

Abstract information

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Title of your session: Session 381: Consultation in the time of COVID-19

Despite COVID-19, consultation on impact assessments, legislation and projects has continued. This diverse session will share and consider learnings on adapted approaches, their strengths and weaknesses. Has changed consultation altered who is empowered and who is marginalised during engagement? Can consultation in a time of COVID-19 be meaningful?

Abstract

Throughout COVID-19, consultation and engagement has had to continue unabated in the energy and mining sector. At the same time, many communities and individuals have become more anxious and sensitive to local change than ever before. Additionally, there is increased economic pressure from government, companies and communities to get development projects underway. Physical distancing because of COVID-19 has created new challenges and added pressures in terms of eliciting useful feedback, making key stakeholders aware of change, and ensuring project deadlines are still met. Balancing strategic goals with adequate consultation is a complex task in such a difficult working environment and has forced practitioners to carefully consider their methods.

Using a mixed-method approach of theory and case studies, this presentation will address some of the challenges and opportunities that arose as part of the Mining Regulations 2020 public engagement and consultation process that happened during COVID-19. The presentation argues that effective and appropriate engagement is possible in such an environment, but the engagement plan must take into account how the changes will affect how people interact, who is more and less likely to get involved, and the consequences of such an environment for effective engagement.

The presentation will use a case study analysis of the most significant regulatory reform project undertaken by the South Australian energy and mining department in more than 50 years, and discuss how consultation dynamics and processes change when face-to-face meetings are restricted.

The paper concludes by juxtaposing the challenges faced by government with the need to continually reflect on how power and participation influences community engagement, and how a mix of old and new consultation techniques is essential to achieve leading practice engagement.

Summary statement

Consultation and engagement has had to continue in the mining sector throughout COVID-19.

At a time when physical distancing is paramount, how can vital government consultation happen in a way that remains effective, fit for purpose, and cognisant of the underlying power dynamics and challenges of such a constrained environment?

Mining regulations consultation during COVID-19: Balancing the modern and the traditional

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Introduction

The mining industry is globally seen as a sector that has wide-ranging environmental and social impacts. The sector is regularly challenged by strong opinions on a variety of topics, such as responsible mining and what it should entail, land use and land conflicts, and social and community performance. For government regulators of exploration and mining activities, balancing the variance of views within the sector is a common challenge. This must be done while also constantly striving to achieve a balance between minimising and mitigating environmental damage, and the benefits that can be obtained from leading practice minerals development.

In 2020, the Department for Energy and Mining (DEM) was tasked with undertaking consultation during COVID-19 restrictions and lockdowns while completing the most widespread regulatory reform to the state's mining sector since the 1970's. Using a case study analysis, this paper discusses the South Australian exploration and mining regulator's challenge of managing the type of diverse opinions outlined above in a modernising regulatory consultation context. It explains how the consultation program was designed to meet the intent of International Association for Public Participation (IAP2) and Australian public service good governance principles and share reflections on its implementation within the constraints of a COVID-19 environment. The paper provides background to the regulatory reform, an outline of the COVID-19-adapted consultation program that was delivered, and a discussion of the lessons, challenges and opportunities that arose from the unique consultation environment. The paper is based on the observations of the authors.

Background

Starting in 2016, DEM led a major reform of the state's 1971 mining legislation. The *Mining Act 1971* and Mining Regulations regulate the technical, environmental and social aspects of mineral, metal and extractive resource exploration, and the mining and quarrying industries. During 2016 and 2017, under pre-COVID-19 'normal' conditions, exhaustive traditional face-to-face consultation on updating the Act took place between industry, environmental NGOs, traditional owners, agricultural and other industry groups, lawyers and other stakeholders. The updated *Statutes Amendment (Mineral Resources) Act 2019* sought to modernise and improve the mining sector's regulatory framework. Key topics for discussion included balancing landowner access rights with resource company and broader state interests; modernising regulatory compliance and enforcement powers; increasing community consultation requirements; and improving digital efficiencies in assessments and reporting for companies.

The bill passed Parliament in late 2019, nearly three years after it began. The delay in the passage of the legislation reflected the ongoing tensions between the various land use sectors, and the complex nature of how to apply multiple land use principles to, primarily, high-value agricultural land. While the resources sector is a major economic contributor to the state, the concerns in primary agricultural areas and the rights assigned to companies versus agricultural landowners was a constant source of anxiety and concern for many.

At the end of 2019, DEM was given 12 months to draft updated mining regulations to support the new bill, with the new act to be operational by 1 January 2021. A committed team of policy, engagement and regulatory officers dutifully planned their approach but, as most of us now know, the year 2020 consistently overturned the best-laid plans of mice, women and men. Although COVID-19 had less impact in Australia than in many other countries, it still created key challenges and restrictions that prevented implementation of the original draft regulations consultation plan:

- For most of 2020, movement into a number of SA's Indigenous communities was restricted to 'minimise the risk of the virus entering more remote areas where medical facilities are limited'.
- Travel or access to regional areas was severely restricted and, as the year progressed, the number of people allowed simultaneously in indoor settings was limited.
- There were periods of lockdown, as well as severe limitations on numbers of people allowed in prescribed spaces.
- Government staff were required to comply with all the above, but also take the lead in protecting and limiting exposure risks to all community members arising from government activities.

The period for completing regulatory reform remained. So, at some speed given the remaining schedule limitations, DEM's approach to the mining regulation's consultation was completely redesigned to respect these unique challenges. The commitment remained to undertake consultation in good faith and:

- provide accessible information on draft regulations to solicit specific feedback from interested stakeholders
- continue to align with the underlying principles of IAP2 and Australian public service good governance
- respect people's limited time to engage and understand, noting the additional stresses of COVID-19 personal and business impacts and therefore attempting to build more flexibility into the process
- demonstrate transparency and ensure that stakeholders are supported to be able to engage meaningfully and provide feedback and submissions on the regulations.

Redesigning consultation praxis: a mix of old and new

Although it could not include in-person meetings, the final consultation approach relied on a blend of 'old' and 'new' to meet the challenge of informing people of the draft changes and consultation process, flexibly meet the requirements of ever-changing COVID-19 rules, and accommodate the distraction of COVID-19 itself. The decision was taken to rely on a wide range of both digital and traditional communication tools to expose the state to the draft changes and the redesigned engagement program. The use of digital forums also enabled DEM to collect and share usage statistics, highlighted later in this paper. It should be noted that South Australia has wide mobile phone coverage and a high internet and digital community connectivity rate.

The revised consultation program had three key phases:

1. Early engagement and notification – communicating changes to consultation engagement due to COVID-19 and the reformed process: the 'old'.
2. Information – provided in multiple formats, which had never been done before, to practically support stakeholders to provide submissions, despite the challenges many groups and individuals were experiencing as a result of COVID-19 that may impact their time or levels of interest: the 'old' and some 'new'.
3. Engagement – methods of providing feedback, participating and engaging with the department using a digital approach: the 'new'.

DEM relied on more traditional communication and engagement tools for change notification. These were invaluable in updating stakeholders about changes and the consultation process during periods of no travel, increasing DEM's ability to reach and inform remote and regional areas. Noting that the concerns of farmers, pastoralists and other stakeholders were to be respected through the process itself, DEM used a suite of activities and tools. And because 'word of mouth' was likely to be reduced with people more isolated from each other and their usual practices, greater effort was put into notification steps. 'Old' methods therefore included:

- Regional radio, not something generally used by the department. 38 spots on four stations played for eight weeks, before and during consultation. This format has wide community reach across the state's significant land mass, especially regionally where listening to the radio is more common than in urban areas.
- Posters, placed in main regional community meeting areas including local government council chambers, grocery stores and post offices. This included more than 200 displays throughout 10 regions and in 35 key regional town centres.
- Regional print and digital media, which covered the key formats and publications for all 10 regions throughout the state.
- Multiple hard copy and digitally delivered letters to key people and interest group organisations in the weeks and months before consultation.

In addition, although not usual practice, the Minister for Energy and Mining also wrote to all elected officials and local government councils to ensure they were aware of the changes arising as a result of the draft mining regulations.

The department considered a range of digital formats that would help interested people to better understand the draft changes, make the process as efficient as possible for time-limited people and uphold the commitment to transparency. The draft mining regulations were broken into three logical topic themes aligning with the normal mining cycle process. Their release was staggered and advance notice provided to ensure that stakeholders knew when the topic they were most concerned about would be released. This method aimed to avoid overwhelming them with one large draft regulations document and to help them prioritise the matters they were most interested in.

The process included the following key digital components:

1. A series of four introductory videos, produced as a 'soft' entry into the key regulatory issues and goals of reform. The aim was to try and capture people's interest, noting the concern that a written format on its own, as an initial introduction point, would not appeal to all stakeholders. These concise video introductions aimed to support people to decide on the topics of interest they wished to explore. In addition, the videos provided an opportunity to personalise the engagement process - to literally show the faces of the team. These videos had more than 900 views, a significant audience.
2. Three live digitally broadcast question and answer sessions held with senior regulators and policy personnel to coincide with the release of the three topic areas. This was a unique approach that, to our knowledge, has not been used elsewhere in government or other projects to date within the state.

The goal was to provide a digital public meeting-style forum with complete transparency of experience. Attendees could ask any question in real time, either anonymously or by name, which the panel would try to answer. The decision was taken to not filter questions to demonstrate transparency and avoid moderator bias. All attendees could see the comments or queries that were being contributed in real time. As with broader social media, there was the propensity for negative or bullying-style enquiries: whilst only minor, this did occur and were filtered out of the Q & A only if they were personal to the panel, specific to a company or community, or derogatory towards a particular stakeholder.

The team were required to prepare intensively for this format so they could answer questions on a diverse range of topics including the proposed regulatory changes, as well as provide technical background and updates. The preparation was similar to that done for

social risk communication and included personal study, group practice and interview sessions to role-play the wide range of potential enquiries the panel would receive. All questions or comments that were unanswered because of time limitations were taken on notice, and written responses published online and sent to all attendees. The report again did not filter any enquiries.

While such sessions were resource-intensive and exhausting for staff, the feedback from attendees was overwhelmingly positive about the openness, transparency and vulnerability of the departmental team in such a forum. This type of feedback demonstrates the elements of trust that government often seeks to foster, but not always successfully.

3. A dedicated, detailed web page, which housed all regulation-related information and focused on making information access both as simple and detailed as possible, so people could choose their level of engagement (see below). The standalone site received more than 7,500 unique access views.
4. A range of guidance material, supporting and explanatory documents available as digital downloads - far more than would normally have been created. Noting the diversity of potential stakeholders and the goal of making engaging as easy as possible, the aim was to offer a spectrum of information, from quick summaries to in-depth, almost academic level analysis, on all the key aspects of regulatory reform. This would support multiple interest types and allow people to engage at their own desired level of detail.
5. Email correspondence used throughout the process for key notifications and updates. In total, 21 formal emails were sent to more than 39,000 recipients with a roughly 42% open rate, which is over 16,500 recipients.

Facebook and Twitter, used in a limited format to raise awareness and direct interested parties to access points to the process. More than 550,000 impressions were measured on these social media platforms, with just over 2,000 clicks. This was again a first for the department.

6. The Minister for Energy and Mining also hosted two live online sessions so people could listen in and directly question the Minister. These were held at the beginning of and later in the regulatory engagement process, further demonstrating the commitment to open consultation.

7. Formal digital meetings were held with more than 340 organisations and individuals. The team committed to multiple sessions to support the evolving conversations and offered broad feedback opportunities. This equated to hundreds of staff hours.
8. A series of smaller digital meetings schedules were offered across a number of days to facilitate small group community forums for more intimate enquiry and discussion of topics. Morning, afternoon and evening time slots were available to support stakeholder availability challenges. This was determined to be the best way to connect to regional areas, attempting to echo the 'drop-in' style of smaller sessions and access.

Feedback was collected in two main ways. The team recorded informal feedback from a large number of people during their various meetings. Formal submissions were digitally supported on the Government of South Australia's YourSay consultation hub (<https://yoursay.sa.gov.au/>) to minimise hard copy submissions, noting challenges in postal delays arising from COVID-19 and to provide a uniform option for all stakeholders.

58 formal, digitally written submissions were received from individuals and organisations, far more than expected, and of a high quality. A wide range of informal feedback was also received, noted and considered through the multiple interaction formats, including phone and email inquiries that were recorded and in turn informed regulatory evolution before the regulations were finalised.

At the conclusion of the consultation period, a written report was provided to stakeholders, again providing more detail and information than normal for a report of this nature. It addressed consultation feedback, resulting changes to regulations – and where changes did not arise – and linked it all back to the strategic intent of the regulatory reform. The report was published online and sent directly to all interested parties involved in the consultation.

Reflections

The 2020 process was resource-intensive, far more so than if a traditional regulatory reform approach had been used. This was mainly because of the multiple information types that were created, the hours and hours of online meetings with stakeholders, and a commitment to providing information at a level requested by individual stakeholders. The effect of time constraints was exacerbated in 2020 due to the sudden onset of COVID-19 and the need to adapt, as well as the hard 1 January 2021 deadline goal.

However, it is not enough to measure engagement solely on an output indicator of 'we did a lot.' It is necessary to interrogate and reflect against the initial project goals. The post-consultation survey showed that more than 80 percent of respondents considered the consultation to be good or excellent. More than half of respondents felt the material was about right, and some felt

that too much information was provided. Noting that the program endeavored to provide more rather than less information, this was considered a validation of the approach.

Despite the high level of engagement, many people's feedback included the desire for more time and face-to-face meetings. For some, the need to be directly heard on matters that greatly concern and interest them remained paramount. This has led to reflection within the department on what can be achieved locally, both substantively and in terms of relationships, by face-to-face meetings on difficult issues at the community-mining, company-government interface. Also, more broadly, what challenges and benefits a blended digital approach offers for government-led consultation.

Power imbalances were an issue that the authors considered throughout the process. This remains an ever-present challenge in any engagement form. Dismissing the issue of power imbalances reduces the credibility of engagement, and for democratic governments is a constant tension as they seek to strike balance among multiple views and stakeholders. For that reason, government has an obligation, regardless of the tools used, to plan how to minimise any imbalance and stimulate wider diversity of inputs and submissions. Targeting activities that result in high quality, diverse views is important to facilitate better balance of inputs to policymaking and promote increased respect for government processes.

Given that digital tools inherently favor some groups over others in terms of usability and access, an effective engagement process should take into account the risk of power imbalances inherent in the engagement tools being used, and make an effort to cover these by using other tools that give individuals options and increase access. It is easy to assume that power imbalances could be exacerbated by digital engagement, however digital mediums also offer new opportunities.

'Traditional' engagement is not without its problems as the following illustrates – and digital formats, if accessible to stakeholders, pose an interesting opportunity to challenge these imbalances:

- “In 2008, only 24 percent of Americans had attended at least one local or school meeting in the past year. The reality is that many residents have the desire to share their input on community projects, but when faced with a six o'clock meeting at city hall on a weeknight, life will often win out. The workday goes long, a child needs extra help with homework, or the thought of dealing with traffic, parking, and sitting upon a cold metal chair for hours is too unappealing” (Smith et al, 2009).
- Research from Boston University (2015-17) measured the participatory function at town hall meetings in public planning and zoning meetings around Boston. Findings included that:
 - women were underrepresented by 8 points
 - white people were overrepresented by 8 points

- people >50 were overrepresented by 22 points (Einstein, cited in Graybar, 2021).

The authors' direct observation has shown that town hall-style meetings in Australia often have the potential to demonstrate similar age, ethnic and gender biases. Digital engagement activities remove the need for travelling to face-to-face forums, and the related time and cost. They can also offer positive gains for people whose physical movement is constrained and therefore struggle to access information. Researchers at Monash University in 2020, investigating COVID-19 digital use in intercultural communities, found that removing the time and cost impact of travel through digital communication had a positive impact on individuals.

Live question and answer sessions, which are most likely to mimic a townhall panel-style forum, allow the relative anonymity of online attendees. While this does create challenges, it also offers benefits of potential 'protection' for individuals, vulnerable or marginalised groups from the constraints and impacts of face-to-face sessions. A consideration for future events is how to style such sessions to provide the greatest opportunity for broad sections of the community to have flexible access, while also managing the potential for cyber bullying.

Offering multiple small sessions in a day is another way to increase public access to information, as meeting times can be flexibly tailored to the audience. Having a very small number of attendees at each meeting promotes direct open discussion with topic experts.

Traditional owner's cultural communication and meeting preferences are not automatically supported by digital formats, and due to the rapid impacts of COVID-19 in 2020, we were unable to review this issue prior to the consultation process. However, noting the risks a pandemic poses to traditional owner communities, it will be important to explore with them how to evolve or alter a digital format to support their participation in a pandemic-restricted scenario. There is a risk that their views may be marginalised if rigid government schedules cannot change, or digital formats are not further interrogated and creatively explored to facilitate effective engagement.

Related to this, but beyond the scope here, is to further unpack whether digital engagement can play a role in involving and extending the reach of engagement to encourage wider community representation, with the aim of enhancing sharing and access to information and soliciting a broader diversity of opinions and views.

Conclusion

In a COVID-19 constrained setting, consultation on the draft mining regulations achieved what it set out to do by blending both old and new engagement methods. In doing so, it met the pre-determined transparency, accessibility and good governance goals. The new digital methods used will likely be used again by the department, however feedback from stakeholders suggests that, in a 'normal' scenario, face-to-face forums continue to be valued. It is unknown whether this is because face-to-face is more familiar or because it is perceived as offering a more equal

power balance that some parties may prefer. The time savings in digital consultation from a travel and personal time perspective has been valued in some reviews of the performance of digital communication, but what is clear is that a mix of options carefully tailored to each consultation topic, the pre-determined engagement and policy goals, and the particular audience, will continue to be the most appropriate way forward. Ongoing critical assessment and understanding of how different engagement approaches affect public and stakeholder involvement and satisfaction with the process will be important to increase understanding in this developing field of engagement.

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