

STANDING COMMITTEE ON LEGISLATION

MINING LEGISLATION AMENDMENT BILL 2015

**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 APRIL 2016**

SESSION FIVE

Members

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

Hearing commenced at 2.29 pm**Mr LESLIE LOWE****President, Amalgamated Prospectors and Leaseholders Association, 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.

[Witness took the oath.]

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

Mr Lowe: 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. Please be aware of the microphones and try to talk into them; ensure that you do not cover them with papers or make noise near them. I remind you that your transcript will become a matter for the public record. If, for some reason, you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Do you wish to make an opening statement to the committee?

Mr Lowe: I do, thank you. Firstly, thanks for inviting us here to represent the prospectors. Our constitution dictates that we foster and protect the interests of prospectors right across Western Australia, not just our membership. That is where APLA comes from. There have been many questions asked about consultation. The origins of this: I only found out this morning that this whole bill were contained in the Auditor General’s report of September 2011 ensuring compliance with conditions in mining. On page 13 of that report, it expressly says that the Auditor General only covered and asked for mining leases to be inspected with a view to being audited and whether they met the existing conditions that the DMP was placing on those mining leases. Those chose a sample of 71 leases out of 608 possible mining tenements. Later on, the report said, in its feedback, that the Auditor General was satisfied that those conditions were being met. As far we were concerned that was the end of it. That goes back quite a long way. It goes back to November 2011. From then it seems to have blossomed, the bill we see in front of us today. Well, not just that; the environmental section of the DMP has blossomed as well. We just found it a little bit quizzical, I suppose. Where did this come from? It seems to have grown like Topsy and I think the previous people before us, they made the same point; we are now being ruled by guidelines, a plethora of information that just hits you like a tsunami.

That leads on to the question of consultation. There have been a lot of questions asked about consultation. It is not a question of: was there consultation? I once said to Tim Griffin, who was in this room earlier on, that consultation is probably the most misused and abused word in the English language today. Consultation to me does not involve being spoken at and being told what to do. It is a question of consultation is, “You listen to what I say and we’ll come to some kind of agreement or we’ll sort the problem out.” It comes down not to the quantity of the consultation; it comes down to the quality. Over the last two or three years, there has been an enormous quantity of consultation

that has not really contained a lot of quality. Essentially, it has been agenda driven from the DMP. We have all sat there as relative laymen, compared to the legal process, legislators such as yourself, thinking: Where is the bottom line? How does it impact us?

It was only in May 2015 that we finally got a copy of this bill that we could work with. In other words, you put this in the context of four or five years of discussions and agendas from the DMP and meeting minutes and guidelines; it is just coming at us like a tidal wave. We just kept thinking: This is all very well, but it does not really mean a lot to us. Where is the impact? The impact came along on 5 May 2015. That is when we finally sat down around about 20 May and discussed this with the DMP and went through it line by line in Kalgoorlie over two or three separate days. Hopefully, they would have gone away and dissected it and addressed our concerns or at least come back with some explanation. There was no reply. For five months there was no reply. Next thing it was in the lower house and it has gone. It went into the lower house on 22 April. We got a copy of the bill on 5 May. There have been several assertions that we did get a copy before that, but we did not. The consultation process, there was a lot of it, but it was not quality consultation.

Moving along, many of the latest consultation sessions that the DMP have referred to were not consultation sessions about RERAP. They were consultation sessions about other issues with the existing system, consultation sessions about low-impact activity. They were not all about RERAP and the effect of this bill.

Hon ROBIN CHAPPLE: Can you just explain what RERAP is, sorry?

Mr Lowe: Sorry, RERAP is reforming environmental regulations approvals process. It was an acronym DMP used through the whole process.

Hon ROBIN CHAPPLE: Okay. Thanks; just doing that for poor Hansard.

Mr Lowe: Many of those meetings that were highlighted in the DMP submission were not RERAP meetings. The central issues in here are that APLA feels that small-scale miners will need to differentiate between the term “prospectors” and “explorers” and “small-scale miners”. It is an important distinction. Small-scale miners have been missed out in this demographic and the DMP have actually admitted that they did miss that demographic. That has led to why APLA is here today and why people in Kalgoorlie are—I would probably use the term—outraged.

What has happened is “prospectors” have never been clearly defined. Small-scale miners are obvious. What has happened is this bill places obligations, responsibilities and imposts on people who do actually own mining leases. They are not just prospecting licences. They are not just exploration licences where—you have all discussed these various low-impact activities. These are small-scale miners. They move a lot of dirt, but they mine, they are productive, they keep mining when the gold price falls, they keep mining when everybody else is out of a job. They contribute to regional economies. They live in Kalgoorlie, they live in Cue, they live in Meekatharra, and they keep going there. They are a vital part of the regional economy, but they are simply not geared up either intellectually, either educationally, either computer-wise, computer savvy, or financially, to accommodate things like environmental management systems, carbon offsets, environmental offsets. You will just put them out of business.

What we are seeing as a result of this blossoming of the DMP, stemming on from the Auditor General, is there has been a little, we think—I am speaking from personal experience. I am probably the only person that has fronted up here today so far who has had practical experience of entering the current system as well as trying to accommodate the new one. I have been prospecting on and off since about 1983. My background is basically in oil and gas as an operations manager and systems engineer, so I know how these things get built. Essentially, what we are seeing now within the DMP blossoming has resulted in the employment of inspectors who are relatively young, relatively inexperienced, do not seem to have much practical experience in mining, no pragmatism, and my personal experience in the last two months actually trying to get some ground rehabilitated

while we are mining it, I have just walked away shaking my head saying, “I don’t believe these questions I’m being asked.” What I am saying is we are seeing levels of inexperience within this new environmental section that does not reflect the ambitions of the executives who have sat here today. It cannot be done and we see practical examples all the time. So, that is my opening address. It might sound a bit hard, but that is how I feel.

Hon ROBIN CHAPPLE: I was going to give you a round of applause.

The CHAIR: But what changes would you make? Given the bill now, what changes would you make, because I know that DMP asked that APLA provide a written statement of its concerns but that you did not do it? Now, you either did not do it because you did not have the information in front of you at the time to do that or you have thrown your hands up, basically. Was there a reason that you did not write back to the DMP with your concerns; and, if you wanted to change things now, what would you say to me to change it?

[2.40 pm]

Mr Lowe: It all depends. When you use the term “we did not write back”, can you be more specific with the date, because at one stage we did? We wrote to the minister.

The CHAIR: Yes; that is what I want to know.

Mr Lowe: We did write to the minister, but by then the bill —

The CHAIR: So the horse had bolted, basically.

Mr Lowe: The horse had bolted. When you are faced with this tsunami of guidelines and these agendas, you cannot pick out the bits you need until you get the legislation in your hands, but by that time the horse had bolted. That is when we wrote to the minister. We never had much of an opportunity before or we could say we did not understand what was coming at us. I think testimony by AMEC and the chamber said basically the same thing. I know from personal experience, from talking to the two guys who have just walked out, that they were caught flat-footed as well. So, we did write to the minister and we did get a reply and it dismissed all 30 points.

Hon KATE DOUST: You have actually made a series of recommendations in your submission. You have broken down clause by clause the areas that you are concerned about, and have made recommendations about what could be done to change or improve it. Those are the areas that you would like this committee to focus on on your behalf?

Mr Lowe: Yes—the EMS. Obviously, they have said they are not going to apply the EMS to prospecting licences and exploration licences, but it is the fact that it is applying to the small-scale miner—the guy who is not in the league of the Super Pit, Sons of Gwalia and Minara and all these people. We need that to be addressed.

The CHAIR: Did the bill make it clear that it would be for the small miners? I know there is a low impact for the prospectors, but did the bill make it clear that it was going to capture the people that you say will throw their hands up and go out of business?

Mr Lowe: Did it make it clear that it did not catch them; is that your question?

The CHAIR: Yes. Did it make it clear that it was going to capture those people that you said were going to go out of business?

Mr Lowe: I suppose it is the negative of what you are saying. It is not the fact that it did not catch it; it is that we knew what it was going to catch. Because we are experienced in the business, we said that they do not fit into that category and they do not fit into that category, so they must fit into that category. So it is a default value.

Hon KATE DOUST: But they have applied a one size fits all, have they not?

Mr Lowe: Yes.

Hon KATE DOUST: So if there was to be a recommendation for a more tiered approach to deal with those various levels, that would be something that APLA would support perhaps?

Mr Lowe: Yes, I think so. We would look at the detail obviously.

Hon ROBIN CHAPPLE: Just on that, if I can, that seems to be something that is cropping up all the time. I am just trying to make an observation, and tell me where I have got it wrong. You have got what I call the classic prospector—the guy with a metal detector who goes out at the weekend and does his stuff. Then you have got a middle-tier prospector who most probably has a front-end loader and clears a bit of dirt and does a bit of prospecting that way and rehabs. Then you have got the small-scale miner. So you have almost got three categories before you even get to AMEC's category.

Mr Lowe: Yes.

Hon ROBIN CHAPPLE: How can you actually deal with that? What the department does is say that anything below AMEC is a prospector. How do you deal with that? I am asking for your advice.

Mr Lowe: It is a difficult question to answer because the mines department itself has never defined a prospector. A prospector can go from a recreational prospector, like you have just mentioned, who goes out at the weekend and on six weeks' holiday and has a metal detector, finds a few nuggets and he is happy. Then you have got another grade of prospector who is serious and full-on —

Hon KATE DOUST: That is their life's job.

Mr Lowe: It is their life's job. They do not look for necessarily the alluvial gold, although that is usually a good indicator. They will use qualitative methods of sampling, maybe use a gold pan or a small dry blower and they will eventually, by looking at the nature of the gold and the quantity of the gold they have got in front of them in a representative sample, slowly track that in a technique called loaming, which has been known for over a hundred years but it has become more sophisticated these days. He will prospect across an area of ground and say, "Right; underneath this spot here, there is a reef here" and, more often than not, he is pretty right because of the nature of the gold. That is the second type of prospector and his impact on the ground is minimal, and probably just as much as the metal detector operator's impacts on the ground is minimal. Then you come to another grade of prospector, who is bordering on mining but he is still a prospector. He might have a tenement prospecting licence. The maximum area is 200 hectares. He might have a 200-hectare lease and he has had odd little indications that there is an alluvial gold deposit there or maybe a fair size reef and he will want to prospect across the tenement using machinery, not just a metal detector, a pick and shovel or a gold pan. He may want to bring in a front-end loader or a backhoe or excavator of some description and he may excavate an area as big as this room: "No, it is not there; backfill it." Then he will have another go over here: "No, it's not there; backfill it." Then he will have another go over there: "No, it's not there; backfill it." He might do six of those, or seven or 10 or however many, and then bingo; he hits it. It might be down half a metre, it might be a metre, it might be three metres or it might be six, but it is there. That is the payable reef and that is where he makes his money. He makes his money then by either small-scale mining, which can keep him going for a lifetime if the reef is big enough, or it may be too big for him to handle and then he tries to do a deal with a mining company, and that is where the big operating goldmines that probably have a far bigger environmental impact than he has come in. I think that describes the full gamut of the differences between prospectors, small-scale miners and big-scale miners.

Hon ROBIN CHAPPLE: Just on that, could I ask one further question? The first two you described would be looking for nuggets.

Mr Lowe: The first ones definitely would. With the second one, it would probably be a little bit of both and more so the second one would be going around testing the ground with a pan and would be interested in alluvial gold but he would be more interested in the nature of the fine gold. You can

look at it through a microscope sometimes and by looking at the hackily coarse nature of the gold, you can say, “We’re pretty close to a reef here.” As gold travels, it loses its edges and it becomes smooth, but by looking at the nature of the gold and the quantity you have got in a representative sample, you can determine how much gold is in that particular area, and then you can start sinking shafts or come in with an excavator to try to get the reef out. Sometimes the reef can be covered by tens of metres of overburden, but the gold still shows up, and that was proven by Mark Creasy, who you probably have all heard of, at Jundee. He was told there was no reef there and it was too deep; there are eight metres of overburden. But he convinced everybody there was and that is how you got Bronzewing.

Hon DAVE GRILLS: Just on that, in your submission the acronyms are great. In the Army, we loved it. Everyone talks about SMPs and ADCs and God knows what else. But you actually put acronyms at the front; I like that.

Mr Lowe: I have done a lot of technical writing in the oil and gas industry.

Hon DAVE GRILLS: Good on you; I like that one.

I always say that change is a concept and development is optional. We have talked a lot about consulting here and you have said there is consulting being talked at or “This is what I reckon; I am going to keep talking at you until you either accept it or do something else.” You are correct; we did ask a lot of questions about that. Out of all the things we have looked at, we understand that as being it. We heard that the government has said it is going to put stuff on the computer to streamline stuff and we even heard from the Chair—I am like that myself—that you cannot always get computer stuff like that right and it takes you a couple of times to do it, but that is where they see themselves persisting. I would look at it and say, “If that is the way it goes, then that is the way it is.” How would you guys, as APLA, being the spokesperson for anybody who comes below AMEC and people like that, work towards doing that? Would you say, “Yes, we need to step up maybe and start to learn this stuff a little bit more and put a bit of effort into that because it is our life’s business” but we need to make it a little bit easier? Would you lobby or seek to have something like that to get a better use of systems so it is more user friendly?

Mr Lowe: Me personally? I do not have a problem with computers, digitisation and electronics. I do all my submissions by computer. There are people out there who just do not even know what a computer is, and we have got to accept that they never will; it is as simple as that. But it is a bigger problem than just their knowledge and their education levels. I spend six months a year out in the bush and sometimes I cannot even get a phone signal, never mind an internet signal.

[2.50 pm]

Hon KATE DOUST: That is true.

Mr Lowe: I am 200 or 300 kilometres the other side of Laverton, out in the desert.

The CHAIR: Yes, that is remote.

Mr Lowe: You are out there and you are living on your wits, more or less. There is no phone signal. The only way you are ever going to get on the internet on a phone is with a satellite phone. It is totally impractical to run a satellite phone for the internet. First of all, it is too expensive, and, secondly, it just is not a practical communications interface. It cannot be done. You can be out there for two or three months, and part of the mines department legislation, as an example, is that they issue notes when there has been a little bit of a problem with a program of works, and they say, “If you don’t reply within 10 days, this gets binned.” So I am out there for three months, right, and I am going back into Laverton occasionally for diesel and fuel, or someone is bringing it out; I have not even seen a television for three months—sometimes that is refreshing, but anyway. It cannot be done. In terms of will you ever get 100 per cent compliance, member, it will never be achieved. I admire the DMP for going down that path and I hope they are successful, but it will never be achieved.

Hon DAVE GRILLS: That is why I am asking. It is not the fact that you cannot use it and you cannot do it; it is just that quite often —

Hon KATE DOUST: It is not accessible.

Hon DAVE GRILLS: Yes, it is not accessible; thanks. That is the whole point, but you still need to get your business done.

Mr Lowe: Exactly.

Hon DAVE GRILLS: Maybe you could put in a prospect that you are going out there and you are going to be away for three months, such and such; I do not know. As far as I am concerned, we as a committee are looking at actually getting these things working. I would like to know what would you actually think and what we could actually put towards saying, “This happens in real life, even though it’s 2016. This is real life as it is today. We are still out the back of Laverton and places like that. How do we actually get something to work that works for us and helps us out?” Basically, what I am trying to get out of this is how we look at that, because that seems to me to be one of the problems. It may not be the biggest, but it is the most difficult given the fact that you are in that environment all the time.

Mr Lowe: I think the only way we can do it is to extend certain deadlines. They simply cannot be adhered to. We cannot meet it; it is just as simple as that. I have heard the expression that some problems are insoluble; they just have to be managed. As a manager—I have been a manager—you cannot solve it; you just have to manage it so that it minimises the impact. The only way we are going to minimise this impact is retain the paperwork system for those who cannot accommodate it. That is the only thing I can suggest.

Hon DAVE GRILLS: And if you go to Laverton and there is a landline, you can fax that through.

Mr Lowe: We could fax it through or drive to Leonora; it is another 134 kilometres.

Hon DAVE GRILLS: That is what I am thinking of with regard to that, that you do go in and you go to get whatever you need to do, but you can actually do it there. That is why I am talking about flexibility with the DMP, to be able to allow you to do that, given the fact that you know you are going to be out there and, like you said, you schedule calls and things like that. You would set up a roster of scheduled times and you would go and put in whatever paperwork you needed to put in. Like I said, that is a management plan; you cannot fix that. What happens if it pours down with rain and you get stuck sitting on the roof of your car? That is what I am sort of looking towards, how we can actually put something like that into —

Mr Lowe: I think you just have to retain the paper-based system.

Hon DAVE GRILLS: Yes, and I think that is probably something that would fit well into a guideline and would actually work, and nobody would have a problem with it being there.

The CHAIR: Are fines associated with not getting the paperwork in on time? What is the —

Mr Lowe: It is not just within the environmental section; right through the Mines Act are written various punitive clauses, and certain amounts of paperwork do have to be in on time. What basically happens is, say, an application for a mining tenement would be compared with an application to have an environmental plan assessed, like a mining proposal or a program of works. I have already taken issue on some submissions from the mines department that they have said they are now going to adopt a refuse or decline policy—so, refuse to assess it because it is incomplete, or decline to assess it and just throw it in the bin. There is a time limit on that. If they ask you a question, the answer has to be back within 10 days or your application is rejected.

Hon ROBIN CHAPPLE: It goes to the back.

Mr Lowe: Sometimes it just goes in the bin; they just bin it and you have to start again. Then you are in the same paradigm; you are in the same trap. You are out in the bush, you have 10 days, it takes you 10 days to drive back, and you are back where you started again.

Hon ROBIN CHAPPLE: And you have pegged your lease, so you have a time line on getting your application in on that.

Mr Lowe: Ten days, and then outsiders have 35 days to object to that application. There are all sorts of systems within the Mines Act like this, but what is happening at the present moment is that the environmental section is applying rules and regulations that we are just going to find it very difficult to comply with.

The CHAIR: Like the low impact, though, they tell us that the low impact is going to make it easier regulation-wise, and you do not have to double up and get clearing permits. Is that a good thing about the bill, in your view?

Mr Lowe: Yes, it is a very good thing for one particular demographic of the whole range of mining operations, from the guy with the metal detector —

The CHAIR: So it is specific to one.

Mr Lowe: — right through to the Super Pit. This will be for people who have small plans; they have a prospecting licence or an exploration licence and they want to move a little bit of dirt there and a little bit of dirt there, and they could very well be looking for the gold enrichment or they could actually be exploiting one they have already found with a metal detector. I have done areas as small as 100 metres by 50 metres, and because there was not sufficient gold to continue, I have backfilled it and rehabilitated it because it is just not worth carrying on with. In terms of small applications to disturb ground, the LIN is going to be really good. There will be limits on it; we have already discussed these with the mines department. There is some suggestion that you can have a rolling LIN—a rolling low impact—so you can do one, and then as soon as you have rehabilitated that one, you can apply for another one straightaway, and because it is almost instantaneous, you get the second one. Playing the devil’s advocate, I raised the issue and said, “Surely you’re not going to allow us to just keep going number three, number four, number five, number six, number seven. Before you know where you are, you’ve done 200 hectares.” They said, “No, we’ll probably allow two, maybe three, and then we’ll send an inspector out to make sure you’re rehabilitating the ground.” To answer your question, yes, it is a great idea, but it is no good for small-scale miners; they move too much dirt.

Hon DAVE GRILLS: You said about AMEC and people like that, prospectors and whatever like that. I live in Kalgoorlie, and I have had a discussion with people in regard to there being nobody who had this space—nobody who had occupied this space—not that you were asleep at the wheel or anything, but it was just a tidal wave of information that, all of a sudden, you had to catch up with really quickly. My thought process was that if we have AMEC and people like that in the world, and APLA have been around since—how long have you been around since?

Mr Lowe: Since 1904.

Hon DAVE GRILLS: Since 1904, yes.

Hon ROBIN CHAPPLE: Before I was born!

Hon KATE DOUST: Just a little while!

Hon DAVE GRILLS: Before you were born, yes!

Mr Lowe: I was not there for all of it!

Hon DAVE GRILLS: Yes, my dad told it me about it.

With regard to that, though, having been around, would you guys see that—we talked about development and what have you and things that you come up with and a management strategy. It is

a work in progress sometimes, and the rules need to be flexible. Would APLA see themselves developing into more of an AMEC or that sort of group? Would you look at doing that and saying, “Well, we’re here; we’ve got a voice. We’re actually associated and we work together and we’ve got this, that and the other. That works and it works well, and it fits in with the next tier of miners and it fits up”? We have talked about a tiered set-up, and if we had tiers to put in the set-up, it would be even better. But we would need a tier for this, I would imagine, if that was to be the case. Have you guys considered that?

Mr Lowe: The member has just hit one of my dreams. That is where I want to go with APLA. I have only taken over the presidency of APLA in the last two months because of internal personal conflicts, deadlock situations. We were not getting anywhere and things were being ignored. I was asked to step into the job against my better judgement, but I have quite a reasonable amount of experience and background, so I thought, “Well, someone has to do it. We can’t let this ship sink now.” Where I want to go is exactly where you have just described. I want to get some of the disaffected members who are in Kalgoorlie that you all know about—people like Goldfields First. They will not come back to APLA because of personal differences. I would hope that in years to come we could patch those up and get up to the level of AMEC.

Hon DAVE GRILLS: If you make APLA the best little group in the playground, everybody will want to join it.

Mr Lowe: Yes, that is what I want to do. That is what I want to do, and that is why I stepped in.

The CHAIR: It just takes time to get it back on track after it has been fractured though, does it not?

Mr Lowe: It does, and it was not a very pleasant process to go through either.

[3.00 pm]

The CHAIR: No.

Mr Lowe: To answer the member’s question, over here, about what we would do, there have been two suggestions: one is probably a little bit out there, and one I can see a lot of sense in. Firstly, there are an awful lot of areas, particularly around Kalgoorlie and Coolgardie, and to a lesser extent around Leonora, Meekatharra, Wiluna and places like that, that have been extensively mined. I think I gave an example in one of my submissions—that is, one of those little boxes. The map at the back was an area of about five hectares, and each one of those triangles is a little mine with a big dump alongside it, so you can see how many there were in five hectares. That ground has been enormously environmentally impacted, and it is an adverse impact. I am actually going through this now with a very famous patch south of Leinster called the Goanna Patch; it is legendary in prospecting lore. What I am proposing to do is mine the existing dumps—not mine, but process them, because they are already sitting there, remove the available gold and then put the dirt back in. I am going through hell and high water to get this sorted out with the DMP; it is proving to be tricky.

Hon KATE DOUST: That is essentially what Bill Powell did back in the 1980s out at Coolgardie, is it not?

Mr Lowe: Yes, same sort of thing. There is a lot of it goes on around there.

Hon ROBIN CHAPPLE: Sven Svenson does the same thing up near Leonora.

Mr Lowe: Yes. It is not a tailings operation; it is just better extractive technology. The gold price is much higher than it used to be. These dumps are becoming—they are just waste rock and they are being reprocessed. Part of the environmental responsibility we have, which I think small miners have displayed eminently over the last 30 or 40 years, is that we put it back and we rehabilitate it when we have finished it. What has been suggested to me is that these known areas around Kalgoorlie and Coolgardie be treated entirely differently. They are mining proposals because of the amount of dirt involved, but instead of being put through this massive environmental system and

this massive environmental assessment—I mean, after all, what are you going to assess? The damage is already there; we are trying to make it better. Do not subject them to EMS. Do not subject them to this endless series of questions that do not seem to go anywhere, when all you are trying to do is process it and put the dirt back in the hole. What we are asking for is maybe a special precinct for existing known goldfields. After all, it is goldmining. It is not agricultural or pastoral; it is goldmining.

Hon KATE DOUST: As this bill stands now and the proposal you are talking about in terms of going back through those dumps, if you wanted to do that as things currently stand, you would still have to comply with all the proposals that are in this bill, would you not?

Mr Lowe: Yes. I am going through one now where I am convinced I could have got this job done on a lesser program of works application, but I was manipulated. I would not use the word “threatened”, but in the end it was obviously easier for the environmental inspector for me to put in a small mining proposal. This brings us back to the complexity of the paperwork. I managed to get through it. It took me two and a half weeks—phone calls, and one thing and another. It also brings in the essence of the DMP’s contention that it is using a risk-based, non-prescriptive system. It is only when you enter the system that you realise how prescriptive it is. The question of whether you need an environmental management system is actually covered by the number of questions you have to answer. You commit yourself to a self-inflicted environmental management system when you answer all these questions; and you have to answer them in writing and you cannot just say “not applicable” or you do not tick the box; you have got to put yes or no. In some of them, you have to explain why you said yes and explain why you said no. Basically, you have built your own environmental management system by actually applying for a mining proposal. Now they want to bolt another one on to it. So you just think, “When is all this going to end?” What I am saying is that in an attempt to do some of this work in mining precincts, all this should not be necessary.

The CHAIR: You are asking for a special category for land that has already been mined, so virtually you can look for what is there but has been missed, and rehabilitate it and fix it up, which you would still have to put in a proposal for, but maybe you could have a special category.

Hon KATE DOUST: Have you actually canvassed that proposal with DMP?

Mr Lowe: No, because when I wrote this submission, it was not just my submission; there was a lot of input from members. That is one idea that was put forward late in the piece, so it is an idea that probably could not —

Hon DAVE GRILLS: CME put in their proposal, they said, about cutting paperwork and red tape and what have you so their inspectors could actually get out and do the job. I guess if an inspector was out there, where they fill in a form and you sign the bottom, did the job, and that would be an ideal opportunity for that to happen. What CME actually said about getting more people, cutting the red tape and getting it out of the ground would probably be a good prospect to allow that to happen. I am just sitting here as a member of the Mining and Pastoral Region and, as Robin would agree, if you look at the Kimberley and places like that, there is mining gold and what have you up there, and it is just an opportunity I see for employment and other opportunities for value-adding back into the communities.

Mr Lowe: Yes.

Hon ROBIN CHAPPLE: I am going to jump in here with an observation. I want to touch base on what Kate was saying a little later. One of the things that has happened over a number of years—and I have been up there since 2001 roaming around—is that I found that a lot of the time when the inspectors go out there, if it is a big boy, they do not necessarily seem to have the same level of fortitude in terms of applying the rule of law as they do to a small miner. Is that your experience?

Mr Lowe: In the past, no, but this particular incident—it is not in my tenement; I am actually managing it out of a mess. It is actually owned by Aborigines. It has been my experience with this

one that, yes, I was leaned on a bit heavily. If you leaned on Rio Tinto, it would not make a scrap of difference. So, yes, there is an element of truth in that.

Hon KATE DOUST: This issue around the definition of a prospector, given your association has been around since 1904, I would hope that this matter has been canvassed with the relevant government agency at least on one occasion.

Mr Lowe: Several.

Hon KATE DOUST: What is their response to having an appropriate definition of a prospector?

Mr Lowe: I have been involved with APLA on and off since about 1993. I was Treasurer–Secretary of the metropolitan branch. Then I faded away from APLA for a while and worked overseas, and came back again into this lot. But I do know that on two occasions when I was involved in it back in 1993–94, two approaches were made. The word “prospector” rather than “prospecting” does not even occur in the Mining Act.

Hon ROBIN CHAPPLE: That is right.

Mr Lowe: It is not there. There is no definition; there is nothing. You can have miner, you can have explorer, but prospector does not occur. So we said, “Look, we need to define this so we never fall into this trap we are falling into now.” On two occasions, to me, I got the impression at the time it was relatively unimportant and they did not bother with it.

Hon KATE DOUST: Are you aware of whether or not that term is applied in any other country, perhaps the US or Canada, in terms of their mining legislation? Do they define a prospector in those places?

Mr Lowe: I cannot answer the question; I do not know.

Hon KATE DOUST: It might be something we can have a look at.

Mr Lowe: The term is used. You see it all the time on forums, “prospectors”. They are quite a proud and secretive bunch, but the term is used. In terms of legislation, I do not know if it has ever been described.

The CHAIR: Would you want it defined though? Would you really want the term “prospector” defined? It is not used.

Mr Lowe: You have to be careful what you wish for, I suppose, the answer to that would be. I do not know. I am not sure I would. I would really have to think about that.

The CHAIR: Yes, me too.

Hon ROBIN CHAPPLE: I want to go back to a question I have asked everybody else. Say this did not exist and you go about prospecting. You go to the EPA. You have your two hectares area. If you are disturbing less than two hectares, you do not have a problem. So what is the difference between what you are doing now and what you may have to do? I say “may” because we actually do not know because it is going to be in the regs and everything else. What actually happens now? If you have 100 hectares and you are going to disturb two hectares, what do you actually do?

[3.10 pm]

Mr Lowe: Can I go back a step before the existing system? I think the member actually made reference to this: the mining inspector turns up, he signs the piece of paper and you get on with it. That was known as the LIMO—low impact mining operation, not to be confused with “low impact notification”, which is a thing for the future. In the LIMO, that is exactly how it happened. You would tell them, “I want to dig this up. I want to do that. There’s a piece of paper.” Bang—done—finished.

Hon ROBIN CHAPPLE: And who did you do that with?

Mr Lowe: That was the DMP. Then we went into the current system, which is probably more towards this one that is proposed in the bill, whereby you make an application for a program of works. They do like them electronically, but they will still accept them hardcopy—and that is a tick-box arrangement—but there are parameters that you are not allowed to go outside. The tonnage is somewhat restricted. You cannot go about moving an awful lot of rock on a program of works. There are questions there. Have you been on the Department of Aboriginal Affairs' site? Are there any registered sites there? So you have got to tick, "Yes, I have." If there is, there is a certain process you go through. I am saying that under a program of works, it is far more arduous than the old LIMO. If you move onto the small mining proposal, it is currently even more arduous—that is what I am going through now—than the old LIMO.

Hon ROBIN CHAPPLE: That is before we even get to this?

Mr Lowe: That is before we even get to this. This is the system we are working with now. The LIMO has gone. The LIMO is just redundant; it is finished. Now we are under a program of works. We are under a small mining proposal. If we want to go really big time with full-blown mining proposal, it can be like six volumes on a bookshelf. So this is where this system is taking us, and I think that is where a lot of the small prospectors have caught up in the last three or four years. They are used to working under the LIMO, where it was, I will not use the word *carte blanche*, but it was a lot simpler to get some mining and recover some gold than it is now. We have this interim system at the moment, which, on reflection, probably should have been legislated, because, again, it seems to have fallen into the same argument that AMEC has used: we are being driven by guidelines. This current system, in my opinion, was brought in under a guideline; it was never really legislated. The mining rehabilitation fund was, but this system was not. It was just introduced: this is our new policy; this is what you have got to do and that was it. We are stuck with it.

Now they have gone down this road, it is bolting an even more arduous process. The prospectors, who were used to digging holes rather than reading stuff on a computer, they have finally caught up and are saying, "Hang on a minute. It's bad enough now. Now you want to make it worse." This is what they are facing. Whilst APLA realises the need for environmental control, we live on it; we survive on it. If people in Kalgoorlie, Leonora or Meekatharra make a mess of something and it is apparent that you have made a mess, then your reputation is shot and you will probably never get another LIMO or program of the works without far more scrutiny. So, the good guys are really trying their best to make sure it is all rehabilitated and looks good. They probably take it more to heart than the big mining companies do because that is what they do for a living.

Hon ROBIN CHAPPLE: They do.

Mr Lowe: If a mining company goes out of business, the shareholders suffer. If a small prospector goes out of business, his family suffers. Probably a bit more clarification, if you would, about the computers. They use an example of the MRF being 97 per cent compliant. The important thing to remember is the MRF is a once-a-year event on a fixed date. POWs, MPs, all these things, 10-day rejection periods—they are all done at different times of the year, so if anybody goes into the mines office on 30 June every year and gets someone behind their desk to help them through the computer program, it is great compliance. You cannot apply the same rule to guys out the bush, 300 miles the other side of Laverton, who cannot get to a computer or a phone line. There is a world of difference between these two.

The CHAIR: We understand those practicalities.

Hon KATE DOUST: I know members of Goldfields First have talked about this. They have talked about what they see as additional costs that will be imposed upon a small miner or single prospector if this bill is passed. Do you agree with that? I wanted some clarity about what sort of additional costs people think there will be?

Mr Lowe: There are two aspects to the additional costs. First of all, there is the issue of fees, because they are still there. It is still in the act that there is a prescribed fee to pay. We have had a letter from the minister for mines, Bill Marmion, to say he has no intention of following that. But he is not the minister for mines anymore; we now have Sean L'Estrange. It is like regulations; it can be changed at any minute. So there is that aspect. That is still a threat like a sword of Damocles over everybody's head.

Hon ROBIN CHAPPLE: I think that is where a lot of the angst has come from.

Mr Lowe: It is.

Hon ROBIN CHAPPLE: There was that \$6 650 fee that was blanket across the industry, whether you happened to be Rio Tinto or Joe Blow down the corner.

Mr Lowe: If you spread it out a bit, if you look at it just from the program of works, it is \$590 for a program of works, and you think, "Oh, what is \$590?" A program of works is allowable on a prospecting or an exploration licence and it would have been \$590. Let us assume the fees come back in. Let us say you get five hectares on a program of works, which you can disturb—no more than two hectares open at any given time. You can do the whole five, so you can do two, fill it back in; two, fill it back in; one, fill it back in; and then you make another application, on the same tenement for another \$590. Now it is very easy to do 10 POWs on a 200-hectare lease, if you would only allow five hectares. That is 50 hectares, and what has it cost you—\$5 950, which is nearly the price of a full-blown mining proposal the size of the Area C or Roy Hill iron ore mine. That is what they are worried about. That is the issue of fees.

In terms of the extra costs is the impost of having to employ perhaps a specialist for EMS systems, or the extra cost is also involved in the increasing amount of paperwork. It is not just this increasing amount of paperwork under this bill; over the last few years we have had to accommodate native title and Aboriginal group negotiations with people like the Goldfields Land and Sea Council and the Yamatji land council. All these various things are starting to build up on prospectors, and they are thinking, "When is this going to end? I can't afford to keep having days off from out of the mine or days from my prospecting or days off my bulldozer", or whatever tool they are using, "to keep addressing this paperwork." So the pressure is building up all the time. I think you have used the correct word there—"angst". The angst is building. What really tipped it over the edge was the DMP spoke for four years in this tsunami of paperwork and presentations and they kept mentioning fees. Even I fell for it at first. I thought, "Oh, it'll just be \$50, like the usual mines department fees, or \$100 maybe. Fair enough. They can afford that." Then bang: \$590—\$6 950. That is when the balloon went up. That is when the distrust came in. That is when what is happening here came in. Then when we kept asking for a copy of the bill and could not get one until it was finally in Parliament, that was it; all bets were off. There was no more talking amongst friends anymore, and that is why we are here today.

The CHAIR: No-one usually gets a copy of the bill until it is read in.

Hon ROBIN CHAPPLE: Exposure drafts.

The CHAIR: There are drafts, but they did not put it out as a draft bill.

Mr Lowe: Sorry?

Hon ROBIN CHAPPLE: We do what we call "exposure" drafts.

The CHAIR: They could have done it a lot better, but they did not.

Mr Lowe: There was mention in one, I think, DMP submission that an exposure draft was given to APLA in February 2015. The only record we can find that anybody was given a draft or a bill of anything that resembled that was the mining legislation bill 2014, which was the year before, and it had not yet been passed. Nobody has any recollection of ever being given a copy of what exists now as the mining legislation bill 2015. We just could not find any record that anybody had one.

The CHAIR: In all likelihood, they never would have given it to them anyway—only if it had come out as a draft bill.

Mr Lowe: I am sorry? I am a bit deaf.

The CHAIR: As a minister previously, you would never have got the bill before it was read into Parliament unless it was in a draft bill or a green paper or the minister had you around the table consulting. There are ways that you can get around it, but in my experience, I have never, ever let a bill in its form—certain parts and aspects of it, you go out on consultation with, but not the actual bill itself. Having said that, we could have done it better.

On that, on behalf of the committee, I would like to thank you for being here today. I note that you have been here listening all day.

Mr Lowe: It has been useful. Thank you very much indeed for listening.

Hearing concluded at 3.20 pm
