19.3.13

AGRICULTURE, RESOURCES AND ENVIRONMENT COMMITTEE

REPORT NO. 18 ON THE

MINING AND OTHER LEGISLATION AMENDMENT BILL 2012

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 28 November 2012 the Mining and Other Legislation Amendment Bill 2012 (the Bill) was introduced to Parliament.

The Bill was subsequently referred to the Agriculture, Resources and Environment Committee (the Committee) with a report back date of 12 March 2013.

On 12 March 2013 the Committee tabled its Report No. 18 in relation to the Bill.

The Queensland Government response to recommendations made and clarification on points raised by the Committee are provided below.

RESPONSE TO RECOMMENDATIONS

Recommendation 1

The Committee recommends that clause 42 be amended to provide greater certainty of the coverage for landowners and resource companies.

Government Response

The Government notes the committee's recommendation that the definition of 'occupier' be amended to make clear that an 'owner' of land be able to provide another party or entity a right to 'occupy' land for the purposes of the land access framework (notification and compensation rights).

The Government maintains that the 'occupier' definition as drafted does in fact adequately address this issue, however is willing to amend the definition on the basis that it will put beyond doubt the fact that an owner of land is able to confer this occupation right.

The Government notes that in addition to clause 42, the clarifying definition will also need to be made to the 'occupier' definition contained in the other resource Acts. Further clauses to be amended include: clause 44 (*Geothermal Energy Act 2010* definition), clause 78 (*Mineral Resources Act 1989* definition), clause 161 (*Petroleum Act 1923* definition); and clause 178 (*Petroleum and Gas (Production and Safety) Act 2004* definition).

Recommendation 2

The Committee recommends that clause 96 be amended to correct errors.

Government Response

The Government is of the view that there are no errors in clause 96 of the Bill.

Specifically, amendments proposed to section 81 of the *Mineral Resources Act 1989* (MRA) under clause 96 were drafted to commence after section 162 of the *Mines Legislation (Streamlining) Amendment Act 2012* (Streamlining Act) that will commence by proclamation before clause 96 of this Bill.

Recommendation 3

The Committee recommends that clause 101 be amended to correct the error in the amendment proposed in 101(6).

Government Response

The Government is of the view that there are no errors in clause 101 of the Bill.

Specifically, amendments proposed to section 93 of the MRA under clause 101 were drafted to commence after section 164 of the Streamlining Act that will commence by proclamation before clause 101 of this Bill.

Recommendation 4

The Committee recommends that clause 109 be amended to correct a grammatical error.

Government Response

Clause 109 will be amended during consideration in detail to correct the reported grammatical error on advice from the Office of Queensland Parliamentary Counsel.

Recommendation 5

The Committee recommends that clause 110 be amended to correct an error in the amendment proposed in 110(4).

Government Response

The Government is of the view that there are no errors in clause 110 of the Bill.

Specifically, the explanatory notes for the clause make reference to a minor amendment relating to the restructure of the MRA by the Streamlining Act as proposed under clause 110.

Item 1 of schedule 3 amendments to the MRA by the Streamlining Act, replaces references to 'part' under section 148(1) of the MRA with 'chapter'.

There are two references to 'part' in section 148(1), the first relates to the part of an exploration permit and second refers to part 5 of the MRA.

Clause 110(4) of the Bill reverses the amendment to the first reference to 'part' made by the Streamlining Act so that correct terminology is used in the context of the section.

Recommendation 6

The Committee recommends that clause 126 and 127 be amended to correct the incorrect references to chapter 13, parts 4, 5 and 6 of the *Mineral Resources Act 1989.*

Government Response

The Government is of the view that there are no errors in clauses 126 and 127 of the Bill.

Specifically, clause 126 and 127 references to 'chapters' relates to the un-commenced restructuring of the MRA by the Streamlining Act that will change references to 'parts' of the Act to 'chapters'.

These clauses of the Bill were drafted to commence after the restructure of the MRA undertaken by the Streamlining Act. The remaining sections of the Streamlining Act will commence by proclamation before the proposed amendments drafted under clauses 126 and 127.

Recommendation 7

The Committee recommends that clause 142 be amended to correct the incorrect references to schedule 1A.

Government Response

The Government is of the view that there are no errors in clause 142 of the Bill.

Specifically, un-commenced section 314 of the Streamlining Act relocates parts 12–18 of the MRA to a new schedule 1A as inserted by section 322.

Parts 12–18 of the MRA address native title provisions that have been moved to new schedule 1A.

Clause 142 of the Bill has been drafted to commence after this un-commenced section of the Streamlining Act.

Recommendation 8

The Committee recommends that the Mining and Other Legislation Amendment Bill 2012 be passed subject to the amendment proposed to clauses 42, 96, 101, 109, 110, 126, 127 and 142.

Government Response

Clause 42, 44, 78, 161 and 178 will be amended during consideration in detail to provide greater clarity in relation to the definition of occupier.

Clause 109 will be amended during consideration in detail to correct the reported grammatical error on advice from the Office of Queensland Parliamentary Counsel.

When the amendments proposed to clauses 96, 101, 110, 126, 127 and 142 are read with reference to the amendments that are yet to commence in the Streamlining Amendment Act the amendments will function as proposed and the Bill clauses are not an error. Therefore, no additional amendments to these clauses as recommended are considered necessary.

CLARIFICATION ON POINTS RAISED BY THE COMMITTEE

Legal advice in relation to the *Native Title Act 1993 (Cwlth)*

The Committee sought clarification whether any legal advice was obtained to confirm that "fossicking" is not considered mining under the *Native Title Act 1993 (Cwlth).*

Government Response

The Government is satisfied that "fossicking" is not considered "mining" on the basis of advice sought in regard to these amendments.

Proposal for a two tiered system to identify occupiers of land

The Committee invited the Minister to comment during the second reading debate on the proposal put forward by the Queensland Law Society and the Queensland Resources Council for a two-tiered system for mining tenement holders to identify occupiers of land.

Government Response

The Government notes the two tiered system proposed by the Queensland Law Society in relation to the identification of occupiers that are not able to be immediately established through a title search. The Government also notes that this proposal was supported by the Queensland Resources Council during the public hearing associated with the Bill.

The Government agrees that there are inherent difficulties associated with identifying these occupiers as they may not be easily discoverable through a title search as the occupation rights may not be registered on title and that there is merit in exploring implementation of such a process in legislation.

The Government is currently in the process of implementing policy and legislative reforms in relation to the land access framework which governs private land access rights as they relate to resource activities. These reforms relate to the Government's response to an independent panel review of the Land Access Framework conducted in early 2012.

Further analysis and consultation on this proposal will be undertaken by the Department as part of this process and further recommendations brought back to Government and Parliament as part of broader land access reforms.

It is currently scheduled that the package of land access reforms will be progressed for Government consideration in August 2013.

An implementation committee of key stakeholders has been established and is advising Government on these reforms. This committee includes representatives of the Queensland Resource Council, Australian Petroleum Production and Exploration Association, Association of Mining and Exploration Companies, AgForce Queensland, the Queensland Farmers' Federation and the Queensland Gasfields Commission.

Consultation with stakeholders on the further analysis of this particular proposal will occur through this group.

Projected revenue from cash bidding

The Committee invited the Minister to clarify how the projected revenue from cash bidding for prospective exploration was calculated.

Government Response

The Committee has requested clarification on how the projected revenues were calculated for the cash bidding project.

As part of the previous Government's 2011-12 Mid-Year Fiscal and Economic Review, $370 million in potential net revenue was estimated from competitive cash tendering for exploration rights over the forward estimates period to June 2016.

These revenue forecasts were developed having regard to prevailing market conditions and expected releases at the time. However, from a Budget perspective, it has always been recognised that proceeds from cash bidding will be inherently lumpy, as they will be determined by the timing of release of highly prospective areas and prevailing market conditions – particularly current and forecast coal, oil and gas prices – at the time of release, such that proceeds could be lower in some years and higher in others.

In addition, there is always a significant degree of uncertainty surrounding forecasts of new revenue streams, particularly when the revenue is being determined by the market, rather than being set a fixed rate by the Government. Over the medium to long term, however, the market-based mechanism is expected to enhance allocation efficiency and provide enhanced returns to the State.

Protection for culturally sensitive sites and artefacts

The Committee invited the Minister to provide assurances that the new access arrangements proposed in the Bill will provide adequate protections for culturally sensitive sites and artefacts on lands that are the subject to unresolved native title claims.

Government Response

The Aboriginal *Cultural Heritage Act 2003* is the overarching Queensland Legislation which provides effective recognition, protection and conservation of Aboriginal cultural heritage. This Act prescribes a duty of care on all persons, and relates to all land in Queensland. This duty of care and the relevant prescribed protocols prevail whether the land is freehold or leasehold, or subject to a native title claim, determination, or not subject to any claim at all.

This Bill does not propose any amendments to the *Aboriginal Cultural Heritage Act 2003* and the proposed amendments to *the Fossicking Act 1994* will have no effect on the operation of the *Aboriginal Cultural Heritage Act 2003*.