

STANDING COMMITTEE ON LEGISLATION

MINING LEGISLATION AMENDMENT BILL 2015

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

SESSION FIVE

Members

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

Hearing commenced at 11.24 am**Mr MICHAEL PHOTIOS****Owner–Manager, Hawkins Mining, sworn and examined:****Mr NICHOLAS PAUL CUKELA****Small Miner, sworn and examined:**

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

[Witnesses took the oath.]

The CHAIR: You will have 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 for the record and please be aware of the microphones and try to talk into them and please try to speak in turn. 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, in turn, each like to make a statement to the committee?

Mr Photios: Can I refer to my submission?

The CHAIR: Yes.

Mr Photios: In my submission I have addressed some of the concerns of myself about the DMP continually changing the goalposts without any consultation to the industry. The culture of distrust between the environmental department and the miners is prevalent, because they keep changing these rules without any consultation. My first paper is “Fundamental Legislative Scrutiny Principles”, which is the first page. I have felt as though they have not addressed these principles in making the Mining Legislation Amendment Bill 2015 and the next page refers to denial of procedural fairness. Under these principles here, it seems that the Mining Legislation Amendment Bill 2015 does not meet these requirements. In other words, it should be thrown out and started again because of the lack of consultation between industry, and the lack of consultation to the Indigenous as well. Secondly, appendix 3, which is on the low-impact mining operations, is dated February 2006. The next page is the appendix 3, which was changed in September 2012 and which is completely different to the first appendix. These are extracts out of the mining proposal guidelines, which were printed by the DMP. They have changed all of these guidelines without any consultation whatsoever to the industry again. That is a prime example of it. Thirdly, in the “Memorandum of Understanding for Collaborative Arrangements between the Office of the Environmental Protection Authority ... and DMP”, you can see that I have highlighted one section there which states —

... the State Government's focus to improve assessment and approvals of major projects, ...

[11.30 am]

No thought whatsoever to the little end of town, which is a thing where small things grow into big things. Big mining companies do not just eventuate as big mining companies; they all grow from small mining and exploration companies. This has taken away the chance for any of the smaller people, basically, to grow into large mining operators. Fourthly, there is a paper there, the Industry Reference Group for Mining Proposal Reform's minutes. It says there, "Meeting No. 1", the first consultation meeting between the environmental department and industry. Now if you read through that, it is all mainly environmental people. There are no actual mining operators. It is the environmentalists in the mining companies that have been consulted, so it really looks like an environmental party to me. Like I say, it is all environmentalists. And if you see on the back page there, that is a form guide of Phil Gorey. He worked as a principal for Strategen Environmental Consultants for a year prior to being appointed executive director of environment for the DMP. You will see, of course, that Strategen Environmental Consultants is one of the people who were invited to that meeting. That is basically it.

The CHAIR: Thank you. Mr Cukela, would you like to make an opening statement? Then we will ask some questions of both of you.

Mr Cukela. A lot of things that have been mentioned here today; you have already heard them all. They will bore you to death.

The CHAIR: I am sure you have got a gem in you.

Mr Cukela: I am not a really educated person, but I am not stupid. I like to go to the mines department and get a bit of help to tick the boxes and away I go. I make the effort to go in there and I talk to someone who knows what they are talking about. They had two women in there that were really good. I talked to them—one of them had experience as a geologist or something—and they would always help you out. You filled the form in and it took 10 minutes and away you would go, walk out the door and everything was good. Miners and things, they find 80 per cent of the main gold. You force them out of business, and the big end of town should be here today, because it is going to happen to them. What happens here? Whoever wrote this document is trying to fly like an eagle and he is surrounded by turkeys, right? That is all it is.

The CHAIR: I love your analogies. Just for anything; not for this!

Hon KATE DOUST: That might even get into the report, you know!

Mr Cukela: There needs to be a little bit of consultation. There is none. That is why governments get it wrong all the time. When you are trying to pass laws, you consult with everyone all the time. That is why they make mistakes all the time. It does not matter whether Liberal, Labor or Greens or whoever they are. They should be working together. You should be working through these committees long before you are going to change something. It really was not broken, so why change it; right? But someone gets a thought bubble and we are going to do it all again and make it better. You have not. You have got too much contradiction in your paperwork. There is too much this page, that page. I do not ask you to read this bit and that bit but there is that much it would drive you mad.

They read the book, they write the form, they have another cup of coffee and they eat a biscuit, and it gets better. The more they read it, the better it gets and it is acceptable. It is not acceptable. They have gone too long to get to this stage. It should have been done a long time before we even got to here, before it even got put into Parliament. That is where the mistakes are made. The dairy industry, I got to DAFWA on that, because I am a farmer. You have these committees, you deregulate, and you send everyone broke. It has nothing to do with the Greens. It is to do with environmental tree huggers. They get out there. Miners do the right thing. They go and clear their little patch out there, do their detecting on their two hectares. It is not a problem. They rehab it and

they move on to the next section. They go into town: “I want to do this.” It is running this way, so that is why we go; another two hectares. We tidy this bit up and we move to this bit. We have got all this legislation which is garbage; right. Chuck it in the bin. You are wasting everyone’s time. It should have been done long before. Anyway, I do not know what else to add, but that will do. Thanks for persevering with me.

Hon ROBIN CHAPPLE: No worries. Thanks for clearing my name!

Hon KATE DOUST: I notice in your submission you talk about the impact upon you as a miner in relation to the online information you have to do now. You talk about your own computer literacy skills, or perhaps lack thereof. So I am just wondering if you could perhaps explain to the committee, if you do not have the required computer literacy levels that you would need to do this, what is it going to cost you in the future, or how are you going to manage that?

Mr Cukela: Well, I have to get someone else to do the paperwork for me. You have to pay someone to do this for you. That means I have got to stand and talk to you—like go around and have a chat, and I am spending more time instead of doing something that I like doing. It has been difficult on the land for many years. I am the third generation to come to the goldfields, and my sons come to the goldfields and work and learn. They are apprentice mechanics and boilermakers, and they will be an asset to the goldfields, and work on the farm. That is what keeps the farm going. But my literacy skills, I am no rocket scientist but I am not stupid; I am very smart. And what I do, I do well.

The CHAIR: We certainly are not saying that; we know that you are very intelligent.

Mr Cukela: But, you see, getting away from people skills, if you want to know something, you go and ask the person. If I make the effort to come in to see you, that means I need help. It does not matter if you are computer illiterate or what you are. The person is there to help you, serve you. This is a problem. It does not matter if you have got computer skills. You are forcing computers on all of us. It is getting back to the basics, and that is what you have got to do. In this bill, you have got to go back to basics on everything. Anyway, I do not know whether I have answered your question well enough. Do you think the nuggets come out the bush and they say, “Take me; take me”? They do not.

Hon KATE DOUST: If only!

The CHAIR: I would be out there today!

Mr Cukela: You have got to draw people from the city to come to the country. If you can get them back out into the country—the city cannot sustain them; all right? So you bring all of them into the city. The bush and the land that the prospectors work and the station, that is owned by the people, not by one man or you or anyone else; it is owned by the people. Everyone should be able to go out there, do a bit of prospecting, do the right thing, and if you do the wrong thing, they come down on you like a tonne of bricks. But that is what it is about. It is coming out—anyway, that is it.

Hon KATE DOUST: The reason I asked is because with a whole range of different types of businesses now, there is an expectation that you shift from the paper to the digital mode for doing work, and it is not always easy for people. So it is just useful for us as a committee to hear about how it impacts on different individuals, because some people know how to do all the forms online. I was just explaining to one colleague that I have difficulties doing those things as well. So it is good for us to hear about how you would find the new system, and you have said that it will impose additional costs, so it helps to educate us.

Mr Cukela: It is when you do not know something—I am there to tick the box; right. You tick all the boxes. The lady is there and she says that if this is what you want to do, you just tick that; yes, I am going to do this, I am going to do that, and I am going to do something else. You send an email. You push a button that says “send”. You ring them up and they have not got it. It got sent, but I do not know where it went to, but it went somewhere. We sent the pages to them. You send it

off and tell them to email that bloke. He has only got one page. The other one ran off down the road somewhere. You have got to go back to keeping things basic and simple—simplicity. Do not make things too complicated. Prospectors are computer literate and we know how to use a GPS and all that, because that is a part of it, and that is fair. But you are going too complex and trying to make it too hard. The old system of the Mining Act was workable. People could work around it. You have got conservationists—I call them tree huggers. A lot of the bush was cleared in the wood lines down here. If you notice the trees when they have grown, there are all these trees with forks in them. Those trees had all been chopped down and they all grew back. Some animals they go on about—it could be a little mouse or something—those ones were extinct from this area years ago; they are gone. It was only one per cent of the ground that was impacted from mining; your rehab is done. But the big end of town should be here today—the big miners should be here, because they are not just big miners. Shareholders own them, and they have responsibilities for the costs that will incur upon them as well. They choose to look after their shareholders and they are not doing so by not being here to represent their companies.

[11.40 am]

The CHAIR: With the 10 hectares and the low-impact statement, if it was to remain paper—I am not saying that I have got a magic wand and it will—could you live with what is in the bill about the low impact, or not?

Mr Cukela: The new bill?

The CHAIR: The new bill.

Mr Cukela: Chuck it all in the bin and we will start again. The old bill was workable. You are trying to pick one little piece out of the new bill. If you want to do it, you do it right. Start at the beginning and work your way back up. The bill, in the form it is today, there is too much—I am not being rude, but they are corrupt; right. You have got one thing saying this thing and then something else saying something else. It is not like they pay them bribes or something, but when they walk down the corridor in Parliament and whoever wrote the document up, he says, “Read this”, and they have another biscuit. “Oh, this is getting better; yes, I’ll add that little bit”, but they forgot what they wrote last week, and that is why the bill is flawed and needs changing completely.

The CHAIR: You have got a new minister as of last week or the week before.

Hon ROBIN CHAPPLE: They wait to see him.

The CHAIR: If I can ask you about the 10 hectares and the low-impact statement, you do not like what you are going to have to do with that low-impact statement.

Mr Photios: That is correct, yes. My mining operation is a little bit above that. Being a little bit above that, it takes me into the top end of town and makes me come into the regime of costing \$250 000 for a mining proposal, because I have to get consultants. There is a problem with the consultants. They actually stated that they will have mining proposals approved within six weeks. They are forgetting some important things like you need a dangerous goods site licence, which takes a minimum of three months if you use a consultant, and I was advised by the dangerous goods department that if I do it myself, it could take up to six months.

The CHAIR: Did they give you a reason for that? There should not be any difference between a consultant and what you put in.

Mr Photios: There should not be, but that is what they stated to me. This was a change that was made. I have got a cyanide licence with the health department. You actually get your poisons licence from the health department, not the dangerous goods department. Then they confer with the dangerous goods department that I now require a dangerous goods site licence, although for 35 years I have been allowed to buy and store 40 tonnes of cyanide on my site, and then all of a sudden they change it. But they do not tell anybody of the changes. Apparently this changed in

2008 or 2009. Nobody was notified of the changes. So when I went to renew my poisons licence, they did not even have the decency to get back to me and tell me; they just sent me a letter saying that my poisons licence was cancelled. I sent the money in for the renewal, as I usually do, every three years. So they sent me a letter back saying that I did not have a poisons licence anymore.

Hon ROBIN CHAPPLE: Mick, can I ask you a question on that?

Mr Photios: Yes.

Hon ROBIN CHAPPLE: When they changed that, did they do that by some sort of guideline or did they do it by regulation? How did they make that change?

Mr Photios: Well, I am not sure how it was actually done.

The CHAIR: It was probably the Contaminated Sites Act, Robin.

Hon ROBIN CHAPPLE: Yes, but it was done by the mines department.

Mr Photios: It was a change in the legislation or something I suppose.

Hon ROBIN CHAPPLE: So it was done by legislation, do you think? We need to look at that, because that is the sort of thing. What we are seeing quite often is that a lot of the changes are being made by guidelines, which actually have no legal effect.

Mr Photios: That is right. It is the same as the guidelines in these mining proposals, yes.

Hon ROBIN CHAPPLE: Now, on a slightly different subject, we heard from the mines department that they did a lot of consultation. Your name crops up a couple of times. On 20 and 23 May you were at a set of meetings—a roundtable.

Mr Photios: Yes.

Hon ROBIN CHAPPLE: This was in 2014. Did they discuss this bill with you then?

Mr Photios: No.

Hon ROBIN CHAPPLE: I think we need to note that. Secondly, on 6 June 2014 they had another set of correspondence with you by email, I understand, about the meeting outcomes. Did they discuss the amendments to the mining legislation with you in those emails?

Mr Photios: Was that the one with Bill Marmion?

Hon ROBIN CHAPPLE: There was Steve Kean, yourself, Chris Potts, Gerard Brewer and Cranston Edwards. The meeting outcomes and specific relevance to the proposed provisions of low-impact activities.

Mr Photios: They did not mention the amendments.

Hon ROBIN CHAPPLE: They have been using this set of statements as their idea of consultation.

Mr Photios: They have been using meetings as consultation where they were not consultation. The only official consultations that we had were actually after the marked-up version of the mining amendments had already had its first reading in Parliament.

Hon ROBIN CHAPPLE: Thank you.

The CHAIR: Sometimes what you think is consultation and what somebody else thinks is consultation are two different things. In government, consultation can be one letter sent out or it can be a series of meetings; it just depends on who. But however it is done, I understand that you think that it has been very unfair.

Mr Photios: Yes, well, they do have records. People like myself, we have had LIMOs—low-impact mining operation papers—in there and approved, POW-Ps, notices of intent. It is quite easy to look up those records and notify these people. We were not notified at all.

Hon KATE DOUST: Just coming back to your submission, in the first part of your submission you talk about how the programme of work—prospecting has been changed three times in the last 12 months.

Mr Photios: That is correct.

Hon KATE DOUST: Are you able to give us some information as to what has actually been changed?

Mr Photios: No, not directly, because I do not know the exact changes. Because I am out at a mine site I am in a black spot for reception, so I have gotten into the habit of printing off the forms so that I can fill them out manually and then take them into the mines department. Because the computer reception is in and out, it chops in and out. I can be halfway through something and it chops out; I cannot even save it, so I have got to go back to square one again, so it costs me a lot of time. I have got emails from the environmental department in Kalgoorlie. They have sent me the new forms saying that they will not accept any forms that were dated July; they have to be dated the latest date.

Hon KATE DOUST: So have they just added a few questions to these new forms?

Mr Photios: Basically, there are only small changes in it.

Hon KATE DOUST: Have you raised what the changes were about or why they have made the changes with the department?

Mr Photios: No, I have not.

Hon KATE DOUST: I was just curious about that; that was all.

The CHAIR: I know that is common practice about changing if you have got a form that does not meet their date. It has happened to me before and I have been pretty lousy about that too; I have had to go back and get new forms.

Mr Photios: That is right, yes.

The CHAIR: It all takes time.

Hon ROBIN CHAPPLE: You were talking about two or three changes there. What are the level of changes that you have got now by comparison with what you had previously? Is there anything specific that has really increased?

Mr Photios: Well, in the last 10 years there has been excessive changes without, like I say, consultation. At one stage there, some bright person in the department thought it was a good thing to change the area that we worked, so they put it in that we could only work one hectare at a time and we had to put a new proposal in every 12 months. Then they found that it overloaded their department with paperwork, of course. They did not think of that beforehand. Things like that. The goalposts just keep changing. Every time I go to put in a new proposal, I have to download new guidelines for whatever I am doing because it has all changed.

[11.50 am]

The CHAIR: And it is about to change again.

Mr Photios: So I have got no certainty in my work programs at all.

Hon ROBIN CHAPPLE: So how far out are you?

Mr Photios: It is about 70 kays as the crow flies, I suppose. It is an hour's drive each way to Kalgoorlie.

Hon KATE DOUST: Just coming back to your submission again where you talk about structure and you reference part IX, section 162, which relates to the powers of the inspectors and their capacity to remove an item, plant or equipment. Now the language you have used here and the

language in the act has become fairly common across a range of different types of inspectors. For example, a health and safety inspector has the same sort of right under their legislation. Can you explain to me your concern about having this power of an inspector placed into this act?

Mr Photios: Well, for a start, it is already in the act that they can do so much, of course. Because the environmental department is going to be part of DMP, it will give these environmental activists a chance to do what they like. We have seen it in the history before of where environmentalists within the department, DMP, have closed down operations illegally. They should never have been closed down, and there is no compensation. If you refer to the “Fundamental Legislative Scrutiny Principles”, it says —

Does the bill provide for the compulsory acquisition of property only with fair compensation?

Now, there is nothing about compensation. Will there be compensation for people that have been unduly targeted? In other words, if the environmental department come and confiscate things and find that there is no breach, have we got the right of compensation?

The CHAIR: It is a good question.

Mr Photios: Well, it has got to be fair both ways, and it does not appear to be to me. They have to be responsible for their actions as well, as we do.

The CHAIR: One thing, in the act there are things that are different. “Environmental harm” has two different meanings. Under the EPA it has a meaning which means fines, and it is very specific, but under this act it is less specific. I actually think that is a good thing that it is not being so prescriptive. I am just alerting you to the fact that there are two different meanings under “environmental harm”. Is it mostly your concerns are in that environmental part of the bill, the new part?

Mr Photios: Yes, because environmentalists have demonstrated in the past that they have abused their powers. Are the environmentalists within the DMP in the future going to abuse the powers that are available to them?

The CHAIR: As Kate said, are you concerned about the inspectors’ powers and the new section in the environmental part?

Mr Photios: That is right.

Hon STEPHEN DAWSON: I was going to ask a question about section 162. Mick, can you explain to the committee, if this bill forces you to close down, what it means? At the moment, where do you get your equipment from? Where do you buy your fuel from?

The CHAIR: How would it force you to close down?

Mr Photios: Everything I can possibly procure locally, I do. Machinery I have bought out of Perth because that is the only place you can buy that equipment. Basically, I own all the equipment I have. I have no debt to speak of at all. I can operate to the economic values of the metal. In other words, if I have to close down tomorrow on to care and maintenance, I can do that until such time as the economic value comes up to the required measure to be able to mine and make a profit.

The CHAIR: I understand where this bill will hurt the small miners but, as you said, yours is a lot larger and it costs you \$250 000. Where does this bill come in that it may make you close your production down? Where is it specifically?

Mr Photios: A lot of it is in the regulatory reporting. I have been doing the annual environmental report for something like 16 years, since 2000. It used to be a two-page report, which was basically a handwritten report. Now I have to have computer access. Some of it gets a bit beyond me. It is doubled up in the MRF. Now it is going to be tripled up in the EMS. It is all basically to do with the same thing. They should be starting to get rid of the AER because they have got the MRF. If we are

going to bring in the EMS, they should definitely get rid of the annual environmental because the EMS is only a double up of the annual environmental.

The CHAIR: All right, so now we are getting down to the nuts and bolts.

Mr Photios: An EMS system on miscellaneous licences—so I think they said every three years or something like that. But you have to do a report on a haul road, a water pipeline and powerlines. For crying out loud, it is a road! It is not going to have a change, the same as the pipeline, and the same as the powerlines. There is no change to it. It is all infrastructure. Some of these haul roads are getting made into gazetted roads because miners make better roads than the council and Main Roads do in actual fact.

The CHAIR: No!

Hon ROBIN CHAPPLE: Can I just ask one question? You talked in section 162 that you are really concerned about part IX, and that is to take photographs and measurements and make sketches and recordings. What was it specifically about that that you had a problem with the officer doing that? Is it the invasion of privacy?

Mr Photios: Under the Criminal Code, they have to get a search warrant to be able to do things like that. The introduction of that clause itself is above the Criminal Code.

The CHAIR: Fisheries have it too.

Mr Photios: To me, it is more demanding than what the bikie task force and the terrorist task force are allowed to do, basically. There is no need for it.

The CHAIR: It is over the top?

Mr Photios: It is over the top. As I say, you get environmental activists in that position. One of the other problems is you have all these fresh graduated environmentalists in the department. They just do not understand. I had a friend put a small mining proposal in recently to be able to get a mining lease on his prospecting licence. Everything was explained in there, even the use of explosives. This person has come back with a question about explosives. You have to go and ask the district mining engineer about that. So he went and asked the district mining engineer about that and he said, “You’ve already stated it in your statement anyway.” Things like that; it was just commonsense. He obviously did not read it properly or something. I do not know. There are things like that with these graduates. They just do not understand.

Mr Cukela: I also think in the act there is something about clearing. Is that correct? If you drive off the track and run over a tree, you will be charged with clearing. Is that right or not?

[12 noon]

Hon ROBIN CHAPPLE: Not quite but you are getting close. Our interpretation of what they are saying is that if you are going to put down a roadway or roll across country, you have got to advise the department of that. So it is slightly broader. You currently access your country working but some of the reading of that would mean that if you were driving across to wherever you were going to work, you would have to make reference to that in your application.

Mr Photios: In here?

The CHAIR: Yes. It does not exactly say that.

Hon ROBIN CHAPPLE: We understand well and truly. Crikey, I have been in and out of Parliament for the last 10 to 15 years and I read legislation all the time. I am starting to get a handle on it now. You guys having a bill like this in front of you is daunting because there are many clauses and that is what makes it really quite complex, and we understand that.

Mr Photios: I really feel if we are going to introduce the biggest changes since 1978 to the Mining Act, they should take the time to get it right.

Hon ROBIN CHAPPLE: It is interesting what happens in our jurisdictions. In South Africa, when they introduce legislation, they send it to committee before they introduce the legislation and talk to the people about the legislation. It is actually the reverse way around. Here we are having a committee and looking at the legislation after it has been introduced.

The CHAIR: That is our system. Are there any more questions?

Hon ROBIN CHAPPLE: I do not have any specifically. Actually, maybe I do. One thing has cropped up and I am wondering if that could be explained. I think between both of you, you might be able to help us there. You have got what we call a miner's right. You have a prospecting licence. There is something that fits in between the prospecting licence and a miner's right. It is a small-scale prospecting —

Mr Photios: A fossicking licence.

Hon ROBIN CHAPPLE: Is that defined?

Mr Photios: It has actually got a definition to it—to fossick for relics and something to that effect.

Mr Cukela: One is for a detector.

Mr Photios: I think there is a definition in the Mining Act.

Hon ROBIN CHAPPLE: That is why I think there is a lot of misconception of what a prospector is. Is it the weekend guy who goes out with his metal detector who can access country without any rights whatsoever or is it a guy who has a miner's right and goes out and works on that or is it somebody who has a prospecting licence or a tribute or whatever? There are so many different aspects in this area.

Mr Photios: Under the act, if you have gold or gold-bearing material and you have not got a prospector's right, you have no right to possess it. I know that is in the act.

The CHAIR: Thank you both for attending today. A transcript of this hearing will be forwarded to you for correction. If you believe that any correction should be made because of typographical or transcription errors, please indicate these corrections on the transcript. Thank you very much for appearing.

Hearing concluded at 12.03 pm
