STANDING COMMITTEE ON LEGISLATION

MINING LEGISLATION AMENDMENT BILL 2015

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
MONDAY, 4 APRIL 2016

SESSION THREE

Members

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

Hearing commenced at 1.02 pm

Mr KANE MOYLE
Manager, Environment and Land Access, Chamber of Minerals and Energy of Western Australia, sworn and examined:

Mrs KIRRILLIE CALDWELL
Policy Adviser, Environment, Chamber of Minerals and Energy of Western Australia, sworn and examined:

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

[Witnesses took the oath or affirmation.]

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

Would you like to make an opening statement to the committee?

Mr Moyle: Yes, thank you. We come here today representing the Chamber of Minerals and Energy, which is the mining and petroleum peak body in Western Australia. We are made up of production-based members and also associates of the mining, and oil and gas sector. CME has been involved in an approvals reform agenda for some time. Back in 2012, we worked on a set of approvals reform principles, which have basically formed the guidelines to our engagement with government around this approvals reform agenda. They are built around legislation and policy that have the principles of accountability and transparency, procedural fairness and also timeliness and resourcing of government departments to deliver that. We would like to acknowledge in the first instance our support for Department of Mines and Petroleum and also the Minister for Mines and Petroleum, Hon Bill Marmion, in pursuing a red tape reduction agenda. Whilst reform can be a difficult process and is one that requires good and adequate consultation with all stakeholders, we believe on the whole what they have developed with the Mining Legislation Amendment Bill is an important piece of reform for the resources sector in Western Australia.

WA mining, oil and gas companies are competing globally to attract capital and it is vital that we have the right policy settings and legislation to attract investment. Recently the Fraser Institute, which is a global policy think tank rated Western Australia, from an investment attractiveness, as number one around the world, which I think is an important acknowledgement of indexed measures, both I guess the geology or mineralisation of a region and also the policy perceptions.

Whilst Western Australia has very good geology and has a competitive advantage in that sense, our policy perceptions still rate eighth in terms of some hundred jurisdictions. So there still is the ability for improvement of our legislation and policy in managing the resources sector.

These amendments largely move the Department of Mines and Petroleum to an outcomes and risk-based regulator. We think that is an appropriate, I guess, policy mechanism for regulating our industry and one which should drive efficiencies when we talk about timeliness and resourcing. The bill consolidates the environmental management provisions of the Mining Act into one new part which will allow for no longer the need for a clearing permit under the EP act and which will allow many mining operations to deal with DMP as a single decision maker rather than multiple avenues through government, and that is a positive thing. Also the creation of the new low-impact notification will see a significant reduction in the requirement for programme of works for our members. This is a positive thing. It will allow effectively for a deemed approval for activities that are classed as low impact and will cut down, in many instances, processes that take many weeks to pursue approval, so that is a positive thing.

I move to some of the negatives about the bill. Like many others you will see appearing before you and also in submissions, the Chamber of Minerals and Energy share opposition to the introduction of cost recovery. That debate has been interwoven with these Mining Act amendments. Even though the bill does not specifically introduce amendments around the charging of fees—that power already exists in the act—we are opposed to the introduction of cost recovery both for mining proposals and programmes of works. There are references within the legislation which relate to the prescribing of fees, and we support the removal of these in the instance of the minister acknowledging that he is no longer pursuing the introduction of cost recovery in the short term.

Now to the consultation process: the chamber, as you would imagine, has been a key stakeholder throughout this. We have been engaged right back till 2012 when a ministerial committee was established on the back of an Auditor General's report into environmental regulation and compliance. We have reviewed exposure drafts of the legislation and provided comment. You will see in our submission, the attachment table which references comments the chamber has formally put to DMP, along with responses from DMP in that process, and then subsequently some further comments where we see some issues that this committee could delve into in further detail and provide either clarity or suggest amendments to ensure that this legislation is the best it can possibly be.

[1.10 pm]

So, in terms of consultation, whilst there have been some criticisms with the observers from other stakeholders, the chamber has felt as though it has been adequately consulted throughout the process. That is our opening statement. We are happy to answer any further questions in relation to our submission.

The CHAIR: Just to put on the record, what are your concerns with the bill—the particular clauses that you are concerned about? I know we have your submission, but can you paraphrase or have a look at your submission and tell us for the record what you have concerns with?

Mr Moyle: Effectively in creating DMP as a single decision-maker it is required to reflect aspects of the Environmental Protection Act into that new environmental part of the Mining Act. We have raised questions around definitions of "environmental harm" in the legislation. There is a definition of "environment"—the inherent nature of regulating that. There needs to be some definition around the environment. But what constitutes environmental harm is a key aspect, because that is where operations would potentially be liable for any penalty. The definition for "environmental harm" in the Mining Act amendment bill does not contain any materiality around it. Now the EP act has a materiality definition based around serious environmental harm and also material environmental harm, so they are two levels. In the mining act it is just environmental harm that is defined and we

have some concern that an operation that may have had an incident could be liable for what is a fairly minor environmental harm provision that would not otherwise have triggered the EP act.

The CHAIR: Yes, we too have the same concerns as to the definition that needs broadening.

Mr Moyle: So, as you will see through our submission we presented to the committee that we have a well-documented process of how we have engaged on that. The Department of Mines and Petroleum have attempted to answer or allay some of those fears; however, we still have some concern about that and we would like the committee I guess, to interrogate a bit further with those government agencies to ensure that that is crystal clear and potentially we are not creating issues in the future for operations that may have inconsequential environmental harm and be made liable under this legislation.

Hon KATE DOUST: I just want to say that I think the way you set out your table, where you have highlighted some of your concerns, is a very good tool for the committee terms of picking up on those issues. I just want to acknowledge that because I know it takes a bit of work to get that done. I think it will make our job a bit easier, picking up on your specific issues.

Hon ROBIN CHAPPLE: You said you were first involved in this in 2012. Your involvement in the industry working group of 2008–09 and indeed your submission to the approvals reform process in 2009 indicates that you were sort of fairly heavily involved in that process. Are you saying that the first time you got involved was 2012, when your submission was quite clearly done in 2009?

Mr Moyle: Sorry, I should clarify those comments. My personal involvement has been right back to 2012, when I was involved with the chamber. There was also that review process that was kicked off back in 2009. We were equally consulted back then. I would, I guess, acknowledge that the formal process around pursuing amendments to the Mining Act commenced when a ministerial committee was put in place to investigate that very option.

Hon ROBIN CHAPPLE: In your 2009 submission you indicated that you wanted the MOU to bring in the department of environmental protection and the EPA review, with a view to passing over to the DMP. So, you have obviously had this view for a long time. You were quite strident on your views in relation to native vegetation clearing assessment guidelines 29. Quite clearly, if you look at the documents the follow on from this within the 2008–09 report, which actually lead to the eventual outcome, just about every single one of your recommendations was taken on board. You stand commended at that level, but your involvement has been with his project for a very long time, and indeed your senior staff members were part of that whole process. I just want to make that fairly clear.

In terms of moving native vegetation clearing out of the EPA into the mines department, it fits within that one-stop shop sort of idea that you were coming up with. But what really we are talking about are the issues of management of those environmental harm issues that attract some quite significant, should we say, elements of the compensation and things like that under the EPA, whereas they do not under the mines department. It was quite clearly stated in your submission of 2008 that you wanted to avoid for your members those levels of oversight. Is that still your view that you do not like the EPA's oversight and its management of the process?

Mr Moyle: No, I do not interpret those comments that way. In terms of specifically looking for what is a one-stop shop, I would prefer to call it a single decision-maker now, because that one-stop shop language can get confused with the commonwealth process now because of the delegation of the EPBC act approvals back through the state jurisdictions. We were not referring to the removal of any environmental level of control. It is simply about making the process more efficient and effective, and to do that it involves some component of the Mining Act needing to regulate the environment. In the case of how this has been subsequently drafted post–that process, you have seen effectively a mirroring of those clearing principles into the environment part of the act, which essentially delivers on what we were requesting back in 2008–09, which is to remove that

duplication and, wherever possible as an industry, us deal with a single decision-maker, or in the case of what we were referring to back then as effectively a one-stop shop.

Hon ROBIN CHAPPLE: In your submission back then you indicated that your preferred model would actually be to have the Premier being the final decision-maker in charge of all departments, and all the decisions going there; is that still your sort of view?

Mr Moyle: No, that is not our view at this point in time. It is something that we did seriously investigate and interrogate, and we came to the conclusion following that process that it would require too much amendment to achieve that outcome, and we have been working towards what is the government's current policy of having what they refer to as lead agencies. So, we would quite obviously view the Department of Mines and Petroleum as the lead agent for our sector. Therefore, for it to become an efficient lead agent, we need to move aspects of the EP act so it can be that single decision-maker for us.

Hon KATE DOUST: I was just going to note that in your submission you have called for a review of the bill. I mean, there is not currently any provision for that in this bill—a review of the acts I suppose. Can you explain why the CME would like to see that happen?

[1.20 pm]

Mr Moyle: Specifically review?

Hon KATE DOUST: There is currently no review of the legislation provided for in this bill with the amendments picking up on the environmental issues; your submission calls for a review.

Mrs Caldwell: A review of the Environmental Protection Act?

Hon KATE DOUST: Yes.

Mrs Caldwell: Yes. That was specifically in relation to works approvals and licences and, again, trying to streamline that process as much as possible through the Mining Act.

Mr Moyle: I was confused for a moment there. I thought you were referring to us building in a review provision in the legislation to come back, which I was not familiar with. Yes, we have suggested that as a result of this process there needs to be a review of the Environmental Protection Act to ensure that there is no duplication created through this process.

The CHAIR: You suggest that a threshold of 10 hectares per tenement per year be included in the definition of low impact activity. How does this compare with what the DMP proposes? We hear 10, 25 or 100; can you explain where you got that number from?

Mr Moyle: So the 10 hectares referred to there is a figure that we felt, following consultation with our members, was a reasonable threshold for a low impact activity. Our members have a preference that a "low impact activity" is defined purely on the nature of the activity, not some threshold of area, because you could have an activity over more than 10 hectares that is very much a low impact; likewise, you could have something that is quite harmful to the environment in such an area. Our preference is that actually no threshold is set; it is better done on an activity basis, but the 10 hectares has been, I guess, a commonly referred threshold in aspects of native veg clearing, so that is why it was reflected as an option or preference of the chamber, in our submission, as a reasonable threshold in the first instance. But we would see later on, once there is either some review or a further discussion paper looking at the effectiveness of this, it may be something to take another look at to see whether it is achieving that outcome.

Mrs Caldwell: I would add as well that the 10-hectare limit aligns with the regulation 5, item 20, of the clearing permit exemptions as well, which relates to low impact clearing for mineral or petroleum activities.

Mr Moyle: But we expect further consultation around that aspect, so the low impact notification process is going to be defined in detail in regulations. We have had some consultation already around that with DMP; we expect ongoing consultation on that as it is drafted.

Hon ROBIN CHAPPLE: On that, is there a draft out at the moment that you are considering?

Mr Moyle: Not that I am aware of.

Hon ROBIN CHAPPLE: It is just basic conversation?

Mr Moyle: Yes.

Hon ROBIN CHAPPLE: When you talk about the 10 hectares, this is 10 hectares of lease or 10 hectares of actual clearing at any one time? Currently, the situation is two hectares and then you move on to the next two hectares. The nature of prospecting is quite often it is across country rather than down; it is quite different from mining. So at the moment you give a two hectare, you usually do your rehab virtually straight away, it stops you remobilising your equipment, and you move on. Are you talking about 10 hectares clear at any one time or are you talking about a 10-hectare lease?

Mr Moyle: Currently under programme of works, and it will be continuation of this even for a low impact notification, you are required under the legislation to rehabilitate that after six months. You could have many multiple hectares open, but you still need to meet your obligations under the act to go and rehabilitate that. We would say that that is the necessary safeguard that is built in there.

Hon ROBIN CHAPPLE: I mean, a number of prospectors have won Golden Gecko Awards for the way they do rehabilitation, because it is usually fairly instantaneous. You move across the country, you do your work, you flick top soil back in and you move on. So with this whole idea, you are actually saying that they can actually have, at different places, 10 hectares open at any one time?

Mr Moyle: Yes, that is our expectation. Also I would like to add that for it to be eligible still it would need to meet those activities which would be prescribed in the regulations, so it is not 10 hectares of clear felling of that whole native vegetation; they are still activities that are deemed to be of a low impact.

The CHAIR: You request that exploration and prospecting activities are excluded from the requirement to prepare an environmental management system. Section 103AZC of the bill provides that environmental management systems are a requirement only for mining leases and miscellaneous leases. Is there still a concern? Do you still have a concern about that?

Mr Moyle: This is a new frontier for mining, exploration and, potentially, prospectors as well preparing environmental management systems. As an industry, we are very familiar with risk-based regulation; it is inherently built into the safety side of our business and also other aspects that we intersect with government. We think it is an effective form of regulation, but it is a new way of doing business in the environmental space. There is, I would interpret, some anxiety around what constitutes an environmental management system and what fits the requirements of Department of Mines and Petroleum moving forward. We would see an environmental management system being very useful for a mining proposal; but, for a basic exploration activity, developing and maintaining an environmental management system is an over-requirement in our experience

Hon ROBIN CHAPPLE: The current situation is that it is covered by the EPA. Normally, if it is low impact, away you go. There are no sort of environmental management plans; the EPA keeps a good model on it. Do you think that moving it over to the DMP, whilst it is certainly, for the big end of town, major miners, most probably of significant benefit? But when it comes to the smaller miners, the smaller prospectors, do you think it might actually in fact create more of a management hurdle than the current process managed by the EPA does?

Mr Moyle: If it is not prescribed well in policy and regulations, I think that is the appropriate level, to give some guidance and definition about what are the expectations and requirements. You are correct: our members are very familiar with such systems. Many have environmental management systems even though there is not a legislative requirement to have and maintain one at the moment; so, yes, they are familiar. But an environmental management does not have to be an overly complex or even detailed document. It can be prepared and maintained fairly efficiently if it is managing what are the appropriate environmental risks to that site. In the case of a number of mining operations that may be in fairly benign areas or ones that do not have high conservation values surrounding them, they should be relatively simple to maintain.

Hon ROBIN CHAPPLE: In the case of major miners—BHP, Rio, those sorts of people—as you say, they have in-house people who do that anyway. Do you not think it is possibly going to be an impost on the smaller miner, one who is maybe not equipped education-wise, whatever else, to be able to submit the EMSs and might have to go out and get a third party to do it for them? Where it is a very small profit margin, do you not think that might be excessive?

Mrs Caldwell: I do not believe it is the DMP's intent to require the smaller miners to go out to a third party to develop an environmental management system, and it can be quite simple. I guess the point of the environmental management system is to ensure the environmental risks are managed and it is documented how you go about that.

[1.30 pm]

Mr Moyle: So a recommendation from this committee may be for even a template EMS for smaller operations that could assist those that do not have experience in this form of regulation to, I guess, submit something without the impost of costly environmental consultants.

The CHAIR: Yes, and that is a good way —

Hon ROBIN CHAPPLE: And yet, at the same time, we have a system at the moment under the EPA or DEC that does not actually imply those extra costs.

Mr Moyle: Sorry?

Hon ROBIN CHAPPLE: The current situation is that when they are regulated under the EPA or DEC, they do not actually have those costs or that impost anyway. I am just concerned that if it goes across to Mines, we are not actually creating the potential for greater regulation in terms of written reporting conditions. I am mindful of what went on in the pastoral industry when we took away the government's oversight and handed it over to pastoralists, and they found it very, very difficult to comply with all these masses of documents and everything else. It became far worse because we were actually trying to regulate an industry that had never had that level of regulation.

Mr Moyle: But in the case of mining proposals, at the moment you are regulated based on prescribed conditions of that mining proposal. In the case of many operations at the moment, they are conditions that require a significant amount of resourcing to review and report against, so it is not like there is not any oversight at the moment; this is just a system replacing what is currently in place, which is regulation by condition of a mining proposal.

Hon ROBIN CHAPPLE: At the moment, you submit an NOI and the department establishes a set of conditions, you tick the box and away you go. That is the current process. Here we are actually throwing it all back onto the prospector or the small miner to actually identify how they are going to do it, really, rather than necessarily ticking the box of what DMP has said they should or should not do, which is in the NOI.

Mr Moyle: Yes, we have discussed and debated that very point from the perspective of our members, which are mining and exploration companies, where, yes, this does put an increased onus on the operator to run and manage and maintain those systems, but the benefit here for government should be that officers that would have been tied up previously assessing proposals and writing

conditions can actually now get out and do some compliance and some monitoring against that regulation, which has been a criticism picked up in the past in that Auditor General's report. So, we would see that it is just a shifting of the government's roles and responsibilities.

Hon ROBIN CHAPPLE: Onto the smaller miner.

Mr Moyle: Well, no, I am talking about mining and exploration companies; they are the people that I am here representing as stakeholders. Prospectors, I am sure, will have their perspective on that, but in the case of those who I am here representing and talking for, it is a better system in their regard.

The CHAIR: And doing a very good job of talking, I think!

You state that you seek removal of statutory guidelines. Do you refer to the guidelines that are made under proposed section 103AM? Is that what you were talking about in your submission? Oh, sorry—my fault! You can answer it, though.

Mr Moyle: I refreshed myself with our table before coming here!

The CHAIR: You can answer it, though—come on! No? Okay.

Mr Moyle: No, we will leave that for our friends later!

Hon KATE DOUST: We had an earlier discussion with DMP around the issue of guidelines and regs. What is set out in the act is quite specific about the matters to be dealt with in the guidelines. My concern is that with guidelines there is no capacity for oversight by Parliament; they can be amended at any time in the department without any discussion or scrutiny applied to it by Parliament. Given the level of detail of what they have put in the descriptors for the guidelines, would it have been the CME's preference, rather than just having a set of loose guidelines that are not enforceable, perhaps to have them set down in regs?

Mr Moyle: Our preference is certainly not having details that would otherwise be picked up in guidelines or regulations into the act. We think it is purely creating the head powers for this new process and not an efficient way of regulating to do that. In terms of picking things up in the regulations, we would expect that there is significant detail in the regulations that prescribe what would be detailed either in further guidelines or in the regs.

The CHAIR: I think this one is for you!

Mr Moyle: Okay!

The CHAIR: You raised concern that the bill introduces a power to impose additional reporting requirements to those which apply under the EP act. Which clauses specifically do you refer to?

Mr Moyle: Relating to the reporting of incidents and also environmental reporting, currently, in the case of the reporting of any environmental incident, there are obligations under the EP act to report any incidents of environmental harm. There is the ability for duplication to be created here where you may need to report incidents, to both the Department of Mines and Petroleum and also to DER, so we would like the government to look at ways that could streamline some of that reporting. Equally, with annual environmental reports, you are required to submit an annual environmental report for DMP as well as a number of other agencies, depending where you may be regulated under, and I think there is an opportunity to look at streamlining some of that process as a result of this. It is really flagging that as a potential issue or consequence as a result of creating this new part of the Mining Act.

Hon KATE DOUST: Those reports that you provide, the annual environment reports, if you are giving one to DMP and one to the EPA and whoever else you provide one to, does the detail in the report vary or is it essentially the same report that could be given to one department and simply passed on to the others, or is there a significant difference between each type of report?

Mr Moyle: There is a lot that is similar or duplicated. There are specific aspects, and in the case of DMP, for example, I will talk about land which is cleared and under either rehabilitation or requiring, so companies are required to report annually under the mining rehabilitation fund

legislation. They then also duplicate that information in their annual environmental report. That is probably the most important area that government needs to have oversight of, so it is even duplicated within a department. Then that is also reported for clearing.

Mrs Caldwell: Clearing permits through the Department of Environment Regulation.

Hon KATE DOUST: So in terms of the so-called red tape issues, it does not actually help, does it?

Mr Moyle: The job is not done with just this piece of legislation; there are still opportunities that exist through all levels of government to streamline processes. In this day and age, as well, with a lot more online submission and the ability to have systems talk to each other, I think we could be doing a better job. To the credit of DMP, they do have quite a progressive agenda to move towards a fully online agency, but as we know, government online platforms have had some issues in the past, and we need to make sure that they are adequately resourced to ensure that they work and then also speak with some of the other agencies.

The CHAIR: If it were up to me they would have both and keep both, but I know I am old!

Mrs Caldwell: I will just add that under section 72 of the Environmental Protection Act, proponents are also required to report any discharges of waste as well, which is also a potential duplication if the Department of Mines and Petroleum also require the reporting of incidents.

The CHAIR: We really do need to get that environmental harm absolutely bedded down.

[1.40 pm]

Hon KATE DOUST: I suppose the issue is, if you are reporting to one body, that may not necessarily send up the red flag to the other one where the information may actually be more relevant at that point in time than, say, the case of waste or leakage. I suppose the consideration is: how does each department know how to use that information when it comes in?

Mrs Caldwell: In our recommendation, we stated that we would like the different departments to work together to streamline that reporting and address those sorts of things as well.

Hon ROBIN CHAPPLE: The 1992 memorandum of understanding, which really started this all off, was actually that there was always this flow of information in a two-way issue.

The CHAIR: He was not born then!

Mr Moyle: I was in primary school then!

Hon ROBIN CHAPPLE: Some of us older members were around. You distracted me. Sorry; I have lost my train of thought. Move on.

The CHAIR: I am sorry. I just thought I would say that we really cannot go back that far. Some of these people were not born.

Hon ROBIN CHAPPLE: I can assure you some of the audience were.

The CHAIR: I am sure they were, and myself.

Hon KATE DOUST: Towards the end of your submission you say it is important to have the right policy settings to remain an attractive investment destination. I suppose from your perspective or the perspective of your members, which are the larger scale end of the business, 90 per cent of this legislation appears to satisfy their interests. You have highlighted a few minor amendments, if you like. During that consideration or the consultation process, was there any discussion with the CME about the impact upon the other end of the mining sector? I just think that attracting capital is not just to the big end. We know from information provided that the prospecting side of it also attracts some dollars and it also attracts a degree of tourism, if you like, into prospecting. Do you think this would work perhaps better if there was clarity in terms of a tiered structure about how this legislation impacts upon the various parts of the sector?

Mr Moyle: I do not think segregating those aspects is necessarily the right way to go. Earlier I made a recommendation around a template EMS as a way to overcome what are some very real issues that have been put forward by the prospecting side of the industry. I do not think

segregating cohorts or parts of the sector is an efficient way to legislate or regulate in the case of mining and exploration in Western Australia. That would be our preferred approach out of this.

I would also just like to put on the record that whilst, yes, you are correct that we do represent some of the very large miners in Western Australia, we also represent some small miners and also exploration companies in Western Australia. I do not think the lens in which we have looked at this legislation is purely just for the large mining companies in Western Australia.

Hon ROBIN CHAPPLE: I have just one question. You may or may not be aware of this, and this came from two of the earlier hearings today. Currently, the bilateral agreement that has been signed between the federal government and the EPBC act and the EPA in relation to clearing would need to be redone after the passage of this legislation. Until that has taken place, once this legislation has passed, all land clearing of anything of any substance will then have to go to the federal government instead of to the state government.

Mr Moyle: But that could be avoided through a subsequent amendment to that bilateral agreement, the approval bilateral. For those who may or may not be familiar with this process, amendments are sitting before the federal Senate to allow for the delegation of approvals back through the states because that power currently does not exist under the Environment Protection and Biodiversity Conservation Act.

Hon ROBIN CHAPPLE: That is the broader issue, but we are actually talking about the existing bilateral agreement, which, in discussion with both the department of environment and the mines department, would indicate that there needs to be a new one of those, notwithstanding the broader issue.

Mr Moyle: The assessment bilateral that you are referring to there was drafted some time before this process, which has not been finalised yet, so it would be wrong to pre-empt an outcome of Parliament to include —

Hon ROBIN CHAPPLE: No, no; that is an existing one.

Mr Moyle: I am saying that these amendments that create the environment part of the act have not gone through the Parliament yet. You cannot refer to something in a bilateral agreement that does not exist yet. Yes, it will require amendment in the future and that would be an expectation of ours.

Hon ROBIN CHAPPLE: Would that not be of concern to your members—that once this is passed, until we have actually redone a bilateral agreement between the federal government and the mines department to cover this issue, we are going to be opening up a Pandora's box of extra regulatory oversight by the federal government, which does not exist currently under the EPA bilateral agreement?

Mr Moyle: I see no other way of approaching this. As I mentioned earlier, you cannot put something into an agreement that does not yet exist. It is our expectation, once this legislation is passed, that those moves from the WA government to renegotiate that assessment bilateral, which has provisions built into it—there is a committee that oversees that—one of the first orders of business will be to include the ability for the Department of Mines and Petroleum to run those assessments under that agreement.

The CHAIR: On behalf of the committee, I would like to thank you for coming. If we do have some more questions, we will send them to you. Thank you very much for being here.

Mr Moyle: Thank you very much. If there are any further questions, we would be more than happy to provide supplementary evidence or detail around those at the request of the committee.

Hearing concluded at 1.46 pm