to be the butt of the joke. That is where a lot of the fear comes from. We are actually setting in place a set of guidelines which the DG at any time can modify. We are $36 billion in debt and we might be $50 billion, and we might need to get some more money out of somebody.

Ms Hammond: We could not be taxing people by way of the guidelines. I just would like to put that out there.

Dr Gorey: My comment, I suppose, would be that we have had two forms of guidelines out there for many years that have been revised on a number of occasions. Those matters that you are talking about—those concerns—have not arisen through that process.

The CHAIR: We have some questions on notice that we will send to you to answer. On behalf of the committee and myself, I would like to thank you all for appearing before us today. I know it has been a long session, but it has been very useful.

Dr Griffin: Thank you very much.

Hearing concluded at 12.31 pm